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AMENDED AND RESTATED DECLARATION  
OF CONDOMINIUM OWNERSHIP AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS  
AND BY-LAWS FOR THE CUMBERLAND  
CROSSING CONDOMINIUM ASSOCIATION



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EDWARD H. MOODY

COOK COUNTY RECORDER OF DEEDS

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This instrument was prepared by and  
after recording return to:

Katerina Tsoukalas-Heitkemper  
Tressler LLP  
550 East Boughton Road  
Suite 250  
Bolingbrook, IL 60440

Property of Cook County Clerk's Office

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DATE 10-25-19 COPIES 6  
OK BY [Signature]

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
OWNERSHIP AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS FOR THE  
CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION is made and entered into this 18<sup>th</sup> day of October, 2019, by THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION with the approval of the Board of Directors pursuant to Section 27 of the Illinois Condominium Property Act; and

WHEREAS, the original Declaration of Condominium Ownership and of Easements, Restrictions, Covenants, and By-Laws for the Cumberland Crossing Condominium Association ("Declaration") was recorded with the Cook County Recorder of Deeds as Document No. 09156480 on December 13, 1999, against a certain parcel of real estate described in Exhibits A and B, as amended from time to time;

WHEREAS, THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION is a not-for-profit condominium association subject to the Condominium Property Act (the "Act") and the General Not-for-Profit Corporation Act; and

WHEREAS, THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION is governed by a Board of Directors (the "Board"); and

WHEREAS, Section 27 of the Act, 765 ILCS 605/27, gives the Board the authority to amend the Declaration to conform it to the Act and other applicable statutes; and

WHEREAS, the Board of THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION believes that it is in the best interest and welfare of the Association to update the provisions of the Declaration to comply with the Act and other applicable statutes; and

WHEREAS, this Amended and Restated Declaration has been approved by a majority of the members of the Board;

NOW THEREFORE, the Declaration is hereby amended and restated as follows:

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## ARTICLE 1

### DEFINITIONS

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

**Association.** The Cumberland Crossing Condominium Association, an Illinois not for profit corporation.

**Board.** The persons determined pursuant to Article 5 who are vested with the authority and responsibility of administering the Property.

**Building.** The building located on the Parcel, forming a part of the Property and containing the Units, as shown by the surveys depicting the respective floors of the Building.

**By-Laws.** The provisions for the administration of the Property including, but not limited to, assessment, maintenance, use, occupancy, sale, leasing and alienation, all as hereinafter set forth, or as may be from time to time duly amended. Articles 5 and 6 shall constitute the By-Laws of the Association.

**Common Elements.** All portions of the Property except the Units, more specifically described in Section 3.1.

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

**Declarant.** Cumberland Development, L.L.C., an Illinois limited liability company.

**Declaration.** This instrument by which the Property is submitted to the provisions of the Act, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.

**Indoor Parking Area.** That part of the Parking Area contained within the Building and containing certain Parking Spaces.

**Limited Common Elements.** A portion of the Common Elements so designated in this Declaration or on the Plat, as hereinafter defined, as being reserved for the use of a certain Unit or Units to the exclusion of other Units. Any portion of the Common Elements which by the terms of this Declaration or by its nature or location is clearly intended to serve exclusively a certain Unit or Units (but less than all of the Units) or the owner or owners thereof shall be deemed a Limited Common Element.

**Majority of the Unit Owners.** Those Unit 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 Unit Owners shall mean those Unit Owners who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the Common Elements.

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

**Outdoor Parking Area.** That part of the Parking Area not contained within the Building and containing certain Parking Spaces as well as additional parking spaces for visitor and guest parking and all other parking more particularly described in Section 4.12 hereof.

**Parcel.** The entire tract of real estate described in the first Recital of this Declaration and submitted to the provisions of the Act.

**Parking Area.** That part of the Common Elements provided for parking passenger vehicles, consisting of the Outdoor Parking Area and the Indoor Parking Area.

**Parking Space.** A part of the Property within the Indoor Parking Area or the Outdoor Parking Area intended for the parking of a single passenger vehicle and designated as a Limited Common Element pursuant to Section 3.3 hereof

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

**Plat.** The plats of survey of the Parcel and all of the Units in the Property submitted to the provisions of the Act, which Plat is attached hereto as Exhibit A and made a part hereof and recorded with the recording of this Declaration.

**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 fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, as hereinafter defined, submitted to the provisions of the Act.

**Storage Area.** That part of the Common Elements provided for storage purposes.

**Storage Space.** A part of the Property within the Storage Area intended for storage and designated as a Limited Common Element pursuant to Section 3.3 of this Declaration.

**Unit.** A part of the Property more specifically described in Article 2 designed and intended for a single-family dwelling, or such other uses permitted by this Declaration.

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

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

**Voting Member.** One person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners designated pursuant to Section 5.3.

## **ARTICLE 2**

### **UNITS**

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## 2.1 Description and Ownership.

(a) All Units are delineated on the Plat and listed on Exhibit B.

(b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on Exhibit A including, without limitation, pipes, ducts, flues, chutes, conduits, wires, and other utility, heating, cooling or ventilation systems or equipment to the extent and only to the extent serving only such Unit; and (notwithstanding anything to the contrary contained in this Declaration) excluding all structural components of the Building, the term "structural components" including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through the Unit and forming a part of any system serving more than the Unit, or any components of communication or master antenna systems, if any, located in the Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on Exhibit A. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on Exhibit A, and every such description shall be deemed good and sufficient for all purposes.

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

(d) Intentionally deleted.

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

2.3 Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for that Unit Owner's Unit and its 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 3

### COMMON ELEMENTS

3.1 Description. The Common Elements shall consist of all portions of the Property, except the Units, and including the Limited Common Elements, unless otherwise expressly specified in this Declaration. The Common Elements include, without limitation and if applicable, any of the following items located at the Property: the walls, roofs, hallways, interior and exterior

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stairways, porches, entrances and exits, laundry room and related facilities, security system, mechanical equipment areas, the Storage Area, mail boxes, master television antenna system (whether leased or owned), if any, fire escapes, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits either or both situated entirely within a Unit and serving only such Unit), central heating, cooling and ventilating systems servicing the Common Elements (but excluding those individual heating, cooling and ventilating systems or equipment either or both situated entirely within a Unit and serving only such Unit), public utility lines, structural parts of the Building, sidewalks and walkways, landscaped and grass areas and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. Any references to "Common Elements" appearing on the Plat (except references to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way.

**3.2 Ownership of Common Elements.** Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit B attached hereto. The percentages of ownership interests set forth in Exhibit B have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, except as specifically permitted under the Act or this Declaration, without unanimous written consent of all Unit Owners and all First Mortgagees (as hereinafter defined in Section 11.1). The ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Common Elements corresponding to such Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering such Unit may refer only to that Unit.

**3.3 Limited Common Elements.** The Limited Common Elements are such parts of the Common Elements serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, as designated as such in this Declaration, included in the Plat, or which by the nature or location thereof, or by the terms of this Declaration, are clearly intended to be reserved for or for the use of one or more Units to the exclusion of other Units. The Limited Common Elements appertaining to, or designated or reserved for or for the use of, or serving any Unit (alone or in conjunction with other Units) are hereinafter from time to time referred to as the Limited Common Elements of such Unit. The Limited Common Elements shall include, but shall not be limited to, the following: (a) the interior surface of the perimeter walls, ceilings and floors which define the boundary planes of a Unit; (b) perimeter doors and windows, including skylights, if any, which serve exclusively a single Unit; (c) any system or component part thereof (including, without limitation, fireplace flues and chimneys, furnaces, fittings, housings, ducts, flues, shafts, electrical wiring and conduits) which serves a Unit exclusively, to the extent that such system or component part is located outside the boundaries of a Unit; (d) ceilings and floors separating different levels in a multi-level Unit; (e) balconies, as shown on the Plat; (f) any Storage

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Space which serves exclusively a single Unit; and (g) a Parking Space which serves exclusively a single Unit.

3.4 **Use of Limited Common Elements.** Each Unit Owner and Occupant shall have the right to (a) the exclusive use and possession of the Limited Common Elements serving exclusively the Unit of such Unit Owner or Occupant, which right shall be appurtenant to and shall run with title to such Unit, and shall not be separated from such Unit, and (b) the use and possession of the Limited Common Elements serving the Unit of such Unit Owner or Occupant in common with one or more (but not all) other Units, which use and possession shall be to the exclusion of all other persons except the Unit Owner or Occupant of any such other Unit to which such Limited Common Elements shall respectively appertain. The use of Limited Common Elements may be transferred between Unit Owners at their expense in accordance with the Act or as expressly provided in this Declaration.

## **ARTICLE 4**

### **GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS**

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

4.2 **No Severance of Ownership.** No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to such Unit Owner's Unit Ownership without including therein both such Unit Owner's interest in the Unit and corresponding percentage of ownership in the Common Elements, it being the intention to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

#### 4.3 **Easements.**

(a) **Encroachments.** In the event that (i) by reason of the construction, repair, settlement or shifting of the Building or any other improvements, 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 any 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 a Unit Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to such Unit, which will not unreasonably interfere with the use or enjoyment of the Common Elements by any other Unit Owner; or (iii) 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 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 such reason for use exists and as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any



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encroachment or use of the Common Elements be created in favor of any Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by any other Unit Owner or has been created by the Unit Owner or such Unit Owner's agent through intentional, willful or negligent conduct.

(b) **Easements for Utilities and Commercial Entertainment.** All suppliers of utilities serving the Property and any person providing cable television or other similar entertainment to any Unit Owners or to 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 and entertainment services, together with the reasonable right of ingress to and egress from the Property for such purpose; and, Board or Association may hereafter grant other or additional easements for utility or entertainment purposes and for other purposes including such easements as the Board may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements, for the benefit of the Property, over, under, along and on any portion of the Common Elements, and each Unit Owner hereby grants the Board or Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit Owner shall be deprived of, or be subjected to material interference with, the use of such Unit Owner's Unit or any Limited Common Element serving such Unit Owner's Unit, other than reasonably and temporarily). Each mortgagee of a Unit shall be deemed to consent to and be subordinate to any easement hereafter granted and also grants such power of attorney to the Board or Association to effectuate the foregoing. Easements are also hereby declared and granted to the Board and Association and to the suppliers of utilities or cable television or entertainment lines described above in this Section 4.3(b) to install, lay, operate, maintain, repair and replace any pipes, wire, ducts, conduits, public utility lines, entertainment lines, components of the communications systems, if any, or structural components, which may run through the walls of a Unit and which constitute or will constitute Common Elements, whether or not such walls lie in whole or in part within the Unit boundaries.

The Declarant hereby reserves for the benefit of the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or mortgagee of a Unit Ownership: (i) to record a supplement to the Plat showing the location of any or all of such utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built", and (ii) to record, from time to time, additional supplements, showing additions, modifications and deletions to any or all of such conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment. Once the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section 4.3(b) to such utility or other entity shall be limited to the area or areas located within ten feet on either



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side of the equipment of such utility or other entity shown on such supplement or additional supplement as such other area designated in the supplement by the Association. A power coupled with an interest is hereby granted to the Association, acting by and through their respective duly authorized officers, their respective successors, assigns, agents and designees, and each of them singly without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit Ownership shall be deemed a grant of such power to each of such attorneys-in-fact, an acknowledgment of a consent to such power, and shall be deemed to reserve to each of such attorneys-in-fact the power to record any and all such supplements.

(c) **Blanket Easement in Favor of Developer and Other Parties.** The right of the Unit Owners to use and possess the Common Elements as set forth in Section 4.4(a) shall be subject to a blanket easement over the Common Elements in favor of the Declarant and the Developer, and their respective representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Property or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Parcel or any part thereof, including the right to restrict and regulate access to the Common Elements for the purposes of completing construction of the Building, Common Elements or Units in the Building, and (iii) exercising the rights reserved to such parties pursuant to Section 7.1(k) including, but not limited to, the installation and maintenance of signs advertising the residences on the Parcel or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with such residences and for such purposes as are described in Section 7.1(k). The foregoing easements in favor of the Declarant and the Developer shall continue until such time as neither the Declarant nor the Developer holds legal title to, or the beneficial interest in any trust holding legal title to, any Unit Ownerships, at which time such easements shall cease and be of no further force and effect without the necessity of any further action.

(d) **Easement in Favor of Association.** A blanket easement over the Property is hereby granted in favor of the Association for the purpose of exercising its rights and performing its duties under this Declaration. The authorized representatives of the Association or the Board, or of the management company for the Property, and any suppliers of water or utility services to the Property, shall be entitled to reasonable access to, over and through the individual Units as may be required in connection with the operation, maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements, or to service and take readings of any utility meters located within a Unit.

(e) **Easements to Run with Land.** All easements and rights described in this Declaration 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 (except where early termination is otherwise provided in this Declaration) and shall

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inure to the benefit of and be binding on Declarant, its successors and assigns, and any Unit 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 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.

#### 4.4 Use of the Common Elements.

(a) **General.** Subject to the provisions of this Declaration, each Unit Owner shall have the nonexclusive right to use the Common Elements (except the Limited Common Elements and portions of the Property subject to leases, easements or licenses made by or assigned to the Board) in common with the other Unit Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Unit Ownership owned by such Unit Owner, and such other incidental uses as are permitted by this Declaration. Use of Limited Common Elements shall be governed by Section 3.4. 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, and rules and regulations of the Association. In addition, the Association shall have the authority to lease, grant licenses or concessions, or grant easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the By-Laws. All income derived by the Association from leases, licenses, 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 Unit Owner and Occupants, members of the immediate family, guests, visitors, agents, servants, invitees, customers and licensees of the Unit Owner, subject to reasonable rules and regulations adopted or prescribed by the Association with respect thereto.

(c) **Disclaimer of Bailee Liability.** Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, nor any Unit Owner,

shall be considered a bailee of any personal property stored in the Common Elements 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.

#### 4.5 Maintenance, Repairs and Replacements.

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a) **By the Association.** The 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 but excluding, however, all windows and window

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frames, all exterior doors and the interior surfaces of walls, ceilings and floors. In addition, the Association shall maintain, repair, and replace all pipes, wires, conduits, ducts, flues, shafts, and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system servicing more than one Unit, as specified in Section 2.2, 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 Unit Owner under Section 4.5(b), or any other provision of this Declaration. Maintenance, repairs, and replacements of the Common Elements (but not Limited Common Elements except as provided in Section 4.5(b)(iii)), including the Parking Area and all garage doors, shall be furnished by the Association acting by and through the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association:

(b) **By the Unit Owner.** Except as otherwise provided in either subsection (a) or (c) of this Section 4.5, each Unit Owner shall furnish and be responsible for, at such Unit Owner's own expense:

- (i) All of the maintenance, repairs and replacements within such Unit Owner's own Unit, all windows and window frames appurtenant thereto, all interior and exterior doors appurtenant thereto, all screens, and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures and plumbing, and any portion of any other utility service facilities located within the Unit and all pipes, wires, conduits, flues, shafts, and other facilities for the furnishing of utility services solely to such Unit Owner's Unit and to no other Unit; provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water and electricity to two (2) or more Units, shall be furnished by the Board as part of the Common Expenses.
- (ii) All of the decorating within such Unit Owner's 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 Unit Owner shall be entitled to the exclusive use of the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceilings of that Unit Owner's Unit, and such Unit Owner shall maintain such portions in good condition at such Unit Owner's sole expense as may be required from time to time. Each Unit Owner who shall elect to alter that Unit Owner's Unit by installing in any portion of that Unit Owner's Unit (other than in bath and powder rooms) hard surface floor covering (i.e., tile, slate, ceramic, parquet, etc.) shall be first required to install a sound absorbent undercushion of such kind and quality as to prevent the transmission of noise to another

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Unit or as may otherwise be required by the Association. The Board may, in addition to exercising all of the other remedies provided for in this Declaration for breach of any of the provisions of this Declaration, require such Unit Owner to cover all non-conforming work with carpeting, or may require removal of such non-conforming work, at the expense of the offending Unit Owner. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed by and at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board as may be imposed from time to time, which shall provide for notice to the Board or the management company prior to any such installation and the approval of the Board, or management company, acting in accordance with the Board's direction, of the method of installation prior to any such installation.

- (iii) All of the maintenance, repair, and replacements of the Limited Common Elements (except for Parking Spaces) benefitting that Unit Owner's Unit, in whole or in part, except to the extent as otherwise directed by the Board or as is otherwise provided in this Declaration. In addition, each Unit Owner shall be individually responsible for the repair, maintenance and replacement of all door and window locks and hardware with respect to which each Unit Owner is entitled to the exclusive use. At the discretion 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 the Unit Owners benefitted thereby, and further, at the discretion of the Board, the Board may direct such Unit Owners, in the name and for the account of such Unit Owners, to arrange for such maintenance, repairs, and replacements, to pay the cost thereof with the funds of the Unit 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 material-men's lien claims that may arise therefrom.

(c) In the event that any repair or replacement to the Common Elements (including the Limited Common Elements) is made necessary by reason of any act or occurrence for which insurance is maintained by the Board pursuant to Section 5.8 and for which insurance proceeds are available as provided in Section 8.1, the Association, at

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its expense to the extent of such proceeds, and subject to Section 4.6, shall be responsible for the repair or replacement of such Common Elements.

(d) **Nature of Obligation.** Nothing contained in this Declaration shall be construed to impose a contractual liability upon the Association for maintenance, repair and replacement of the Common Elements or the Units or any portion or parts thereof, but the Association's liability shall be limited to damages resulting from negligence. The respective obligations of the Association and Unit 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 to the contrary contained in this Declaration, no Unit Owner shall have a claim against the Board or the Association for any work ordinarily the responsibility of the Board or the Association, but which the Unit Owner himself has performed or paid for, unless such an arrangement shall have been agreed to in advance by the Board, the Association or the Declarant

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

4.7 **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 Unit Owner shall be in all respects reasonable as it affects the other Unit Owners.

4.8 **Additions, Alterations or Improvements.**

(a) The Board may authorize and charge as a Common Expense (or in the case of Limited Common Elements may charge the Unit Owners benefitted thereby) the cost of the additions, alterations, or improvements to the Common Elements. The cost of any such work to the Common Elements may be paid out of a special assessment.

(b) Except as otherwise provided in Section 7.1(a), no additions, alterations or improvements shall be made by a Unit Owner to any part of the Common Elements and no additions, alterations or improvements shall be made by a Unit Owner to such Unit Owner's Unit where such work alters the wall or partition, configuration, ceiling, perimeter doors or windows, terrace, floor load or otherwise affects the structure of the Unit or increases the cost of insurance required to be carried by the Board hereunder without the prior written consent of the Board. Any addition, alteration or improvement of a Unit by the Unit Owner which shall affect the structure of the Unit or the Common Elements shall, further, conform with structural or

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engineering drawings prepared or reviewed and approved by an architectural or engineering firm selected by the Board. The cost of such drawings or review and approval shall be paid by the Unit Owner. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement by a Unit Owner under this Section 4.8(b) upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Association from time to time the additional costs of maintenance or insurance as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made by a Unit Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions, which actions shall not be exclusive of the remedies available to the Board under Section 10.2:

(1) Require the Unit Owner to remove the addition, alteration or improvement and restore the Property to its original condition, all at the Unit Owner's expense; or

(2) If the Unit Owner refuses or fails to properly perform the work required under (1), the Board may cause such work to be done and may charge the Unit Owner for the cost thereof as determined by the Board; or

(3) Ratify the action taken by the Unit Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

4.9 **Master Television Antenna System and Cable Television System.** Each Unit has been equipped with at least one outlet activated for connection to the master television antenna system serving the Building and at least one outlet activated for connection to the cable television system serving the Building, which outlets and systems are integral parts of the Common Elements. Additional outlets for connection to the master television antenna system and the cable television system are obtainable only from the Association and may be installed only by the firm or individual authorized by the Board or Association to make such installation, with the prior approval of the Board or the Association and the payment of any required additional fees. Unit Owners and Occupants are prohibited from making any modifications to or tampering with such outlet(s) and from making any connections to the master television antenna system or the cable television system, and the Board or Association may charge any Unit Owner with the cost of locating and removing any unauthorized connections thereto and of repairing any modifications thereto.

4.10 **Storage Area.** The Storage Area is a part of the Common Elements, and includes all Storage Spaces, which are Limited Common Elements. Each Unit has been allocated at least one (1) Storage Space as a Limited Common Element appurtenant to such Unit, as shown on the Plat, and Declarant reserves the right to allocate additional Storage Spaces to Units. The Declarant, the Board or the Association may allocate Storage Spaces on such basis and at such fees as the Declarant, the Board or the Association deems appropriate and may prescribe such rules and regulations with respect to the Storage Area as it may deem fit.



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4.11 **Street and Utilities Dedication.** At a meeting called for such purpose, two-thirds (2/3) or more of the Unit Owners may elect to dedicate a portion of the Common Elements to a public body for use as, or in connection with, a street or utility.

4.12 **Parking Area.** The Parking Area is a part of the Common Elements. The Parking Area consists of the Outdoor Parking Area and the Indoor Parking Area. A portion of the Outdoor Parking Area shall be used for visitor and guest parking and other parking, all as the Board or the Association deems appropriate and subject to such rules and regulations as the Board or the Association may promulgate. The remaining portion of the Outdoor Parking Area and the Indoor Parking Area has been divided into Parking Spaces as shown on the Plat. The legal description of each Parking Space shall consist of the identifying symbol of such Parking Space as shown on Exhibit A. Whenever reference is made to any Parking Space in a legal instrument or otherwise, a Parking Space may be legally described by its identifying symbol as shown on Exhibit A and every such description shall be deemed good and sufficient for all purposes. Each Unit has been allocated one (1) Parking Space as a Limited Common Element appurtenant to such Unit, as shown on the Plat, and Declarant reserves the right to allocate additional Parking Spaces to Units. Each deed, lease, mortgage, or other instrument affecting a Unit Ownership shall include the Parking Space so allocated and appurtenant thereto. Any such deed, lease, mortgage or other instrument purporting to affect a Unit Ownership without also including the specific Parking Space expressly allocated to such Unit, if any, shall be deemed and taken to include the Parking Space, even though not expressly mentioned or described therein. Unit Owners may exchange, subject to the prior written consent of the holder of a first mortgage upon the Unit Ownership (upon the recording of an amendment to this Declaration in accordance with Section 26 of the Act), or lease between themselves or to others, the specific Parking Space appurtenant to their own Unit Ownership. Any Unit Owner who has a Parking Space appurtenant to such Unit Owner's Unit has the right to sell such Parking Space to another Unit Owner, subject to the prior written consent of the holder of a first mortgage upon the Unit Ownership; and upon the recording of an amendment to this Declaration in accordance with Section 25 of the Act, it shall become appurtenant to the Unit of the purchaser. The term of any lease of a Parking Space and access thereto shall be subject to such reasonable rules and regulations as may be established by the Board. The Parking Spaces shall not be used to park any vehicle other than a passenger vehicle, nor for any other purpose, including, without limitation, any repair work on, or the exterior cleaning of, such vehicle. The parking spaces located in the Outdoor Parking Area which are not limited common element Parking Spaces (the "Visitor Parking Area") are reserved for the temporary parking of passenger vehicles of visitors and guests of Unit Owners. Unit Owners and Occupants are prohibited from parking vehicles in such Visitor Parking Area. To the extent that a Unit Owner or Occupant desires to park a greater number of passenger vehicles than Parking Spaces appurtenant to such Unit Owner's Unit (or in which such Unit Owner or Occupant has a right to park pursuant to a sale or lease arrangement or other arrangement with another Unit Owner to whose Unit such additional Parking Space is an appurtenant Limited Common Element), than all such excess vehicles shall be parked off-site and shall not be parked on the Property. Notwithstanding anything to the contrary contained in this Declaration, only a Unit Owner may purchase or own a Parking Space.

## **ARTICLE 5**

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## ADMINISTRATION

5.1 **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"), which shall consist of three (3) persons who shall be elected in the manner hereinafter set forth; provided, however, that, irrespective of anything else contained in this Declaration, for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Unit Owners, the Board shall consist of three (3) directors.. Each member of the Board shall be one of the Unit Owners; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any designated agent of such corporation, partnership, limited liability company, or other legal entity, or beneficiary of such trust, shall be eligible to serve as a member of the Board. If a Unit Owner owns more than one Unit Ownership and is a corporation, partnership, limited liability company, trust or other legal entity, other than a natural person, then any number of agents or beneficiaries of such Unit Owner may be directors, provided that the number of such Unit Owner's agents or beneficiaries who become directors shall not exceed the number of Unit Ownerships owned by such Unit Owner. If a director fails to meet such qualifications during his or her term, he or she shall thereupon cease to be a director, and his or her place on the Board shall be deemed vacant.

5.2 **Association.** The Association has been, or will be, formed as a not for profit corporation under the General Not for Profit Corporation Act of 1986 of the State of Illinois and for the purposes and having the powers prescribed in the Act, and having the name (or a name similar thereto) the CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION and shall be the governing body for all of the Unit 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 Unit 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 Unit Owners in accordance with the provisions contained herein. Each Unit Owner shall be a member of the Association so long as he or she shall be a Unit Owner, and such membership shall automatically terminate when he or she ceases to be a Unit Owner, and upon the transfer of his or her ownership interest the transferee thereof shall likewise succeed to such membership in the Association. The Association shall have one class of membership. A Unit Owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a Unit Owner under the Act, the Declaration, By-Laws, or the rules and regulations of the Association; and that such an attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void. 5.3 **Voting Rights.**

(a) There shall be one Voting Member for each Unit Ownership. Such Voting Member may be the Unit Owner or one of the group composed of all the owners of a Unit Ownership, or a person designated by such Unit Owner or Unit Owners or the duly authorized attorney-in-fact of such Unit Owner or Unit Owners to act as proxy on his, her or their behalf and who must be a Unit Owner. Such designation shall be made in writing to the Board, 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

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the Unit Owner or such Unit Owner's duly authorized attorney-in-fact, shall bear the date of its execution and shall be invalid after eleven (11) months from date of execution unless otherwise provided in the proxy. Any or all such Unit Owners may be present at any meeting and, furthermore, may vote or take any other action as a Voting Member to the extent provided in Section 5.3(b) hereof. The person(s) designated by the Declarant with respect to any Unit Ownership owned by the Declarant shall also have the right to vote at any meetings of the Board for so long as the Declarant shall retain the right to so designate a Board member. If a Unit Owner is a trust, then the voting rights of such Unit Owner may be exercised by a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation, limited liability company or partnership, then the voting rights of such Unit Owner or beneficiary may be exercised by an officer, member, manager, partner or employee of such Unit Owner or beneficiary. The total number of votes of all Voting Members shall be one hundred (100), and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to the Unit Ownership of such Unit Owner or group of Unit Owners as set forth in Exhibit B; provided that when thirty (30%) percent or fewer of the Units, by number, possess over fifty (50%) percent in the aggregate of the votes in the Association, any percentage of Unit Owners specified in this Declaration shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

(b) In the event the Voting Member is other than the Unit Owner, is not present at a meeting of the Association and has not voted by proxy, then if the Unit Owner is present, such owner shall be entitled to cast all of the votes allocated to the Unit. In the event the ownership of a Unit is composed of multiple owners and the Voting Member is not present and has not voted by proxy, then if only one of the multiple owners of a Unit is present, such owner shall be entitled to cast all of the votes allocated to that Unit Ownership. In the event more than one owner of a Unit Ownership is present, but not the Voting Member, who has not voted by proxy, the votes allocated to that Unit Ownership may be cast only in accordance with the agreement of a majority in interest of the group of owners comprising the Unit Owner who are present. Majority agreement shall be deemed to have occurred if any one of the multiple owners casts the votes allocated to that Unit Ownership without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit Ownership.

(c) The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if (i) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated; and (ii) the Board does not express a preference in favor of any candidate.

(d) Any proxy distributed for Board elections by the Board must give Unit Owners the opportunity to designate any person as the proxy holder, and must give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

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## 5.4 Meetings.

(a) **Quorum.** Meetings of the Unit Owners 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 Unit Owners' meeting of Voting Members or other Unit Owners representing at least twenty (20%) percent of the Unit Ownerships shall constitute a quorum unless the Unit Owners, in accordance with the Act, provide otherwise. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Unit Owners at which a quorum is present upon the affirmative vote of the Voting Members (or Unit Owners pursuant to Section 5.3(b)) having a majority of the total votes present at such meeting.

(b) **Annual Meeting.** There shall be an annual meeting of the Unit Owners on the second Tuesday of December following such initial meeting, and on the second Tuesday of December of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date as may be designated by written notice of the Board delivered to the Unit Owners in accordance with Section 13.2.

(c) **Special Meetings.** Special meetings of the Unit Owners may be called at any time after the initial meeting provided for in Section 5.4(b) 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 (or Unit Owners pursuant to Section 5.3(0)) having not less than two-thirds (2/3) of the total votes: (i) the merger or consolidation of the Association; (ii) the sale, lease, exchange or other disposition (excluding the mortgage or pledge) 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 by the Association on behalf of all Unit 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 Unit Owners, and delivered not less than ten (10) days and no more than thirty (30) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be submitted to the Unit Owners at special membership meetings shall be submitted by the Board.

5.5 **Notices of Meetings.** Notices of meetings of the Unit Owners required to be given by this Declaration may be delivered either personally or by mail to the designated Voting Member, addressed to each such person at the address given by the Unit Owner to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains, if no address has been given to the Board by the Voting Members, 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. The Association shall furnish any Unit Owner, within ten (10) days of receipt by it of a request therefor, the names, addresses and the number of votes of each Unit Owner entitled

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to vote at each meeting to elect members of the Board. For purposes of this Section 5.5, a notice shall be deemed "delivered" upon compliance with the notice provisions set forth in Section 13.2.

## 5.6 Board of Directors.

(a) In all elections for members of the Board, each Voting Member for each Unit which he represents shall be entitled to the number of votes equal to the number of Directors to be elected and non-cumulative voting shall be permitted. At the initial meeting five (5) Board members shall be elected. The three (3) persons receiving the highest number of votes shall be elected to a term ending on the date of the second (2nd) annual meeting, and the two (2) persons receiving the next highest number of votes shall be elected for a term ending on the date of the first annual meeting. The election as between candidates receiving the same number of votes shall be determined by lot. Any candidate for election to the Board, and such candidate's representative, shall have the right to be present at the counting of ballots at such election. Upon the adoption of appropriate rules by the Board (including rules to verify the status of the Unit Owner issuing a proxy or casting a ballot), elections may be conducted by secret ballot. All members of the Board shall be elected at large. Upon the expiration of the terms of office of the Board members so elected at the initial meeting and thereafter, all successors shall be elected for a term of two (2) years each. The Unit Owners owning at least two-thirds (2/3) of the Unit Ownerships may from time to time at any annual or special meeting increase or decrease the term of office of Board members, provided that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. Members of the Board shall receive no compensation for their services. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by a vote of the Voting Members at the meeting at which the vacancy occurs, the next annual meeting or a special meeting of the Unit Owners called for such purpose. Vacancies may also be filled by the Board by a two-thirds (2/3) vote of the remaining members thereof at a special meeting of the Board which vacancy shall be filled until the next annual meeting of the Unit Owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by Voting Members holding twenty (20%) percent of the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. A meeting of the Unit Owners shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the filing of a petition signed by Voting Members with twenty (20%) percent of the votes of the Association requesting such a meeting. 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 Unit Owner shall be entitled to notice, in the same manner as provided in Section 5.5, 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. Two-thirds (2/3) of the total number of members on the Board shall constitute a quorum. Any



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member of the Board may succeed himself or herself. Special meetings of the Board can be called by the president or twenty-five percent (25%) of the members of the Board.

(b) Except as otherwise provided in Section 6.2, in the event the Board adopts an annual budget or a supplemental budget or a separate or special assessment which would result in the sum of all regular and separate or special assessments against the Unit Owners in any fiscal or calendar year exceeding one hundred fifteen percent (115%) of the sum of all regular and separate or special assessments for the preceding year, the Board, upon written petition by the Voting Members with twenty percent (20%) of the votes of the Association delivered to the Board within twenty-one (21) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the budget. Unless a majority of the votes of the Voting Members present are cast at the meeting to reject the budget or separate or special assessment, the budget shall be deemed to be ratified.

(c) The Board shall elect from among its members a President who shall preside over both its meetings and those of the Unit Owners, 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 to this Declaration as provided in this Declaration and in the Act, a Secretary who shall keep the minutes of all meetings of the Board and of the Unit Owners 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. The term of office for each officer shall be until the next succeeding annual meeting of the Board, and until his successor shall be duly elected or appointed and qualified pursuant hereto. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the director he or she succeeds. Any director may be removed for cause at any time by a vote of two-thirds (2/3) of the total membership of the Board at a special meeting of the Board. Any director may succeed himself or herself.

(d) Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board at least 48 hours prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

(e) All meetings of the Board, shall be open to attendance by any Unit Owner, except that the Board may close any portion of a noticed meeting or meet separately from a noticed meeting to: (i) 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) discuss the appointment, employment, engagement, or dismissal of an employee, independent contractor, agent, or other provider of goods and services, (iii) interview a potential employee, independent contractor, agent or other provider of goods and services, (iv) discuss violations of rules and regulations of the Association, (v) discuss a Unit Owner's unpaid share of common expenses, or (vi) consult with the Association's legal counsel. Any vote on these matters



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shall take place at a meeting of the Board or portion thereof open to any Unit Owner. Notice of meetings of the Board shall be mailed or delivered to each Unit Owner not less than forty-eight (48) hours prior thereto unless a written waiver of such notice is signed by such Unit Owner before the meeting is convened. A copy of such notice of meeting required to be given hereunder shall be posted in a conspicuous place in the Building at least forty-eight (48) hours prior to the time fixed for such meeting. Board members may participate in and act at any meeting of the Board in person, 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. Any Unit Owner may record the proceedings at meetings or portions thereof required to be open under the Act by tape, film, or other means provided, however, that the Board may prescribe reasonable rules and regulations to be given the right to make such recordings.

(f) Intentionally deleted.

(g) Any Board member may be removed from office, at any time after the election of directors at the initial meeting of Unit Owners pursuant to Section 5.6(a) hereof, by affirmative vote of the Voting Members representing at least two-thirds (2/3) of the Unit Ownerships, 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.

5.7 **General Powers of the Board.** The Board shall have the following general powers:

(a) The Board may engage the services of a management company to manage the Property for which the Board is responsible pursuant to this Declaration, to the extent deemed advisable by the Board; provided, however, that any agreement for professional management, except as hereinafter provided, shall provide for termination by the Board without cause upon ninety (90) days written notice without payment of a termination fee, and shall provide for termination by the Board with cause on thirty (30) days written notice without payment of a termination fee. The management agreement shall require the management company to furnish a fidelity bond in such amounts and with such provisions as contained in Section 5.8(a)(v).

(b) The Board or its agents, upon reasonable notice, may enter any Unit when necessary in connection with any maintenance, repair or replacement or construction for which the Board is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Elements or to any other Unit or Units.

(c) Except as otherwise provided in the budget, the Board's powers hereinafter enumerated shall be limited in that the Board shall have no authority to acquire and pay for from the maintenance fund any structural alterations to, 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

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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 and no/100 Dollars (\$25,000.00) without in each case the prior written approval of Voting Members representing at least two-thirds (2/3) of the Unit Ownerships. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, the foregoing limitations of this Section 5.7(c) shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the Common Elements. For the purposes of this Section 5.7(c) only, the phrase "repair, replacement, or restoration" means expenditures to deteriorated or damaged portions of the Property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such area. Replacement of the Common Elements may result in an improvement over the original quality of such Common Elements or facilities; provided that, if the improvement results in a proposed expenditure exceeding five percent (5%) of the annual budget, the Board, upon written petition by the Voting Members with twenty percent (20%) of the votes of the Association delivered to the Board within fourteen (14) days of the Board action to approve the expenditure, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the expenditure. Unless a majority of the votes of the Voting Members present are cast at the meeting to reject the expenditure, the expenditure shall be deemed to be ratified, regardless of whether or not a quorum is present.

(d) 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 President of the Board and countersigned by the Treasurer or Secretary.

(e) 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, engineers or architects, 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 management company (and any such employees or other personnel as may be employees of the management company).

(f) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Unit Owners as a group referred to in this Declaration or the Act. More specifically, the Board shall exercise for the Association all powers, duties and authority vested in it by law or this Declaration except for such powers, duties and authority reserved thereby to the members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following matters:

- (i) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements in a neat and orderly

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manner and payments therefor, including the method of approving payment vouchers. Nothing in this subsection (i) shall be deemed to invalidate any provision in the Declaration, By-Laws, or rules and regulations placing limits on expenditures for the Common Elements, provided, that such limits shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the Common Elements. The term "repair, replacement or restoration" means expenditures to deteriorated or damaged portions of the property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such areas. Replacement of the Common Elements may result in an improvement over the original quality of such elements or facilities; provided that, unless the improvement is mandated by law or is an emergency as defined in Section 6.2 of the Declaration, if the improvement results in a proposed expenditure exceeding five percent (5%) of the annual budget, the Board, upon written petition by Unit Owners with twenty percent (20%) of the votes of the Association delivered to the Board within twenty-one (21) days of the Board action to approve the expenditure, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the expenditure, it is ratified;

- (ii) Preparation, adoption and distribution of the annual budget for the Property;
- (iii) Levying of assessments and collection thereof from Unit Owners and expenditure of amounts collected;
- (iv) Borrowing funds;
- (v) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;
- (vi) Obtaining adequate and appropriate kinds of insurance;
- (vii) Purchasing and receiving conveyances of Unit Ownerships and owning, conveying, mortgaging, encumbering, leasing and otherwise dealing with Unit Ownerships conveyed to or purchased by it;

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- (viii) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property (including, but not limited to, rules authorizing elections of Board members by secret ballot, whereby the voting ballot is marked only with the percentage interest for the Unit and the vote itself, including rules to verify the status of the Unit Owner issuing a proxy or casting a ballot), after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations; however, no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I to the Illinois Constitution, including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of the Act or the Declaration and By-Laws. No rule or regulation shall prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a Unit;
- (ix) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;
- (x) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements (to the extent the Association is responsible for such maintenance, repair or replacement) therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to other Unit or Units;
- (xi) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body which are authorized by law to be assessed and levied upon the real property of the condominium and are not payable by Unit Owners directly;
- (xii) Impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of this Declaration and rules and regulations of the Association;
- (xiii) By a majority vote of the entire Board, assign the Association's right to future income from Common Expenses, assessments or other

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sources, and mortgage or pledge substantially all of the remaining assets of the Association;

- (xiv) Record the dedication of a portion of the Common Elements to a public body for use as or in connection with a street or utility where authorized by the Unit Owners under the provisions of Section 14.2 of the Act;
- (xv) Record the granting of an easement for the laying of cable television or high speed Internet cable where authorized by the Unit Owners under the provisions of Section 14.3 of the Act; to obtain, if available and determined by the Board to be in the best interests of the Association, cable television or bulk high speed Internet service for all of the Units on a bulk identical service and equal cost per Unit basis; and to assess and recover the expense as a common expense and, if so determined by the Board, to assess each and every Unit on the same equal cost per Unit basis;
- (xvi) Except to the extent limited by this Declaration and the Act, the Board shall have the power and duty to exercise the rights of, and perform all of the covenants and obligations imposed upon, the Association or the Unit Owners, and to execute any and all instruments required pursuant thereto;
- (xvii) Adoption and amendment of rules and regulations or a schedule for the purpose of coordinating and regulating construction and move-in by other Unit Owners and Occupants and other purposes permitted hereunder and under the Act;
- (xviii) To reasonably accommodate the needs of a Unit Owner who is a person with a disability as required by the federal Civil Rights Act of 1968, the Illinois Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of the Common Elements or approval of modifications in an individual Unit;
- (xix) Seek relief on behalf of all Unit Owners when authorized pursuant to subsection (c) of Section 10 of the Act from or in connection with the assessment or levying of real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body;

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- (xx) Accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Association with respect to improvements performed pursuant to any contract entered into by the Board or any contract entered into prior to the recording of the Declaration pursuant to the Act, and to distribute the notice to the Unit Owners within seven (7) days of the acceptance of the service by the Board. The service shall be effective as if each individual Unit Owner had been served individually with notice;
- (xxi) Adopt and amend rules and regulations (1) authorizing electronic delivery of notices and other communications required or contemplated by the Act to each Unit Owner who provides the Association with written authorization for electronic delivery and an electronic address to which such communications are to be electronically transmitted; and (2) authorizing each Unit Owner to designate an electronic address or a U.S. Postal Service address, or both, as the Unit Owner's address on any list of members or Unit Owners which the Association is required to provide upon request pursuant to any provision of the Act or the Declaration, By-Laws, or rules and regulations;
- (xxii) Establish and maintain a system of master metering of public utility services and collect payments in connection therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act; and
- (xxiii) Ratify and confirm actions of the members of the Board taken in response to an emergency, as that term is defined in Section 6.2 of the Declaration. 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.
- (g) Subject to the provisions of Sections 4.6 and 6.8, the Board for the benefit of all the Unit Owners shall acquire and shall pay as Common Expenses, the following:
- (i) Operating expenses of the Common Elements, including water, electricity, gas and telephone and other necessary utility service for the Common Elements and (if not separately metered or charged) for the Units.



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- (ii) Services of any person or firm to act on behalf of the Unit 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 Unit Owners are deemed by the Board to be similar and nonadverse to each other.
- (iii) Painting, cleaning, outside window washing, tuck-pointing, maintenance, decorating, repair, and replacement of the Common Elements (but not including the interior surfaces of the Units and of the perimeter doors appurtenant thereto, and repair of windows which the Unit 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.
- (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 the restrictions contained herein.
- (v) Any amount necessary to discharge any mechanics' 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 Unit Owners, Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of such lien or liens shall be specifically assessed to such Unit 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, or if a Unit Owner of any Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of such maintenance or repair delivered by the Board to such Unit Owner, provided that the Board shall levy a special assessment against such Unit Owner for the cost of such maintenance or repair.
- (h) Prior to the election by the Voting Members of the first Board, the Declarant or Developer shall, subject to the terms of this Declaration and the Act, have the authority to lease or to grant licenses, concessions, easements, leases and contracts

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with respect to any part of the Common Elements, all upon such terms as the Declarant or Developer deems appropriate. Upon election of the first Board, and thereafter, the Board by a vote of at least two-thirds (2/3) of the persons on the Board shall have the same authority as aforesaid.

(i) 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 Voting Members representing not less than two-thirds (2/3) of the total votes.

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

(k) No judicial or administrative action, proceeding or claim shall be commenced or prosecuted by or at the direction of the Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the total votes represented by all Voting Members to the commencement and prosecution of the proposed action, proceeding or claim. This Section shall not apply to actions brought by the Association to recover unpaid assessments or other charges or to foreclose a lien for unpaid assessments or charges.

## 5.8 Insurance.

(a) The Board shall have the authority to and shall obtain insurance for the Property as follows:

- (i) Physical damage insurance on the Property (but excluding additions, alterations, improvements and betterments to the Units), subject to the following conditions:
  - (A) Such insurance shall be exclusive of additions, alterations, improvements and betterments made by a Unit Owner to any Common Element in accordance with the provisions of this Declaration.
  - (B) The Property shall be insured for an amount not less than one hundred percent (100%) of its full insurable replacement cost on a blanket basis.
  - (C) Replacement cost values are to be reviewed annually, and the insurance policy or policies shall be endorsed with an agreed amount clause. The cost of any and all appraisals for insurance purposes shall be Common Expenses.
  - (D) Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad

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form" named perils on personal property, and such other perils as may be deemed appropriate by the Board. The policies for such insurance shall contain an inflation guard endorsement, a building ordinance or law endorsement, a construction code endorsement, and a special condominium endorsement, if required.

- (ii) Commercial General Liability insurance covering personal injury and property damage insuring against hazards of premises/operation, products and completed operations, contractual liability, personal injury liability (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-liability claims of one insured against the other, and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner on account of the negligent acts of the Association or another Unit Owner.
- (iii) Umbrella Liability insurance in excess of the required Commercial General Liability and Employer Liability policies in an amount deemed desirable by the Board. Such policy shall be no less than "following form" coverage of the primary liability policies.
- (iv) Worker's Compensation and Employer Liability (minimum amount \$100,000) as necessary to comply with applicable laws, including Voluntary Compensation to cover employees not covered under the Illinois statute for benefits.
- (v) A fidelity bond or fidelity insurance insuring the Association, the Board and the Unit Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management company or of any other person handling the funds of the Association, the Board or the Unit Owners in such amounts as the Board shall deem necessary but not less than the level of funds within the custody or control of the Association at any time, plus reserves. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified

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without at least ten (10) days' prior written notice to the Board and to all First Mortgagees.

- (vi) Directors and Officers Liability insurance in such amounts as the Board shall determine to be reasonable.
- (vii) Boiler and Machinery insurance on a comprehensive, blanket basis covering all Building equipment machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, and their appurtenant equipment, air conditioning equipment and elevator equipment on a repair or replacement basis. Limits of liability shall be determined by the Board but such limit shall be no less than the lesser of (A) Two Million Dollars (\$2,000,000.00) per accident and (B) the insurable value of the Building.
- (viii) Such other insurance, which may include, without limitation, any or all of the following, in such amounts as the Board shall deem desirable: plate glass insurance; Errors and Omissions coverage for the directors of the Board; and Medical Payments coverage for members of the public injured on the Property, without regard to liability of the Board or the Association.
- (ix) If any improvements on the Property are within a Special Flood Hazard Area as shown on the applicable Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, Flood insurance on the Common Elements, including all contents which are Common Elements, for an amount not less than one hundred percent (100%) of the full replacement cost thereof on a blanket basis, or the maximum coverage available through the National Flood Insurance Program, if less than full replacement cost. All of the requirements of subsections (b) through (j) of this Section 5.8 applicable to the policy of insurance described in Section 5.8(a)(i) shall be applicable to the policy of insurance described in this Section 5.8(a)(ix).

The premiums for this insurance and bond, except as otherwise provided in this Section 5.8, shall be Common Expenses. Any management company holding reserve funds of the Association and other associations shall at all times maintain a separate account for each association provided, however, that for investment purposes, the Board may authorize the management company to maintain the Association's reserve funds in a single interest bearing account with similar funds of other associations. The management company shall at all times maintain records identifying all monies of each association in such investment accounts. The Board may also authorize the management company to hold all operating funds of the

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Association and other associations in a single operating account but such management company shall at all times maintain records identifying all monies of each association in such operating account. Any operating and reserve funds held by the management company for the Association shall not be subject to attachment by any creditors of the management company.

(b) All insurance provided for in this Section 5.8 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/VIII according to Best's Insurance Reports –International Edition or a substantially equivalent rating from a nationally-recognized insurance rating service, or such lower rating as is acceptable to all agencies described in Section 13.12. All such policies shall provide a minimum of ten (10) days advance written notice to the Board (on behalf of the Association) and all First Mortgagees if such policy is to be canceled or substantially modified.

(c) All policies of insurance of the character described in Sections 5.8(a)(i) and (ii): (i) shall name as insured: the Declarant, so long as it has an insurable interest; the Board, as trustees for the Unit Owners, in the percentages established in Exhibit B to this Declaration; and shall also name as an assured the Insurance Trustee described in Section 5.8(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 Unit Owners, whether such other insurance covers their respective Units or the additions and improvements made by such Unit Owners to their respective Unit; (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 Unit Owners elect to sell the Property or remove 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 or substantially changed without at least ten (10) days' prior written notice to the Board and the First Mortgagee of each Unit Ownership. Policies of insurance of the character described in Section 5.8(a)(i) 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 Sections 5.8(a)(i) and (ii), 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.

(d) All policies of insurance of the character described in Sections 5.8(a)(ii), (iii), (iv) and (v) shall name as assureds the Association, the Board, its management company, and the other agents (not including contractors and subcontractors) and employees of such Association, Board and management company, and shall also provide coverage for each Unit Owner (but as to the insurance described in Section 5.8(a)(iii), only with respect to those portions of the Property not reserved for their exclusive use). In addition, all policies of insurance of the character described in Sections 5.8(a)(i), (ii) and (iii) shall contain an endorsement or clause whereby the insurer waives any right to be

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subrogated to any claim against the Association, its officers, members of the Board, , the management company, their respective employees and agents, and the Unit Owners and Occupants.

(e) The Association, for the benefit of the Unit Owners and the First Mortgagee of each Unit Ownership, shall pay the premiums and obtain a binder on the policies of insurance described in Section 5.8(a) at least thirty (30) days prior to the expiration date of the respective policies, and upon written request therefor, shall notify the First Mortgagee of each Unit Ownership of such payment within ten (10) days after the date on which payment is made.

(f) Loss, if any, under any policies of insurance of the character described in Section 5.8(a)(i) and (ii) shall be adjusted with the Board, which is hereby appointed as attorney-in-fact for each Unit Owner to represent the Unit Owners in any proceedings, negotiations, settlements and agreements relating to such loss, and the insurance proceeds on account of any such loss shall be paid and applied as follows:

- (i) To the Board, as trustee for each of the Unit Owners in their respective percentages of ownership in the Common Elements as established in this Declaration and each of the First Mortgagees, in the case of any one loss, of Fifty Thousand and No/100 Dollars (\$50,000.00) or less in the aggregate, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Property to substantially the same condition as it existed immediately prior to such damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, free from vendor's, mechanics', materialman's, and other similar liens; or
- (ii) In the case of any one loss exceeding Fifty Thousand and No/100 Dollars (\$50,000.00) in the aggregate, then the insurance proceeds shall be paid to for the Board, each Unit Owner and each of the First Mortgagees pursuant to the Act for the purpose of collecting and disbursing the insurance proceeds described in this subsection (ii). (Such proceeds, less the actual cost, fees, and expenses, if any, incurred in connection with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Property to substantially the same condition as it existed immediately prior to such damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the restoration of the Property in accordance with the provisions of the Act. The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter into an insurance trust agreement further implementing the provisions of the Act



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and this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee.

(g) Each Unit Owner shall be responsible for (i) physical damage insurance on the personal property in such Unit Owner's Unit and elsewhere on the Property, and any additions, alterations and improvements to such Unit Owner's Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in such Unit); (ii) such Unit Owner's personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Unit Owners as above provided; and (iii) such Unit Owner's additional living expense. All policies of casualty insurance carried by each Unit Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners as above provided. For the purposes of Sections 5.8(g) and 5.8(h), "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation, carpeting, flooring, wall covering, paint, paneling, toilets, fixtures, and cabinetry.

(h) The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations and improvements to a Unit or any personal property of a Unit Owner or any other insurance for which a Unit Owner is responsible pursuant to Section 5.8(g). In the event the Board does carry such insurance, and the premium therefor is increased due to additions, alterations or improvements of a Unit Owner, then the Board may charge a special assessment against such Unit Owner.

(i) Each Unit Owner hereby waives and releases any and all claims which such Unit Owner may have against any other Unit Owner, the Association, its officers, members of the Board, , the management company of the Property, if any, and their respective employees and agents, for any 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 or would be covered by insurance for which such Unit Owner is responsible pursuant to Section 5.8(g).

(j) The Board shall have the right to select substantial deductibles to the insurance coverages required or permitted under this Section 5.8 if the economic savings justifies the additional risk and if permitted by law; provided, however, that no deductibles shall exceed the lesser of (i) \$10,000.00 (\$5,000.00 with respect to a Flood insurance policy); or (ii) one percent (1%) of the face amount of the insurance policy to which such deductible applies, and further provided that funds to cover any deductible amounts shall be maintained as part of the Capital Reserve. The deductibles shall be on a per occurrence basis irrespective of the number of insureds suffering injury or damage. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Common Expenses.

**5.9 Liability of the Board of Directors and Officers of the Association.** Neither the members of the Board nor the officers of the Association shall be liable to the Unit Owners for

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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 finally adjudged by a court to constitute gross negligence or fraud. The Unit Owners (including the members of the Board and the officers of the Association in their capacity as Unit 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 Unit Owners or arising out of their status as Board members or officers of the Association, unless any such contract or act shall have been finally adjudged by a court to have been made fraudulently or with gross negligence. 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 such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his or her 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 or her duties as such member or officer. It is also intended that the liability of any Unit Owner arising out of any contract made by or other acts of the Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board or officers of the Association, shall be limited to such proportion of the total liability hereunder as such Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Every agreement made by the Board on behalf of the Unit Owners shall be deemed to provide that the members of the Board are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as such Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

5.10 **Resale of Units.** In the event of a resale (i.e. any sale made after the initial sale) of any Unit Ownership by a Unit Owner, and within thirty (30) days after the written request by such Unit Owner, the Board shall deliver a copy of each of the documents and make the disclosures described in and required by Section 22.1 of the Act. The Board shall be allowed to charge a reasonable fee, not to exceed the maximum amount prescribed by the Act, for providing such information.

5.11 **Contracts.** Board may not enter into a contract with a current Board member or with a corporation or partnership in which a Board member or a member of the Board member's immediate family has twenty-five percent (25%) or more interest, unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Unit Owners, for an election to approve or disapprove the contract.

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Such petition shall be filed within thirty (30) days after such notice and such election shall be held within thirty (30) days after filing the petition. For purposes of this subsection, a Board member's immediate family means the Board member's spouse, parents, and children.

**5.12 Installment Contracts.** In the event of a resale of a Unit the purchaser of a Unit from a seller pursuant to an installment contract for purchase shall during such times as he or she resides in the Unit be counted toward a quorum for purposes of election of members of the Board at any meeting of the Unit Owners called for purposes of electing members of the Board, shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contact shall be made available to the Association or its agents. For purposes of this subsection, "installment contact" shall have the same meaning as set forth in Section 1 (e) of the Dwelling Unit Installment Contract Act.

## ARTICLE 6

### COMMON EXPENSES

**6.1 Preparation of Annual Budget.** On or before November 1 of each calendar year, the Board shall cause to be prepared a detailed proposed budget for the ensuing calendar year. Such budget shall take into account the estimated annual Common Expenses and cash requirements for the year, including wages, materials, insurance, services, supplies and all other Common Expenses, together with a reasonable amount considered by the Board to be necessary for adequate reserves, including, without limitation, amounts to maintain a Capital Reserve (as hereinafter defined in Section 6.2). The annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements and, to the extent that the assessments and other cash income collected from the Unit Owners during the preceding year are more or less than the expenses for the preceding year, the surplus or deficit shall also be taken into account. On or before November 15 of each year, the Board shall notify each Unit Owner in writing as to the proposed annual budget, with reasonable itemization thereof, including those portions intended for reserves, capital expenditures or repairs or payment of real estate taxes and containing each Unit Owner's respective assessment; provided, however, that such proposed annual budget shall be furnished to each Unit Owner at least twenty-five (25) days prior to its adoption by the Board. On or before January 1 of the ensuing calendar year, and the first day of each and every month of such year, each Unit 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 such Unit Owner's proportionate share of the Common Expenses for each year as shown by the annual budget. Such proportionate share of the Common Expenses for each Unit Owner shall be in accordance with such Unit Owner's respective percentage of ownership in the Common Elements as set forth in Exhibit B attached hereto. On or before April 1 of each calendar year following the initial meeting of the Unit Owners, the Board shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred or paid, together with an indication of which portions were for reserves, capital

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expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net amount over or short of the actual expenses plus reserves. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting, subject, however, to the provisions of Section 6.2. Each Unit Owner shall receive notice, in the same manner as is provided for meetings of the Unit Owners, of any meeting of the Board concerning the adoption of the proposed annual budget.

6.2 **Capital Reserve; Supplemental Budget.** The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures and paying for the costs of deferred maintenance in connection with the Common Elements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major repairs or improvements and maintenance, repairs and replacements necessary to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder and those matters set forth in Section 9(c)(2) of the Act. Each budget shall disclose that percentage of the annual assessment which shall be added to the Capital Reserve and each Unit Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual assessment paid by such Unit Owner. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of any specific contingency reserve or the Capital Reserve, as applicable, which remains unallocated. If the estimated Common Expenses contained in the budget prove inadequate for any reason or in the event a nonrecurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a special or separate assessment shall be made to each Unit Owner for such Unit Owner's proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. In addition to the foregoing, any Common Expense not set forth in the annual budget or any increase in assessments over the amount set forth in the adopted annual budget shall be separately assessed against all Unit Owners. Assessments for additions and alterations to the Common Elements or to property owned by the Association not included in the adopted annual budget shall be separately assessed against all Unit Owners and, except if relating to an emergency or mandated by law, shall be subject to the affirmative vote of at least two-thirds (2/3) of the total votes of all Unit Owners at a meeting specifically called for the purpose of approving such special or separate assessment. The Board may adopt special or separate assessments payable over more than one fiscal year. Unless such multi-year assessment relates to an emergency or is mandated by law or is for an addition or alteration to the Common Elements or to the property owned by the Association and is not included in the adopted annual budget, the entire amount of such multi-year assessment shall be deemed considered and authorized in the first fiscal year in which such multi-year assessment is approved. Any separate or special assessment for expenditures relating to an emergency or mandated by law may be

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adopted by the Board without being subject to Unit Owner approval pursuant to Section 5.6(b) or otherwise. As used in this Section 6.2, "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. Each Unit Owner shall receive notice, in the same manner as is provided for meetings of the Unit Owners, of any meeting of the Board concerning the adoption of any supplemental budget or any special or separate assessment.

6.3 Intentionally deleted

6.4 **Failure to Prepare Annual Budget.** The failure or delay of the Board to give notice to each Unit Owner of the annual budget shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay such Unit Owner's respective monthly assessment, as provided in this Declaration, whenever such monthly assessment shall be determined, and in the absence of the annual or adjusted budget, the Unit Owner shall continue to pay monthly assessment at the then existing monthly rate established for the previous period, until the monthly assessment which is due more than ten (10) days after notice is given of such new annual budget.

6.5 **Records of the Association.**

(a) The management company or the Board shall maintain the following records of the Association available for inspection, examination and copying during normal business hours by the Unit Owners, First Mortgagees, Insurers and Guarantors, and their duly authorized agents or attorneys:

- (i) Copies of this Declaration (including the By-Laws) and any amendments, Articles of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board, and the Association's books, records and financial statements shall be available..
- (ii) Detailed accurate records 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 expense incurred, and copies of all contracts, leases, or other agreements entered into by the Association shall be maintained.
- (iii) The minutes of all meetings of the Association and the Board shall be maintained. The Association shall maintain these minutes for a period of not less than seven (7) years.
- (iv) Ballots and proxies relating thereto for all elections to the Board and for any other matters voted on by the Unit Owners shall be maintained for a period of not less than one (1) year; provided that if the Association has adopted the secret ballot process under Section 18 of the Act and under this Declaration, unless directed by



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court order, only the voting ballot excluding a Unit number or symbol shall be subject to inspection and copying.

- (v) Such other records of the Association as are available for inspection by members of a not for profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986, as amended, shall be maintained.

(b) A reasonable fee may be charged by the Association or its Board for the cost of copying.

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

6.6 **Status of Collected Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such 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 Unit Owners in the percentages set forth in Exhibit B.

6.7 Intentionally deleted.

6.8 **User Charges.** The Board, , acting pursuant to Section 13.1, may establish, and each Unit 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 Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such expense may include such services and facilities provided to Unit Owners which the Board determines should not be allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Unit Owner benefitted thereby, or may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing in this Declaration shall require the establishment of user charges pursuant to this Section 6.8, and the Board may elect to treat all or any portion thereof as Common Expenses.

6.9 **Non-Use and Abandonment.** No Unit Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Elements or abandonment of such Unit Owner's Unit.

## ARTICLE 7

### **COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY**

7.1 The Property shall be occupied and used as follows:



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(a) Each Unit (or any two or more adjoining Units used together) shall be used for residential purposes only and each Parking Space shall be used only for the parking of a single passenger vehicle. That part of the Common Elements separating any two or more adjoining Units which are owned by the same Unit Owner, including, without limitation, walls separating such Units and hallways serving only such Units, may be altered, removed or made part of such Units to afford ingress and egress to and from such adjoining Units, and new walls obstructing such hallways may be added to the Common Elements; 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 Unit Owner shall furnish to the Board not less than thirty (30) days prior to the date the Unit Owner desires to commence such work all plans detailing the work to be done; (iii) the Board consents to the performance of such work and grants permission to the Unit Owner to use such Common Elements as Limited Common Elements (provided that the Board shall grant such permission if the conditions set forth in Section 31 of the Act and the other requirements of this Section 7.1(a) are met); (iv) the expense of such alterations shall be paid in full by the Unit Owner making such alterations; and (v) such Unit Owner shall pay in full the expense of restoring such Common Elements to their former condition prior to such alterations in the event such Units cease to be used together.

(b) There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements, except in areas which are Limited Common Elements serving exclusively the Unit of the Unit Owner obstructing such Common Elements and in areas made part of a Unit in accordance with Section 7.1(a) without the prior consent of the Board or except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair such Unit Owner's 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. In any case, the Unit Owner shall be responsible for payment of any such increase. No Unit 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.

(d) 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 and by Section 4.5(b)(ii); provided, however, that the floor covering existing in any Unit as of the date of the recording of this Declaration shall be deemed in compliance with any such rules and regulations.

(e) No animals or reptiles shall be raised, bred or kept in any Unit or the Common Elements, except that each Unit Owner or Occupant shall be permitted to keep not more than one (1) pet in such Unit Owner's Unit, such pet not to weigh more than twenty-five (25) pounds and which is of a breed or variety commonly kept as household pets in first-class condominium buildings located in suburban Cook County. No animals or reptiles shall be kept or bred for any commercial purpose or allowed to run loose on the

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Property, are kept in strict accordance with such other rules and regulations relating to household pets as may be from time to time adopted or approved by the Board, and do not, in the judgment of the Board, constitute a nuisance to others. Each Unit Owner and each Occupant shall be responsible for picking up after any animal kept in such Unit Owner's or Occupant's respective Unit, including, without limitation, removing any waste deposited by such animal anywhere on the Common Elements or anywhere on the Property.

(f) No noxious, unlawful 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 Unit Owners or Occupants or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

(g) 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 Unit 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 or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board or the management company, acting in accordance with the Board's direction. No Unit Owner shall overload the floors of any Unit. Any furnishings which may cause floor overloads shall not be placed, kept or used in any Unit except only in accordance with advance written Board approval.

(h) No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles (including, without limitation, signage) outside such Unit Owner's Unit, or which may be visible from the outside of such Unit Owner's Unit (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board), or paint or decorate or adorn the outside of such Unit Owner's Unit, or install outside such Unit Owner's Unit any canopy, awning or other equipment, fixtures or items of any kind, without the prior written permission of the Board or the management company, acting in accordance with the Board's direction, or install outside such Unit Owner's Unit any outside radio or television antenna, dish or other receptive or transmitting device, except in accordance with the rules and regulations of the Board.

(i) Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in any area constituting part of the Common Elements except for such articles as may be stored in the Storage Spaces.

(j) No use of a Unit shall be conducted, maintained or permitted to the extent such same is in violation of the uses permitted hereunder or under any applicable laws, statutes, codes, regulations or ordinances governing the Property from time to time

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(including, without limitation, the relevant provisions of the City of Chicago zoning ordinance).

(k) Intentionally deleted.

(l) The Unit restrictions in Section 7.1(a) shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his or her personal professional library therein; (ii) keeping his or her personal business or professional records or accounts therein; (iii) handling his or her personal business or professional telephone calls or correspondence therefrom; (iv) maintaining a computer or other office equipment within the Unit; or (v) utilizing secretarial help and having occasional business visitors. Such uses are expressly declared customarily incident to the principal resident use and not in violation of Section 7.1.(a). Notwithstanding the foregoing, no Unit Owner shall suffer or permit the regular or consistent entry of customers or clients.

(m) The provisions of the Act, this Declaration and rules and regulations that relate to the use of the individual Unit or the Common Elements shall be applicable to any person leasing a Unit Ownership and shall be deemed to be incorporated in any lease executed in connection with a Unit Ownership. Unit Owners are subject to the leasing restrictions set forth in Section 12.2 and other rules prescribed hereof as may be adopted by the Association. The Board may proceed directly against a tenant, at law or in equity, or under the provisions of Article IX of the Code of Civil Procedure, for any breach by a tenant of any covenants, rules, regulations or bylaws, without excluding any other rights or remedies. The remedies set forth in Article IX of the Code of Civil Procedure shall be available to the Association and against the Unit Owner and the Unit Owner's lessee in the event of any violation of this sentence, Article 12 or of any other provision of this Declaration concerning Unit Ownership leasing, without excluding any other rights or remedies. No owner shall cause his or her unit to be conveyed to a Corporate or LLC entity for the purpose of circumventing the leasing prohibition set forth in Article 12. Only Board Members of the Corporation and/or Members of the LLC shall be entitled to reside in the Unit and proof of same must be provided to the Association prior to taking occupancy.

(n) Each Unit Owner shall deposit with the Board duplicate keys for all locks required for entry to such Unit Owner's Unit and Storage Space.

(o) Except for Parking Spaces controlled the Association, no Parking Space shall be used or occupied (other than on a temporary and non-continuous basis) by any party other than a Unit Owner or Occupant of a Unit.

## ARTICLE 8

### DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDING

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8.1 **Sufficient Insurance.** In the event the improvements forming a part of the Property, or any portion thereof, including any Units, 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, plus Capital Reserves, shall be sufficient to pay the cost of repair, restoration or reconstruction, then such restoration, repair, replacement or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Capital Reserve shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one hundred eighty (180) days after such damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in Article 9 or to withdraw the Property from the provisions of this Declaration and from the provisions of the Act as therein provided, then such restoration, repair, replacement, or reconstruction shall not be undertaken. In the event such restoration, repair, replacement, or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B, after first paying from the share of each Unit Owner the amount of any unpaid liens on such Unit Owner's Unit, in the order of the priority of such liens.

8.2 **Insufficient Insurance**

(a) If the insurance proceeds and the Capital Reserve are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the Building within one-hundred eighty (180) days from the date of damage or destruction, then the provisions of Section 14(a) of the Act shall apply.

(b) In the case of damage or other destruction in which fewer than one-half (1/4) of the Units are rendered uninhabitable and the insurance proceeds and the Capital Reserve are insufficient to reconstruct the Building, upon the unanimous affirmative vote of not fewer than three-quarters (3/4) of the Voting Members at a meeting called for the purpose, the Building or other portion of the Property shall be reconstructed. The 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 occurrence of the damage or other destruction. At such meeting the Board or its representatives shall present to the members present an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner. Unless at least 3/4 of the Voting Members at such meeting vote to reconstruct the Building or portion of the property so damaged or destroyed or such damaged portion is withdrawn from the Act in accordance with Section 8.2(c), then the provisions of Section 14(a) of the Act shall apply.

(c) In the case of damage or other destruction where the insurance proceeds and the Capital Reserve are insufficient to reconstruct the Building, upon the unanimous affirmative vote of the Voting Members at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the

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Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements will be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

8.3 **Eminent Domain.** In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portions so taken from the provisions of the Act may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion so withdrawn shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board, and the other Unit Owners' percentages shall be correspondingly increased. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any part thereof, and the Association is hereby appointed as attorney-in-fact for each Unit Owner to represent the Unit Owners in any condemnation proceedings, or in negotiations, settlements and agreements with the condemning authority relating to such acquisitions of the Common Elements or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in that connection shall be divided by the Association among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B, after first paying from the share of each Unit Owner the amount of any unpaid liens on such Unit Owner's Unit, in the order of the priority of such liens.



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8.4 **Repair, Restoration or Reconstruction of the Improvements.** As used in this Article, "restoration, repair, replacement 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 Element having the same vertical and horizontal boundaries as before, unless, if allowed by the Act, other action is approved by First Mortgagees of Unit Ownerships representing at least sixty-seven percent (67%) of the votes in the Association. Any repair, restoration or reconstruction shall be in accordance with law and this Declaration.

## **ARTICLE 9**

### **SALE OF THE PROPERTY**

9.1 **Sale.** At a meeting duly called for such purpose and attended by all Unit Owners, the Unit Owners by affirmative vote of Unit Owners who own seventy-five percent (75%) or more in the aggregate of the entire percentage ownership interest in the Common Elements may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale is approved, the Board shall give written notice of such action to each First Mortgagee. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale.

## **ARTICLE 10**

### **REMEDIES**

10.1 **Violations.** Upon the occurrence of any one or more of the following events, the Board shall have the rights and remedies set forth in Section 10.2:

(a) Failure by a Unit Owner to pay when due any sums required to be paid by such Unit Owner pursuant to Sections 4.5, 4.6 and 4.8, Article 6, or other provisions of this Declaration, for thirty (30) days after written notice of such non-payment shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to cure such failure if such Unit Owner has been given three (3) or more notices pursuant to this Section 10.1(a) during the twelve-month period immediately preceding the first day of such failure.

(b) Violation or breach by a Unit Owner or an Occupant of any provision, covenant or restriction of the Act, this Declaration, the By-Laws, contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board, and continuation of such violation or breach for thirty (30) days after written notice thereof shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to correct such violation or breach if such Unit Owner has been given three (3) or more notices pursuant to this Section 10.1(b) during the twelve-month period immediately preceding the first day of such violation or breach.



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10.2 **Remedies.** Upon the occurrence of any one or more of the events described in Section 10.1, the Board shall have the following rights and remedies:

(a) The Board shall have the right to immediate possession of the defaulting Unit Owner's Unit after service by the Board on such Unit Owner, in the manner set forth in Section 13.2, of a notice to quit and deliver up possession, which right may be enforced by an action for possession under Article IX of the Code of Civil Procedure, as amended.

(b) For a violation or breach described in Section 10.1(6), the Board shall have the right: (i) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove or do whatever else may be necessary to correct, at the expense of the defaulting Unit Owner, any such violation or breach or the cause of such violation or breach, and the the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass, or (ii) to enjoin, abate, or remedy by a proceeding at law or in equity the continuance of any such violation or breach; provided, however, that no summary abatement shall be undertaken in connection with any alteration or demolition of improvements until judicial proceedings are instituted.

(c) Upon the occurrence of one of the events described in Section 10.1(a), including, without limitation, failure by a Unit Owner to pay such Unit Owner's percentage share of Common Expenses or user charges, the Board shall have a lien on the interest of the defaulting Unit Owner in such Unit Owner's Unit Ownership in the amount of any sums due from such Unit Owner; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. Except as hereinafter provided, the lien provided for in this Section 10.2(c) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien described in this Section 10.2(c) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit Ownership, whichever occurs first. However, the transferee of a Unit Ownership shall be liable for such transferee's share of any sums with respect to which a lien against such Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Unit Owners pursuant to a subsequently adopted annual revised or special assessment, and non-payment thereof by such transferee shall result in a lien against the transferee's Unit Ownership as provided in this Section 10.2(c).

(d) The Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the right of such defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control such Unit Owner's Unit Ownership and thereupon an action may be filed by the Board against the defaulting Unit Owner for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him and ordering that all the right, title and interest of such defaulting Unit Owner in the Property shall be sold at a judicial sale, upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the defaulting Unit Owner from re-acquiring such Unit Owner's interest in the

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Unit Ownership at such judicial sale. It shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration. 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 Unit Owner in such decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments or other sums due hereunder or any liens, shall be paid to the defaulting Unit Owner. Upon the confirmation of such sale, the purchaser at such sale shall 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.

(e) In addition to or in conjunction with the remedies set forth above, the Board or its agents shall have the right to bring an action at law or in equity against the Unit Owner or Occupant as permitted by law including, without limitation, an action (i) to foreclose a lien against the Unit Ownership, (ii) for damages, injunctive relief, or specific performance, (iii) for judgment or for the payment of money and the collection thereof, (iv) for any combination of the remedies set forth in this Article or (v) for any other relief which the Board may deem necessary or appropriate. Any and all rights and remedies provided for in the Act, this Declaration, the By-Laws, any contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board may be exercised at any time and from time to time cumulatively or otherwise by the Board in its discretion. The failure of the Board to exercise any such rights or remedies to enforce any provisions of this Declaration, the By-Laws or rules and regulations of the Board shall in no event be deemed a waiver of the right to do so thereafter.

(f) All expenses incurred by the Board in connection with any actions, proceedings or self-help in connection with the exercise of its rights and remedies under this Article, including, without limitation, court costs, reasonable attorneys' fees and all other fees and expenses, and all damages, together with interest thereon at the rate of eighteen percent (18%) per annum (or such lesser rate charged by law should 18% be held to be in excess of the maximum legal rate allowable by law), shall be charged to and assessed against the defaulting Unit Owner, and shall be added to and deemed part of such Unit Owner's respective share of the Common Expenses, and the Board shall have a lien for all of such amounts upon the Unit Ownership (including all additions and improvements to such Unit Ownership) of such defaulting Unit Owner.

**10.3 Enforcement by Unit Owners.** Any aggrieved Unit Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board by an action at law or in equity against the defaulting Association or against the defaulting Unit Owner or Occupant upon a violation or breach described in Section 10.1(b) against any person or persons either to restrain such violation or breach or to recover damages.

## ARTICLE 11

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## MISCELLANEOUS PROVISIONS RESPECTING MORTGAGES

11.1 **Mortgages.** The following provisions are intended for the benefit of each holder of a recorded first mortgage or trust deed encumbering a Unit Ownership ("First Mortgagee") and to the extent, Sat all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

(a) Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded first mortgage or trust deed on a Unit ("Insurer or Guarantor") and the Unit number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of any default by a Unit Owner of that Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any First Mortgagee of a Unit, as well as any other holder of a prior recorded mortgage on a Unit Ownership, who comes into possession of the Unit Ownership pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit Ownership which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Unit Ownership, whichever occurs first (except for any sums which are reallocated among the Unit Owners pursuant to the last sentence of Section 10.2(c)).

(b) Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

- (i) to examine current copies of this Declaration, the By-Laws, the articles of incorporation of the Association, rules and regulations and the books, records and financial statements of the Association during normal business hours;
- (ii) to receive, without charge and within a reasonable time after such request, an audited financial statement for the Association for the preceding fiscal year, and an audited financial statement for each fiscal year must be available within one hundred twenty (120) days after the end of such fiscal year;
- (iii) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;
- (iv) to receive written notice of any decision by the Unit Owners to make a material amendment to this Declaration, the By-Laws or the Articles of Incorporation;

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- (v) to receive written notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Association; and
- (vi) to receive written notice of any action which would require the consent of a specified percentage of First Mortgagees.

(c) No provision of this Declaration or the Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, or the Common Elements, or any portion thereof or interest therein. In such event, the First Mortgagees, Insurers or Guarantors of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

(d) Unless the First Mortgagees of all of the Unit Ownerships which are a part of the Property have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

- (i) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units or the Common Elements;
- (ii) change the pro rata interest or obligations of any Unit Owner for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and (2) determining the pro rata share of ownership of each Unit Owner in the Common Elements or rights to their use, except as provided in Sections 8.2 and 8.3;
- (iii) use hazard insurance proceeds for losses to any portion of the Property (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such improvements, except as provided by the Act in case of substantial loss to the Units or the Common Elements.

(e) Unless at least sixty-seven percent (67%) of the First Mortgagees based on one vote per Unit, have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to do or permit to be done any of the following:

- (i) Adoption of an amendment to this Declaration which (aa) changes Section 10.2(c), (bb) changes Article 11 or any other provision of this Declaration which specifically grants rights to First Mortgagees, (cc) changes insurance and fidelity bond requirements, (dd)

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imposes a right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey such Unit Owner's Unit Ownership materially different from that presently contained in this Declaration or changes the provisions concerning the leasing of Unit Ownerships, (ee) changes the responsibility for maintenance and repair of any portion of the Property, (ff) changes any provisions of this Declaration concerning repair, restoration, or reconstruction of the Project, or (gg) changes any provisions of this Declaration to reduce reserves for maintenance, repair and replacement of Common Elements;

- (ii) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Property and except for the encumbrance, sale or transfer of the percentage of ownership in the Common Elements in connection with the encumbrance, sale or transfer of a Unit Ownership or the lease, license, concession or grant of easement with respect to the Common Elements permitted by this Declaration);
- (iii) The sale of the Property;
- (iv) The removal of all or a portion of the Property from the provisions of the Act and this Declaration; or
- (v) The effectuation of a decision by the Association to terminate professional management and assume self-management of the condominium.

(f) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Unit Ownership shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements or the Unit Ownership that is subject to such First Mortgagee's, Insurer's or Guarantor's mortgage.

(g) If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, Insurer or Guarantor of the Unit Ownership involved will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle the owner of a Unit Ownership

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or other party to priority over such First Mortgagee with respect to the distribution of the proceeds of any award or settlement.

(h) Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the First Mortgagee within thirty (30) days after making the request for consent, provided such request was delivered by certified or registered mail, return receipt requested.

## ARTICLE 12

### TRANSFER OF A UNIT

12.1 **Unrestricted Transfers.** Subject to Section 12.3, a Unit Owner may, without restriction under this Declaration, sell, give, devise, convey, mortgage, or otherwise transfer such Unit Owner's entire unit. Notice of such transfer shall be given to the Board, in the manner provided in this Declaration for the giving of notices, within five (5) days following consummation of such transfer.

12.2 **Restriction on Leasing.** No Unit shall be leased or otherwise occupied by a Non-Owner of a Unit except as specifically provided herein.

- (a) **Definitions.** For purposes of Section 12.2, the following words are defined as follows:
- (i). **Cap.** Refers to the maximum percentage of Units that may be leased within the Association at any given point in time. No more than twenty-five percent (25%), in number, of the total number of Units, as reflected in the Association's books and records, shall be leased or otherwise occupied by a non-owner of a Unit at any time, except as provided herein.
  - (ii). **Delinquent.** Refers to Unit Owners that own Units with accounts that are more than thirty (30) days delinquent on assessments owed, as defined under Section 4.5(b).
  - (iii). **Unit Owner(s).** Refers to any person or entity that is a record owner, whether one or more persons, individuals or entities, of a fee simple title to any Lot, which is part of the Property, including contract purchasers.
  - (iv). **Owner Occupied Unit.** Any Unit which is occupied by one or more titleholders. A titleholder shall mean the holder of a fee interest, a beneficiary of a trust or shareholder of a corporation holding a fee interest in the dwelling unit. Dwelling Units in which "immediate family members" of a titleholder reside, shall also be considered owner occupied dwelling units.
  - (v). **Non-Owner Occupied Unit.** All Units except those which are Owner Occupied Units.
  - (vi). **Immediate Family Members.** Herein defined as mother, father, son, daughter, step-son, step-daughter, grandmother, grandfather, and/or individuals who are under the age of 18 and under the legal custody of the Unit Owner.
  - (vii). **Occupant.** Any individual residing in a Unit with or without a lease.

(b) **Grandfathered Units.** All units which are leased or occupied by a Non-Owner at the time of adoption of this Amendment to the Declaration shall be "grandfathered" and shall not be subject to the provisions of this amendment until (1) the lease expires; (2) the Unit becomes



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Owner Occupied; (3) the Unit is sold or otherwise changes title, whichever shall occur first and regardless of whether the change is recorded. Upon the happening of one of the foregoing, the Unit shall henceforth be subject to all other provisions of this Amendment.

(c) **Immediate Family Members**. Any Unit may be leased or otherwise occupied, without restriction, to Immediate Family Members, and shall not count against the leasing Cap. The Unit Owner must submit a copy of the lease and the names and telephone numbers of all individuals occupying their Unit to the Board. The Board shall have the right to require that the proposed Occupant(s) furnish proof of identity and relationship to the Unit Owner to the Board's satisfaction.

(d) **Permitted Use**. Units shall be used as single-family residences only. No Unit shall be used as a hotel, boarding room or for transient purposes or for temporary or short-term housing. Additionally, no Parking Space shall be leased to any party other than a Unit Owner or Occupant of a Unit, without the prior written consent of the Board or the management company of the Property acting in accordance with the Board's direction.

(e) **Leasing**. Unit Owners wishing to lease to individuals not subject to Subsection (c) are subject to the Cap and must submit a written application to the Board. Delinquent Unit Owners are prohibited from applying, until Unit Owners bring their accounts current, and are therefore prohibited from leasing their Units. The Board shall number each application in the order that it is received and shall place the Unit Owner's name on a list. The list shall be kept and maintained as Records of the Association, in accordance with Section 605/19 of the Act. The Board's determination of the order in which applications are received shall be binding. Permission to lease shall be given based on a first come first served basis with applications having priority based on: (i) the date and time received as determined by the Board, and (ii) on hardship as determined by the Board and pursuant to Subsection (g) below.

(f) **Lease Expirations**. Upon the expiration of each and every lease subject to subsection (e) and including without limitation prior to any renewal of a lease, which shall be deemed expiration of a lease and the creation of a new lease, the Unit Owner must submit an application to lease to the Board within 90 days of the lease expiring and obtain permission before he or she may lease their Unit again.

Once the Unit Owner has received permission from the Board to lease his/her unit, the Unit Owner will have an additional 90 days thereafter to establish a lease and provide a copy of same to the Board for its records.

(g) **Hardship Exemptions**. In the event of a hardship as defined by the Board, a Unit Owner may request a hardship exemption from the Board. The Board may grant permission to the Unit Owner to lease his/her Unit for a specified period not to exceed twelve (12) months. At the expiration of each term granted, if hardship to the Unit Owner continues, the Unit Owner shall apply to the Board for an extension before renewing any expiring lease or seeking a new tenant or occupant for the Unit. The granting of a hardship exemption and the extension of a hardship exemption is at the sole discretion of the Board. If a hardship exemption is granted or extended, the Unit Owner shall provide the Board with a copy of the lease agreement within the time frame required by the Illinois Condominium Act and will provide the names and telephone

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numbers of all Occupants no later than the date the Unit becomes Non-Owner Occupied. At the Board's discretion, leases granted under Subsection (g) may be excluded from the Cap.

(h) **Leasing by the Association and/or units acquired by Mortgagees after judicial foreclosure proceedings.** In the event the Association takes title to or possession of a Unit, it may lease the Unit for a period not to exceed thirteen (13) months, which period may be extended by order of any court of competent jurisdiction. At the end of each lease period, and after attainment of such order, at the sole discretion of the Board, the lease period may be extended for another period not to exceed thirteen (13) months. Upon the sale of the Unit or the relinquishment of possession by the Association, the Unit shall be subject to all the provisions of this Amendment. The board may exclude Residential Units leased under this provision from the twenty-five percent (25%) limitation set forth above. At the Board's discretion, leases granted under Subsection (h) may be excluded from the Cap. The Board shall also exclude Residential Units which are leased by a Mortgagee after acquiring the unit either via court order, consent judgment or judicial foreclosure proceedings—said leasing exclusion shall expire upon the Mortgagee selling the unit to a third-party purchaser. Said third-party purchaser who acquires the unit from a Mortgagee (who acquired the unit after judicial foreclosure proceedings) shall be subject to the same leasing restrictions set forth in the aforementioned paragraphs.

(i) **Lessees.** Pursuant to Section 13.5, the lessee under every lease shall be bound by and subject to all of the obligations, under the Declaration and By-Laws, of the Unit Owner making such lease and the failure of the lessee to comply therewith shall constitute a default under the lease which shall be enforceable by the Board or the Association, and the lease shall be deemed to expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any obligations set forth within the Declaration.

(j) **Leasing Violations.** In the event a Unit Owner permits his/her Unit to become Non-Owner Occupied without complying with the provisions of this Amendment to the Declaration, or in the event Occupant(s) of the Unit, in the sole judgment of the Board, becomes a habitual or continual violator of the Declaration, Bylaws or Rules and Regulations of the Association, the Board, after service of a 30-day notice of violation of this Amendment to the Declaration upon the Occupant(s) and the Unit Owner, by personal delivery or by certified mail, return receipt requested, and the failure of the Occupant(s) to vacate the Unit within such 30-day period, may initiate a forcible entry and detainer action against the Occupant(s) and/or Unit Owner, and all Unit Owners hereby consent to the bringing of such action in their name. As an alternative, the Association may seek a restraining order against the Occupant(s) and the Unit Owner to prevent the Unit from continuing to be Non-Owner Occupied. Attorneys' fees and court costs shall be assessed to the Unit Owner of the Unit in violation of the provisions of this Amendment, and if such costs and fees are not paid, they may be the subject of a lien of the Association against the Unit and may be collected using all the remedies available for the collection of delinquent assessments.

12.3 **Financing of Purchase by Association.** The Board shall have authority to make such mortgage arrangements and other financing arrangements, and to authorize such special assessments proportionately among the respective Unit Owners, as the Board may deem desirable, in order to close and consummate the purchase or lease of a Unit Ownership, or interest therein, by the Association.

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## 12.4 Miscellaneous

(a) Subject to Section 12.2(h) and applicable law, the Board shall have the authority at any time to sell, mortgage, lease or sublease such Unit Ownership on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold (other than pursuant to a foreclosure or deed in lieu of foreclosure) for less than the amount paid by the Association to purchase such Unit Ownership unless Unit Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements first authorize the sale for such lesser amount. All of the net proceeds from such a sale, mortgage, lease or sublease shall be applied in such manner as the Board shall determine.

(b) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Article 12, for the purpose of implementing and effectuating such provisions.

## ARTICLE 13

### GENERAL PROVISIONS

13.1 Certain Rights of the Declarant and Developer. Until the time established by the Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant or Developer, which may be exercised by the designation of an initial Board in accordance with Sections 5.1 and 5.6 hereof. If the initial Board shall not be elected by the Unit Owners at the time established by this Declaration, the Declarant or Developer shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights, and the other rights reserved by the Declarant or Developer pursuant to this Declaration, the Declarant or Developer shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's or Developer's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

13.2 Manner of Giving Notices. Notices provided for in this Declaration and in the Act to be given to the Board or Association shall be in writing and addressed to the Unit address of each member of the Board or at such other address as otherwise provided herein. Notices provided for in this Declaration and in the Act to any Unit Owner shall be in writing and addressed to the Unit address of such Unit Owner, or at such other address as otherwise provided herein, including, without limitation, in Section 5.5. Any Unit Owner may designate a different address or addresses for notices to him by giving written notice of such change of address to the Board or Association. Notices so addressed shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof; or, if addressed to a Unit Owner, when deposited in such Unit Owner's mailbox at such address as is designated pursuant hereto.

13.3 Notice to Mortgagees. Upon written request to the Board, notices shall be given to a First Mortgagee as required under Article 11.

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13.4 **Notices of Estate or Representatives.** Notices required to be given any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his, her or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

13.5 **Conveyance and Leases.** Each grantee of the Declarant, each subsequent grantee by the acceptance of a deed of conveyance, each purchaser under Articles of Agreement for Deed, and each tenant under a lease for a Unit Ownership, accepts such conveyance or lease 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 obligations hereby imposed, shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in the Property, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

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

13.7 **Change, Modification or Rescission.** As long as either the Declarant or Developer is a Unit Owner, no provision of this Declaration may be modified without their respective written consent. The provisions of Article 11, Sections 13.2 and 13.12 and this Section 13.7 may be changed, modified, or rescinded only by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President of the Association, and by all of the Unit Owners and all First Mortgagees. Other provisions of this Declaration may be changed, modified or rescinded as provided in Section 13.12 or by an instrument in writing setting forth such change, modification or rescission signed and acknowledged by the President or a Vice-President of the Board, and approved by the Unit Owners having, in the aggregate, at least sixty-seven percent (67%) of the total vote, at a meeting called for that purpose; provided, however, that (i) all First Mortgagees have been notified by certified mail of any change, modification or rescission, (ii) an affidavit by the Secretary of the Board certifying to such mailing is made a part of such instrument and (iii) any provisions of this Declaration which specifically grant rights to First Mortgagees, Insurers or Guarantors may be amended only with the written consent of all such First Mortgagees, Insurers or Guarantors, except in those instances in which the approval of less than all First Mortgagees is required. 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, other than as provided in Section 13.12, 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.

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13.8 **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.

13.9 **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 (i) the rule against perpetuities or some analogous statutory provisions, (ii) the rule restricting restraints on alienation, or (iii) 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 Joseph P. Kennedy, former ambassador of the United States.

13.10 **Liberal Construction; References.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class condominium development. All references in this Declaration to any Article, Section, Subsection or Clause that do not refer also to another document or statute shall be deemed to be references to the appropriate Article, Section, Subsection or Clause of this Declaration.

13.11 **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.

13.12 **Special Amendment.** Developer and Declarant reserve the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct clerical or typographical or similar errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer or Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit Ownership, and the acceptance



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thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer or Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Developer and Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant or Developer no longer holds or controls title to a Unit Ownership.

**13.13 Assignments by Developer and Declarant.** All rights which are specified in this Declaration to be rights of the Developer or Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Developer or Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Developer or Declarant hereunder as fully as if named as such party herein. No party exercising rights as Developer or Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

**13.14 Display of American Flag or Military Flag.**

(a) Notwithstanding any provision in the Declaration, By-Laws, rules or regulations of the Association or a Board's construction of any of those instruments, a Board may not prohibit the display of the American flag or a military flag, or both, on or within the Limited Common Elements and facilities of an Owner or on the immediately adjacent exterior of the building in which the Unit of an Owner is located. A 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 a Board may adopt reasonable rules and regulations regarding the placement and manner of display of a military flag. A 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 Limited Common Elements and facilities of an Owner or on the immediately adjacent exterior of the building in which the Unit of an Owner is located, but a Board may adopt reasonable rules and regulations regarding the location and size of flagpoles.

(b) As used in this Section:

"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.

"Board" includes a Board of Managers or a Board of a Master Association or a Common Interest Community Association.

"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



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of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

## 13.15 Use of Technology.

(a) Any notice required to be sent or received for signature, vote, consent, or approval required to be obtained under the Declaration or bylaws or any provision of the Act may be accomplished using acceptable technological means. This Section shall govern the use of technology in implementing the provisions of the Declaration or bylaws or any provision of the Act concerning notices, signatures, votes, consents, or approvals.

(b) The Association, Owners, and other persons entitled to occupy a Unit may perform any obligation or exercise any right under the Declaration or bylaws or any provision of the Act by use of acceptable technological means.

(c) A signature transmitted by acceptable technological means satisfies any requirement for a signature under the Declaration or bylaws or any provision of the Act.

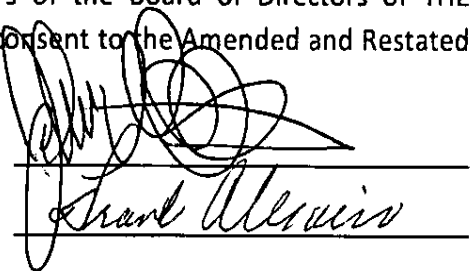
(d) Voting on, consent to, and approval of any matter under the Declaration or bylaws or any provision of the Act may be accomplished by any acceptable technological means, provided that a record is created as evidence thereof and maintained as long as the record would be required to be maintained in nonelectronic form.

(e) Subject to other provisions of law, no action required or permitted by the Declaration or bylaws or any provision of the Act need be acknowledged before a notary public if the identity and signature of the person can otherwise be authenticated to the satisfaction of the Board.

(f) If any person does not provide written authorization to conduct business using acceptable technological means, the Association shall, at its expense, conduct business with the person without the use of acceptable technological means.

(g) This Section does not apply to any notices required under Article IX of the Code of Civil Procedure related to: (i) an action by the Association to collect a common expense; or (ii) foreclosure proceedings in enforcement of any lien rights under the Act.

NOW THEREFORE we, the undersigned members of the Board of Directors of THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION consent to the Amended and Restated Declaration aforementioned.



Frank Alessio

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Cheerl Pecchia  
Ulki OAN Arsdale  
Christina Helser

BEING THE MEMBERS OF  
THE BOARD OF DIRECTORS

STATE OF ILLINOIS    )  
                                   ) SS  
 COUNTY OF COOK     )

Ulki OAN Arsdale, do hereby certify that I am the duly qualified and acting Secretary of THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation, and as such am the keeper of the records and files of the Association.

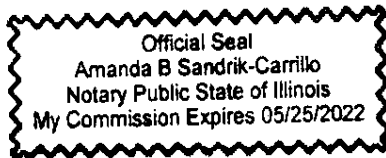
I certify that two-thirds (2/3) of the Board of Directors have approved the Amended and Restated Declaration.

IN WITNESS WHEREOF, I hereunto affix my hand and seal on this the 18 day of October, 2019.

Ulki OAN Arsdale  
 Secretary

SUBSCRIBED and SWORN to before me this 18<sup>th</sup> day of October, 2019.

Amanda Sandrik-Carrillo



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**EXHIBIT A  
TO  
DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS  
FOR THE CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION**

**SURVEY OF UNITS**

(To be attached prior to recording)

**LEGAL DESCRIPTION OF THE PROPERTY**

PARCEL 1:

LOT 18 (EXCEPT THE WEST 100.03 FEET THEREOF, EXCEPT THE NORTH 50 FEET THEREOF AND EXCEPT THE EAST 168.23 FEET THEREOF) IN PENNOYER AND OTHERS SUBDIVISION OF LOTS 1, 2, 3 AND 4 OF THE SUBDIVISION OF THE ESTATE OF JAMES PENNOYER, IN SECTIONS 1, 2, 11 AND 12, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF THE SOUTHEAST 1/4 OF SECTION 2 AFORESAID. LYING SOUTH OF THE CENTER LINE OF HIGGINS ROAD AND WEST OF THE WEST LINE OF ORIGINAL LOT 2 OF THE SUBDIVISION OF THE ESTATE OF JAMES PENNOYER AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 12, 1893 AS DOCUMENT 1885061. IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 168.23 FEET OF LOT 18 (EXCEPT THE NORTH 50 FEET THEREOF) IN PENNOYER AND OTHERS SUBDIVISION OF LOTS 1, 2, 3 AND 4 OF THE SUBDIVISION OF THE ESTATE OF JAMES PENNOYER IN SECTIONS 1, 2, 11, AND 12 TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF THE SOUTHEAST 1/4 OF SECTION 2 AFORESAID, LYING SOUTH OF THE CENTER LINE OF HIGGINS ROAD AND WEST OF THE WEST LINE OF ORIGINAL LOT 2 OF THE SUBDIVISION OF THE ESTATE OF JAMES PENNOYER AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 12, 1893 AS DOCUMENT NO. 1885061, IN COOK COUNTY, ILLINOIS.

Common Address: 5555 Cumberland Avenue, Chicago, Illinois

PINs: 12-11-200-029 and 030

**UNOFFICIAL COPY**  
**FIRST AMENDED**  
**EXHIBIT B TO DECLARATION OF CONDOMINIUM OWNERSHIP**  
**AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND**  
**BY-LAWS FOR THE**  
**CUMBERLAND CROSSING CONDOMINIUM ASSOCIATION**

Percentage of Ownership Interest

UNIT #	MODEL	PARKING SPACE	STORAGE SPACE	% OF OWNERSHIP
301	Fairfield	P40	S-40	1.3651%
302	Laurel	P-51	S-51	1.0885%
303	Kensington	P-63	S-63	1.1320%
304	Glenmoor	P43	S-43	1.0909%
305	Dartmoor	P-53	S-53	0.9440%
306	Hartford	P-50	S-50	1.0761%
307	Birchwood	OP-96	S-3-S	0.8238%
308	Laurel	P-84	S-84	1.0885%
309	Bartlett	P-79	S-79	0.7878%
310	Manchester	P-24	S-24	1.4366%
311	Kensington	P-29	S-29	1.1320%
312	Dartmoor	P-86	S-86	0.9440%
313	Essex	P-12	S-12	1.3209%
401	Fairfield	P-39	S-39	1.3651%
402	Laurel	P-58	S-58	1.0885%
403	Kensington	P-64	S-64	1.1320%
404	Glenmoor	P-46	S-46	1.0909%
405	Dartmoor II	P-54	S-54	0.9751%
406	Hartford	P-57	S-57	1.0761%
407	Birchwood	OP-93	S-4 S	0.8238%
408	Laurel	P-59	S-59	1.0885%
409	Bartlett	P-78	S-78	0.7878%
410	Manchester	P-25, P-42	S-25 ,S-42 ,S-5	1.4366%
411	Kensington	P-31	S-31	1.1320%
412	Dartmoor II	P47	S-47	0.9751%
413	Essex	P-9	S-9	1.3209%
501	Fairfield	P-37	S-37	1.3651%
502	Laurel	P-85	S-85	1.0885%
503	Kensington	P-71	S-71	1.1320%
504	Glenmoor	P45	S-45	1.0909%
505	Dartmoor II	P-80	S-80	0.9751%
506	Hartford	P-52	S-52	1.0761%
507	Birchwood	OP-95	S-5LS	0.8238%
508	Laurel	P49	S-49	1.0885%
509	Bartlett	P-82	S-82	0.7878%
510	Manchester	P-16	S-16	1.4366%

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511	Kensington	P-30	S-30	1.1320%
512	Dartmoor II	P48	S-48	0.9751%
513	Essex	P-7	S-7	1.3209%
601	Fairfield	P41	S-41	1.3651%
602	Laurel	P-62	S-62	1.0885%
603	Kensington	P-36	S-36	1.1320%
604	Glenmoor	P-32	S-32	1.0909%
605	Dartmoor II	P-77	S-77	0.9751%
606	Hartford	P-56	S-56	1.0761%
607	Birchwood	OP-94	S-6-S	0.8238%
608	Laurel	P-72	S-72	1.0885%
609	Bartlett	P-75	S-75	0.7878%
610	Manchester	P-19, P-66	S-19, S-66	1.4366%
611	Kensington	P-35	S-35	1.1320%
612	Dartmoor II	P-61	S-61	0.9751%
613	Essex	P-8	S-8	1.3209%
701	Fairfield	P-28	S-28	1.3651%
702	Laurel	P-68	S-68	1.0885%
703	Kensington	P-10	S-10	1.1320%
704	Glenmoor	P-70	S-70	1.0909%
705	Dartmoor II	P-81	S-81	0.9751%
706	Hartford	P-13	S-13	1.0761%
707	Birchwood	OP-92	S-7-S	0.8238%
708	Laurel	P-87	S-87	1.0885%
709	Bartlett	P-67	S-67	0.7878%
710	Manchester	P-17	S-17	1.4366%
711	Kensington	P-88	S-88	1.1320%
712	Dartmoor II	P-74	S-74	0.9751%
713	Essex	P-4	S-4	1.3209%
801	Fairfield	P-27	S-27	1.3651%
802	Laurel	P-90	S-90	1.0885%
803	Kensington	P-38	S-38	1.1320%
804	Glenmoor	P-69	S-69	1.0909%
805	Dartmoor II	P-44	S-44	0.9751%
806	Hartford	P-83	S-83	1.0761%
807	Birchwood	OP-91	S-8-S	0.8238%
808	Laurel	P-65	S-65	1.0885%
809	Bartlett	P-21	S-21	0.7878%
810	Manchester	P-18	S-18	1.4366%
811	Kensington	P-34	S-34	1.1320%
812	Dartmoor II	P-73	S-73	0.9751%
813	Essex	P-5	S-5	1.3209%
901	Fairfield	P-26	S-26	1.3651%
902	Laurel	P-60	S-60	1.0885%
903	Kensington	P-11	S-11	1.1320%
904	Glenmoor	P-89	S-89	1.0909%

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905	Dartmoor II	P-76	S-76	0.9751%
906	Hampshire	P-22 & P-23	S-22 & S-23	1.4110%
908	LeClaire	P-14 & P-15	S-14, S-15 & S-9-S	1.5928%
909	Bartlett	P-20	S-20	0.7878%
910	Manchester	P-1, P-2 & P-3	S-1, S-2 & S-3	1.4366%
911	Kensington	P-33	S-33	1.1320%
912	Dartmoor II	P-55	S-55	0.9751%
913	Essex	P-6	S-6	<u>1.3209%</u>

100%

Property of Cook County Clerk's Office

RECORDED OF DEEDS  
COOK COUNTY

RECORDED OF DEEDS  
COOK COUNTY