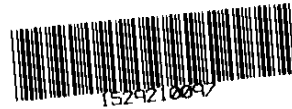


# UNOFFICIAL COPY

THIS DOCUMENT WAS  
PREPARED BY AND AFTER  
RECORDING, PLEASE MAIL TO:

Vincent A. Lavieri, Esq.  
Gardiner Koch Weisberg & Wrona  
53 West Jackson Boulevard  
Suite 950  
Chicago, Illinois 60604  
312-362-0000



Doc#: 1529210097 Fee: \$106.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 10/19/2015 04:06 PM Pg: 1 of 35

## **FIFTH AMENDMENT TO THE DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS FOR THE VANGUARD LOFTS CONDOMINIUMS**

This Fifth Amendment to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium is made and entered into this 13th day of July, 2015.

**WHEREAS**, the Board of Managers of the Vanguard Lofts Condominium Association (hereinafter "the Board") is responsible of the administration, operation and management of the condominium property located at 1250 W. Van Buren Street, Chicago, Cook County, Illinois, (hereinafter "the Property"), which is legally described on Exhibit "A" attached hereto and made a part hereof.

**WHEREAS**, the Property was submitted to the provisions of the Illinois Condominium Property Act (the "Act") pursuant to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on June 2, 1999 as

# UNOFFICIAL COPY

Document No. 99527499 (hereinafter "the Declaration").

**WHEREAS**, the Declaration was amended pursuant to the First Amendment to Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 23, 1999 as Document No. 99705153;

**WHEREAS**, the Declaration was amended pursuant to the Second Amendment to Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on August 27, 1999 as Document No. 99822780;

**WHEREAS**, the Declaration was amended pursuant to the Third Amendment to Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on September 15, 1999 as Document No. 99873616;

**WHEREAS**, the Declaration was amended pursuant to the Fourth Amendment to Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 28, 2000 as Document No. 00574003;

**WHEREAS**, the Declaration, at page 2, defines the By-Laws as "the provisions for the administration of the Property attached as Exhibit "E" hereto, or as the same may be from time to time duly amended."

**WHEREAS**, in connection with the recording of the Declaration, including the amendments thereto set forth in the foregoing recitals, the Declarant failed to attach Exhibit "E" or otherwise cause to be recorded the By-Laws of the Association;

# UNOFFICIAL COPY

**WHEREAS**, Article XIV, Section 11, of the Declaration provides that except for those provisions of the Declaration requiring the signature and acknowledgement of all of the Unit Owners and all First Mortgagees, (i) the other provisions of the Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission; (ii) signed and acknowledged by the President and the Secretary of the Board and certifying that the Unit Owners having at least two-thirds ( $\frac{2}{3}$ ) of the total votes (*i.e.*, having least two-thirds ( $\frac{2}{3}$ ) of the total percentage interests in the Common Elements) have approved such amendment at a meeting of the Association called for such purpose; (iii) containing an Affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all First Mortgagees no less than ten (10) days prior to the date of such Affidavit; and (iv) the Amendment shall be effective upon recordation in the Office of the Recorder of Deeds of Cook County, Illinois; and

**WHEREAS**, the Board and the Unit Owners desire to amend the Declaration by adopting By-Laws to govern the administration of the Property.

**NOW, THEREFORE**, the Declaration is hereby amended as follows:

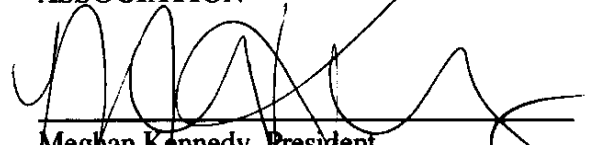
1. The Declaration is amended by adopting Exhibit "B" attached hereto as the By-Laws of the Vanguard Lofts Condominium Association.
2. In all other respects, the Declaration, as amended, shall remain unchanged.


**IN WITNESS WHEREOF**, the President and Secretary of the Board have duly executed this Fifth Amendment as of the day and year first above written.

**[SIGNATURE PAGE TO FOLLOW]**

# UNOFFICIAL COPY

**BOARD OF MANAGERS OF THE  
VANGUARD LOFTS CONDOMINIUM  
ASSOCIATION**

  
\_\_\_\_\_  
Meghan Kennedy, President

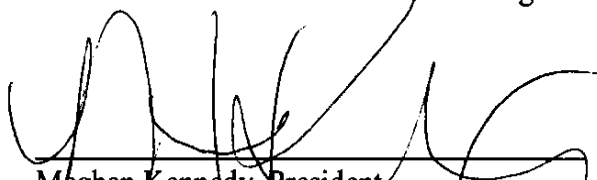
  
\_\_\_\_\_  
Jim Thomas, Secretary

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## CERTIFICATION

The undersigned, being the President and Secretary of the Vanguard Lofts Condominium Association, an Illinois not-for-profit corporation, certify that, as required by Article XIV, Section 11, of the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium, certifying that the Unit Owners having at least two-thirds ( $\frac{2}{3}$ ) of the total votes (*i.e.*, having least two-thirds ( $\frac{2}{3}$ ) of the total percentage interests in the Common Elements) have approved such amendment at a meeting of the Association called for such purpose, except to the extent that notice of such a meeting has been waived in writing by the Unit Owners.



\_\_\_\_\_  
Meghan Kennedy, President



\_\_\_\_\_  
Jim Thomas, Secretary

# UNOFFICIAL COPY

## ATTESTATION

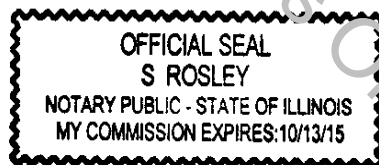
STATE OF ILLINOIS       )  
   ) SS  
 COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Meghan Kennedy, personally known to me to be the President of the Vanguard Lofts Condominium Association, an Illinois not-for-profit corporation, and Jim Thomas, personally known to me to be the Secretary of said not-for-profit corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument, pursuant to authority given by the Board of Managers of said not-for-profit corporation, as their free and voluntary act, and as the free and voluntary act and deed of said not-for-profit corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 13th day of July, 2015.

  
 Notary Public

My Commission expires on  
October 13, 2015.

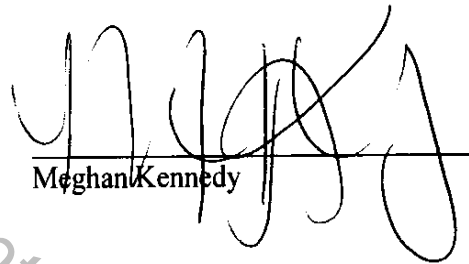


# UNOFFICIAL COPY

## AFFIDAVIT

STATE OF ILLINOIS     )  
                                       ) SS  
 COUNTY OF COOK        )

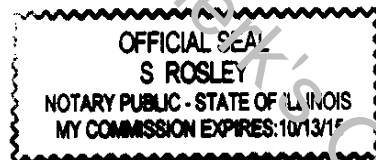
The undersigned, being the President of the Vanguard Lofts Condominium Association, an Illinois not-for-profit corporation, certify that on September 11, 2015, as required by the Article XIV, Section 11, of the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium, a copy of this Fifth Amendment to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Lofts Condominium was mailed by certified mail to all First Mortgagees.

  
 Meghan Kennedy

Subscribed and sworn before me  
 this 21 day of September, 2015.

  
 Notary Public

My Commission expires on  
October 13, 2015.



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL 1: UNITS 1A, 1B, 1C, 109 THRU 115, 201 THRU 215, 301 THRU 315, 401 THRU 415, 501 THRU 515, 601 THRU 615, 701 THRU 715 AND P1 THRU P27, P35 THRU P101, P103 THRU P105 & P107 IN THE VANGUARD LOFT CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

CERTAIN PARTS OF BLOCK 23 IN THE CANAL TRUSTEES' SUBDIVISION OF THE WEST 1/2 AND THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 99527499, AND AS AMENDED, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENTS FOR THE BENEFIT OF PARCEL 1 FOR INGRESS, EGRESS, USE, MAINTENANCE, UTILITIES AND ENJOYMENT AS SET FORTH IN THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT NUMBER 99527499.

Property Index Nos.: 17-17-117-036-1001 though 17-17-117-036-1198, inclusive

Address: 1250 W. Van Buren Street, Chicago, Illinois 60607

Units 1A, 1B, 1C, 109 thru 115, 201 thru 215, 301 thru 315, 401 thru 415, 501 thru 515, 601 thru 615, 701 thru 715 and P1 thru P27, P35 thru P101, P103 thru P105 & P107



# UNOFFICIAL COPY

## Exhibit B

### BY-LAWS OF VANGUARD LOFTS CONDOMINIUM ASSOCIATION

#### ARTICLE I

##### General Provisions

The Vanguard Lofts Condominium Association ("the Association") is responsible for the overall management, operation and administration of the Property through its duly elected Board of Managers ("the Board"). Whether or not incorporated, the Association shall have such powers as are now or may hereafter be granted by the Illinois General Not-For-Profit Corporation Act of 1986, which are not inconsistent with the Act or the Condominium Instruments. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with law which may be appropriate to promote and attain the purposes set forth in the Act or the Condominium Instruments. All capitalized terms used but not defined herein that are defined in the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for the Vanguard Loft Condominium, recorded on June 6, 1999 in the Office of the Recorder of Deeds of Cook County, Illinois as Document Number 99527499, as amended from time to time, (hereinafter "the Declaration") shall have the same meaning as ascribed to such terms in the Declaration.

#### ARTICLE II

##### Members

**Section 1. Classes of Members, Membership and Termination Thereof.** The Association shall have one class of members. The designation of such class and the qualifications of the members of such class shall be as follows: Each Unit Owner shall be a member of the Association, which membership shall terminate upon the sale or other disposition of such member's Unit, at which time the new Unit Owner shall automatically become a member of the Association. Such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred under or in any way connected with the Unit or the Association during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies that the Board or others may have against a former Unit Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

**Section 2. Votes and Voting Rights.**

- (a) The total number of votes of all members shall be one hundred (100). Each member shall be entitled to the number of votes equal to his, her or its percentage

# UNOFFICIAL COPY

ownership interest in the Common Elements at the time any matter is submitted to a vote of the members.

(b) Where there is more than one owner of a Unit, if only one of the multiple owners is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit, if more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise, that there is majority agreement if any one of the multiple owners cast the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

(c) Any specified percentage of the members, whether majority or otherwise, for purposes of voting or for any other purpose, wherever provided in these By-Laws, shall mean such percentage of the total number of votes hereinabove set forth. Such percentage shall be computed in the same manner as is a specified percentage of the Unit Owners of the Condominium as provided in the Declaration, provided, however, that when thirty (30%) percent or fewer of the Units, by number, possess over fifty (50%) percent in the aggregate of the votes as provided herein, any percentage vote of the members specified herein or in the Declaration shall require the specified percentage by number of units rather than by percentage of interest in the Common Elements allocated to units that would otherwise be applicable.

**Section 3. Transfer of Membership.** Membership in this Association is not transferable or assignable, except as provided in Article II, Section 1, hereof.

**Section 4. Installment Contracts.** Anything herein to the contrary notwithstanding, in the event of a sale of a Unit, the purchaser of such Unit pursuant to an installment contract for purchase from a seller shall, during such times as he or she occupies the Unit, be counted toward a quorum for purposes of election of members of the Board at any meeting of the Unit Owners called for the purpose of electing members of the Board and have the right to vote for the election of members of the Board and to be elected to and serve on the Board, unless the seller expressly retains in writing any or all of such rights. In no event may both the seller and purchaser be counted toward a quorum, be permitted to vote for a particular office or be elected to serve on the Board. Satisfactory evidence of the existence and terms of the installment contract as they relate to the subject matter of this Section 4 shall be made available to the Association or its agents. For purposes of this subsection, "installment contract" shall have the same meaning as set forth in Section 1 (e) of "An Act relating to installment contracts to sell dwelling structures," approved August 11, 1967, as amended.

## ARTICLE III

### Meetings of Members

**Section 1. Annual Meeting.** An annual meeting of the members for the purpose of electing Board members and for the transaction of such other business as may come before the meeting

# UNOFFICIAL COPY

shall be held on the first Tuesday of November of each year at 7:30 p.m., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated in a written notice from the Board. If the election of members of the Board shall not be held when designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members called as soon thereafter as it conveniently may be held. The Board may disseminate to the members biographical and background information about candidates for election to the Board if reasonable efforts are made to identify all candidates and all candidates are given an opportunity to include biographical information and background material in the information to be disseminated and the Board does not express a preference in favor of any candidate. A Unit Owner shall be entitled to receive from the Board, within five (5) business days after the request therefor, the names, addresses, and weighted vote of each Unit Owner entitled to vote at the next annual meeting of members.

**Section 2. Special Meetings.** Special meetings of the members may be called by the President, twenty-five (25%) percent of the members of the Board or not less than twenty (20%) percent of the members. All matters to be considered at special meetings of the members called by not less than twenty (20%) percent of the members shall first be submitted in writing to the Board not less than ten (10) days before the date of the special meeting of the members called to consider such matters.

**Section 3. Place and Time of Meeting.** All meetings of the members shall take place at 7:30 p.m. in some part of the Property designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting.

**Section 4. Notice of Meetings.** Written or printed notice stating the purpose, place, day and hour of any meeting of members shall be mailed or delivered to each member entitled to vote at such meeting, not less than ten (10) days, nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, except that notice may be sent, to the extent the Condominium Instruments or rules adopted thereunder expressly so provide, by electronic transmission consented to by the Unit Owner to whom the notice is given, provided the director and officer or his agent certifies in writing to the delivery by electronic transmission.

**Section 5. Quorum.** The members present at a meeting in person or by proxy holding twenty (20%) percent of the votes that may be cast at any meeting shall constitute a quorum at such meeting; provided that in voting on amendments to these By-Laws, a Unit Owner who is in arrears on the Unit Owner's regular or separate assessments for sixty (60) days or more, shall not be counted for purposes of determining if a quorum is present, but that Unit Owner retains the right to vote on amendments to the Association's By-Laws. If a quorum is not present at the commencement of any meeting of members, the meeting shall be adjourned and may be called again only in accordance with the provisions of these By-Laws.

**Section 6. Proxies.**

- (a) Except as otherwise provided subsection (b) of this Section 6 in connection with

# UNOFFICIAL COPY

the election of Board members, at any meeting of members, a member entitled to vote may vote either in person or by proxy, executed in writing by the member or by his duly authorized attorney-in-fact. Every proxy must bear its date of execution and unless the proxy itself provides otherwise, shall be invalid after eleven (11) months from the date of its execution. Any proxy distributed by the Board for election of members of the Board shall give Unit Owners the opportunity to designate any person as the proxy holder and shall give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

(b) Pursuant to any rule adopted by the Board not less than one hundred (120) days before an election of Board members, Unit Owners may not vote by proxy in such election of Board members but shall vote only (1) by submitting an Association-issued ballot in person at the election meeting, or (2) by submitting an Association-issued ballot to the Association or its designated agent by mail or other means of delivery specified in the Condominium Instruments, or by such rule. Ballots to be used for the purposes specified in this subsection 6(b) shall be mailed or otherwise distributed to Unit Owners not less than ten (10) days nor more than thirty (30) days before the election meeting, and the Board shall give Unit Owners not less than twenty-one (21) days' prior written notice of the deadline for inclusion of a candidate's name on the ballots, which deadline shall be not more than seven (7) days before the ballots are mailed or otherwise distributed to Unit Owners. Every ballot shall include the names of all candidates who have given the Board or its authorized agent timely written notice of their candidacy and shall give the person casting the ballot the opportunity to cast votes for candidates whose names do not appear on the ballot. No ballot received by the Association or its designated agent after the close of voting shall be counted. Any Unit Owner who submits a ballot by mail or other means of delivery specified in the Condominium Instruments or a rule adopted by the Board may request and cast a ballot in person at the election meeting, and thereby void any ballot previously submitted by that Unit Owner.

(c) If a written petition by members with at least twenty (20%) percent of the votes of the Association is delivered to the Board within fourteen (14) days after the Board's approval of a rule adopted pursuant to Subparagraph 6(b) above, the Board shall call a meeting of the members within thirty (30) days after the date of delivery of the petition. Unless a majority of the total votes of members are cast at the meeting to reject the rule, the rule shall be ratified.

**Section 7. Manner of Acting.** Except as set forth in these By-Laws, and except as otherwise required by the Condominium Instruments or the Act, any action to be taken at any meeting of the members at which a quorum is present shall be on the affirmative vote of more than fifty (50%) percent of the members represented at such meeting. The following matters shall require the affirmative vote of two-thirds ( $\frac{2}{3}$ ) or more of all Unit Owners at a meeting duly called for the purposes:

- (a) Merger or consolidation of the Association.
- (b) Sale, lease, exchange, or other disposition of all, or substantially all, of the

# UNOFFICIAL COPY

property and assets of the Association; or

- (c) The purchase and sale of land or Units on behalf of the Unit Owners.

## ARTICLE IV

### Board of Managers

**Section 1. In General.** The affairs of the Association shall be managed by the Board, which shall act as the Board of Managers of the Condominium as provided in the Act and the Declaration.

**Section 2. Number, Tenure and Qualifications.** The number of members of the Board shall be elected from the members of the Association. There shall be five (5) members of the Board. Commencing with the date of the first annual meeting of the members, the three (3) candidates receiving the highest number of votes shall be elected for a term of two (2) years and the candidates receiving the next highest number of votes shall be elected for a term of one (1) year. Upon expiration of the initial terms of office of the members of the Board so elected, and, thereafter, successors shall be elected for a term of two (2) years. Members of the Board shall serve until their respective successors shall have been elected and qualified. All members of the Board shall be elected at large. Each member of the Board shall hold office without compensation. In the event that a member of the Association is a corporation, limited liability company, partnership, trust, or other legal entity other than a natural person or persons, then any shareholder, officer, or director of such corporation, member or manager of such limited liability company, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity may be eligible to serve as a member of the Board. If there are multiple owners of a single Unit, only one of the multiple owners shall be eligible to serve as a member of the Board at any one time. A member of the Board may succeed himself or herself in office.

**Section 3. Election.** At each annual meeting of the members, voting for the members of the Board shall be on a non-cumulative basis, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Unit Owners biographical information about candidates for election to the Board if (a) no preference is expressed in favor of any candidate and (b) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.

**Section 4. Regular Meetings.** A regular annual meeting of the Board shall be held immediately after and at the same place as the annual meeting of members. The Board shall, by rules or regulations that the Board may from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four (4) times per year.

**Section 5. Special Meetings.** Special Meetings of the Board may be called by or at the



# UNOFFICIAL COPY

request of the President or not less than twenty-five (25%) percent of the members of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

**Section 6. Notice.** Written notice of any special meeting of the Board shall be mailed or delivered to all members of the Association and all members of the Board not calling the meeting at least forty-eight (48) hours prior to the date of such special meeting. Written notice of regular meetings of the Board shall be mailed or delivered to all members of the Association at least forty-eight (48) hours prior to the date of such meeting. The business to be transacted at, or the purpose of any regular or special meeting of the Board, shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. Notice of meetings of the members shall be given as provided in Article XI of these By-Laws. Copies of said notices of meetings of the Board shall be posted in entranceways or other conspicuous places in the Condominium designated by the Board at least forty-eight (48) hours prior to the meeting.

**Section 7. Quorum.** A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of the meeting, the meeting shall be adjourned and may be called again only in accordance with the provisions of these By-Laws.

**Section 8. Manner of Acting.** The act of a majority of the members of the Board present at the meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except when otherwise provided by law or in the Condominium Instruments.

**Section 9. Vacancies.** Any vacancy occurring in the Board by reason of death, removal or resignation of a member of the Board shall be filled by a two-thirds ( $\frac{2}{3}$ ) vote of the remaining members of the Board. A member elected by the Board to fill a vacancy shall serve until the next annual meeting of the members of the Association; provided that if a petition is filed with the Board signed by members of the Association holding twenty (20%) percent of the votes in the Association requesting a meeting of the members to fill the vacancy for the balance of the unexpired term of his predecessor, the term of the member so elected by the Board shall terminate thirty (30) days after the filing of the petition and a meeting of the members for the purpose of filling such vacancy for such unexpired term shall be called no later than thirty (30) days following the filing of such petition. Members of the Board may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective on receipt of said resignation or upon the date specified in the notice of resignation. Notice of such resignation shall be given as provided in Article XI of these By-Laws. If, as the result of the death, removal or resignation of a member of the Board, no member of the Board remains in office, a special meeting of members of the Association may be called to fill all vacancies for the unexpired terms of the members of the Board.

**Section 10. Removal.** Any member of the Board may be removed as a member of the Board by the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of all the members of the Association at a special meeting called for such purpose.

# UNOFFICIAL COPY

**Section 11. Adoption of Rules and Regulations.** All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations, which rules and regulations conform to the requirements of the Act and the Condominium Instruments. No quorum is required at such meeting of the members. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution, nor may any rules or regulations conflict with the provisions of the Act or the Condominium Instruments. Such rules and regulations shall be effective upon adoption.

**Section 12. Open Meetings.** All meetings of the Board, whether regular or special, shall be open to the members of the Association, except for meetings: (a) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent; (b) to consider information regarding appointment, employment or dismissal of an employee; or (c) to discuss violations of rules and regulations of the Association, or a member's unpaid share of Common Expenses. Any vote on the above matters shall be taken at a meeting, or portion thereof, open to any member. Any member may record the proceedings at meetings required to be open by the Act or these By-Laws by tape, film or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

**Section 13. Contracts with Board Members.** The Board may not enter into a contract with a current Board member or with a corporation, limited liability company or partnership in which a Board member or a Board member's immediate family has a twenty-five (25%) percent or more interest unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by twenty (20%) percent of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice, and such election shall be held within thirty (30) days after filing the petition. For purposes of this Section 13, a Board member's immediate family means the Board member's spouse, grandparents, parents, siblings and children.

**Section 14. Powers and Duties.** The powers and duties of the Board shall include, but not be limited to, the operation, care, upkeep, maintenance, replacement and improvement of the Common Elements. However, nothing in the foregoing sentence shall be deemed to invalidate any provision in the Condominium Instruments placing limits on expenditures for capital additions or capital improvements to the Common Elements (other than for purposes of repairing, replacing, or restoring portions of the Common Elements) by the Board without the prior approval of the Unit Owners.

**Section 15. Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provisions of the Condominium Instruments or the rules and regulations adopted by the Board from time to time, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners.

# UNOFFICIAL COPY

## ARTICLE V

### Officers

**Section 1. Officers.** The officers of the Association shall be a President, a Treasurer and a Secretary. The Board may, in its discretion, establish the office of Vice Presidents, the number thereof to be determined by the Board.

**Section 2. Election and Term of Office.** The officers of the Association shall be elected annually by the Board at the regular annual meeting of the Board, from and among the members of the Board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his successor shall have been duly elected and shall have qualified. An officer may succeed himself in office. Officers and members of the Board shall serve without compensation.

**Section 3. Removal.** Any officer elected by the Board may be removed as an officer by a majority vote of the members of the Board.

**Section 4. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board for the unexpired portion of the term of the member of the Board no longer serving.

**Section 5. President.** The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. He or she shall preside at all meetings of the members of the Board. He or she may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds, mortgages, contracts, or other instruments which the Board has authorized to be executed and any amendment to the Condominium Instruments and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

**Section 6. Vice President.** In the absence of the President, or in the event of the President's inability or refusal to act, the Vice President, (if there is one, or in the event there be more than one Vice President, the Vice Presidents, in order of their election) shall perform the duties of the President and, when so acting, shall have all the powers of, and be subject to, all the restrictions on the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or the Board.

**Section 7. Treasurer.** The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for money due and payable to the Association from any source whatsoever, and deposit all such money in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these By-Laws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board.



# UNOFFICIAL COPY

**Section 8. Secretary.** The Secretary shall keep the minutes of the meetings of the members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; receive all notices on behalf of the Association and, together with the President, execute on behalf of the Association amendments to the Condominium Instruments and other documents as required or permitted by the Condominium Instruments or the Act; be custodian of the records; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board.

## ARTICLE VI

### Powers and Duties of the Association and Board

**Section 1. Section 1. General Duties. Powers. Authority of the Board.** The Board shall exercise for the Association all powers, duties and authority vested in the Association by the Act and the Condominium Instruments, including, but not limited to, the following:

- (a) To provide for the operation, care, upkeep, maintenance, replacement and improvement of the Common Elements. Nothing in this subsection (a) shall be deemed to invalidate any provision in a Condominium Instrument placing limits on expenditures for the Common Elements, provided, that such limits shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the Common Elements. The term "repair, replacement or restoration" means expenditures to deteriorated or damaged portions of the property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such areas. Replacement of the Common Elements may result in an improvement over the original quality of such elements or facilities; provided that, unless the improvement is mandated by law or is an emergency as defined in item (iv) of subparagraph (8) of paragraph (a) of Section 18 of the Act, if the improvement results in a proposed expenditure exceeding 5% of the annual budget, the Board, upon written petition by Unit Owners with 20% of the votes of the Association delivered to the Board within 14 days of the Board action to approve the expenditure, shall call a meeting of the Unit Owners within 30 days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the expenditure, it is ratified.
- (b) To prepare, adopt and distribute the annual budget for the property.
- (c) To levy and expend assessments.
- (d) To collect assessments from Unit Owners.
- (e) To provide for the employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements.

# UNOFFICIAL COPY

- (f) To obtain adequate and appropriate kinds of insurance.
- (g) To own, convey, encumber, lease, and otherwise deal with Units conveyed to or purchased by it.
- (h) To adopt and amend rules and regulations covering the details of the operation and use of the property, after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations. Notice of the meeting shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements of Section 18(b) of the Act, except that no quorum is required at the meeting of the Unit Owners unless the Declaration, By-Laws or other Condominium Instrument expressly provides to the contrary. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of this Act or the Condominium Instruments. No rule or regulation shall prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front door area of a Unit.
- (i) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the property.
- (j) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements or for making emergency repairs necessary to prevent damage to the Common Elements or to other Units.
- (k) To pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium.
- (l) To impose charges for late payment of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, to levy reasonable fines for violation of the declaration, by laws, and rules and regulations of the Association.
- (m) Unless the Condominium Instruments expressly provide to the contrary, by a majority vote of the entire Board, to assign the right of the Association to future income from Common Expenses or other sources, and to mortgage or pledge substantially all of the remaining assets of the Association.
- (n) To record the dedication of a portion of the Common Elements to a public body for use as, or in connection with, a street or utility where authorized by the Unit Owners under the provisions of Section 14.2 of the Act.
- (o) To record the granting of an easement for the laying of cable television cable or

# UNOFFICIAL COPY

high speed internet where authorized by the Unit Owners under the provisions of Section 14.3 of the Act; to obtain, if available and determined by the Board to be in the best interests of the Association, cable television or bulk high speed internet service for all of the Units on a bulk identical service and equal cost per unit basis; and to assess and recover the expense as a Common Expense and, if so determined by the Board, to assess each and every Unit on the same equal cost per unit basis.

(p) To seek relief on behalf of all Unit Owners when authorized pursuant to subsection (c) of Section 10 of the Act from or in connection with the assessment or levying of real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body.

(q) To reasonably accommodate the needs of a handicapped Unit Owner as required by the federal Civil Rights Act of 1968, the Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of Common Elements or approval of modifications in an individual Unit.

(r) To accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Association with respect to improvements performed pursuant to any contract entered into by the Board and to distribute the notice to the Unit Owners within seven (7) days of the acceptance of the service by the Board. The service shall be effective as if each individual Unit Owner had been served individually with notice.

(s) To adopt and amend rules and regulations (1) authorizing electronic delivery of notices and other communications required or contemplated by this Act to each Unit Owner who provides the Association with written authorization for electronic delivery and an electronic address to which such communications are to be electronically transmitted; and (2) authorizing each Unit Owner to designate an electronic address or a U.S. Postal Service address, or both, as the Unit Owner's address on any list of members or Unit Owners which an association is required to provide upon request pursuant to any provision of this Act or any condominium instrument.

**Section 2. Specific Powers and Duties.** Anything herein contained to the contrary notwithstanding, the Association shall have the following powers:

(a) To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than two (2) years, shall not be automatically renewed and shall be terminable by either party to such agreement without cause and without payment of a termination fee, upon sixty (60) days' or less prior written notice. The Board, in its discretion, may delegate to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent) such duties and responsibilities that the Board deems advisable,

# UNOFFICIAL COPY

(b) To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance and management of the Property, or in connection with any duty, responsibility or right of the Association and to remove, at any time, any such personnel. The Board, in its discretion, may delegate to such persons (and any such employees or other personnel as may be employees of such persons) such duties and responsibilities that the Board deems advisable,

(c) To establish or maintain one or more bank accounts for the deposit of any funds paid to or received by the Association.

(d) To invest any funds of the Association in certificates of deposit, money market funds or comparable investments.

(e) The Board's powers enumerated in these By-Laws shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital additions to or capital improvements, including structural and non-structural additions and improvements, of the Common Elements requiring an expenditure in excess of Fifty Thousand (\$50,000.00) Dollars without in each case the prior approval of the Unit Owners having two-thirds ( $\frac{2}{3}$ ) or more of the total votes. This limitation shall not be construed as a limit on expenditures necessary for the Board to repair, replace or restore the Common Elements as required by the Declaration or as required by Section 18.4 of the Act as from time to time amended, nor shall this limitation be construed as a limit on expenditures mandated by law in an emergency. As used herein, the term "repair, replace, and restore" means to repair, replace or restore deteriorated or damaged portions of the then-existing decorating, facilities, structural or mechanical components, interior or exterior surfaces or energy systems and equipment to their functional equivalent prior to the deterioration or damage. As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners. In the event the replacement of a Common Element may result in an improvement over the quality of such Common Element as originally designed, the Board may provide for such improvement, provided that if the improvement over and above the functional equivalency of what existed before results in a proposed expenditure in excess of five (5%) percent of the Annual Budget, the Board, on receipt of a written petition by the Unit Owners with twenty (20%) percent of the votes of the Association, within fourteen (14) days after the Board's action to approve such expenditure, shall call a special meeting of Unit Owners within thirty (30) days after its receipt of such petition. Unless a majority of the total votes of the Unit Owners are cast at this special meeting to reject the expenditure, the Board's decision to make the expenditure is ratified.

(f) Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Unit Owners or any of them unless approved by a majority of the Unit Owners. The granting of licenses, leases, or concessions by the Board shall not be considered conducting an active business for profit.

# UNOFFICIAL COPY

(g) Nothing hereinabove contained shall be construed to limit the powers and duties of the Board as set forth in the Act, and the powers and duties set forth in the Declaration and these By-Laws shall be construed as a clarification and, where permissible, an expansion of such statutory powers and duties.

**Section 3. Authorized Expenditures.** The Association shall acquire and make arrangements for, and pay for out of the maintenance fund, in addition to the manager, managing agent or other personnel above provided for, the following:

- (a) Water, waste removal, heating, electricity, telephone, or other necessary utility services for the Common Elements and such services to the Units as are not separately metered or charged to the owners thereof;
- (b) Such insurance as the Association is required or permitted to obtain as provided in the Declaration or the Act, together with such additional insurance, if any, as the Board deems advisable;
- (c) Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintaining, decorating, repairing and replacing the Common Elements (but not including the Limited Common Elements not visible from the exterior of the Building, which Limited Common Elements the Unit Owners enjoying the use thereof shall paint, clean, decorate, maintain and repair) and such furnishings and equipment for the Common Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements.
- (d) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations or assessments that the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein;
- (e) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which may, in the opinion of the Board, constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. When one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens, including but not limited to, any interest, late charges, reasonable attorneys' fees, costs of collection and the amount of any unpaid fine, shall be specially assessed to said Unit Owners and shall, until paid by such Unit Owners, constitute a lien on the interest of such Unit Owners in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses.
- (f) Maintenance and repair of any Unit or any other portion of the Property which a



# UNOFFICIAL COPY

Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements or any other portion of the Property, and the Unit Owner has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Association to said Unit Owner; provided that the Association shall levy a special assessment against such Unit for the cost of said maintenance or repair, and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses.

(g) Maintenance and repair (including payment of real estate taxes and Common Expenses) with respect to any Unit owned by the Association;

(h) If, due to the act or neglect of a Unit Owner or of an employee, agent, invitee or other authorized Occupant of such Unit Owner, damage shall be caused to the Common Elements, including the Limited Common Elements, or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required that would otherwise be a Common Expense, the assessment against such Unit Owner of a charge for such damage and such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by insurance, and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses. All expenses, charges and costs of the maintenance, repair, restoration or replacement of the Common Elements, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board. As used herein, the term "repair, replacement or restoration" means to repair, replace or restore deteriorated or damaged portions of the then-existing decorating, facilities, structural or mechanical components, interior or exterior surfaces or energy systems and equipment to their functional equivalent prior to the deterioration or damage.

## **Section 4. Annual Budget.**

(a) Each year on or before November 1st, the Board shall estimate the annual budget of Common Expenses (the "Annual Budget") including the total amount required for the cost of wages, materials, insurance, services and supplies that will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements (as hereinafter specified), all anticipated assessments and income, and each Unit Owner's proposed Common Expense assessment (including assessments for expenditures relating to the Limited Common Elements proportionately attributable to the Unit Owners to which such Limited Common Elements are assigned), together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs of payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Unit Owner at least thirty (30) days prior to the adoption thereof.

# UNOFFICIAL COPY

The Association shall give Unit Owners notice as provided in Article III, Section 4, of these By-Laws of the meeting of the Board, at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted.

(b) If said Annual Budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, or any nonrecurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, the Board may, at any time, levy a further assessment, which shall be separately assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements, and which may be payable in one lump sum or such installments as the Board may determine. The Board shall serve notice of such further assessment on all Unit Owners (as provided in Article III, Section 4, of these By-Laws) by a statement in writing, giving the amount and reasons therefor, and such further assessment shall become effective and shall be payable at such time or times as determined by the Board. All Unit owners shall be obligated to pay the further assessment.

(c) Each Unit Owner shall receive notice, in the same manner as is provided for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget and regular assessments pursuant thereto or to adopt a separate (special) assessment, (ii) that except as provided in subsection (iv) below, if an adopted budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, the Board, upon written petition by Unit Owners with twenty (20%) percent of the votes of the Association delivered to the Board within 14 days of the Board action, shall call a meeting of the Unit Owners within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the budget or separate assessment, it is ratified, (iii) that any Common Expense not set forth in the budget or any increase in assessments over the amount adopted in the budget shall be separately assessed against all Unit Owners, (iv) that separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Unit Owner approval or the provisions of item (ii) above or item (v) below. As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners, (v) that assessments for additions and alterations to the Common Elements or to Association owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two thirds of the total votes of all Unit Owners, (vi) that the Board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by items (iv) and (v), the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

(d) The Annual Budget shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements. Each Unit Owner shall be

# UNOFFICIAL COPY

obligated to pay the Association, or as it may direct, the portion of the Annual Budget assessed to such Owner in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1st of the following year, and on the first day of each and every month of said year.

(e) The failure or delay of the Association to prepare or serve the Annual Budget on the Unit Owners shall not constitute a waiver or release in any manner of the Unit Owner's obligation to pay the maintenance and other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual or adjusted budget, the Unit Owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the monthly assessment payment that is due more than ten (10) days after such new Annual Budget shall have been mailed.

(f) Anything in the Condominium Instruments to the contrary notwithstanding, the Board may charge to fewer than all Unit Owners such portion of the insurance premium for insurance the Association is required or permitted to obtain that reflects increased charges for coverage on the Units owned by such Unit Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a Common Expense with respect to the Units owned by such Unit Owners for all purposes herein and under the Declaration.

(g) All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in their relative percentages of ownership interest in the Common Elements, and in the Limited Common Elements as the case may be.

## **Section 5. Annual Accounting.**

(a) On or before the 1st day of April, the Association shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with an indication of which portions of the Annual Budget were for reserves, capital expenditures or repairs or payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

(b) In the event that there is a budget surplus, the Board may, in its sole discretion, deposit all or part of such surplus funds in the Association's reserve account; refund all or part of such surplus to the Unit Owners; apply such surplus funds, in whole or in part, in determining the annual budget for the succeeding year; or use such funds, in whole or in part, in such a manner as the Board deems advisable. In the event that there is a net deficit of income over expenditures plus Reserves, such net deficit shall be added, according to each Unit Owner's percentage of ownership of the Common Elements, to the installments due in the succeeding six (6) months after rendering of the accounting.



# UNOFFICIAL COPY

(c) The Association shall allow any First Mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association, or at its direction.

(d) If available, the Association shall provide a financial statement for the preceding fiscal year within one hundred twenty (120) days after the end of such fiscal year on submission of a written request by any holder, insurer, or guarantor of a first mortgage secured by a Unit

## Section 6. Reserves.

(a) The Association shall build up and maintain a reasonable Reserve for operations, contingencies, and replacement. Extraordinary expenditures not originally included in the Annual Budget that may become necessary during the year shall be charged first against such Reserve. In addition, the Association or the Board shall have the right to segregate all or any portion of the Reserve for any specific replacement or contingency on such conditions as the Association or the Board deems appropriate.

(b) The Annual Budget shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the Common Elements, which Reserves shall be held in a separate account segregated from the operating funds of the Association. To determine the amount of Reserves appropriate for the Association, the Board shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life of the property which the Association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the Building and Common Elements, and energy systems and equipment; (ii) the current and anticipated return on investment of Association funds; (iii) any independent professional reserve study which the Association may obtain; (iv) the financial impact on Unit Owners, and the market value of the Units, of any assessment increase needed to fund Reserves; and (v) the ability of the Association to obtain financing or refinancing. Anything to the contrary in the foregoing notwithstanding, the Association may elect to waive in whole or in part the Reserve requirements of this section by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of the total votes of the Association. In the event the Association elects to waive all or part of the Reserve requirements of this section, such fact must be disclosed after the meeting at which such waiver occurs by the Association in the financial statements of the Association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under Section 22.1 of the Act, and no member of the Board or the managing agent of the Association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of Reserve funds in the Annual Budget. If the Association elects to waive all or part of such Reserve requirements, the Association may by a vote of not less than two-thirds ( $\frac{2}{3}$ ) of the total votes of the Association elect again to be governed by the Reserve requirements of this section.

# UNOFFICIAL COPY

## **Section 7. Payment of Assessments, Late Fees, Attorneys' Fees, Interest, Default in Payment.**

(a) Payment of regular monthly assessments is due on the first day of each month. Payment of any special assessment shall be due as determined by the Board. In the event that a Unit Owner fails to pay the regular monthly assessment on or before the tenth (10<sup>th</sup>) day of the month, the Unit Owner shall be assessed a late fee of fifty (\$50.00) dollars or such other sum as may be determined from time to time by the Board. Late fees for special assessments or other charges assessed to a Unit Owner shall be fifty (\$50.00) dollars or such other sum as may be determined from time to time by the Board. Any charges assessed to the Association by its financial institution as a result of a Unit Owner's check being returned for insufficient funds or for any other reason shall be charged back to the Unit Owner. In addition, on any balance, which includes any assessments, late fees, costs of collection and any other lawful charges, that remains due and owing after thirty (30) days, interest shall accrue at the rate of twelve (12%) percent per annum for each month, or part thereof, that said balance, or any part thereof remains unpaid. The Association may bring suit for and on behalf of itself and as representative of all Unit Owners, to enforce collection thereof or to foreclose the lien therefor as provided by law; and there shall be added to the amount due, the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. In addition, the Association may also take possession of such defaulting Unit Owner's interest in the Property and maintain an action for possession of the Unit in the manner provided by law. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Unit.

(b) Each such assessment, together with interest, court costs, late charges, and reasonable attorneys' fees and costs of collection, or the amount of any unpaid fine, shall also be the personal obligation of the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them or required by applicable law.

(c) In the event that the Association is made or named a party to any lawsuit or any other action in any court of law or before any federal, state or local department, commission, agency or other administrative or governmental body (hereinafter, "Action") arising out of or related to a Unit Owner's ownership, lease, occupancy or use of his or her Unit, the Association shall be entitled to recover from the Unit Owner any attorneys' fees, litigation expenses, court costs and all other expenses incurred or expended by the Association in the defense of the Action. The foregoing shall also apply to any mortgage foreclosure or lien foreclosure lawsuit in which the Association or the Board is made or named a party. Any attorneys' fees, litigation expenses, court costs and all other expenses incurred pursuant to this subsection 6(c) shall be added to, and deemed a part of, the Unit Owner's respective share of the Common Expense.

(d) In the event that any Unit Owner or Tenant, Resident, Occupant, Invitee or Guest of a Unit Owner files a complaint, counterclaim, charge, lawsuit or any other action in any court of law or before any federal, state or local department, commission, agency or

# UNOFFICIAL COPY

other administrative or governmental body (hereinafter "Action") against the Board, or any member thereof acting in his or her capacity as a Board member, or the Association (hereinafter "Association Defendant"), and the Association Defendant is the prevailing party in such Action, then the Association Defendant shall be entitled to recover attorneys' fees, litigation expenses, court costs and all other expenses incurred or expended in the defense of the Action from the Unit Owner. Any sums recoverable pursuant to this subsection 6(d) shall be added to, and deemed a part of, the Unit Owner's respective share of the Common Expense.

(e) The Association shall have no authority to forbear the payment of assessments by any Unit Owner.

(f) A Unit Owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a Unit Owner under this Act, the condominium instruments, or the rules and regulations of the Association; and that such an attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void.

## **Section 8. Books of Account and Statement of Account.**

(a) The Association shall keep full and correct books of account, which shall be open for inspection by any Unit Owner, or any representative of a Unit Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Unit Owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use, and account of all the Unit Owners in their relative percentages of ownership interest in the Common Elements.

(b) Upon ten (10) days' notice to the Association and the payment of a reasonable fee fixed by the Association, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

**Section 9. Other Powers and Duties.** The Association may number and assign to any Unit Owner the exclusive privilege to use for storage purposes any portion of the Property designated for such purposes; provided, however, that the Association shall have the right of access to all such storage spaces that contain pipes or other portions of the Common Elements that the Association has the duty or right to maintain, repair or replace. Any such designation by the Association shall not thereafter be changed except on the affirmative vote of a majority of the Unit Owners. All property stored in any storage area shall be at the sole risk of the respective Unit Owner who has the privilege to use it and neither the Association nor any other Unit Owner shall be considered a bailee, or otherwise responsible therefor.

# UNOFFICIAL COPY

## ARTICLE VII

### Contracts, Checks, Deposits and Funds

**Section 1. Contracts.** The Board may authorize any officer or officers or agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

**Section 2. Checks, Drafts, Etc.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers or agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Association. In the absence of such determination by the Association, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

**Section 3. Deposits.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select; provided, however, that the funds of the Association must be insured by the Federal Deposit Insurance Corporation (FDIC) or a similar governmental agency or body.

**Section 4. Gifts.** The Board may accept, on behalf of the Association, any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

## ARTICLE VIII

### Books and Records

**Section 1. Maintaining Books and Records.** The Association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the authority of the Board.

**Section 2. Availability for Examination.**

(a) The Board shall keep and maintain the following records, or true and complete copies of these records, at the Association's principal office:

(1) The Association's Declaration, By-Laws, and plats of survey, and all amendments of these;

(2) The rules and regulations of the Association, if any;

(3) If the Association is incorporated as a corporation, the Articles of Incorporation of the Association and all amendments to the Articles of Incorporation;

(4) Minutes of all meetings of the Association and the Board for the

# UNOFFICIAL COPY

immediately preceding seven (7) years;

(5) All current policies of insurance of the Association;

(6) All contracts, leases, and other agreements then in effect to which the Association is a party or under which the Association or the Unit Owners have obligations or liabilities;

(7) A current listing of the names, addresses, and weighted vote of all members entitled to vote;

(8) Ballots and proxies related to ballots for all matters voted on by the members of the Association during the immediately preceding 12 months, including but not limited to the election of members of the Board; and

(9) The books and records of account for the Association's current and 10 immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures.

(b) Any member of an Association shall have the right to inspect, examine, and make copies of the records described in subdivisions (1), (2), (3), (4) and (5) of subsection (a) of this Section 2, in person or by agent, at any reasonable time or times, at the Association's principal office. In order to exercise this right, a member must submit a written request to the Board or its authorized agent, stating with particularity the records sought to be examined. Failure of the Board to make available all records so requested within thirty (30) days of receipt of the member's written request shall be deemed a denial.

(c) Except as otherwise provided in subsection (e) of this Section, any member of an Association shall have the right to inspect, examine, and make copies of the records described in subdivisions (6), (7), (8) and (9) of subsection (a) of this Section, in person or by agent, at any reasonable time or times but only for a proper purpose, at the Association's principal office. In order to exercise this right, a member must submit a written request, to the Board or its authorized agent, stating with particularity the records sought to be examined and a proper purpose for the request. Subject to the provisions of subsection (e) of this Section 2, failure of the Board to make available all records so requested within 30 business days of receipt of the member's written request shall be deemed a denial; provided, however, that the Board that has adopted a secret ballot election process as provided in Section 18 of this Act shall not be deemed to have denied a member's request for records described in subdivision (8) of subsection (a) of this Section if voting ballots, without identifying Unit numbers, are made available to the requesting member within 30 days of receipt of the member's written request.

(d) The actual cost to the Association of retrieving and making requested records available for inspection and examination under this Section shall be charged by the Association to the requesting member. If a member requests copies of records requested



# UNOFFICIAL COPY

under this Section 2, the actual costs to the Association of reproducing the records shall also be charged by the Association to the requesting member.

(e) Notwithstanding the any of the provisions of this Section 2, unless otherwise directed by court order, the Association need not make the following records available for inspection, examination, or copying by its members:

(1) Documents relating to appointment, employment, discipline, or dismissal of Association employees;

(2) Documents relating to actions pending against or on behalf of the Association or the Board in a court or administrative tribunal;

(3) Documents relating to actions threatened against, or likely to be asserted on behalf of, the Association or the Board in a court or administrative tribunal;

(4) Documents relating to Common Expenses or other charges owed by a member other than the requesting member; and

(5) Documents provided to the Association in connection with the lease, sale, or other transfer of a Unit by a member other than the requesting member.

## ARTICLE IX

### Resale

**Section 1.** In the event of any resale of a condominium Unit by a Unit Owner such owner shall obtain from the Board and shall make available for inspection to the prospective purchaser, upon demand, the following:

(a) A copy of the Declaration, By-Laws, other Condominium Instruments and any Rules and Regulations.

(b) A statement of any liens, including a statement of the account of the Unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of the Act or the Condominium Instruments.

(c) A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years.

(d) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board.

(e) A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available.

# UNOFFICIAL COPY

(f) A statement of the status of any pending suits or judgments in which the Association is a party.

(g) A statement setting forth what insurance coverage is provided for all Unit Owners by the Association.

(h) A statement that any improvements or alterations made to the Unit, or the Limited Common Elements assigned thereto, by the prior Unit Owner are in good faith believed to be in compliance with the condominium instruments.

(i) The identity and mailing address of the principal officer of the Association or of the other officer or agent as is specifically designated to receive notices.

The principal officer of the Association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within thirty (30) days of the request.

A reasonable fee covering the direct out of pocket cost of providing such information and copying may be charged by the Association or the Board to the seller of the Unit for providing such information.

**Section 2.** Within fifteen (15) days following the recording of a mortgage or trust deed against a Unit Ownership given by the Unit Owner of the Unit to secure a debt, the Unit Owner shall inform the Board of the Association of the identity of the lender together with a mailing address at which the lender can receive notices from the Association. If a Unit Owner fails or refuses to inform the Board as required under this Section 2, then that Unit Owner shall be liable to the Association for all costs, expenses and reasonable attorneys' fees and such other damages, if any, incurred by the Association as a result of such failure or refusal.

## ARTICLE X

### Fiscal Year

The fiscal year of the Association shall begin the first day of January and end on the last day of December.

## ARTICLE XI

### Notice; Notice to Heirs and Waiver of Notice

#### Section 1. Notice.

(a) Notice may be given to the Board or the Association as follows:

(1) By personal delivery, with notice being effective upon delivery;

# UNOFFICIAL COPY

(2) By United States registered or certified mail, postage prepaid, with notice being effective upon mailing.

Any such notice given to the Board or to the Association shall be given to the President of the Association, with a copy to the Secretary of the Association and the property manager.

(b) Notice may be given to a Unit Owner as follows:

(1) By personal delivery, with notice being effective (a) when personally delivered, (b) when deposited in the Unit Owner's mailbox at the Building or (c) when deposited at the door of his, her or its Unit at the Property;

(2) By United States registered or certified mail, postage prepaid, to the address on file with the Association, with notice being effective upon mailing; and

(3) By United States first class mail, postage prepaid, to the address on file with the Association, with notice being effective upon two (2) business days following mailing.

**Section 2. Notices to Heirs.** Notices required to be given to any heir, legatee, devisee or personal representative of a deceased Unit Owner shall be delivered by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

**Section 3. Waiver of Notice.** Whenever any notice is required to be given under the provisions of the Condominium Instruments, a waiver thereof in writing by the person or persons entitled to such notice, whether before or at the time stated therein, shall be deemed equivalent to the giving of such notice, provided such waiver or the time of giving it is not contrary to the provisions of the Act.

## ARTICLE XII

### Amendments to By-Laws

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted upon the affirmative vote of at least two-thirds ( $\frac{2}{3}$ ) of all of the members at a regular meeting, or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment or repeal, that is signed and acknowledged by an authorized member of the Board and that contains an affidavit by an officer of the Association certifying that the necessary affirmative vote of the members of the Association has been obtained.



# UNOFFICIAL COPY

## ARTICLE XIII

### Seal

If incorporated, the Association may have, but shall not be required to have, a corporate seal as shall be determined by the secretary of the Association in his discretion. If a corporate seal is obtained, the seal shall contain the name of the corporation and the words "Corporate Seal, Illinois," and the use thereof shall be determined from time to time by the officer or officers executing and delivering instruments on behalf of the Association, provided that the affixing of a corporate seal to an instrument shall not give the instrument additional force or effect or change the construction thereof. The seal, if any, may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

## ARTICLE XIV

### Liability of Board Members and Officers; Indemnification

**Section 1. Liability of Board Members and Officers.** Neither the members of the Board nor the officers of the Association shall be liable to the Association or the Unit Owners for any error or mistake of judgment, constructive fraud, or for any other acts or omissions of any nature whatsoever, as such Board members and officers, except for any acts or omissions found by a court of law to constitute wilful misconduct or actual fraud in the performance of their duties.

**Section 2. Indemnification.** The Association shall defend, indemnify and hold harmless any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a Board member or officer of the Association, against expenses, including attorneys' fees, litigation expenses and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized by the Board in the specific case, on receipt of an undertaking by or on behalf of the Board member or officer of the Association to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article XIV. The Board shall have authority to purchase and maintain insurance on behalf of the officers and members of the Board against any expenses (including attorneys' fees), liability or settlement based on asserted liability, incurred by them by reason of being or having served in such capacity, whether or not the Association would have the

# UNOFFICIAL COPY

power to indemnify them against such liability or settlement under the provisions of this Article XIV. The costs of any such insurance shall be a Common Expense. The sums necessary to discharge the obligations of the Association under this Article XIV shall be Common Expenses. The indemnification provided by this Article XIV shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested Board members, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Board member or an officer of the Association. If the Board or Association elects to or is required to indemnify or hold harmless a Board member or officer pursuant to this Article XIV, the Board reserves the right to provide defense of such member and to settle or compromise any claim against such individuals.

**Section 3. Limited Liability of Unit Owners for Contracts.** It is intended that the liability of any Unit Owner arising out of any contract made by the Board, the officers, or out of the aforesaid Unit Owner's indemnity, shall be limited to such proportion of the total liability thereunder as such Unit Owner's percentage of ownership in the Common Elements bears to the total percentage of ownership in the Common Elements of all Unit Owners. Every contract made by the Board, the officers or the managing agent on behalf of the Unit Owners shall provide that they are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners) and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as such Owner's percentage of ownership in the Common Elements bears to the total percentage of ownership in the Common Elements of all Owners.

## ARTICLE XV

### Signatures

All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Secretary or Treasurer and countersigned by the Secretary or Treasurer.

## ARTICLE XVI

### Construction

Nothing hereinabove contained shall in any way be construed as altering, amending or modifying the Declaration, as amended from time to time. The Condominium Instruments shall always be construed to further the harmonious, beneficial, cooperative and proper use and conduct of the Property. If there is any inconsistency or conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control. If there is any inconsistency or conflict between the Declaration and the Act, the provisions of the Act shall control.

# UNOFFICIAL COPY

All words and terms used herein that are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.

## ARTICLE XVII

### Amendment

The provisions of these By-Laws may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President and Secretary of the Board, and certifying that the Unit Owners having at least a majority of the total votes have approved such amendment at a meeting of the Association duly called for such purpose, and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all First Mortgagees, no less than ten (10) days prior to the date of such affidavit. Notwithstanding the foregoing, an amendment to these By-Laws which falls within the parameters of Article XII of the Declaration shall not be effective without the prior written approval of two-thirds ( $\frac{2}{3}$ ) of all First Mortgagees. Any change, modification or rescission shall be effective upon recording such instrument in the Office of the Recorder of Deeds, Cook County, Illinois.