

UNOFFICIAL COPY



1815934060

Doc# 1815934060 Fee \$120.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 06/08/2018 02:32 PM PG: 1 OF 42

For use by Recorder's Office only

Property of Cook County Clerk's Office

**AMENDED AND RESTATED DECLARATION
OF CONDOMINIUM OWNERSHIP
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS
AND BY-LAWS FOR
ORCHARD VALE CONDOMINIUM ASSOCIATION NO. 2**

**This document prepared by and after
recording to be returned to:**

KERRY T. BARTELL, Attorney at Law
Kovitz Shifrin Nesbit
175 North Archer Avenue
Mundelein, IL 60060 – 847/537-0500

RECORDING FEE 120.⁰⁰
DATE 6/08/2018 COPIES 6
OK BY [Signature]

UNOFFICIAL COPY

Table of Contents

ARTICLE I.....	2
DEFINITIONS.....	2
1.01 Declaration.	2
1.02 Parcel.....	2
1.03 Building.	2
1.04 Property.	2
1.05 Unit.....	2
1.06 Common Elements.	2
1.07 Limited Common Elements.....	3
1.08 Unit Ownership.....	3
1.09 Person.....	3
1.10 Owner.	3
1.11 Occupant.....	3
1.12 By-Laws.	3
1.13 Association.....	3
1.14 Majority of the Unit Owners.	3
1.15 Board.	3
1.16 Common Expenses.....	3
1.17 Condominium Instruments.....	3
1.18 Acceptable Technological Means.....	3
1.19 Plat.....	3
ARTICLE II.....	4
UNITS.....	4
2.01 Description and Ownership.....	4
2.02 Certain Structures Not Constituting Part of a Unit.	4
2.03 Real Estate Taxes.....	4
ARTICLE III.....	4
COMMON ELEMENTS.....	4
3.01 Description.....	4
3.02 Ownership of Common Elements.....	5
3.03 Limited Common Elements.	5
3.04 Transfer of Limited Common Elements.	5

UNOFFICIAL COPY

ARTICLE IV	5
GENERAL PROVISIONS AS TO UNITS	5
AND COMMON ELEMENTS.....	5
4.01 Submission of Property to the Act.....	5
4.02 No Severance of Ownership.	5
4.03 Easements.....	6
4.04 Use of the Common Elements.....	7
4.05 Maintenance, Repairs and Replacements.....	8
4.06 Negligence of Owner.	9
4.07 Joint Facilities.	9
ARTICLE V	10
ADMINISTRATION.....	10
5.01 Administration of Property.	10
5.02 Association.	10
5.03 Voting Rights.	10
5.04 Meetings.....	12
5.05 Notices of Meetings.....	12
5.06 Board of Directors.....	13
5.07 General Powers of the Board.	15
5.08 Insurance.	18
5.09 Liability of the Board of Directors.....	22
ARTICLE VI.....	23
COMMON EXPENSES-MAINTENANCE FUND.....	23
6.01 Preparation of Estimated Budget.....	23
6.02 Reserve for Contingencies and Replacements; Supplement Budget.....	23
6.03 Budget.	23
6.04 Failure to Prepare Annual Budget.....	24
6.05 Books and Records.....	24
6.06 Status of Collected Funds.....	24
6.07 User Charges	24
6.08 Non-Use and Abandonment.....	25
ARTICLE VII	25
COVENANTS AND RESTRICTIONS.....	25
AS TO USE AND OCCUPANCY	25

UNOFFICIAL COPY

ARTICLE VIII	29
DAMAGE, DESTRUCTION, CONDEMNATION.....	29
AND RESTORATION OF BUILDING	29
8.01 Sufficient Insurance.....	29
8.02 Insufficient Insurance	29
8.03 Condemnation.	29
8.04 Repair, Restoration or Reconstruction of the Improvements.	30
ARTICLE IX.....	30
SALE OF THE PROPERTY	30
ARTICLE X	31
HOMEOWNER'S ASSOCIATION.....	31
ARTICLE XI.....	31
REMEDIES.....	31
11.01 Abatement and Injointment.	31
11.02 Involuntary Sale..	32
11.03 Remedies for Failure to Pay Common Expenses or User Charges	32
ARTICLE XII	33
GENERAL PROVISIONS	33
12.01 Notice to Mortgagees.	33
12.02 Manner of Giving Notices.....	33
12.03 Notices to Estate or Representatives.	33
12.04 Conveyance and Leases.....	33
12.05 No Waivers.....	33
12.06 Change, Modification or Rescission.....	34
12.07 Partial Invalidity.....	34
12.08 Perpetuities and Other Invalidity.....	34
12.09 Liberal Construction.....	34
12.10 Ownership by Land Trustee	34
EXHIBIT A.....	1
LEGAL DESCRIPTION	1
EXHIBIT B	1
PERCENTAGE OWNERSHIP INTERESTS	1
EXHIBIT C	1
AFFIDAVIT OF SECRETARY	1

UNOFFICIAL COPY

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS
AND BY-LAWS FOR
ORCHARD VALE CONDOMINIUM ASSOCIATION NO. 2
A Not-For-Profit Corporation

This Amended and Restated Declaration ("Declaration") was adopted pursuant to Section 27(b)(1) of the Illinois Condominium Property Act and approved by no less than two-thirds (2/3) of the Board of Directors of Orchard Vale Condominium Association No. 2 ("Association"). This Declaration shall serve the purpose of amending and updating the Declaration of Condominium Ownership and Easements, Restrictions, Covenants and By-Laws for Orchard Vale Condominium Association No. 2 ("Original Declaration") which was recorded as Document No. 24771257 in the Office of the Recorder of Deeds for Cook County, Illinois against the property legal described in Exhibit A attached hereto.

WITNESSETH:

WHEREAS, the Association and its owners hold legal title to the following described parcel of real estate situated in the Village of Mount Prospect, County of Cook, State of Illinois (hereinafter called the "Parcel"):

That part of Lot 2 in Old Orchard Country Club Subdivision, being a part of the Northwest ¼ of Section 27 and part of the East ¼ of the Northeast ¼ of Section 28, Township 42 North, Range 11 East of the third Principal Meridian, according to Plat recorded May 9, 1972 as Document 21895678, described as follows: Beginning at a point on the East line of the aforesaid Northwest quarter of Section 27, said point being 685.48 feet (as measured along the East line) South of the Northeast corner of said Northwest quarter; thence 9 89° 59' W, a distance of 175.00 feet along a line being parallel with the north line of the said Northwest quarter to the point of intersection with the West line of the East 175.00 feet of the said Northwest quarter; thence 9 00° 11' 59" E along said West line, a distance of 100.345 feet; thence 5 13° 45' 18" W, a distance of 456.48 feet; thence 5 76° 14' 42" a distance of 293.70 feet to a point on the East line of the said Northwest quarter; thence N 00° 11' 39" W, a distance of 613.59 feet along the East line of the said Northwest quarter to the point of beginning, excepting from the above described parcel of land that part thereof taken for Elmhurst Road per Document No. 10155704, all in Cook County, Illinois.

WHEREAS, the Original Declaration submitted the Property, as hereinafter defined, to the provisions of the Condominium Property Act of the State of Illinois, as amended from time

UNOFFICIAL COPY

to time, (hereinafter called the "Act"); and further established for the benefit of all future owners or occupants of the Property, and each part thereof certain assessments and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use and maintenance thereof; and

WHEREAS, the several owners, mortgagees, occupants, and other persons acquiring any interest in the Property shall at all times enjoy the benefits of, and shall at all times hold their interests subject to, the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership and to facilitate the proper administration of such Property and are established for the purpose of enhancing the perfecting the value, desirability and attractiveness of the Property.

NOW, THEREFORE, the Association and its owners for the purposes above set forth, DECLARE AS FOLLOWS:

ARTICLE I

DEFINITIONS

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 Declaration. This Amended and Restated Declaration, as hereinafter provided and such Declaration as from time to time amended.

1.02 Parcel. The entire tract of real estate above described, which is hereby submitted to the provisions of the Act.

1.03 Building. The buildings located on the Parcel, forming a part of the Property and containing the Units, as shown by the surveys depicting the respective floors of said Buildings.

1.04 Property. All the land, property and space comprising the Parcel all improvements and structures erected, constructed or contained therein or thereon, including the Building, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, as hereinafter defined, submitted to the provisions of the Act.

1.05 Unit. A part at the Property designed and intended for any type of independent use and more specifically described hereafter in Article II.

1.06 Common Elements. All portions of the Property except the Units, more specifically described in Section 3.01 hereof. For convenience of reference only, a portion of the Common Elements is hereinafter referred to as Limited Common Elements. Except as specifically otherwise provided, the term Common Elements, as used herein, is inclusive of Limited Common Elements.

UNOFFICIAL COPY

1.07 Limited Common Elements. A part of the Common Elements serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto to the exclusion of other Units and more specifically described in Section 3.03 hereof.

1.08 Unit Ownership. A part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

1.09 Person. A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.10 Owner. The person or persons whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Unit Ownership.

1.11 Occupant. Person or persons, other than an Owner, in possession of a Unit.

1.12 By-Laws. The provisions of Articles V, VI and VII hereof shall constitute the By-Laws by which, in addition to the other provisions of this Declaration, the administration of the Property shall be governed.

1.13 Association. The Orchard Vale Condominium Association No. 2, an Illinois not-for-profit corporation.

1.14 Majority of the Unit Owners. Those Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate of the entire undivided ownership interest in the Common Elements. Any specified percentage of the Owners shall mean those Owners who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the Common Elements.

1.15 Board. The parties determined pursuant to Article V hereof, and who are vested with the authority and responsibility of administering the Property.

1.16 Common Expenses. The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board, including, but without limitation, the expenses of maintenance, repair, administration and operation of the Common Elements.

1.17 Condominium Instruments. All documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, By-Laws and Plat.

1.18 Acceptable Technological Means. Electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, or electronic mail.

1.19 Plat. A Plat or Plats of survey of the Parcel and of all Units in the Property submitted to the provisions of this Act, which consists of a three-dimensional horizontal and vertical delineation of all such Units, which Plat or Plats were recorded with the Original Declaration and incorporated herein by reference only.

UNOFFICIAL COPY

ARTICLE II

UNITS

2.01 Description and Ownership.

(a) All Units are delineated on the plat of survey attached to the Original Declaration as Exhibit A. The Units are legally described on Exhibit A of this Amended and Restated Declaration.

(b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on the Plat. The legal description of each Unit shall consist of the identifying number or symbol or such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol is shown on the Plat, and every such description shall be deemed good and sufficient for all purposes.

(c) Except as provided by the Act, no Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

2.02 Certain Structures Not Constituting Part of a Unit. Except as a tenant in common with all other Owners, no Owner shall own any structural components of the Building, or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through his Unit and forming part of any system serving more than his Unit, or any components of communication (including but not limited to any intercom system), located in his Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit.

2.03 Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Owner for his Unit and his corresponding percentage of ownership in the Common Elements as provided in the Act provided, however, until such time as separate real estate tax bills are issued with respect to each Unit, the real estate taxes imposed on the Property shall be included in the Common Expenses assessed pursuant to this Declaration.

ARTICLE III

COMMON ELEMENTS

3.01 Description. Except as otherwise provided in this Declaration; the Common Elements shall consist of all portions of the Property except the Units. Without limiting the generality of the foregoing, the Common Elements shall include the Parcel, balconies, patios, outside walks and driveways, landscaping, exterior entrances and exits, the structural parts of the Building, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, and such component parts of walls, floors and ceilings as are not located within the Units, and structural parts of the Building, including structural columns located within the Units. Each Unit is equipped with individual heating and air-conditioning equipment serving only such Unit and

UNOFFICIAL COPY

such equipment, including the ducts and pipes exclusively serving such Unit, shall be the individual property of such Owner and not part of the Common Elements and for which such Owner shall be responsible for the maintenance, repair and replacement thereof.

3.02 Ownership of Common Elements. Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all other Owners of the Property. The extent or amount of such Ownership shall be expressed by a percentage amount, and, once determined, shall remain constant, and may not be changed without unanimous approval of all Owners. Each Unit's corresponding percentage of Ownership in the Common Elements as set forth in Exhibit B attached to this Declaration.

3.03 Limited Common Elements. The Limited Common Elements are part of the Common Elements serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, including specifically, but not by way of limitation, driveways, patios, balconies, and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows and entryways, screens, and all associated fixtures and structures therein as lie outside the Unit boundaries.

3.04 Transfer of Limited Common Elements. The use of Limited Common Elements may be transferred between Unit Owners at their expense, provided that the Transfer may be made only in accordance with the Condominium Instruments and the provisions of this Declaration executed by all Unit Owners who are parties to the transfer and consented to by all other Unit Owners who have any right to use the Limited Common Elements affected. The Amendment shall contain a certificate showing that a copy of the Amendment has been delivered to the Board of Managers. The Amendment shall contain a statement from the parties involved in the transfer which sets forth any changes in the parties' proportionate shares. If the parties cannot agree upon a reapportionment of their respective shares, the Board of Managers shall decide such reapportionment. No transfer shall become effective until the Amendment has been recorded. Rights and obligations in respect to any Limited Common Element shall not be affected, nor shall any transfer of it be effective, unless a transaction is in compliance with the requirements of this Section.

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

4.01 Submission of Property to the Act. The Property is hereby submitted to the provisions of the Condominium Property Act of the State of Illinois.

4.02 No Severance of Ownership. No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the unit and his corresponding percentage of Ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined Ownership. Any such deed, mortgage, lease or other instrument purporting to effect the one without including also the

UNOFFICIAL COPY

other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

4.03 Easements.

(a) Encroachments. In the event that (i) by reason of the construction, repair, reconstruction, settlement or shifting of the Building, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon a part of the Common Elements, or any other Unit; or (ii) by reason of the design or construction of any Unit, it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to said Unit, which will not unreasonably interfere with the use or enjoyment of the Common Elements by other Owners, or, if by reason of the design or construction of utility and ventilation systems, any mains, pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit; then in any such case valid easements for the maintenance of such encroachment and for such use of the Common Elements are hereby established and shall exist for the benefit of such Unit, or the Common Elements, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Elements be created in favor of any Owner if such encroachment or use has been created by the Owner through his intentional, willful or negligent conduct or that of his agent.

(b) Easements for Utilities. Illinois Bell Telephone Company, Commonwealth Edison Company and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Elements for the purpose of providing the Property with utility services, together with the reasonable right of ingress to and egress from the Property for said purpose. The Board or Association may hereafter grant other or additional easements for utility purposes for the benefit of the Property, over, under, along and on any portion of said Common Elements, and each Owner hereby grants the Board or Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines, components of the communications systems, if any, or structural components, which may run through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries.

(c) Easements to Run with Land. All easements and rights described herein are easements appurtenant running with the land, and so long as the Property is subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any

UNOFFICIAL COPY

mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgagees and trustees of such Unit Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

(d) Easement to Board. The Property shall be subject to a perpetual easement to the Board, its successors and assigns, for ingress and egress, to perform its obligations and duties as required by this Declaration and By-Laws. Should it be necessary to enter a Unit to repair a Common Element, employees, agents and workmen shall be entitled to entrance by exhibiting to the Owner an order from the Board or its agents.

(e) Easement to Owners. Easements are hereby declared and created in favor of the Owners for ingress and egress over such portion of the Common Elements as may be necessary to permit the maintenance, repair and replacement of the heating and air conditioning equipment serving each Unit and owned by the respective Owner.

4.04 Use of the Common Elements.

(a) General. Subject to the provisions of this Declaration, each Owner shall have the nonexclusive right to use the Common Elements (except the Limited Common Elements) in common with all other Owners, as may be required for the purpose of ingress and egress to and use, occupancy and enjoyment of the respective Unit owned by such Owner, and such other incidental uses permitted by this Declaration. Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving such Unit alone or with adjoining Units. Such rights to use and possess the Common Elements, including the Limited Common Elements, shall be subject to and be governed by the provisions of the Act, this Declaration, By-laws, and rules and regulations of the Association. The Association shall have the authority to lease or grant concessions with respect to parts of the Common Elements subject to the provisions of this Declaration and By-Laws. All income derived by the Association from leases, concessions or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

(b) Guest Privileges. The aforescribed rights shall extend to the Owner and the members of the immediate family and authorized guests and other authorized occupants and visitors of the Owner, subject to reasonable rules and regulations with respect thereto. The use of the Common Elements and the rights of the Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration and the By-Laws and rules and regulations of the Board as may be from time to time.

(c) Disclaimer of Bailee Liability. Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association or any Owner shall be considered a bailee of any personal property stored in the Common Elements whether or

UNOFFICIAL COPY

not exclusive possession of any particular areas shall be given to any Owner for storage purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

4.05 Maintenance, Repairs and Replacements.

(a) By the Board. The Board or Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions, if any, of each Unit which contribute to the support of the Building excluding, however, interior wall, ceiling and floor surfaces. In addition, except as provided in Section 3.01 hereof, the Board or Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which as be located within the Unit boundaries as specified in Section 2.02 hereof, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Owner under subparagraph (b) below, or any other provision of this Declaration. Maintenance, repairs and replacements of the Common Elements (except as otherwise specifically provided herein) shall be furnished by the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.

(b) By the Owner. Except as otherwise provided in paragraph (a) above, each Owner shall furnish and be responsible for, at his own expense:

(i) All of the maintenance, repairs and replacements within his own Unit and of the doors appurtenant thereto, and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures and plumbing fixtures and any portion of any other utility service facilities located within the Unit boundaries as specified in Sections 2.01 and 2.02; provided, however, that such maintenance, repair, and replacements as any be required for the bringing of water, gas and electricity to the Units, shall be furnished by the Board as part of the Common Expenses and provided further that the Board or the Association may provide, by its rules and regulations as may be imposed from time to time for ordinary maintenance and minor repairs and replacements to be furnished to Units and appliances therein as a Common Expense or as user charges pursuant to Section 6.08 hereof.

(ii) All of the decorating within his own Unit (initially and thereafter from time to time) including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceiling, and such Owner shall maintain such portions in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Board or Association as may be imposed from time to time. The interior and exterior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Owner.

UNOFFICIAL COPY

(iii) All of the maintenance, repair and replacements of the Limited Common Elements benefiting his Unit, in whole or in part, to the extent determined by the Board. In addition, each Owner shall be individually responsible for the repair, maintenance and replacement of all door and window locks and hardware and of all garage door opening and closing mechanisms with respect to which such Owner is entitled to the exclusive use. At the direction of the Board, the Board may perform, or cause to be performed, such maintenance, repairs and replacements of the Limited Common Elements and the cost thereof shall be assessed in whole or in part to Owners benefited thereby, and further, at the discretion of the Board, the Board may direct such Owners, in the name and for the account of such Owners, to arrange for such maintenance, repairs and replacements, to pay the cost thereof with the funds of the Owner, and to procure and deliver to the Board such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Property from all mechanics' or materialman's lien claims that may arise therefrom.

(c) Nature of Obligations. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence. The respective obligations of the Association and Owners set forth in this Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Building, nor because they may become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything hereinabove to the contrary, no Owner shall have a claim against the Board or Association for any work ordinarily the responsibility of the Board or Association, but which the Owner himself has performed or paid for, unless the same shall have been agreed to in advance by the Board or Association.

4.06 Negligence of Owner. If, due to the negligent act or omission of an Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board.

4.07 Joint Facilities. To the extent that equipment, facilities and fixtures within any unit or Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Owners shall be subject to the rules and regulations of the Board as may be imposed from time to time. The authorized representatives of the Association or the Board, or of the manager or managing agent for the Building, shall be entitled to reasonable access to the individual Units as may be required in connection with maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Element.

UNOFFICIAL COPY

ARTICLE V

ADMINISTRATION

5.01 Administration of Property. The direction and administration of the Property shall be vested in the Board of Directors (herein sometimes referred to as the "Board" or the "Board of Managers") which shall consist of five (5) persons who shall be elected in the manner hereinafter set forth. Each member of the Board shall be one of the Owners, provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, than any designated agent of such corporation, partnership, trust, or other legal entity, shall be eligible to serve as a member of the Board.

5.02 Association. The Association has been formed, as a not-for-profit corporation under the General Not-for-Profit Corporation Act of the State of Illinois, having the name (or a name similar thereto) ORCHARD VALE CONDOMINIUM ASSOCIATION NO. 2 and shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Property. The Board shall be deemed to be the "Board of Managers" for the Owners referred to in the Act. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Owners in accordance with the provisions contained herein. Each Owner shall be a member of the Association so long as he shall be an Owner, and such membership shall automatically terminate when he ceases to be an Owner, and upon the transfer of his ownership interest shall likewise succeed to such membership in the Association. The Association may issue certificates evidencing membership therein.

5.03 Voting Rights. There shall be one person with respect to each Unit ownership who shall be entitled to vote at any meeting of the Owners. Such person shall be known (and hereinafter referred to) as a "voting member". Such voting member may be that Owner or one of the group composed of all the Owners of a Unit ownership, or be some person designated by such Owner or Owners to act as proxy on his or their behalf and who must be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner or Owners. Any or all such Owners may be present at any meeting of the voting members and (those constituting a group acting as a single voting member) may vote or take any other action as a voting member either in person or by proxy. The total number of votes of all voting members shall be one hundred (100), and each Owner or group of Owners shall be entitled to the number of votes equal to the total of the percentage of Ownership in the Common Elements applicable to his or their Unit Ownership as set forth in Exhibit B, except as otherwise provided in this Section 5.03. At any time, in the event that thirty percent (30%) or less of the total number of Units control in excess of fifty percent (50%) of the total votes of the Association, any provision herein which requires a vote by Owners holding a certain percentage of the total vote shall require, in lieu thereof, that the percentage required be based on the number of Units rather than the percentage of the votes allocable to Units pursuant to their respective percentage of Ownership in the Common Elements.

UNOFFICIAL COPY

(a) except as provided in subparagraph (b) in connection with Board elections, that a Unit Owner may vote by proxy executed in writing by the unit owner or by his duly authorized attorney in fact; that the proxy must bear the date of execution and, unless the Condominium Instruments or the written proxy itself provide otherwise, is invalid after 11 months from the date of its execution; to the extent the Condominium Instruments or rules adopted thereunder expressly so provide, a vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the unit owner or the Unit Owner's proxy;

(b) that if a rule adopted at least 120 days before a Board, Unit Owners may not vote by proxy in Board elections, but may vote only (i) by submitting an Association-issued ballot in person at the election meeting or (ii) by submitting an Association-issued ballot to the Association or its designated agent by mail or other means of delivery specified in the Declaration, By-laws, or rule; that the ballots shall be mailed or otherwise distributed to Unit Owners not less than 10 and not more than 30 days before the election meeting, and the Board shall give Unit Owners not less than 21 days' prior written notice of the deadline for inclusion of a candidate's name on the ballots; that the deadline shall be no more than 7 days before the ballots are mailed or otherwise distributed to Unit Owners; that every such ballot must include the names of all candidates who have given the Board or its authorized agent timely written notice of their candidacy and must give the person casting the ballot the opportunity to cast votes for candidates whose names do not appear on the ballot; that a ballot received by the Association or its designated agent after the close of voting shall not be counted; that a Unit Owner who submits a ballot by mail or other means of delivery specified in the declaration, bylaws, or rule may request and cast a ballot in person at the election meeting, and thereby void any ballot previously submitted by that Unit Owner;

(c) that if a rule adopted at least 120 days before a Board election, Unit Owners may not vote by proxy in board elections, but may vote only (i) by submitting an association-issued ballot in person at the election meeting; or (ii) by any acceptable technological means as defined in Section 2 of this Act; instructions regarding the use of electronic means for voting shall be distributed to all Unit Owners not less than 10 and not more than 30 days before the election meeting, and the Board shall give Unit Owners not less than 21 days' prior written notice of the deadline for inclusion of a candidate's name on the ballots; the deadline shall be no more than 7 days before the instructions for voting using electronic or acceptable technological means is distributed to Unit Owners; every instruction notice must include the names of all candidates who have given the Board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or acceptable technological means the opportunity to cast votes for candidates whose names do not appear on the ballot; a Unit Owner who submits a vote using electronic or acceptable technological means may request and cast a ballot in person at the election meeting, thereby voiding any vote previously submitted by that unit owner;

(d) that if a written petition by Unit Owners with at least 20% of the votes of the Association is delivered to the Board within 30 days after the Board's approval of a rule adopted pursuant to subparagraph (b) or subparagraph (c), the Board shall call a meeting of the Unit

UNOFFICIAL COPY

Owners within 30 days after the date of delivery of the petition; that unless a majority of the total votes of the unit owners are cast at the meeting to reject the rule, the rule is ratified;

(e) that votes cast by ballot under subparagraph (b) or electronic or Acceptable Technological Means under subparagraph (c) are valid for the purpose of establishing a quorum;

(f) that the Association may, upon adoption of the appropriate rules by the Board conduct elections by secret ballot whereby the voting ballot is marked only with the percentage interest for the Unit and the vote itself, provided that the Board further adopt rules to verify the status of the Unit Owner issuing a proxy or casting a ballot; and further, that a candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of ballots at such election.

5.04 Meetings.

(a) Quorum. Meetings of the voting members shall be held at the Property or at such other place in Cook County, Illinois, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the voting members having twenty percent (20%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

(b) Annual Meeting. There shall be an annual meeting of the voting members on the second Tuesday of November each year at 7:30 P.M., or at such other reasonable time or on such date as may be designated by written notice of the Board delivered to the voting members.

(c) Special Meetings. Special meetings of the voting members may be called at any time after the initial meeting provided for Section 5.04(b) hereof for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the voting members, or for any other reasonable purpose provided, however, that the following matters shall require the approval of voting members having not less than two-thirds (2/3's) of the total votes: (i) the merger or consolidation of the Association; (ii) the sale, lease, exchange (but not the mortgage or pledge) or other disposition of all, or substantially all of the property and assets of the Association; and (iii) the purchase or sale or lease of Units or other real estate on behalf of all Owners. Special meetings may be called by written notice authorized by a majority of the Board, the President of the Board, or by twenty percent (20%) of the voting members and delivered not less than ten (10) days and no more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

5.05 Notices of Meetings. Except as otherwise provided herein, notices of meetings required to be given herein may be delivered either personally, by mail or by electronic means to the persons entitled to vote thereat, addressed to each such person at the address given by him to

UNOFFICIAL COPY

the Board for the purpose of service of such notice, or to the Unit of the Owner with respect to which such voting right appertains, if no address has been given to the Board provided that any such notice shall be delivered no less than ten (10) and no more than thirty (30) days prior to the date fixed for such meeting and shall state the time, place and purpose of such meeting.

5.06 Board of Directors.

(a) In the first annual meeting of the Association, the voting members elected the Board which consisted of five (5) members. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting 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. At the first annual meeting, the three (3) persons receiving the highest number of votes were elected to the Board for a term of two (2) years and the two (2) persons receiving the next highest number of votes were elected to the Board for a term of one (1) year. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may decrease the term of office of Board members at any annual or special meeting, provided that such number shall not be less than three (3), that the terms of at least one-third (1/3) of the persons on the Board shall expire annually and that no Board member nor officer shall be elected for a term of more than two (2) years, but that officers and Board members may succeed themselves. Members of the Board shall receive no compensation for their services. Except as otherwise provided in this Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt provided, however, that (i) each Owner shall be entitled to notice, in the same manner as provided in Section 5.05 hereof, of any meeting of the Board called for the purpose of considering the adoption of the proposed annual budget or any increase or establishment of an assessment; and (ii) the Board shall meet no less than four (4) times each year. A majority of the total number of members on the Board shall constitute a quorum.

(b) Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board by a two-thirds (2/3) vote of the remaining members of the Board for the unexpired portion of the term or for a period terminating no later than twenty (20) days following the filing of a petition signed by Unit Owners holding twenty percent (20%) of the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term, and that a meeting of the Unit Owners shall be called for the purpose of filling the vacancy no later than thirty (30) days following the filing of said petition.

(c) Notice. Written notice of any special meeting of the Board shall be mailed, delivered or sent by electronic means to all members of the Association and all members of the Board at least forty-eight (48) hours prior to the date of such special

UNOFFICIAL COPY

meeting. Written notice of regular meetings of the Board shall be mailed, delivered or sent by electronic means to all members of the Association at least 48 hours prior to the date of such meeting. All such notices shall be deemed to each member at his address as it appears on the records of the Association, with proper postage thereon prepaid. 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. However, 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.

(d) The Board shall elect from amongst its members a President who shall preside over both its meeting and those of the voting members, and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein and in the Act, a Secretary who shall keep the minutes of all meetings of the Board and of the voting members and who shall, in general, perform all the duties incident to the office of the Secretary, and a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect from amongst the members of the Board.

(e) Any Board member may be removed from office, at any time after the election of directors at the initial meeting of voting members pursuant to Section 5.06(a) hereof, by affirmative vote of the voting members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the voting members at the same meeting or any subsequent meeting called for that purpose.

(f) Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board not less than forty-eight (48) hours prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

(g) Open Meetings. All meetings of the Board, whether regular or special, shall be open to the members of the Association except for meetings:

(i) 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;

(ii) To discuss the appointment, employment, engagement, or dismissal of an employee, independent contractor, agent, or other provider of goods and services;

(iii) To interview a potential employee, independent contractor, agent or other provider of goods and services;

UNOFFICIAL COPY

- (iv) To discuss violations of rules and regulations of the Association;
- (v) To discuss a Unit Owner's unpaid share of Common Expenses; or
- (vi) To consult with the Association's legal counsel.

(h) Board members may participate in and act at any meeting of the Board by telephonic means or by use of any Acceptable Technological Means whereby all persons participating in the meeting can communicate with each other; that participation constitutes attendance and presence in person at the meeting.

(i) Any Unit Owner may record the proceedings at meetings of the Board, or portions thereof required to be open by the Act, by tape, film or other means. The Board may prescribe reasonable rules and regulations to govern the right to make such recordings.

5.07 General Powers of the Board. The Board shall have the following general powers and duties:

(a) The Board shall provide for the operation, maintenance, repair, replacement and improvement of the Common Elements.

(b) The Board shall prepare, adopt and distribute the annual budget for the Association and provide the manner of assessing and collecting from the Owners their respective shares of the estimated expenses.

(c) The Board shall have the power and duty to provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(d) The Board shall have the power to own, convey, encumber, lease or otherwise deal with Units conveyed to or acquired by the Association.

(e) The Board by vote of at least two-thirds (2/3) of the entire Board, and without approval from any of the voting members except as hereinafter set forth, may adopt such reasonable rules and regulations as the Board deems advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all voting members not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting in which they are adopted.

(f) The Board or its agents, upon reasonable notice, may enter any Unit when necessary in connection with any maintenance or construction for which the Board is

UNOFFICIAL COPY

responsible or to make emergency repairs as may be necessary to prevent damage to the Common Elements or to any other Unit or Units.

(g) The Board may engage the services of an agent to manage the portions of the Property for which the Board is responsible pursuant to this Declaration, to the extent deemed advisable by the Board.

(h) The Board's powers herein enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions to, or capital improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration or unless required for emergency repair, protection or operation of the Common Elements), requiring an expenditure in excess of Twenty-five Thousand Dollars (\$25,000.00) without in each case the prior written approval of Owners outing two-thirds (2/3) of the total ownership interest in the Common Elements.

(i) 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 Treasurer and countersigned by the President of the Board. The managing agent of the Property may be authorized to execute those documents required to enable it to perform its duties under its management agreement.

(j) The Board shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Common Elements, upon such terms as the Board deems appropriate.

(k) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the Owners or any of them.

(l) The Board shall have the power to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for Common Expenses under the Act, or at a sale pursuant to an order of direction of a court, or other involuntary sale, upon the consent or approval of Owners owning not less than two-thirds (2/3) of the aggregate of the undivided Ownership of the Common Elements.

(m) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Owners as a group referred to in the Declaration or the Act.

(n) upon authorization by the affirmative vote of not less than a majority of the Voting Members at a meeting duly called for such purposes, the Board, acting on behalf of all Unit Owners, shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any

UNOFFICIAL COPY

other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge and collect all expenses incurred in connection therewith as common expenses.

(o) Reasonably accommodating the needs of a Unit Owner who is a person with a disability 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.

(p) By a majority vote of the entire Board, assign its right to future income from common expenses or other sources, including the right to receive assessments, and to mortgage or pledge substantially all of the remaining assets of the Association.

(q) Impose charges for late payments of a Unit Owner's assessments, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, Bylaws, and rules and regulations of the Association.

(r) The Board may ratify and confirm actions of the members of the Board taken in response to an emergency, as that term is defined in subdivision (a)(8)(iv) of this Section; that the Board shall give notice to the Unit Owners of: (i) the occurrence of the emergency event within seven (7) business days after the emergency event, and (ii) the general description of the actions taken to address the event within seven (7) days after the emergency event.

(s) subject to the provisions of this Declaration, the Board for the benefit of all the Owners shall acquire and shall pay out of the maintenance fund hereinafter provided for, the following:

(i) Operating expenses of the Common Elements, including water, other necessary utility service for the Common Elements and (if not separately metered or charged) for the Units.

(ii) Services of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments on the Unit Ownerships, and in connection with any other matter where the respective interests of the Owners are deemed by the Board to be similar and nonadverse to each other. The cost of such services shall be Common Expenses.

(iii) Painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the interior or exterior surfaces of windows and of the Units and of the doors appurtenant thereto, which the Owners shall paint, clean, decorate, maintain and repair) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.

UNOFFICIAL COPY

(iv) Any other materials, supplies, utilities, furniture, equipment, labor, services, maintenance, repairs or structural alterations which the Board is required to secure or pay for, pursuant to the terms of this Declaration and By-Laws or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first-class condominium development or for the enforcement of those restrictions.

(v) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire 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 interests therein of particular Owners. Where one or more 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 Board by reason of said lien or liens shall be specifically assessed to said Owners.

(vi) Maintenance and repair of any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements, or any other portion of the Building, and an Owner of any Unit 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 delivered by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the cost of said maintenance or repair.

5.08 Insurance. The Association at all times shall maintain:

(a) Property Insurance. Property insurance (1) on the Common Elements and the Units, including the Limited Common Elements and except as otherwise determined by the Board of Managers, the bare walls, floors, and ceilings of the Unit, (2) providing coverage for special form causes of loss, and (3) providing coverage, at the time the insurance is purchased and at each renewal date, in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage sufficient to rebuild the insured property in compliance with building code requirements subsequent to an insured loss, including: Coverage B, demolition costs; and Coverage C, increased cost of construction coverage. The combined total of Coverage B and Coverage C shall be no less than 10% of each insured building value, or \$500,000, whichever is less.

(b) General Liability Insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees and agents and all persons acting as agents. The Unit Owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance must cover claims of one or more insured parties against other insured parties.

UNOFFICIAL COPY

(c) Fidelity Bond; Directors and Officers Coverage.

(i) The Association must obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the Association, for the maximum amount of coverage available to protect funds in the custody or control of the Association, plus the Association reserve fund.

(ii) All management companies that are responsible for the funds held or administered by the Association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The Association has standing to make a loss claim against the bond of the managing agent as a party covered under the bond.

(iii) For purposes of paragraphs (i) and (ii), the fidelity bond must be in the full amount of Association funds and reserves in the custody of the Association or the management company.

(iv) The Board of Managers must obtain directors and officer's liability coverage at a level deemed reasonable by the Board, if not otherwise established by the Declaration or By-Laws. Directors and officer's liability coverage must extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the Illinois Condominium Property Act, the General Not For Profit Corporation Act of 1986 or the Declaration and By-Laws of the Association.

(d) Contiguous Units; Improvements and Betterments. The insurance maintained under paragraph (a) must include the Units, the Limited Common Elements except as otherwise determined by the Board of Managers, and the Common Elements. The insurance need not cover improvements and betterments to the Units installed by Unit Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected. Common Elements include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual Units initially installed by the Developer. Common Elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the Unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by Unit Owners.

(e) Payment of Deductibles. In the event of an insurance claim for damage to a Unit or the Common Elements, the Board may:

(i) Pay the deductible as a common expense;

UNOFFICIAL COPY

(ii) Assess the deductible amount against the Unit Owner who caused the damage or from whose Unit(s) the damage or cause of loss originated, after notice and an opportunity for a hearing;

(iii) Require the Unit Owner(s) of the Unit(s) affected to pay the deductible amount.

(f) **Other Coverages.** Within the discretion of the Board, the Association may carry any other insurance, including workers compensation, employment practices, environmental hazards, and equipment breakdown that the Board of Managers considers appropriate to protect the Association, the Unit Owners, or officers, directors, or agents of the Association.

(g) **Insured Parties; Waiver of Subrogation.** Insurance policies carried pursuant to paragraphs (a) and (b) must include each of the following provisions:

(i) Each Unit Owner and secured party is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.

(ii) The insurer waives its right to subrogation under the policy against any Unit Owner of the Condominium or Members of the Unit Owner's household and against the Association and members of the Board of Managers.

(iii) The Unit Owner waives his or her right to subrogation under the Association policy against the Association and the Board of Managers.

(h) **Primary Insurance.** If at the time of a loss under the policy there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy is primary insurance.

(i) **Adjustment of Losses; Distribution of Proceeds.** Any loss covered by the property policy under paragraph (a) must be adjusted by and with the Association. The insurance proceeds for that loss must be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association must hold any insurance proceeds in trust for Unit Owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged Common Elements, the bare walls, ceilings, and floors of the Units, and then to any improvements and betterments the Association may insure. Unit Owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored or the Association has been terminated as trustee.

The premiums for the above described insurance, except as otherwise provided in this Section 5.08, shall be Common Expenses.

UNOFFICIAL COPY

(j) All insurance provided for in this Section 5.08 shall be affected under valid and enforceable policies issued by insurers of recognized responsibility to do business in the State of Illinois.

(k) All policies of insurance of the character described in clauses (i) and (ii) of Paragraph (a) of this Section 5.08: (i) shall name as insured, the Trustee, so long as it has an insurable interest, and the Board as trustees for the Owners in the percentages established in Exhibit B to this Declaration and shall also name as an assured the Insurance Trustee described in subparagraph 5.08(f)(ii), as the respective interests of all of such assureds may appear; (ii) shall be without contribution as respects other such policies of insurance carried individually by the Owners whether such other insurance covers their respective Units and/or the additions and improvements made by such Owners to their respective Units; (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the Owners elect to sell the Property or from the Property from the provisions of the Act; and (iv) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to the mortgagee of each Unit. Policies of insurance of the character described in clause (i) of Paragraph (a) of this Section 5.08 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in clauses (i) and (ii) of Paragraph (a) of this Section 5.08, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

(l) Each Owner shall be responsible for his own insurance on the contents of his own Unit, and furnishings and personal property therein, and his personal property stored elsewhere on the Property, and his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Owners as above provided. All policies of casualty insurance carried by each Owner shall be without contribution as respects the policies of casualty insurance obtained by the Board for the benefit of all of the Owners as above provided.

(m) Each Owner shall be required to report all additions or alterations to his Unit promptly in writing to the Board, without prior request from the Board or the management agent, and to reimburse the Board for any additional insurance premiums attributable thereto, and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure to so notify the Board. The Board shall not be responsible for obtaining insurance on such additions, alterations or improvements unless and until such Owner shall make such report and request the Board in writing to obtain such insurance, shall make arrangements satisfactory to the Board for such additional premiums; and upon the failure of such Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the effected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. "Additions" or "alterations" shall mean property attached to the Unit and not readily removable without damage to the Unit, including, but not limited to, carpeting, special flooring (parquet), special wall covering and paneling. The insurance coverage described in this

UNOFFICIAL COPY

paragraph (m) of Section 5.08 shall not be deemed to include personal property owned by the Owner and not attached to the Unit.

(n) Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Association, its officers, members of the Board, Trustee, the manager and managing agent of the Property, if any, and their respective employee, and agents, for damage to the Common Elements, the Units, or to any personal property located in the Unit or Common Elements caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

5.09 Liability of the Board of Directors. Neither the members of the Board nor the officers of the Association shall be liable to the Owners for any mistake of judgment 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 to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Owners or arising out of their status as Board member, or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer; provided, however, that each indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer. It is also intended that the liability of any Owner arising out of any contract made by or other acts of the Board or officer; of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association, shall be limited to such proportion of the total liability hereunder as his percentage of interest in the Common elements bears to the total percentage interest of all the Owners in the Common Elements. Every agreement made by the Board or by the managing agent on behalf of the Owner; shall provide that the members of the Board or the managing agent, as the case may be, are acting only as agents for the Owners, and shall have no personal liability thereunder (except as Owners) and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Owners in the Common Elements.

UNOFFICIAL COPY

ARTICLE VI

COMMON EXPENSES-MAINTENANCE FUND

6.01 Preparation of Estimated Budget. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall on or before November 15 notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof and containing each Owner's respective assessment provided, however, that such annual budget shall be furnished to each Owner at least twenty-five (25) days prior to its adoption by the Board. The annual budget shall also take into account the net available cash income for the year derived from the operation or use of the Common Elements. Said "estimated cash requirement" shall be assessed to the Owners according to each Owner's percentage of Ownership in the Common Elements as set forth in Exhibit B attached hereto, on or before January 1 of the ensuing year, and the first of each and every month of said each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessments made pursuant to this paragraph. On or before April 1 of each calendar year following the initial meeting, the Board shall supply to all Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Such accounting shall be prepared by a certified public accountant.

6.02 Reserve for Contingencies and Replacements; Supplement Budget. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such reserve. If the "estimated cash requirement" proves inadequate for any reason or in the event a non-recurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Owner, and thereupon a separate assessment shall be made to each Owner for his proportionate share of such supplemental budget. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount.

6.03 Budget. Each unit owner shall receive notice, in the same manner as is provided in this Act for membership meetings, (i) of any meeting of the board of managers 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 of managers, upon written petition by unit owners with 20 percent of the votes of the association delivered to the board within 21 days of the board action, shall call a meeting of the unit owners

UNOFFICIAL COPY

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 of managers 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 of managers 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.

6.04 Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.05 Books and Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Elements, specifying; and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Such records and the vouchers authorizing the payment shall be available for inspection at the office of the Association, if any, by any Owner or any holder of a first mortgage lien on a Unit Ownership, at such reasonable time or times during normal business hours as may be required by the Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any 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 Owner.

6.06 Status of Collected Funds. All funds collected hereunder shall be held and expanded for the purposes designated herein, and (except for much special assessments as may be levied hereunder against less than all the Owner, and for such adjustments as may be required to reflect delinquent or prepaid assessments or user charges) shall be deemed to be held for the benefit, use and account of all the Owners in the percentages set forth in Exhibit B.

6.07 User Charges. The Board shall establish, and each Owner shall pay, user charges to defray the expense of providing services, facilities or benefits which may not be used equally or proportionately by all of the Owners or which, in the judgment of the Board, should not be charged to every Owner. Such expenses may include, without limitation, charges for use of facilities located in the Common Elements; and fees for such other services and facilities

UNOFFICIAL COPY

provided to Owners which should not be reasonably allocated among all of the Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Owner benefited thereby, or may be added to such Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein (shall require the establishment of user charges pursuant to this Section 6.07, and the Board may elect to treat all or any portion thereof as Common Expenses.

6.08 Non-Use and Abandonment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his or their Units.

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

7.01 The Property shall be occupied and used as follows:

(a) Each Unit or any two or more adjoining Units used together shall be used for housing and related common purposes for which the Property was designed and for no other purpose. That part of the Common Elements separating any two or more adjoining Units which are owned by the same Owner may be altered or removed to afford ingress and egress to and from such adjoining Units provided, however, that (i) such alteration or removal shall not impair or weaken the structural integrity of any Unit or any portion of the Common Elements; (ii) the Owner furnish to the Board not less than ten (10) days prior to date Owner desires to commence such work, plans detailing the work to be done; (iii) the Board consents to the performance of such work; (iv) the expense of such alterations shall be paid in full by the Owner making such alterations; and (v) such Owner shall pay in full the expense of restoring such Common Elements to their former condition prior to such alternations in the event such Units cease to be used together. The restrictions contained in this Section 7.01(a) shall not apply to Units owned by the Trustee.

(b) There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements (except in areas designed for such purpose) without the prior consent of the Board or except as hereinafter expressly provided. Each Owner shall be obligated to maintain and keep in good order and repair his own Unit.

(c) Nothing shall be done or kept in any Unit or in the Common Elements serving the Units which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements,

UNOFFICIAL COPY

(d) Without the prior consent of the Board, Owners shall not cause or permit anything to be placed on the outside walls of the Building and no sign, awning, canopy, shutter shall be affixed to or placed upon the exterior walls or roof or any part thereof; and Owners shall not cause or permit the enclosure (either partially or entirely) of any exterior portions of the Building.

(e) In order to enhance the sound conditioning of the Building, the floor covering for all occupied Units shall meet the minimum standard as may be specified by rules and regulations of the Board.

(f) No animals of any kind shall be raised, bred, or kept in any Unit or in the Common Elements, except that dogs, cats, or other usual household pets may be kept in Units, subject to rules and regulation adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board. The Board may restrict pets from access to any portions of the Common Elements, and may designate other portions of the Common Elements to accommodate the reasonable requirements of Owners who keep pets.

(g) No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or Occupants.

(h) Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein. No Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others. No Owner shall overload the floors of any Unit.

(i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials which are not in receptacles provided for such purpose.

(j) There shall be no storing or parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs in any corridor, hallway, lobby, driveways or area constituting any part of the Common Elements.

(k) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise shall be conducted, maintained, or permitted in any Unit.

(l) No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property.

UNOFFICIAL COPY

(m) The Unit restrictions in paragraphs (a) and (k) of this Section 7.01 shall not, however, be construed in such a manner as to prohibit an Owner from: (i) maintaining his personal professional library therein; (ii) keeping his personal business or professional records or accounts therein; or (iii) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal resident use and not in violation of paragraphs (a) and (k) of this Section 7.01.

(n) The provisions of paragraphs (b), (d) and (j) of this Section 7.01 shall not apply to those patio areas to which the Owners are entitled to the exclusive use and possession. Such use, however, shall be reasonable and subject to such rules and regulations as the Board may prescribe.

(o) **Satellite Dish.** Any Owner interested in installing a satellite dish one meter or less in diameter must notify the Board and obtain instructions for installation within seven (7) days from the date of installation. Satellite dishes greater than one (1) meter in diameter are prohibited. In addition, the following guidelines must be adhered to:

(i) Satellite dishes may only be installed on portions of property within the Owner's exclusive use or control. Any deviations must be approved by the Board of Directors prior to the installation of the satellite dish.

(ii) To protect the health, safety and welfare of the residents, all satellite dishes must be professionally installed. The Owner must provide proof that the contractor is insured and licensed.

(iii) In order to protect the health, safety and welfare of the residents and their property the Board reserves the right to inspect the installation and maintenance of the satellite dish. The cost of this inspection may be assessed back to the Owner installing the dish.

(iv) Once installed, the Owner will be responsible for the maintenance of the dish. If additional cost is required to maintain the portion of property on which the dish is installed, the Board may assess this cost back to the Owner. If it is necessary for the Association to remove the satellite dish to perform maintenance, the Owner will be advised accordingly.

(v) The Owner shall at all times keep the satellite dish in good repair. Failure to do so after five (5) days' notice from the Board may result in the removal of the dish.

(vi) The Owner shall be responsible to fund the cost of any maintenance, repair or replacement to the property resulting from installation of

UNOFFICIAL COPY

the satellite dish. In addition, the Owner must restore the property to its original condition upon removal of the dish.

(vi) The Owner hereby indemnifies and holds harmless the Board of Directors, the Association, its agents and members from any and all claims, controversies or causes of action resulting from the installation or use of this satellite dish, including the payment of any and all costs of litigation and attorneys' fees resulting therefrom. Owner agrees to be responsible for any damage to the property or any injury to any individual as a result of the installation of the dish. Upon installation of the dish the Owner must execute a hold harmless agreement.

(viii) Upon transference of the ownership or occupancy of the Dwelling, the Owner shall inform the successor in title, including any purchaser by Articles of Agreement for Warranty Deed, or tenant, of the existence of these rules and regulations and the obligations set forth herein. All obligations herein shall pass to any successor in interest. If the transferee is unwilling to assume the responsibilities set forth herein, and execute a new hold harmless agreement, the dish must be removed prior to conveyance.

(ix) All satellite dishes shall be constructed in strict compliance with these provisions. Any deviation from these provisions without the written consent of the Board of Directors may result in the dismantling and removal of the satellite dish by the Association without notice. All costs of removal and restoration shall be borne by Owner. The Association reserves the right to levy a continuing and daily fine for each and every day an unauthorized satellite dish shall remain on the premises after the Owner has been notified to remove it, or advised to re-install the dish in conformance with the rules and regulations. The fine shall be set by the Board of Directors in accordance with approved guidelines for fines.

(p) Flags. Notwithstanding any provision in the Declaration, By-Laws, rules, regulations, or agreements or other instruments of the Association, or the Board's construction of any of those instruments, the Board may not prohibit the display of the American flag or a military flag, or both, on or within the facilities of a Unit Owner or on the immediately adjacent exterior of the building in which the Unit of a Unit Owner is located. The Board may adopt reasonable rules and regulations, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American flag and the Board may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. The Board may not prohibit the installation of a flagpole for the display of the American flag or a military flag, or both, on or within the facilities of a Unit Owner or on the immediately adjacent exterior of the building in which the Unit of a Unit Owner is located, but the Board may adopt reasonable rules and regulations regarding the location and size of flagpoles. As used in this Section:

UNOFFICIAL COPY

(i) “American flag” means the flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but “American flag” does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

(ii) “Military flag” means a flag of any branch of the United States armed forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but “military flag” does not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

ARTICLE VIII

DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDING

8.01 Sufficient Insurance. In the event the improvements forming a part of the Property, or any portion thereof, including any Unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds (including the insurance Trustees) in payment therefor.

8.02 Insufficient Insurance. In the event the Property, or any part thereof, shall suffer damage or destruction from any cause and the proceeds of any policy insuring against such loss or damage, and payable by reason thereof, shall be insufficient to pay the cost of repair, restoration or reconstruction, or the Property is not insured against the peril causing the loss or damage, and the Owners and all other parties in interest do not voluntarily make provision for reconstruction, repair or restoration within one hundred and eighty (180) days after said damage, destruction or taking, then the provisions of the Act in such event shall apply. Notwithstanding the foregoing, if such damage, destruction or taking renders uninhabitable fewer than one-half (1/2) of the Units, then, upon the affirmative vote of not fewer than three-fourths (3/4) of the Owners voting at a meeting called for that purpose, the Board shall cause the Property or any affected part thereof to be repaired and reconstructed. Such meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the damage, destruction or taking. At such meeting, the Board, or its representative, shall present an estimate of the cost of repair or reconstruction and the estimated amount of necessary separate assessments to be levied against each Owner.

8.03 Condemnation. In the case of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements in the

UNOFFICIAL COPY

remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards made to the Association in connection with any such taking or condemnation shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either (i) applied to pay the Common Expenses; or (ii) distributed to the remaining Owners and their respective first mortgagees, as their interests may appear, based on their current percentage of interest in the Common Elements. In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Act and the court which has jurisdiction of the action shall adjust the percentage of interest in the Common Elements of the remaining Units in a just and equitable manner and as provided under the Act, and if the court fails to make such adjustment, such adjustment may be made by the Board. The President and Secretary of the Association shall execute and record an instrument on behalf of the Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property and adjustments, if any, in the percentage of interest in the Common Elements as a result of an occurrence covered by this Section 8.03. From and after the effective date of the amendment referred to in the preceding sentence, the Owner of a Unit which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the percentage of interest in the Common Element, if any, allocated to the Unit in the amendment.

8.04 Repair, Restoration or Reconstruction of the Improvements. As used in this Article, "repair, restoration or reconstruction" of improvements means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Elements having the same vertical and horizontal boundaries as before.

ARTICLE IX

SALE OF THE PROPERTY

At a meeting duly called for such purpose, the Owners by affirmative vote of at least seventy-five percent (75%) of the total vote, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale was approved the Board shall give written notice, of such action to the holder of any duly recorded mortgage or trust deed against any Unit entitled to notice under Section 12.02 of this Declaration. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale; provided, however, that any Owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by an appraisal, less the amount of any unpaid assessment or charges due and owing from such Owner. In the absence of agreement on an appraiser, such Owner and the Board may each select a qualified appraiser, experienced in the appraisal of condominium units in Mount Prospect, Illinois and two (2) so

UNOFFICIAL COPY

selected, shall select a third appraiser, majority of the three (3) so selected, shall control if either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal.

ARTICLE X

HOMEOWNER'S ASSOCIATION

In accordance with the provisions of the Declaration of Covenants, Conditions, Restrictions and Easements recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document 22507684 ("Homeowner's Declaration"), a not-for-profit corporation has been organized under the General Not-for-Profit Corporation Act of the State of Illinois having the name "Colony Country Homeowner's Association" (referred to in this Declaration as the "Homeowner's Association"). Each Owner who has purchased a Unit from Trustee shall automatically be a member of the Homeowner's Association as long as he shall be an Owner, and such membership shall automatically terminate when he ceases to be an Owner; and upon the transfer of his ownership interest, the new Owner succeeding to such ownership interest shall likewise succeed to such membership. Each shall be responsible for payment of assessments levied by the Homeowner's Association. Such assessments shall be collected by the Board and remitted to the Homeowner's Association in the manner prescribed by the aforesaid Declaration, and payment thereof shall be secured as therein provided by a lien on such member's Unit ownership.

ARTICLE XI

REMEDIES

11.01 Abatement and Enjoinment. The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, upon not less than ten (10) days' notice, in addition to the rights set forth in the next succeeding section:

(a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

All expenses of the Board in connection with such action, or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eight percent (8%) per annum until paid, shall be charged to assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same

UNOFFICIAL COPY

upon the Unit ownership of such defaulting Owner and upon all of his additions and improvements thereto and all of his personal property in his Unit or located elsewhere on the Property. Any and all of such rights and remedies may be exercised at any time and from time to time cumulatively or otherwise, by the Board.

11.02 Involuntary Sale. If any Owner (either by the own conduct or any other occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice is writing from the Board, or shall recur more than once after such notice, then the Board shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the right of said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Unit and thereupon an action in equity say be filed by the members of the Board against the defaulting Owner for a decree of mandatory injunction against the Owner or Occupant or, in the alternative, a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by his on account of the breach of covenant and ordering that the right, title and interest of the Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from reacquiring his interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale and all such items shall be taxed against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any lien's, shall be paid to the Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property sold subject to this Declaration.

11.03 Remedies for Failure to Pay Common Expenses or User Charges. Each Owner shall pay his proportionate share of the Common Expenses. Such proportionate share shall be in the same ration as his percentage of ownership in the Common Elements as set forth in Exhibit B. Each Owner shall also pay all user charges for which he is responsible pursuant to this Declaration. In the event of the failure of an Owner to pay such Common Expenses or user charges when due, the amount thereof shall constitute a lien on the interest of such Owner, as provided by the Act, provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Owner, owned or held by a bank, insurance company or savings and loan association, or other lender, except for the amount of the Common Expenses or user charges which become due and payable from and after the date on which the said mortgage or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as security), or files suit to foreclose its mortgage. If any Owner refuses to pay any installment of such Common Expenses, or any user charges for which he is responsible pursuant to this Declaration, within thirty (30) days after notice of default, the Board may accelerate the maturity of the remainder of installments of such Common Expenses due from such Owner for the balance of the assessment year, and may enforce collection thereof and of all of such user charges then or thereafter falling due. A "late charge" in the amount of Thirty-five

UNOFFICIAL COPY

(\$35.00) Dollars per month shall be charged to and assessed against such defaulting Owner until paid, which late charge shall be subject to review by the Board from time to time. In addition to the foregoing, the Board or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time, without limiting the generality of the foregoing, if any Owner shall fail to pay his proportionate share of the Common Expenses or of any other expenses required to be paid hereunder when due, such rights and remedies shall include the right to take possession of such Owner's interest in the Property and to maintain for the benefit of all the other Owners an action for possession in the manner prescribed by "an act in regard to forcible entry and detainer," approved February 16, 1974, as amended.

ARTICLE XII

GENERAL PROVISIONS

12.01 Notice to Mortgagees. Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Unit Ownership is subject to such mortgage or trust deed.

12.02 Manner of Giving Notices. Notices provided for in this Declaration and in the Act shall be in writing and shall be addressed to the Board or Association, or any Owner, as the case may be, at the Unit address of any member of the Board or any Owner, as the case may be, or at such other address as herein provided. Any Owner may designate a different address or addresses for notice to him by giving written notice of his change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof, or, if addressed to an Owner, when deposited in his mailbox in the Building or at the door of his Unit in the Building.

12.03 Notices to Estate or Representatives. Notices required to be given any devisee, heir or personal representative of a deceased Owner may be delivered either personally or 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.

12.04 Conveyance and Leases. Each grantee by the acceptance of deed of conveyance, and each purchaser under a purchase contract therefor, and each tenant under a lease for a Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligation, hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time interest or estate in the Property, and shall inure to the benefit of such Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

12.05 No Waivers. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any

UNOFFICIAL COPY

failure to enforce the same, irrespective of the number of violations or breaches which may occur.

12.06 Change, Modification or Rescission. Provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, the Owners having at least seventy-five percent (75%) the total vote and the mortgagees having bona fide liens of record against such Owners' Unit Ownerships. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of Cook County, Illinois; provided however, that no such change, modification or rescission shall change the boundaries of any Unit, the allocation of percentages of Ownership in the Common Elements and votes in the Association, quorum and voting requirements for action by the Association, or liability for Common Expenses assessed against any Unit, except to the extent authorized by other provisions of this Declaration or by the Act.

12.07 Partial Invalidity. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

12.08 Perpetuities and Other Invalidity. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints or ion, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Donald J. Trump, President of the United States.

12.09 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of crediting a uniform plan for the operation of a first-class condominium development.

12.10 Ownership by Land Trustee. In the event title to any Unit Ownership is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the Unit Ownership under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit ownership. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Unit Ownership.

UNOFFICIAL COPY

SIGNED AND ACKNOWLEDGED THIS 5th DAY OF MARCH, 2018

Margaret Harrett

Judy Pearce

Francis Bossan

Anthony DeLuca

Russell L. Pearce

BEING AT LEAST TWO-THIRDS (2/3) OF THE BOARD OF DIRECTORS
FOR ORCHARD VALE CONDOMINIUM ASSOCIATION NO. 2

County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

Units 101A, 201A, 102A, 202A, 103A, 203A, 104A, 204A, 101B, 201B, 102B, 202B, 101C, 201C, 102C, 202C, 103C, 203C, 104C, and 204C, as delineated on a survey of that part of Lot 2 in Old Orchard Country Club Subdivision, being a part of the Northwest Quarter of Section 27 and part of the East Half of the Northeast Quarter of Section 28, Township 42 North, Range 11 East of the Third Principal Meridian, according to Plat Recorded May 9, 1972 as Document Number 21895678, described as follows: Beginning at a point on the East line of the aforesaid Northwest Quarter of Section 27, said point being 685.48 feet (as measured along the East line) South of the Northeast corner of said Northwest Quarter; thence South 89 degrees 59 minutes 01 seconds West, a distance of 175.00 feet along a line being parallel with the North line of the said Northwest Quarter to the point of intersection with the West line of the East 175.00 feet of the said Northwest Quarter; thence South 00 degrees 11 minutes 39 seconds East along said West line, a distance of 100.345 feet; thence South 13 degrees 45 minutes 18 seconds West, a distance of 456.48 feet; thence South 76 degrees 14 minutes 42 seconds East, a distance of 293.70 feet to a point on the East line of the said Northwest Quarter; thence North 00 degrees 11 minutes 39 seconds West, a distance of 513.59 feet along the East line of the said Northwest Quarter to the point of beginning, excepting from the above described parcel of land that part thereof taken for Elmhurst Road per Document Number 10155704, all in Cook County, Illinois, which survey is attached as Exhibit "A" to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for Orchard Vale Condominium Association Number 2 made by Mount Prospect State Bank, as Trustee under Trust Agreement dated February 10, 1978 and known as Trust Number 732 and Recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document Number 24771257.

Unit	Pin	Commonly known as (for informational purposes only)
101A	03-27-100-029-1001	1456 N. Elmhurst Road, Unit 101A, Mount Prospect IL 60056
201A	03-27-100-029-1002	1456 N. Elmhurst Road, Unit 201A, Mount Prospect IL 60056
102A	03-27-100-029-1003	1456 N. Elmhurst Road, Unit 102A, Mount Prospect IL 60056
202A	03-27-100-029-1004	1456 N. Elmhurst Road, Unit 202A, Mount Prospect IL 60056
103A	03-27-100-029-1005	1458 N. Elmhurst Road, Unit 103A, Mount Prospect IL 60056
203A	03-27-100-029-1006	1458 N. Elmhurst Road, Unit 203A, Mount Prospect IL 60056
104A	03-27-100-029-1007	1458 N. Elmhurst Road, Unit 104A, Mount Prospect IL 60056
204A	03-27-100-029-1008	1458 N. Elmhurst Road, Unit 204A, Mount Prospect IL 60056
101B	03-27-100-029-1009	1454 N. Elmhurst Road, Unit 101B, Mount Prospect IL 60056
201B	03-27-100-029-1010	1454 N. Elmhurst Road, Unit 201B, Mount Prospect IL 60056
102B	03-27-100-029-1011	1454 N. Elmhurst Road, Unit 102B, Mount Prospect IL 60056
202B	03-27-100-029-1012	1454 N. Elmhurst Road, Unit 202B, Mount Prospect IL 60056
101C	03-27-100-029-1013	1450 N. Elmhurst Road, Unit 101C, Mount Prospect IL 60056
201C	03-27-100-029-1014	1450 N. Elmhurst Road, Unit 201C, Mount Prospect IL 60056
102C	03-27-100-029-1015	1450 N. Elmhurst Road, Unit 102C, Mount Prospect IL 60056
202C	03-27-100-029-1016	1450 N. Elmhurst Road, Unit 202C, Mount Prospect IL 60056
103C	03-27-100-029-1017	1452 N. Elmhurst Road, Unit 103C, Mount Prospect IL 60056
203C	03-27-100-029-1018	1452 N. Elmhurst Road, Unit 203C, Mount Prospect IL 60056
104C	03-27-100-029-1019	1452 N. Elmhurst Road, Unit 104C, Mount Prospect IL 60056
204C	03-27-100-029-1020	1452 N. Elmhurst Road, Unit 204C, Mount Prospect IL 60056

UNOFFICIAL COPY

EXHIBIT B PERCENTAGE OWNERSHIP INTERESTS

Unit	% Interest	Commonly known as (for informational purposes only)
101A	5.8667	1456 N. Elmhurst Road, Unit 101A, Mount Prospect IL 60056
201A	5.8667	1456 N. Elmhurst Road, Unit 201A, Mount Prospect IL 60056
102A	5.0588	1456 N. Elmhurst Road, Unit 102A, Mount Prospect IL 60056
202A	5.0588	1456 N. Elmhurst Road, Unit 202A, Mount Prospect IL 60056
103A	4.2510	1458 N. Elmhurst Road, Unit 103A, Mount Prospect IL 60056
203A	4.2510	1458 N. Elmhurst Road, Unit 203A, Mount Prospect IL 60056
104A	5.1320	1458 N. Elmhurst Road, Unit 104A, Mount Prospect IL 60056
204A	5.1320	1458 N. Elmhurst Road, Unit 204A, Mount Prospect IL 60056
101B	4.2510	1454 N. Elmhurst Road, Unit 101B, Mount Prospect IL 60056
201B	4.2510	1454 N. Elmhurst Road, Unit 201B, Mount Prospect IL 60056
102B	5.1320	1454 N. Elmhurst Road, Unit 102B, Mount Prospect IL 60056
202B	5.1320	1454 N. Elmhurst Road, Unit 202B, Mount Prospect IL 60056
101C	5.8667	1450 N. Elmhurst Road, Unit 101C, Mount Prospect IL 60056
201C	5.8667	1450 N. Elmhurst Road, Unit 201C, Mount Prospect IL 60056
102C	5.0588	1450 N. Elmhurst Road, Unit 102C, Mount Prospect IL 60056
202C	5.0588	1450 N. Elmhurst Road, Unit 202C, Mount Prospect IL 60056
103C	4.2510	1452 N. Elmhurst Road, Unit 103C, Mount Prospect IL 60056
203C	4.2510	1452 N. Elmhurst Road, Unit 203C, Mount Prospect IL 60056
104C	5.1320	1452 N. Elmhurst Road, Unit 104C, Mount Prospect IL 60056
204C	5.1320	1452 N. Elmhurst Road, Unit 204C, Mount Prospect IL 60056

Total 100.00%

UNOFFICIAL COPY

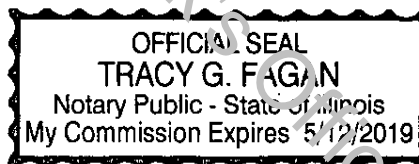
EXHIBIT C AFFIDAVIT OF SECRETARY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, MARIE SASSON, being first duly sworn on oath, depose and state that I am the Secretary of the Board of Managers of Orchard Vale Condominium Association No. 2, and as such Secretary and keeper of the books and records of said condominium. I further state that the foregoing Amended and Restated Declaration was approved by at least two-thirds (2/3) of the members of the Board of Managers of said condominium, at a meeting of the Board of Managers duly noticed and convened and held for that purpose on December 14, 2017, at which a quorum was present throughout, and such approval has not been altered, modified, or rescinded in any manner but remains in full force and effect, and that a copy of the foregoing Amended and Restated Declaration either was delivered personally to each unit owner at the Association or was sent by regular mail, to each Unit Owner in the Association at the address of the Unit or such other address as the Owner has provided to the Board of Managers for purposes of mailing notices. I further state the Unit Owners did not file a petition with the Board, pursuant to the requirements of Section 27(b)(3) of the Illinois Condominium Property Act, objecting to the adoption of this Amended and Restated Declaration.

Marie M. Sasson 3-5-2018
Secretary of Orchard Vale
Condominium Association No. 2

SUBSCRIBED AND SWORN to before me
this 5th day of March, 2018.



Tracy G. Fagan
Notary Public