

UNOFFICIAL COPY

THIS DOCUMENT HAS
BEEN PREPARED BY, AND
AFTER RECORDATION
SHOULD BE RETURNED TO:

Kovitz Shifrin Nesbit
175 North Archer Avenue
Mundelein, Illinois 60060
Attn: David M. Bendoff, Esq.



Doc# 2204622056 Fee \$303.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 02/15/2022 03:09 PM PG: 1 OF 127

**FIRST
CONSOLIDATED, AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
ROB ROY COUNTRY CLUB VILLAGE, A CONDOMINIUM**

WHEREAS, the Declaration of Condominium Ownership (hereafter the "Declaration") for Rob Roy Country Club Village, a Condominium, incorporated as the Rob Roy Country Club Village Association (hereafter the "Association") was recorded on November 12, 1982 as Document No. 26410009 in the Office of the Recorder of Deeds of Cook County, Illinois against the Property legally described in Exhibit "1" attached hereto, and the Property has been submitted to the provisions of the Illinois Condominium Property Act ("Act"); and

WHEREAS, the Declaration has been amended from time to time by the following documents (hereinafter referred to as the "Amendments") recorded with the Recorder of Deeds of Cook County, Illinois:

<u>Document No.</u>	<u>Recording Date</u>
26441635	12/6/1982
26452276	1/3/1983
26524418	3/3/1983
26651977	6/21/1983
26757767	8/31/1983
26866205	11/17/1983
26976857	2/21/1984
26976858	2/21/1984
27022477	3/28/1984
27054268	4/19/1984
27088618	5/16/1984
27138624	6/20/1984
27171018	7/13/1984

RECORDING FEE 303.00
DATE 2-15-22 COPIES 6X
OK BY JP

UNOFFICIAL COPY

27217801	8/17/1984
27249339	9/11/1984
27291718	10/12/1984
27336639	11/14/1984
27375080	12/17/1984
27411584	1/18/1985
27430884	2/4/1985
27458774	3/1/1985
85006464	5/3/1985
85063290	6/17/1985
85098427	7/11/1985
85163043	8/26/1985
85254473	10/25/1985
85276961	11/12/1985
86017164	1/14/1986
86090406	3/6/1986
86129558	4/4/1986
86265703	6/27/1986
86402040	9/9/1986
86464208	10/8/1986
86474133	10/14/1986
86555051	11/21/1986
87076761	2/6/1987
87174596	4/2/1987
0708702327	3/28/2007
2121022025	7/29/2021; and

WHEREAS, Section 27(b)(1) of the Illinois Condominium Property Act (the "Act"), 765 ILCS 605/27, provides a procedure for amending the Declaration if there is an omission, error, or inconsistency in a condominium instrument, such that a provision of a condominium instrument does not conform to the Act. This section of the Act provides that the Association may correct the error or omission or inconsistency by an amendment in order to conform the instrument with the provisions of the Act. The Section 27(b) of the Act amendment may be adopted by a vote of two-thirds (2/3) of the members of the Board of Managers unless the Board of Managers' action is rejected by a majority of the votes of the Unit Owners at a meeting of the Unit Owners duly called for that purpose pursuant to a written petition of the Unit Owners having twenty percent of the votes of the Association filed within thirty (30) days after the action of the Board of Managers to approve such amendment; and

WHEREAS, provisions of the Act establish certain requirements which the Association is required by law to follow, and with which the present Declaration is in conflict or does not include; and

UNOFFICIAL COPY

WHEREAS, the Board recognizes the burden and practical difficulty on the Board and the Owners and others in reviewing, consulting and referring to the Declaration, the Amendments, and the Section 27(b) of the Act amendments; and

WHEREAS, the Board desires to prepare, and has caused to be prepared, a single document consolidating the Declaration, the Amendments, and the Section 27(b) of the Act amendments into one document (hereafter referred to as the "First Consolidated, Amended And Restated Declaration"), to provide the Board, Owners and others with a convenient document that restates the substantive provisions of the Declaration and reflects the accumulated Amendments for ease of reference; and

WHEREAS, the First Consolidated, Amended And Restated Declaration truly and accurately reflects the Declaration as amended from time to time, and the Board desires to record the First Consolidated, Amended And Restated Declaration in order to memorialize all of the foregoing action; and

WHEREAS, the Section 27(b) of the Act amendments to the Declaration were approved by at least two-thirds (2/3) of the members of the Board of Managers of the Association at a duly called meeting held October 7, 2021; and

WHEREAS, the requisite number of unit owners failed to submit a written petition to the Board of Managers within thirty days of the Board of Managers' action, as provided by Section 27(b)(3) of the Act.

NOW THEREFORE, in furtherance of the foregoing recitals, the Declaration of Condominium Ownership for Rob Roy Country Club Village a Condominium is hereby consolidated, amended and restated in accordance with the following

UNOFFICIAL COPY

**FIRST CONSOLIDATED, AMENDED AND RESTATED DECLARATION OF
CONDOMINIUM OWNERSHIP
FOR
ROB ROY COUNTRY CLUB VILLAGE, A CONDOMINIUM**

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions	5
2. Submission of the Property to the Act	10
3. Plat	10
4. Units	10
5. Association of Unit Owners and Administration and Operation of the Property	11
(a) The Association	
(b) Management of Property	
(c) Initial Management Contract	
(d) Non-Liability of the Directors, Board, Officers, Trustee and Developer	
6. Board's Determination Binding	12
7. Common Elements; Grant of Easements; Reservation	12
(a) Undivided Percentage Interest	
(b) Grant of Easements and Reservation	
(i) Streets	
(ii) Utility Lines	
(iii) Dedication; Termination of Easement	
(iv) Maintenance	
(v) Amendment to Easements	
8. Use of the Common Elements	14
(a) Right to Use the Common Elements	
(b) Blanket Easement In Favor of Developer and Other Parties and Other Easements	
(c) Blanket Utility and Commercial Entertainment Easements	
(d) Easement for Use and Enjoyment of Certain Common Elements	
(i) Recreation Easement	
(ii) Recreational Fee and Recreation Budget	
(iii) Release of Rights Under Recreation Easement	
(e) Easement Over Private Roads	
(i) Private Roads	
(ii) Reservation of Easements	
(iii) Maintenance of Private Roads	
(iv) Reimbursement of Association	
(f) Amendment	

UNOFFICIAL COPY

9.	Parking Areas	22
10.	Balconies, Etc.	23
11.	Heating and Cooling Units	23
12.	Recreational Facilities	23
13.	Common Expenses	24
	(a) General	
	(b) Developer's Share of Common Expenses	
	(c) Expenses of Special Limited Common Elements	
14.	Mortgages	25
15.	Separate Real Estate Taxes	27
16.	Damage or Destruction and Restoration of the Property, Insurance and Eminent Domain	27
	(a) Damage or Destruction and Restoration of the Property	
	(b) Insurance	
	(c) Eminent Domain	
17.	Maintenance, Repairs and Replacements; Reserve and Maintenance Funds	36
	(a) Maintenance, Repairs and Replacements of Units	
	(b) Maintenance, Repairs and Replacements of Limited Common Elements	
	(c) Maintenance, Repairs and Replacements of Common Elements and Off-Site Facilities	
	(d) Discharge of Liens	
	(e) Damage to Units or Common Elements	
	(f) Access to Units	
	(g) Reserve and Maintenance Funds	
18.	Alterations, Additions or Improvements	39
19.	Decorating	40
20.	Encroachments	41
21.	Restrictions on Leasing	41
22.	Use and Occupancy Restrictions	43
23.	Remedies	44
	(a) In General	
	(b) Association Self-help	
	(c) Injunctive Relief	
	(d) Involuntary Sales	
	(e) Cumulative Rights; No Waiver of Rights	
24.	Reservation of Right to Annex Additional Parcels	46
25.	Amendment	49
26.	Notices	50
27.	Description of Condominium	50

UNOFFICIAL COPY

28.	Golf Course	51
	(a) Waiver.	
	(b) Acquisition of Golf Course	
29.	Commercial Entertainment	52
30.	Perpetuities and Restraints on Alienation	52
31.	Rights and Obligations	52
32.	Land Trustee as Unit Owner	54
33.	General Provisions	54
34.	Execution of Declaration by Trustee	55
	Exhibit A - Plat of Survey	A-1
	Exhibit B - Percentage of Ownership Interest in the Common Elements	B-1
	Exhibit C - Bylaws of Rob Roy Country Club Village Association	C-1
	ARTICLE I – Member (Unit Owners)	C-1
	ARTICLE II – Board of Directors	C-3
	ARTICLE III – Officers	C-12
	ARTICLE IV – Assessments	C-13
	ARTICLE V – Use and Occupancy Restrictions	C-20
	ARTICLE VI – Contractual Power	C-22
	ARTICLE VII – Architectural Control Commission	C-23
	ARTICLE VIII – Amendments	C-23
	ARTICLE IX – Indemnification; Agency	C-24
	Exhibit D - Articles of Incorporation of Rob Roy Country Club Village Association	D-1
	Exhibit E - Legal Description of Future Development Parcel	E-1
	Exhibit F - Legal Description of Street Easement Parcel	F-1

UNOFFICIAL COPY

**FIRST CONSOLIDATED, AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
ROB ROY COUNTRY CLUB VILLAGE, A CONDOMINIUM**

THIS IS A CONSOLIDATION, AMENDMENT AND RESTATEMENT OF THE DECLARATION, made and entered into by CENTRAL NATIONAL BANK IN CHICAGO, a national banking association, as Trustee under Trust Agreement dated May 1, 1981, and known as Trust No. 24978, and not individually, hereinafter referred to as "Trustee";

WITNESSETH:

A. The Trustee is the legal title holder of the following described real estate located in the County of Cook, and State of Illinois and described as:

THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER (EXCEPT THE NORTHERLY 250 FEET OF THE WESTERLY 250 FEET THEREOF) AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER ALL IN SECTION 26, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT TUE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE SOUTH 89° 59' 20" EAST ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 26, A DISTANCE OF 946.26 FEET TO THE WESTERLY RIGHT OF WAY LINE OF COUNTRY CLUB DRIVE RECORDED AS DOCUMENT NO. 26260378 JUNE 15, 1982 IN COOK COUNTY, ILLINOIS; THENCE NORTH 00° 00' 40" EAST, ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE, A DISTANCE OF 357.86 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE BEING A CURVE TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED AND HAVING A RADIUS OF 50.00 FEET, A DISTANCE OF 48.82 FEET TO A POINT OF REVERSE CURVATURE; THENCE CONTINUING NORTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE BEING A CURVE TO THE LEFT OF THE LAST DESCRIBED CURVE AND HAVING A RADIUS OF 25.00 FEET, A DISTANCE OF 24.41 FEET TO A POINT OF TANGENCY; THENCE NORTH 00° 00' 40" EAST ALONG A LINE TANGENT TO THE LAST DESCRIBED CURVE ALSO BEING THE SAID

UNOFFICIAL COPY

WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE, A DISTANCE OF 50.00 FEET TO A POINT OF CURVATURE; THENCE SOUTH 89° 59' 20" EAST, A DISTANCE OF 34.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF SAID COUNTRY CLUB DRIVE FOR THE PLACE OF BEGINNING; THENCE NORTHEASTERLY ALONG THE EASTERLY; RIGHT OF WAY OF SAID COUNTRY CLUB DRIVE BEING A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 203.00 FEET, A CHORD BEARING OF NORTH 13° 01' 58" EAST AND AN ARC LENGTH OF 92.27 FEET TO A POINT OF TANGENCY; THENCE NORTH 26° 03' 17" EAST ALONG A LINE TANGENT TO THE LAST DESCRIBED CURVE ALONG SAID EASTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE, A DISTANCE OF 248.79 FEET; THENCE SOUTH 50° 56' 44" EAST, A DISTANCE OF 210.00 FEET; THENCE SOUTH 00° 00' 40" WEST, A DISTANCE OF 175.37 FEET; THENCE NORTH 89° 59' 20" WEST, A DISTANCE OF 244.94 FEET; THENCE SOUTH 84° 03' 52" WEST, A DISTANCE OF 48.26 FEET TO THE PLACE OF BEGINNING; AND ALSO THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER (EXCEPT THE NORTHERLY 250 FEET OF THE WESTERLY 250 FEET THEREOF) AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER ALL IN SECTION 26, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE SOUTH 89° 59' 20" EAST ALONG THE SOUTH LINE OF THE SAID NORTHWEST QUARTER OF SECTION 26, A DISTANCE OF 946.26 FEET TO THE WESTERLY RIGHT OF WAY LINE OF COUNTRY CLUB DRIVE RECORDED AS DOCUMENT NO. 26260378 JUNE 15, 1982 IN COOK COUNTY, ILLINOIS; THENCE NORTH 00° 00' 40" EAST ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE, A DISTANCE OF 357.86 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE BEING A CURVE TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED AND HAVING A RADIUS OF 50.00 FEET, A DISTANCE OF 48.82 FEET TO A POINT OF REVERSE CURVATURE; THENCE CONTINUING NORTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE BEING A CURVE TO THE LEFT OF THE LAST DESCRIBED CURVE AND HAVING A RADIUS OF 25.00 FEET, A DISTANCE OF 24.41 FEET TO A POINT OF TANGENCY; THENCE NORTH 00° 00' 40" EAST ALONG A LINE

UNOFFICIAL COPY

TANGENT TO THE LAST DESCRIBED CURVE ALSO BEING THE SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE, A DISTANCE OF 50.00 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG SAID RIGHT OF WAY OF COUNTRY CLUB DRIVE BEING A CURVE TO THE RIGHT OF THE LAST DESCRIBED COURSE EXTENDED AND HAVING A RADIUS OF 237.00 FEET, A DISTANCE OF 107.73 FEET TO A POINT OF TANGENCY; THENCE NORTH 26° 03' 17" EAST ALONG SAID RIGHT OF WAY OF COUNTRY CLUB DRIVE TANGENT TO THE LAST DESCRIBED CURVE, A DISTANCE OF 108.67 FEET FOR THE PLACE OF BEGINNING; THENCE NORTH 63° 56' 43" WEST A DISTANCE OF 101.46 FEET; THENCE SOUTH 56° 22' 04" WEST, A DISTANCE OF 125.88 FEET; THENCE NORTH 63° 56' 43" WEST, A DISTANCE OF 35.00 FEET; THENCE NORTH 16° 44' 12" WEST, A DISTANCE OF 144.39 FEET; THENCE NORTH 58° 10' 21" EAST A DISTANCE OF 200.00 FEET; THENCE NORTH 89° 21' 28" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 01° 08' 39" EAST, A DISTANCE OF 108.87 FEET; THENCE SOUTH 63° 56' 43" EAST, A DISTANCE OF 97.32 FEET TO SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE; THENCE SOUTH 26° 03' 17" WEST ALONG SAID WESTERLY RIGHT OF WAY OF COUNTRY CLUB DRIVE, A DISTANCE OF 92.31 FEET TO THE PLACE OF BEGINNING.

The above-described real estate is, on the date this Declaration is recorded, subject to:

1. general and special taxes assessed against the real estate for the current year and subsequent years (taxes for any prior years will be paid or provision made therefor prior to closing the sale of any Unit);
2. terms, powers, provisions and limitations of the trust agreement under which the title to said real estate is held;

This instrument was prepared by
 Thomas C. Homburger and Mark C. Simon
 Sonnenschein Carlin Nath & Rosenthal
 8000 Sears Tower
 Chicago, Illinois 60606

3. easements and rights in favor of gas, electric, telephone, sanitation, water and other utilities and cable television and other commercial entertainment lines serving said real estate;

UNOFFICIAL COPY

4. roads and streets;
5. right of way for drainage tiles, ditches, feeders and laterals;
6. Annexation Agreement between Chicago Title and Trust Company, as Trustee under Trust Agreement dated April 4, 1977 and known as Trust Number 1069552, and the City of Prospect Heights, recorded May 7, 1981 with the office of the Recorder of Deeds of Cook County, Illinois as Document No. 25863226, including all easements, covenants and restrictions contained therein, and ordinance of such City recorded May 7, 1981 with the office of the Recorder of Deeds of Cook County, Illinois as Document Number 25863227;
7. Declaration of Covenants, Conditions, Restrictions and Easements dated November 8, 1982 and made by Chicago Title and Trust Company, as Trustee under Trust Agreement dated April 7, 1977 and known as Trust Number 1069552, Central National Bank in Chicago, as Trustee under Trust Agreement dated May 1, 1981 and known as Trust Number 24978, Central National Bank in Chicago, as Trustee under Trust Agreement dated May 1, 1981 and known as Trust Number 24979, and Central National Bank in Chicago, as Trustee under Trust Agreement dated May 1, 1981 and known as Trust Number 24980, recorded November 12, 1982, with the office of the Recorder of Deeds of Cook County, Illinois as Document No.26409998;
8. easements, covenants, restrictions and reservations created by this Declaration;
9. terms of zoning ordinances;
10. Requirements for Storm Water Detention recorded on September 24, 1981, with the office of Recorder of Deeds of Cook County, Illinois as Document Number 26009752; and
11. plats of dedication and covenants thereon.

B. The Trustee intends to and does hereby submit the above-described real estate together with all buildings, structures, improvements and other permanent fixtures of whatever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto to the provisions of the Condominium property Act of the State of Illinois; and

C. The Trustee further desires to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property, as described below, or any part thereof,

UNOFFICIAL COPY

and intends that all such future owners, occupants, mortgagees, and any other person hereinafter acquiring any interest in said Property shall hold said interest subject to certain rights, easements and privileges in, over and upon said Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the co-operative aspects of residence on the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

NOW, therefore, the Trustee, as the legal title holder of the real estate hereinbefore described, and for the purposes above set forth, declares as follows:

1. DEFINITIONS. As used herein, unless the context otherwise requires:

(a) "Acceptable Technological Means" includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, electronic mail, and any generally available technology that, by rule of the association, is deemed to provide reasonable security, reliability, identification, and verifiability.

(b) "Act" means the "Condominium Property Act" of the State of Illinois, as amended from time to time heretofore and hereafter.

(c) "Additional Parcel" means any part of the Future Development Parcel actually submitted to the Act pursuant to the provisions of Paragraph 24, below.

(d) "Architectural Control Commission" means the commission described in Article VII of the Bylaws.

(e) "Association" means the Rob Roy Country Club Village Association, an Illinois not-for-profit corporation.

(f) "Board" means the Board of Directors of the Rob Roy Country Club Village Association, including the First Board.

(g) "Building" means individually any of the buildings, structures, attached or unattached, located on the Parcel forming part of the Property and containing Units, as shown by the surveys of the respective floors of each Building. "Buildings" means collectively every Building from time to time located on the Parcel.

(h) "Bylaws" means the Bylaws of the Rob Roy Country Club Village Association.

UNOFFICIAL COPY

(i) "City" means the City of Prospect Heights, Illinois.

(j) "Common Elements" means all portions of the Property except the Units, and shall include, without limitation, Limited Common Elements unless otherwise specified, Special Limited Common Elements unless otherwise specified, the land, the Recreational Facilities, the outdoor lighting system (except any outdoor lighting controlled from within any Unit which shall be a Limited Common Element), all outdoor landscaping, the Landscaped entranceways located at Euclid Avenue and Camp McDonald Road, fencing, walkways, streets and roadways not dedicated or transferred to any public body, driveways, uncovered parking areas and any and all other portions of the Property, except the individual Units. Any references to "Common Elements" appearing on the Plat shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such references define the Common Elements in any way.

(k) "Common Expenses" means the expenses of the administration, operation, protection and preservation of the Common Elements, including, but not limited to, (i) the maintenance and repair thereof and any and all replacements and additions thereto, and all reserves created for such maintenance, repair, replacement or additions (except as provided below in this subparagraph (k)) and (ii) any other expenses incurred in connection with the Common Elements in conformance with this Declaration and the Bylaws. The first sentence of this subparagraph (k) notwithstanding, so long as the Trustee (of which the Developer is sole beneficiary) is holding the Units only pending sale and not for investment or long-term use, the Developer shall be required to pay only its equitable share of the expenses affecting the Property computed as set forth in the next sentence. For the purpose of calculating any assessments owed by the Trustee or the Developer (including any assignee of the Developer's interest as beneficiary of the Trustee and any mortgagee or purchaser at a foreclosure sale succeeding to the interest of Trustee or Developer), the term "Common Expenses" shall not include the amount of any costs for the Maintenance Reserve (defined hereafter) or any other reserves or any expenditures for capital improvements or replacements to the Common Elements. The limitation on the definition of the term "Common Expenses" contained in the immediately preceding sentence (i) shall expire and be deemed deleted herefrom upon the expiration of the rights of the Trustee and the Developer to submit Additional Parcels to the Act and (ii) may not be amended or deleted prior to such time without the consent of the Developer.

(l) "Declaration" means this instrument, by which the above-described real estate is submitted to the provisions of the Act, as hereinafter provided, and such Declaration as amended from time to time.

(m) "Declaration of Covenants" means the Declaration of Covenants Conditions, Restrictions and Easements more fully described in item 7 of Recital A hereinabove.

UNOFFICIAL COPY

(n) "Developer" means Rob Roy Country Club Village, an Illinois joint venture, and presently the sole beneficiary of Trustee.

(o) "Electronic Transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.

(p) "First Board" means the Board as initially constituted, consisting of the directors listed in the Articles of Incorporation of the Association filed with the Secretary of State of Illinois and any subsequent Board appointed by Developer pursuant to any right granted to Developer by this Declaration or the Bylaws.

(q) "First Mortgagee" means any Mortgagee (i) whose mortgage constitutes a first lien against the subject Unit or (ii) who is the holder of a note secured by a trust deed which constitutes a first lien against the subject Unit.

(r) "Future Development Parcel" means the parcel or tract of real estate, described as Tract A on Exhibit E attached hereto and made a part hereof, and, upon acquisition by Trustee of the parcels or tracts of real estate or any part thereof described as Tracts B and C on said Exhibit E, shall also mean said Tract B or Tract C or such part or parts thereof that have been acquired by Trustee from time to time, as the case may be. The Trustee hereafter may develop and improve the Future Development Parcel with multifamily structures or otherwise, pursuant to the provisions of Paragraph 24, below.

(s) "Golf Course" means a privately owned nine-hole golf course to be created from a portion of the golf course presently known as Rob Roy Golf Course and to be located on land adjacent to and abutting the Parcel and the Future Development Parcel. The Golf Course is not intended to constitute part of the Property.

(t) "Interest Rate" means a fluctuating rate which shall be three percent (3%) per annum above the "prime rate" per annum announced from time to time by American National Bank and Trust Company of Chicago, the Interest Rate to change as such prime rate shall change from time to time; provided, however, that the Interest Rate shall never exceed the highest rate of interest which can be lawfully paid by the payor thereof.

(u) "Limited Common Elements" means a portion of the Common Elements serving exclusively one or more Units but not all the Units, including specifically, but not limited to, the Special Limited Common Elements, exterior walkways serving any Building, driveways serving

UNOFFICIAL COPY

any one or more Units, patios serving any Unit or Building, and the Buildings, and all associated fixtures and structures therein and thereon, as are adjacent to but lie outside the Unit boundary. Any reference to "Limited Common Elements" appearing on the Plat shall be deemed solely for purposes of general information, and shall not be limiting in any way, nor shall any such reference serve to define the Limited Common Elements in any way.

(v) "Majority" or "majority of the Unit Owners" means the owners of more than fifty percent (50%) in the aggregate in interest of the undivided ownership of the Common Elements. Any specific percentage of Unit Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.

(w) "Mortgagee" means the holder of a mortgage or the holder of a note secured by a trust deed, in either case, encumbering any Unit. As a matter of law, upon submission of the original Parcel described in Recital A above or any Additional Parcel to the Act pursuant to this Declaration, the lien of any mortgagee against such Parcel or Additional Parcel will become a lien against all Units located on such Parcel or Additional Parcel. Therefore, as a matter of construction of this Declaration, any such mortgagee will after such submission be a "Mortgagee" (as that term is used herein) as to each Unit on the Parcel or Additional Parcel so submitted and not released from time to time from the lien of such mortgagee's mortgage. Notwithstanding anything hereinabove, nothing in this Paragraph 1(w) shall be deemed to create any lien or other interest in any Unit in favor of any Person, it being the sole purpose of this Paragraph 1(w) to define the term "Mortgagee" for the purposes of this Declaration.

(x) "Occupant" means a person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

(y) "Parcel" means the parcel or tract of real estate described above in this Declaration, submitted to the provisions of the Act and any Additional Parcel submitted to the Act pursuant to the provisions of Paragraph 24, below.

(z) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(aa) "Plat" means the plats of survey of the Parcel, including any Additional Parcel submitted to the Act pursuant to the provisions of Paragraph 24 below, and of all Units in the Property submitted to the provisions of the Act, consisting of a three dimensional horizontal and vertical delineation of all such Units and showing the measurements, elevations, locations and other data required by the Act, such Plat being attached hereto as Exhibit A and by this reference made a part hereof. Whenever in this Declaration or any amendment to this Declaration the term "Plat" or "Exhibit A" appears, it shall be deemed to include the plat recorded simultaneously

UNOFFICIAL COPY

with this Declaration, as said plat is hereafter amended from time to time and recorded pursuant to the provisions of Paragraph 3, below.

(bb) "Private Roads" shall have the meaning set forth in subparagraph 8(e)(i) below.

(cc) "Property" means all the land, property and space comprising the Parcel, including any Additional Parcel submitted to the Act pursuant to the provisions of Paragraph 24, below, and all improvements and structures now or hereafter erected, constructed or contained thereon or therein, and all easements, rights and appurtenances now or hereafter belonging thereto, and all furniture, furnishings, fixtures and equipment thereon or therein now or hereafter intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.

(dd) "Record" or "recording" refers to record or recording in the office of the Recorder of Deeds of Cook County, Illinois.

(ee) "Recreational Facilities" means a portion of the Common Elements available to and designed for the recreational use, benefit and enjoyment of members of the Association, subject to the provisions of this Declaration (including, but not limited to, the easement created by Paragraph 8(d) hereof), the Bylaws and such rules and regulations as the Board may adopt from time to time, and shall include two swimming pools, a lodge and a cabana, tennis courts, benches and other such miscellaneous play equipment and areas, and any additions or improvements thereto, located from time to time on the Parcel, including any Additional Parcel submitted to the Act pursuant to the provisions of Paragraph 24, below.

(ff) "Special Limited Common Elements" means the following portions of the Limited Common Elements: (i) any sump pumps located in the basement of certain Units and serving one or more other Units, (ii) any post lights operated by photoelectric cells outside each Unit, and (iii) any amplifiers for any master television systems and any antennas located in the attic and on the roof of certain Units and serving one or more other Units.

(gg) "Turnover Date" means the earlier of (i) the date three (3) years from the date of recording of this Declaration or (ii) the first date on which deeds for and possession of 488 Units, being seventy-five percent (75%) of the Units contemplated to be located on the Parcel and the Future Development Parcel, have been delivered to Unit Owners.

(hh) "Unit" means a part of the Property designed and intended for any type of independent use and so specified as a Unit and listed on Exhibit B attached hereto, and as set forth on the Plat attached hereto as Exhibit A. Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on said Plat; provided, however, that no

UNOFFICIAL COPY

structural components of the Building in which such Unit is located, and no pipes, wires, conduits, ducts, flues, shafts, or public utility lines, situated within such Unit and forming part of any system serving one or more other Units or the Common Elements, shall be deemed to be a part of such Unit.

(ii) "Unit Owner" means the one or more natural individuals, corporations, partnerships, trustees or other legal entities whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit and of the undivided interest in the Common Elements appurtenant thereto.

2. SUBMISSION OF THE PROPERTY TO THE ACT. The Trustee, as the legal title holder in fee simple of the Property, expressly intends to, and by recording this Declaration does hereby submit the Property to the provisions of the Condominium Property Act of the State of Illinois.

3. PLAT. To the extent such data is available to the Trustee at the time this Declaration is filed, the Plat sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (1) the Parcel and its exterior boundaries; (2) every Building and each floor thereof; and (3) each Unit in every Building and said Unit's horizontal and vertical dimensions. However, the Trustee hereby reserves unto itself and the Developer, the right, from time to time, as further data becomes available, to amend the Plat so as to set forth the measurements, elevations, locations and other data required by the Act, with respect to the Buildings and the Units now or hereafter constructed on the Parcel including any Additional Parcel submitted to the Act pursuant to the provisions of Paragraph 24 below.

In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Trustee, acting by or through its duly authorized officers, its successors, or its designee, and to the Developer, and their agents, and each of them singly, as attorney-in-fact, to amend the Plat, as described above, without notice to any Unit Owner. Each deed, mortgage or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorney-in-fact, and acknowledgement of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Plat, as described above.

4. UNITS. The legal description of each Unit shall consist of the identifying number or symbol for such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument referring to a Unit shall legally describe said Unit by its identifying number or symbol as shown on the Plat and every such description shall be deemed good and sufficient for all purposes, as provided in the Act. No Unit Owner shall, by deed, plat, court decree or otherwise, subdivide,

UNOFFICIAL COPY

partition or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat.

5. ASSOCIATION OF UNIT OWNERS AND ADMINISTRATION AND OPERATION OF THE PROPERTY.

(a) The Association. An Illinois not-for-profit association has been or will be formed named "Rob Roy Country Club Village Association", which shall be the governing body for all of the Unit Owners, for the purpose of maintenance, repair, replacement, administration and operation of the Property, as provided in the Act, this Declaration and Bylaws. The initial Bylaws of the Association shall be the Bylaws attached to this Declaration as Exhibit C and by this reference made a part hereof. The Board of Directors of the Association shall constitute the board of managers provided for in the Act. The fiscal year of the Association shall be determined by the Board of Directors and may be changed from time to time as said Board deems advisable. The Association shall not be deemed to be conducting a business of any kind. All activities undertaken by the Association shall be for the sole benefit of the Unit Owners, and all funds received by the Association shall be held and applied by it for the sole use and benefit of Unit Owners in accordance with the provisions of the Declaration and Bylaws. Each Unit Owner shall automatically become a member of the Association upon becoming a Unit Owner and shall remain a member of the Association so long as he shall be a Unit Owner. A Unit Owner's membership in the Association shall automatically terminate when he ceases to be a Unit Owner. Upon the transfer of a Unit Owner's ownership interest to a new Unit Owner, the new Unit Owner shall simultaneously succeed to the former Unit Owner's membership in the Association. The aggregate number of votes for all members of the Association shall be one hundred (100) and shall be divided among the respective Unit Owners in accordance with their respective percentages of ownership interest in the Common Elements, as set forth in Exhibit B hereto, as said Exhibit may be amended from time to time.

(b) Management of Property. The Board shall be required to engage the services of a qualified agent (herein sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Property, to the extent deemed advisable by the Board, subject to the provisions of subparagraph (c) below. Management of the Property by the Board without the assistance of a Management Agent is hereby prohibited. The cost of such services shall be a Common Expense. Any management agreement shall include a provision for termination with cause by the Board on 30 days or less written notice without payment of a termination fee and a provision for termination without cause by the Board on 90 days or less written notice without payment of a termination fee.

(c) Initial Management Contract. The First Board, appointed as provided herein, shall ratify, adopt and approve a management agreement between the Trustee or the Developer and a

UNOFFICIAL COPY

Managing Agent for a term of one year and for a monthly rate and subject to such terms as are consistent with competitive rates and terms prevailing in the area in which the Property is located, payable by the Association as a common expense. Said ratification, adoption and approval shall not be subject to the provisions of Article IV, Section 6 of the Bylaws.

(d) Non-Liability of the Directors, Board, Officers, Trustee and Developer. The directors, Board, officers of the Association, Trustee and the Developer shall not be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors, Board, officers, Trustee or Developer, except for any acts or omissions found by a court to constitute gross negligence, willful misconduct or fraud. The Association shall indemnify and hold harmless each of the directors and officers, Board, Trustee and Developer, their heirs, executors or administrators, successors and assigns in accordance with the provisions of Article VIII of the Bylaws.

6. BOARD'S DETERMINATION BINDING. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration or Bylaws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

7. COMMON ELEMENTS; GRANT OF EASEMENTS; RESERVATION.

(a) Undivided Percentage Interest. 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 the schedule attached hereto as Exhibit B and by this reference made a part hereof, as though fully set forth herein, as said Exhibit B may be amended from time to time. The percentages of ownership interest set forth in Exhibit B are computed and determined in accordance with the Act, and shall remain constant unless hereafter changed by recorded amendment to this Declaration pursuant to either the provisions of Paragraph 24 or Paragraph 25 below said 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 separately from the percentage of ownership in the Common Elements corresponding to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit or said legal description may not specifically refer to the undivided percentage of ownership in the Common Elements corresponding to said Unit.

(b) Grant of Easements and Reservation.

UNOFFICIAL COPY

(i) Streets.

(A) The Trustee intends to dedicate to the City the streets known or to be known as Country Club Drive and Rob Roy Lane. These streets abut the Parcel and will abut some or all of the Additional Parcels submitted to the Act pursuant to Paragraph 24 hereof. The Parcel does not include any portion of Country Club Drive or Rob Roy Lane, the median strips situated in Country Club Drive or Rob Roy Lane (including any street lights located thereon), the curbs fronting and abutting such streets or the one foot wide strip of land (including any street lights located thereon) fronting and abutting said curbs (all of the aforementioned excluded property being collectively referred to as the "Streets"). The Streets will also be excluded from each Additional Parcel.

(B) In order that the Unit Owners may have the use of those portions of the Streets which are available for use by Unit Owners, until such dedication is made to, and accepted by, the City, Trustee hereby grants to the Unit Owners a non-exclusive easement appurtenant to the Parcel, including any Additional Parcel submitted to the Act pursuant to Paragraph 24 hereof, over that portion of the Streets legally described on Exhibit F attached hereto and made a part hereof (the "Street Easement Parcel") for use by the Unit Owners and their respective agents, servants, tenants, family members, invitees and licensees for purposes of access, ingress, and egress to and from the Property.

(ii) Utility Lines.

(A) The Trustee also intends (x) to dedicate to the City water and storm sewer lines situated on the Parcel and situated or to be situated on the Future Development Parcel and (y) to dedicate to the Prospect Heights-Old Town Sanitary District sanitary sewer lines situated on the Parcel and situated or to be situated on the Future Development Parcel. Notwithstanding the submission of the Parcel and any Additional Parcel to the Act pursuant to Paragraph 24 hereof, the Trustee reserves from each such submission all water lines, storm sewer lines and sanitary sewer lines (collectively called "Utility Lines") lying within the Parcel or such Additional Parcel, as the case may be.

(B) In order that the Unit Owners may have the use of the Utility Lines until such dedications are made to, and accepted by the City and the Prospect Heights-Old Town Sanitary District, as the case may be, Trustee hereby grants to the Unit Owners a non-exclusive easement appurtenant to the Parcel, including any Additional Parcel submitted to the Act pursuant to Paragraph 24 hereof, to

UNOFFICIAL COPY

use those Utility Lines situated from time to time within the Parcel and the Future Development Parcel for the respective purposes for which such Utility Lines are intended.

(iii) Dedication: Termination of Easement.

(A) Trustee may transfer and dedicate the Streets or Utility Lines or any part thereof, to the City or the Prospect Heights-Old Town Sanitary District (as the case may be) from time to time without the consent of the Unit Owners or any Mortgagee. The easements granted hereby shall terminate as to any portion of the Street Easement Parcel or Utility Lines so transferred and dedicated from time to time upon such transfer and dedication and acceptance by the grantee thereof.

(iv) Maintenance.

The Association shall, at its sole cost, maintain, repair and replace (x) all portions of the Streets (including all fixtures therein and thereon) lying within the Street Easement Parcel, (y) all Utility lines situated in the Parcel and (z) prior to development of the Future Development Parcel (other than for submission to the Act as an Additional Parcel), all Utility Lines situated on the Future Development Parcel and serving the Property, during the term of the easements granted hereby in the same manner as though the Streets and Utility Lines were part of the Common Elements: hereunder so that the Streets and Utility Lines will be in a condition suitable for acceptance of dedication and transfer by the grantees thereof.

(v) Amendment to Easements.

The Trustee may, without the consent of the Unit Owners or any Mortgagee, amend the Street Easement Parcel from time to time to add portions of the Streets which may be constructed from time to time.

8. USE OF THE COMMON ELEMENTS.

(a) Right to Use the Common Elements. Each Unit Owner shall have the right to use the Common Elements (subject to any leases, concessions, licenses or easements made by or assigned to the Association), except the Limited Common Elements, in common with all other Unit Owners, as may be required for the purposes of access and ingress to, egress from, and use, occupancy and enjoyment of the Unit owned by such Unit Owner. A group of Unit Owners shall have the right to the exclusive use and possession of any Limited Common Elements serving their Units jointly and any single Unit Owner shall have the right to the exclusive use and

UNOFFICIAL COPY

possession of any Limited Common Element serving his own Unit alone. Such rights to use the Common Elements and to the exclusive use and possession of the Limited Common Elements shall extend not only to each Unit Owner but also to his agents, servants, tenants, family members, invitees and licensees. However, said rights to use the Common Elements and to the exclusive use and possession of the Limited Common Elements, shall be subject to and governed by the provisions of the Act, the Declaration, the Bylaws and the rules and regulations of the Association.

(b) Blanket Easement In Favor of Developer and Other Parties and Other Easements. The right of the Unit Owners to use and possess the Common Elements as set forth in Paragraph 8(a) hereof shall be subject to a blanket easement over the Common Elements (including those now or hereafter located on any Additional Parcel) in favor of the Trustee and Developer, and their respective representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purposes of (i) access and ingress to and egress from the Common Elements and the Future Development Parcel or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, roads, buildings, landscaping and any other improvements on the Parcel or the Future Development Parcel or any part thereof, (iii) tapping into and using sewer, water or other utility lines on or adjacent to the Parcel or the Future Development Parcel, (iv) the installation and maintenance of signs advertising the residences constructed or to be constructed on the Parcel and the Future Development Parcel or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with such residences, and (v) any other development of the Future Development Parcel or any part thereof. The foregoing easements shall continue until such time as the rights of Trustee to submit Additional Parcels to the Act have expired and neither the Trustee nor the Developer holds legal title to, or the beneficial interest in any trust holding legal title to, any Units, at which time such easements shall cease and be of no further force and effect without the necessity of any further action. The foregoing easements shall be deemed and taken to be covenants running with the land. In addition, the Association, and the Board on behalf of the Association, shall, without the consent of the Unit Owners or any Mortgagee, have the authority to lease or grant concessions, licenses or easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the Bylaws, including, without limitation, any parking area or storage area. In pursuance of the foregoing power, the Board shall, upon the request of the City, grant a perpetual easement across the Common Elements for purposes of a fire access lane from Country Club Drive to the property designated as Tract G on Exhibit E hereto to the owners from time to time of said property. All revenues derived by the Association from such licenses, easements, leases or concessions or from other sources shall be held by the Association and used for the sole benefit of the Unit Owners, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe. Nothing contained in this Paragraph 8(b) shall be interpreted as limiting the powers reserved in Paragraph 7(b) hereof.

UNOFFICIAL COPY

(c) Blanket Utility and Commercial Entertainment Easements. The rights of the Unit Owners to use and possess the Common Elements as set forth in Paragraph 8(a) hereof shall be subject to a blanket easement over the Common Elements (including those now or hereafter located on any Additional Parcel) in favor of the City, Illinois Bell Telephone Company, Commonwealth Edison Company, Northern Illinois Gas Company, the Prospect Heights-Old Town sanitary District, all other public utilities serving the Property and any person providing cable television or other commercial entertainment to any Unit Owners or to the Property, granting such utilities or persons, as the case maybe, the right to lay, construct, renew, operate and maintain conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment including housings for such equipment, into, over, under, along, and through the Common Elements for the purpose of providing utility and commercial entertainment services to the Property, any Additional Parcel or the Future Development Parcel, or any parts thereof, together with reasonable rights of ingress to and egress from the Property for such purpose, and granting further such utilities and other entities the right to install, lay, operate, maintain, repair and replace any pipes, electrical wiring, ducts, conduits, cables, public utility and commercial entertainment lines or structural components running through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries. The Board may hereafter grant other or additional easements for utility or commercial entertainment purposes for the benefit of the Property or any part or all of any Additional Parcel or the Future Development Parcel, over, under, along and on any portion of said Common Elements, and each Unit Owner and each Mortgagee hereby grants the Board an irrevocable power of attorney coupled with an interest to execute, acknowledge and record in the name of such Unit Owner, such instruments as may be necessary or appropriate to effectuate the foregoing.

The Trustee hereby reserves to itself and the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or Mortgagee; (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 Paragraph 8(c) to such utility or other entity shall be limited to the area or areas located within ten feet on either side of the equipment of such utility or other entity shown on such supplement or additional supplement. A power coupled with an interest is hereby granted to the Trustee and 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 shall be deemed a grant of such power to each of said attorneys-in-fact, an

UNOFFICIAL COPY

acknowledgement of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to record any and all such supplements.

(d) Easement for Use and Enjoyment of Certain Common Elements.

(i) Recreation Easement. The rights of the Unit Owners to use and possess the Common Elements set forth in Paragraph 8(a) hereof shall be subject to a perpetual blanket easement (the "Recreation Easement") over the Common Elements (including those now or hereafter located on any Additional Parcel), in favor of the Trustee and Developer and their respective representatives, agents, associates, successors and assigns, and any person or persons leasing or owning residential dwellings located on any part of the Future Development Parcel that has not been submitted to the Act and annexed to the Parcel pursuant to Paragraph 24 hereof, and such person's or persons' agents, subtenants, servants, family members and invitees, for the benefit of such part or parts of the Future Development Parcel and for the purpose of access and ingress to, egress from and the use, benefit and enjoyment of the Recreational Facilities, equivalent to the use, benefit and enjoyment of such Recreational Facilities by Unit Owners and their agents, tenants, servants, family members and invitees, subject to the provisions of this Declaration and the Bylaws and such rules and regulations as the Board may adopt which are applicable to the use and enjoyment of such Recreational Facilities by Unit Owners and their agents, tenants, servants, family members and invitees. The Recreation Easement shall terminate as to any part of the Future Development Parcel submitted to the Act as an Additional Parcel. Upon any conveyance by the Trustee of the Future Development Parcel or any portion thereof, the Trustee's and Developer's rights and obligations with respect to the Recreation Easement which are appurtenant to the portions of the Future Development Parcel so conveyed shall respectively inure to and bind the grantee. Upon any such conveyance, the Developer shall be relieved from the obligation to pay the Recreation Fee payable with respect to the portion of the Future Development Parcel or the portion thereof being sold being conveyed.

(ii) Recreational Fee and Recreation Budget. If there are any residential dwellings situated on portions of the Future Development Parcel that have not been submitted to the Act and annexed to the Parcel pursuant to Paragraph 24 hereof and such residential dwellings have been leased and occupied or sold and deeds delivered therefor, then in such event:

(A) Trustee agrees to cause the Developer to pay monthly to the Association a fee (the "Recreation Fee"), in an amount equal to one-twelfth (1/12) of its proportionate share (determined as hereinafter provided in this Paragraph 8(d)) of the net annual expenses of administration, operation and maintenance of the Recreational Facilities in a first class manner. Developer's obligation to pay

UNOFFICIAL COPY

the Recreation Fee, if any, shall be in addition to any of Developer's obligations under Paragraph 13(b) hereof.

(B) The Board shall cause to be prepared, in accordance with this Declaration and the Bylaws, an estimated annual budget for the administration, operation and maintenance of the Recreational Facilities for each such fiscal year of the Association during which it is anticipated that the Developer will owe a Recreation Fee. Said annual budget shall take into account the estimated net available income for such year from the operation or use of the Recreational Facilities and shall provide for a reserve for contingencies for the year and a reserve for replacements with respect to the Recreational Facilities, all in reasonable amounts as determined by the Board. To the extent that the income collected with respect to the Recreational Facilities for such preceding year shall be more or less than the expenditures incurred with respect to the Recreational Facilities for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The estimated annual budget for the administration, operation and maintenance of the Recreational Facilities for each fiscal year, and any amendments or changes thereto, shall be subject to the approval of the Board and the Developer. On or before the first day of the first month and of each succeeding month of the year covered by such annual budget, the Trustee shall cause the Developer to pay, as its monthly Recreation Fee, an amount equal to one-twelfth (1/12) of its proportionate share (calculated as set forth below) of the net expenses of administration, operation and maintenance of the Recreational Facilities, as shown by such annual budget. As to the budget for any fiscal year which is less than a full year, the monthly payments payable by the Developer shall be proportionate to the number of months and days covered by such budget. The Developer's proportionate share of the expenses of the Recreational Facilities shall be determined by comparing the number of residential dwellings located on such portions of the Future Development Parcel that have not been submitted to the Act and annexed to the Parcel pursuant to Paragraph 24 hereof, and which have been leased and occupied, or sold and deeds delivered therefor, as of the first day of such fiscal year, with the number of Units on the Parcel, adjusted equitably, however, for any significant differences in size between the residential dwellings on such portions of the Future Development Parcel and the Units on the Parcel. If, during any calendar month, there shall be a change in the ratio of (x) the number of residential dwellings located on such portions of the Future Development Parcel that have not been submitted to the Act and annexed to the Parcel, and which have been leased and occupied, or sold and deeds delivered therefor, to (y) the number of Units on the Parcel, then, at the end of any calendar month during which such change occurs, the amount of the monthly Recreation

UNOFFICIAL COPY

Fee for the months remaining in the then current fiscal year (beginning with the next calendar month) shall be correspondingly adjusted. If there are no such residential dwellings which have been leased and occupied, or sold and deeds delivered therefor, on the portions of the Future Development Parcel that have not been submitted to the Act and annexed to the Parcel, the Trustee and Developer (and any other legal title holder to the Future Development Parcel or any portion thereof) shall have no obligation to pay any part of the aforesaid net expenses of administration, operation and maintenance of the Recreational Facilities and said expenses shall be paid by the Unit Owners as part of the Common Expenses. In the event that the Board shall not approve an estimated annual budget or shall be delayed in doing so, the Trustee shall cause the Developer to continue to pay each month the amount of his respective monthly payment of the Recreation Fee as last determined, unless the Trustee and Developer have been relieved of the obligation to pay the Recreation Fee as herein provided. The Developer shall pay its monthly payment on or before the first day of each month to the Managing Agent or as may be otherwise directed by the Board. Within 90 days after the end of each fiscal year covered by such annual budget, the Board shall cause to be furnished to the Developer a statement for such year so ended, prepared by a certified public accountant licensed by the State of Illinois and showing the receipts and expenditures and such other information as the Board and the Developer may deem desirable. If during the course of any fiscal year it shall appear to the Board that the monthly Recreation Fee and the portion of the monthly assessments paid by the Unit Owners earmarked for the administration, operation and maintenance of the Recreational Facilities shall not be adequate for such administration, operation and maintenance for the remainder of such fiscal year, then the Board shall prepare a supplemental budget to be approved by the Developer and the Board, covering the estimated deficiency for the remainder of the year and thereupon supplemental monthly payments shall be made to the Association by the Developer, in the amount of the Developer's proportionate share of such supplemental budget in accordance with this Paragraph 8(d)(ii)(B), the remainder of such supplemental budget to be paid by the Unit Owners in accordance with Article IV, Section 5 of the By Laws.

(iii) Release of Rights Under Recreation Easement. If the Trustee and Developer at any time release their rights under the Recreation Easement with respect to all or any part of the Future Development Parcel owned by them and then not submitted to the Act, then as of the date of such release, the Trustee and Developer shall be relieved of the obligation to pay the Recreation Fee with respect to the portion of the Future Development Parcel so released. If the Trustee and Developer at any time release their rights under the Recreation Easement with respect to all of the Future Development

UNOFFICIAL COPY

Parcel, the aforesaid provisions of this Paragraph 8(d) requiring the Developer's approval with respect to the annual budget for the administration, operation and maintenance of the Recreational Facilities shall no longer be in effect. If any person or persons to whom any portions of the Future Development Parcel have been conveyed or their successors and assigns at any time release their rights under the Recreation Easement with respect to all or any part of the Future Development Parcel then not submitted to the Act, then as of the date of such release, any person or persons who may be liable for part or all of the Recreation Fee shall be relieved of the obligation to pay the Recreation Fee with respect to the portion of the Future Development Parcel so released.

(e) Easement Over Private Roads.

(i) Private Roads. The term "Private Roads" shall mean collectively all private roads from time to time located on the Parcel, including any Additional Parcel, together with any curbs fronting and abutting such roads and any streetlights serving such roads. The Private Roads shall not be deemed to include any driveway serving solely a single Unit or Units located in a single Building.

(ii) Reservation of Easement. Notwithstanding the submission of the Parcel and any Additional Parcel to the Act pursuant to Paragraph 24 hereof and subject to the limitations set forth below in this subparagraph 8(e)(ii), Trustee reserves from each such submission a non-exclusive perpetual easement appurtenant (the "Private Road Easement") over the Private Roads in favor of Trustee and Developer and all succeeding owners of any portion of the Future Development Parcel (as in existence now or hereafter) served by the Private Roads or any extension thereof from time to time hereafter, for purposes of access and ingress to, and egress from, any residential dwelling from time to time on or being constructed on the Future Development Parcel or any portion thereof. The rights of each beneficiary of the Private Road Easement shall be limited to use of the Private Road serving his respective dwelling(s). The Private Road Easement shall also be for the benefit of the respective representatives, agents, tenants, servants, contractors, family members, licensees and invitees of the beneficiaries of the Private Road Easement, provided that the rights of any such Person claiming under any beneficiary of the Private Road Easement shall be limited to use of the Private Road serving the dwelling(s) of the beneficiary through whom such Person's rights arise. The Private Road Easement shall terminate (a) as to each portion of the Future Development Parcel submitted to the Act upon the submission of each such portion and (b) as to each Private Road at such time as all land abutting such Private Road has been submitted to the Act. Notwithstanding the expiration of the rights of Trustee and Developer to submit Additional Parcels to the Act, the Private Road Easement shall continue in full force and effect, except that, for the purposes of determining the parcel benefitted by the Private

UNOFFICIAL COPY

Road Easement, after such expiration the Future Development Parcel shall be deemed to be the Future Development Parcel as it existed on the date of such expiration. Because it is now impossible to specifically describe the parcels benefitted and burdened by the Private Road Easement, Trustee and Developer may from time to time record supplements to the Private Road Easement setting forth more specific descriptions of the parcels burdened and benefitted thereby, and upon and after the recording of, each such supplement the parcels specifically described therein burdened and benefitted by the Private Road Easement shall be deemed located as shown therein until, such supplement is superseded by a subsequent supplement, Subject to the provisions of the immediately preceding sentence, the Private Road Easement may not be modified, amended or terminated without the prior written consent of Trustee, Developer and the holders of legal title to all portions of the Future Development Parcel abutting any of the Private Roads or any extensions thereof, provided that the Association may from time to time relocate any of the Private Roads so long as such relocation does not unreasonably interfere with access and ingress to, and egress from, any portion of the Future Development Parcel abutting any of the Private Roads or any extension thereof.

(iii) Maintenance of Private Roads. The Private Roads are and shall remain Common Elements, and as Common Elements shall be repaired, maintained and replaced by the Association as reasonably necessary from time to time. The costs of such repair, maintenance and replacement shall be part of the Common Expenses, subject to subparagraph (iv) immediately following.

(iv) Reimbursement of Association. If there are any residential dwellings ("Adjacent Dwellings") (x) situated on portions of the Future Development Parcel that have not been submitted to the Act and annexed to the Parcel pursuant to Paragraph 24 hereof, (y) which have been leased and occupied or sold and deeds delivered therefor, and (z) the primary means of which access and ingress to, and egress from, is over the Private Roads or any of them, then in such event:

(A) The Board shall cause to be prepared, in accordance with this Declaration and the Bylaws, an estimated annual budget for the maintenance and repair of, and a reserve for the replacement of, the Private Roads. To the extent that the budget (excluding amounts set aside for reserves) for the Private Roads for the preceding year shall have been more or less than the expenditures incurred with respect to the Private Roads for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. If at any time Trustee or Developer holds legal title to, or the beneficial interest in a land trust holding legal title to, any of the Adjacent Dwellings, then such estimated budget (and any

UNOFFICIAL COPY

supplemental budget prepared as set forth below) shall be subject to the approval of Developer.

(B) The holder of legal title to each Adjacent Dwelling as of the first day of each fiscal year shall pay to the Association on or before the thirtieth (30th) day of such fiscal year its proportionate share (calculated as set forth below) of the budget for the Private Roads for such fiscal year. Such proportionate share for each Adjacent Dwelling shall be the amount of the budget for the Private Roads for such fiscal year divided by the sum of the number of Adjacent Dwellings and the number of Units in existence as of the first day of such fiscal year. No sums collected for maintenance and repair of, or for reserves for replacement of, the Private Roads, shall be used or applied for any other purpose.

(C) If during the course of any fiscal year it shall appear to the Board that the estimated annual budget for the Private Roads for such fiscal year was insufficient for necessary maintenance, repairs and replacements, then the Board shall prepare a supplemental budget covering the estimated deficiency for the remainder of the year and thereupon a supplemental payment shall be made by the holders of legal title to each Adjacent Dwelling as of the date such supplemental budget is approved by the Board in their respective proportionate shares calculated in the same manner as set forth in subparagraph 8(e)(iv)(B) above, the remainder of such supplemental budget to be paid by the Unit Owners in accordance with Article IV, Section 5 of the Bylaws.

(f) Amendment. Subject to the more specific limitations on amendment contained above in this Paragraph 8, this Paragraph 8 cannot be amended or deleted without the consent of (i) all legal title holders of any part of the Future Development Parcel and (ii) the Developer, prior to the expiration of the rights of Trustee to submit Additional Parcels to the Act. In the event of an inconsistency between the limitations on amendment contained in this subparagraph 8(f) and limitations contained elsewhere in this Paragraph 8, the limitations contained elsewhere in Paragraph 8 shall prevail.

9. PARKING AREAS. The uncovered parking areas on the Property shall be part of the Common Elements. The cost of maintenance and upkeep of said uncovered parking areas shall be a common expense as defined in Paragraph 13, subject to the provisions of Paragraph 17 below. The Board shall have the authority to operate, manage and use, for and on behalf of the Unit Owners, all such uncovered parking areas and to adopt such regulations as it shall deem necessary governing the use of all such uncovered parking areas.

UNOFFICIAL COPY

10. BALCONIES, ETC. Any balcony structure, patio, stoop, exterior walkway, exterior stairway or exterior stairway landing serving exclusively a single Unit or adjoining Units shall be a Limited Common Element serving said Unit or Units, subject to such rules and regulations as the Board may prescribe. Pursuant to the provisions of Paragraph 17 below, the cost of maintenance, repair and replacement of said balcony structure, patio, stoop, exterior walkway, exterior stairway or exterior stairway landing may be assessed in whole or in part to Unit Owners benefited 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 Owners, and to procure and deliver to the Board such lien waivers and contractor's and sub-contractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's liens or claims that may arise therefrom.

11. HEATING AND COOLING UNITS. The heating and cooling equipment serving any Unit (except for the heating and cooling equipment which is installed by a Unit Owner other than the Trustee), including, without limitation, wiring, electrical elements and ducts related thereto located in any wall, ceiling or floor of said Unit, shall be a Limited Common Element serving said Unit, subject to such rules and regulations as the Board may prescribe. Any such heating and cooling equipment installed by a Unit Owner other than the Trustee, including, without limitation, wiring, electrical elements and ducts related thereto located in any wall, ceiling or floor of a Unit, shall be the property of the Unit Owner so installing said equipment. Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to, replacements of and additions to the heating and cooling equipment serving his Unit, regardless of whether such equipment is a Limited Common Element or the property of the Unit Owner, and, at the discretion of the Board, the Board may direct such Unit Owner, in the name and for the account of such Unit Owner, 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 and sub-contractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's liens or claims that may arise therefrom.

12. RECREATIONAL FACILITIES. The Recreational Facilities shall be part of the Common Elements. Each Unit Owner shall have the right to use the Recreational Facilities (subject to the provisions of Paragraph 8(b), 8(c) and 8(d) hereof, and any leases, concessions, or easements made by or assigned to the Association) in common with all other Unit Owners. However, such use shall be subject to and governed by the provisions of the Act, the Declaration and the Bylaws and by the rules and regulations of the Association. Such right to use the Recreational Facilities shall extend not only to each Unit Owner but also to his agents, tenants, family members and invitees. The Association and the Board on behalf of the Association shall have the authority to lease or grant concessions or easements with respect to any part or all of the

UNOFFICIAL COPY

Recreational Facilities, subject to the provisions of this Declaration and the Bylaws. All income derived by the Association from such leases, easements or concessions or from any other sources related to the Recreational Facilities shall be held and used by the Association for the sole benefit of the members of the Association, pursuant to such rules, resolutions or regulations as the Board may adopt or prescribe.

13. COMMON EXPENSES.

(a) General. Except as provided in this Paragraph 13 and in the By Laws and subject to the provisions of paragraph 1(k) hereof, each Unit Owner shall pay his proportionate share of the Common Expenses. Except as provided herein and in the Bylaws, such proportionate share of the Common Expenses for each Unit Owner shall be in accordance with his percentage of ownership in the Common Elements. Payment of Common Expenses, including any prepayment thereof required by any contract for sale of a Unit, shall be in such amounts and at such times as determined in the manner provided in the Bylaws. If any Unit Owner shall fail or refuse to make any payment of the Common Expenses when due, the amount thereof together with interest thereon at the Interest Rate from the date said Common Expenses become due and payable until paid together with costs and attorneys' fees and expenses, if any, incurred by the Association, shall constitute a lien on the interest of such Unit Owner in the Property as provided in the Act; provided, however, such lien shall be subordinate to the lien of a prior recorded encumbrance on the interest of such Unit Owner, except for the amount of the proportionate share of Common Expenses which first becomes due and payable from and after the earliest of the date (the "Priority Date") on which the encumbrance owner or holder (or the grantee in any sheriff's deed or marshal's deed) takes possession of the Unit, accepts a conveyance of any interest therein (other than as security) or causes a receiver to be appointed. The sole liability of the encumbrance owner or holder (or the grantee in any sheriff's deed or marshal's deed) for assessments shall be the amount first becoming due and payable after the Priority Date and the lien for all assessments first becoming due and payable prior to the Priority Date shall be extinguished thereon. In a voluntary conveyance of a Unit (other than a conveyance in lieu of foreclosure), the grantee of the Unit shall have no personal liability for assessments which accrue before the Unit is conveyed to such grantee unless such liability is assumed by such grantee; provided, however, that such voluntary conveyance shall not extinguish the lien for assessments on such Unit. Any person or entity which has contracted to purchase a Unit shall be entitled to a statement from the Board setting forth the amount of the unpaid Common Expenses against the grantor due the Association and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Common Expenses in excess of the amount therein set forth. This Paragraph 13(a) shall not be amended or deleted (i) without the prior written consent of all Mortgagees and (ii) without the consent of the Developer, as long as either (a) Trustee owns any Unit or (b) the rights of Trustee to submit Additional Parcels to the Act have not expired or been released.

UNOFFICIAL COPY

(b) Developer's Share of Common Expenses. The above Paragraph 13(a) notwithstanding, the Trustee, the Developer, or any assignee of the Developer's interest as beneficiary of the Trustee, in lieu of paying its proportionate share of the Common Expenses as a Unit Owner, may, at its election, pay the difference (if any) remaining after deducting (i) the amount due to the Association from the Unit Owners other than the Trustee, the Developer, or any assignee of the Developer's interest as beneficiary of the Trustee, pursuant to the Declaration and this Paragraph 13, from (ii) the aggregate actual operating expenses (hereinafter defined) from time to time required to be paid in connection with the operation of the Property, provided, that in no case shall the Trustee, the Developer, or any assignee of the Developer's interest as beneficiary of the Trustee pay less than its proportionate share of the Common Expenses. For purposes of this paragraph, "aggregate actual operating expenses" means all costs and expenses incurred in the operation of the Common Elements, but not including any costs for the Maintenance Reserve or any other reserves or any expenditures for capital improvements or replacements to the Common Elements.

(c) Expenses of Special Limited Common Elements. Notwithstanding anything herein to the contrary, the electricity used to operate each Special Limited Common Element shall be paid for by the Unit Owner to whose electrical system such Special Limited Common Element is connected and shall not be a part of the Common Expenses.

14. MORTGAGES. Each Unit Owner shall have the right, subject to the provisions herein, to make separate mortgages for his respective Unit together with his respective ownership interest in the Common Elements.

The prior written approval of the First Mortgagees of not less than seventy-five percent (75%) of the Units with respect to which there is a First Mortgagee will be required for:

(a) The abandonment or withdrawal of the Property from the Act, except for abandonment or withdrawal provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Any material amendment to the Declaration or to the Bylaws of the Association, including, but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Elements or would abandon, partition, subdivide, encumber (other than by an easement or license), sell or transfer the Common Elements (except for an amendment expressly authorized by the provisions of Paragraphs 3, 7, 16, 24, the second to last grammatical paragraph of Paragraph 14 or the first grammatical paragraph of Paragraph 25 hereof);

UNOFFICIAL COPY

(c) Use of hazard insurance proceeds from losses to the Property other than for repair, replacement or reconstruction of the affected portion of the Property;

(d) Notwithstanding anything herein to the contrary requiring approval of any mortgagee or lien holder of record, and if the mortgagee or lien holder of record receives a request to approve or consent to an amendment to the Declaration and/or Bylaws, the mortgagee or lien holder of record is deemed to have approved or consented to the request unless the mortgagee or lien holder of record delivers a negative response to the requesting party within sixty (60) days after the mailing of the request. A request to approve or consent to an amendment to the Declaration and/or Bylaws that is required to be sent to a mortgagee or lien holder of record shall be sent by certified mail.

Each Mortgagee, upon written request, shall be entitled to:

(i) inspect the books and records of the Association during normal business hours;

(ii) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Association;

(iii) receive written notice of all meetings of the Association and shall be permitted to designate a representative to attend all such meetings; and

(iv) receive written notice in the event of (1) substantial damage to or destruction of its respective Unit mortgagor's Unit or the Common Elements, (2) institution of any condemnation or eminent domain proceeding with respect to any Unit, the Common Elements or any substantial portion thereof, or (3) any lapse, cancellation or material modification of any insurance policy required to be carried with respect to the Property or any part thereof pursuant to Paragraph 16(b) below.

The Association shall upon written request of any First Mortgagee give such First Mortgagee prompt notice of any default in its respective Unit mortgagor's obligations under the Declaration and the Bylaws which is not cured within 30 days after written notice of such default from the Association to such Unit Owner; provided, that the foregoing shall not impair the right of the Association to pursue any remedies available to it or resolve or cure any such default.

A power coupled with an interest is hereby granted to the Trustee, acting by or through its duly authorized officers, its successors, or its designee, and to the Developer, and their agents, and each of them singly, as attorney-in-fact, to amend the Declaration as

UNOFFICIAL COPY

may be required in order (i) to induce any lender to make loans for the construction of Units or other improvements on the Parcel or the Future Development Parcel or (ii) to induce any governmental or quasi-governmental authority to make, buy, sell, guarantee or insure mortgages granted by Unit Owners or Unit purchasers. Each deed, mortgage, trust deed or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgement of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Declaration, as described above.

No Unit Owner shall have the right or authority to make or create, or cause to be made or created, any mortgage, trust deed or other lien on or affecting the Property or any part thereof, except to the extent of his own Unit, the respective percentage interest in the Common Elements corresponding thereto, and any easement appurtenant to his interest therein.

15. SEPARATE REAL ESTATE TAXES. Real estate taxes shall be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements during the years for which the taxes are being paid and, in such event, said taxes shall be a Common Expense.

16. DAMAGE OR DESTRUCTION AND RESTORATION OF THE PROPERTY INSURANCE AND EMINENT DOMAIN.

(a) Damage or Destruction and Restoration of the Property. If the Recreational Facilities or any part thereof shall suffer damage or destruction from any cause (including, but not limited to fire, other casualty or partial taking by condemnation or eminent domain of any of the Recreational Facilities), the Association shall have the duty to promptly restore the Recreational Facilities to substantially the same condition in which they existed prior to such damage or destruction. If the Association shall default in any of the foregoing obligations and if such default shall continue for thirty (30) days after notice thereof in writing to the Board, then, and in such event, the Trustee and the Developer shall have the right (but not the obligation) to repair, restore or reconstruct the Recreational Facilities. In the event the Trustee or the Developer exercises the rights as aforesaid granted, the Board or the corporate trustee provided for in Paragraph 16(b) below, if any, shall deliver the insurance proceeds to the Trustee or the Developer to the extent required to pay for such repair, restoration or reconstruction of the Recreational Facilities. To the extent that the amount of money expended by the Trustee or the Developer, as the case may be, to pay for such repair, restoration or reconstruction of the

UNOFFICIAL COPY

Recreational Facilities is in excess of the insurance proceeds delivered to the Trustee or the Developer, as the case may be, such excess amount shall be a demand obligation owing by the Association to the Trustee or the Developer, as the case may be, bearing interest at the Interest Rate from the date written demand for repayment thereof is given until the repayment thereof by the Association. Any such amount expended by the Trustee or Developer as aforesaid shall be a Common Expense which the Board shall assess and levy against the Unit Owners, but the Board shall not be required to obtain Unit Owners' approval for any assessment made hereunder. The Association shall promptly remit payments received thereon to the Trustee or the Developer, as the case may be. This first paragraph of Paragraph 16(a) shall be deemed a covenant running with the land and shall not be amended or deleted without the prior written consent of all legal title holders of the Future Development Parcel or any portion thereof not submitted to the Act, other than those legal title holders who have released all of their rights pursuant to subparagraph 8(d)(iii) hereof. This first paragraph of Paragraph 16(a) shall not be amended or deleted without the prior written consent of Developer so long as Trustee owns any Unit.

Subject to the provisions of the first grammatical paragraph of this Paragraph 16(a), in the event the Property or any part thereof shall suffer damage or destruction from any cause and the proceeds of any policy insuring against such loss or damage, and payable by reason thereof, shall be insufficient to pay the cost of repair, restoration or reconstruction or the Property is not insured against the peril causing the loss or damage, and the Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction, repair or restoration within 180 days after said damage or destruction, then the provisions of the Act shall apply. The proceeds of such insurance, if sufficient to reconstruct the Property, shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of the Property; or shall be otherwise disposed of, in accordance with the provisions of this Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act with respect to the application of insurance proceeds to reconstruction of the Property.

Subject to the provisions of the first grammatical paragraph of this Paragraph 16(a), in the event that fewer than one-half (1/2) of the Units are rendered uninhabitable because of fire or other casualty and the proceeds of any policy insuring against such loss or damage, and payable by reason thereof, shall be insufficient to pay the cost of repair, restoration or reconstruction or the affected Property is not insured against the peril causing the loss or damage, the Board, or the corporate trustee (if it is so willing) on behalf of the Board, upon the affirmative vote of the Unit Owners of not fewer than seventy-five percent (75%) of the Units voting at a meeting duly called for that purpose, may arrange for the repair, restoration and reconstruction of the affected Property. The said meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any, or within ninety (90) days of the occurrence, whichever is earlier. At

UNOFFICIAL COPY

such meeting, the Board, or its representative, shall present to the members present an estimate of the cost of repair, restoration, and reconstruction and the estimated amount of necessary assessments against each Unit Owner.

Subject to the provisions of the first grammatical paragraph of this Paragraph 16(a), in the event the Property or any part thereof shall suffer damage or destruction from fire or other casualty and the proceeds of any policy insuring against such loss or damage, and payable by reason thereof, shall be insufficient to pay the cost of repair, restoration, or reconstruction or the affected Property is not insured against the peril causing the loss or damage, then, upon the affirmative vote of the Unit Owners of a majority of the Units voting at a meeting duly called for that purpose, the President of the Association shall execute and record an amendment to the Declaration for the purpose of withdrawing the affected portion of the Property or any part thereof from the provisions of the Declaration. Such amendment to the Declaration shall contain an amended plat of survey of the condominium area and a reallocation of the percentage of interest in the Common Elements appurtenant to each Unit as hereinafter provided. Upon the recording of such an amendment to the Declaration, no assessment attributable to the period after recording of the amendment shall be required for such withdrawn portions of the Property. The percentage of interest in the Common Elements appurtenant to any withdrawn 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, and such reduced percentage of interest shall be used in computing future assessments. The payment of just compensation, or the allocation of any insurance, or other proceeds to any withdrawing or remaining Unit Owner or his respective Mortgagee, as their interests appear, shall be on an equitable basis determined by the Board, which basis need not be a Unit's percentage interest in the Common Elements. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, other than Limited Common Elements shall be allocated on the basis of each Unit Owner's percentage interest herein. The proceeds available from the withdrawal of any Limited Common Elements shall be distributed in accordance with interests of those entitled to their use, as reasonably determined by the Board.

(b) Insurance. The Board shall have the authority to and shall obtain insurance for the Property (exclusive of the additions within, improvements to and decorating of the Units or Limited Common Elements by the Unit Owners) against loss or damage by fire, debris removal, lightning, windstorm, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Elements and the Units, and against such other hazards and for such amounts as the Board may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the Common Elements, Units or any part thereof to substantially the same condition in which they existed

UNOFFICIAL COPY

prior to the damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to the Association, as the trustee for each of the Unit Owners in direct ratio to said Unit Owner's respective percentage of ownership in the Common Elements, as set forth in the Declaration, and for the holders of mortgages on his Unit, if any, and for the Trustee and the Developer with respect to the interest of the Trustee and the Developer in the Recreational Facilities, pursuant to Paragraph 8(d)(i). All policies of insurance shall contain a waiver of any possible coinsurance penalty or an agreed amount endorsement for the blanket property limit of liability, and a waiver of any defenses based upon invalidity arising from the acts of the insured, and shall contain a waiver of subrogation rights by the insurer against individual Unit Owners, and against the Trustee and Developer and all employees and agents of each of them and all tenants and others holding through or under Trustee and Developer, and shall cover claims of one or more insured parties against other insured parties. All policies of property insurance shall provide that notwithstanding any provisions thereof which give the insurer the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable without the prior written approval of the Association or when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party, or any requirement of law. Premiums for such insurance shall be a Common Expense. During the period while the improvements to the Property are still under construction, the above insurance requirements shall be deemed satisfied by the so-called "All-Risk Builders Risk" insurance and fire and extended coverage insurance written on a completed value basis for the full insurable value of the improvements under construction on the Property. Notwithstanding anything herein to the contrary, no policy of insurance shall be issued or delivered to the Association, and no policy of insurance issued to the Association shall be renewed, unless the insurance coverage under the policy includes property insurance (i) on the Common Elements and the Units, including the Limited Common Elements and except as otherwise determined by the Board, the bare walls, floors, and ceilings of the Unit, (ii) providing coverage for special form causes of loss, and (iii) providing coverage, at the time the insurance is purchased and at each renewal date, in a total amount of not less than the full insurable replacement cost of the insured property, less deductible, but including coverage sufficient to rebuild the insured property in compliance with building code requirements subsequent to an insured loss, including: the Coverage B, demolition costs; and Coverage C, increased cost of construction coverage. The combined total of Coverage B and Coverage C shall be no less than ten percent (10%) of each insured building value or \$500,000 whichever is less. The insurance maintained under this subsection must include the Units, the Limited Common Elements except as otherwise determined by the Board, and the Common Elements. The insurance need not cover improvements and betterments to the Units installed by Unit Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected. Common Elements include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual Units initially installed by the developer. Common Elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" means all decorating, fixtures, and

UNOFFICIAL COPY

furnishings installed or added to and located within the boundaries of the Unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, built-in cabinets installed by Unit Owners, or any other additions, alterations, or upgrades installed or purchased by any Unit Owner.

The Board shall also have authority to and shall obtain comprehensive public liability insurance. No policy of insurance shall be issued or delivered to the Association, and no policy of insurance issued to the Association shall be renewed, unless the insurance coverage under the policy includes commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees and agents and all persons acting as agents. The Unit Owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance must cover claims of one or more insured parties against other insured parties.

Property and general liability insurance policies required to be carried by the Association must include each of the following provisions:

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

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

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

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

UNOFFICIAL COPY

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

The Board of the Association may, in the case of a claim for damage to a Unit or the Common Elements, (i) pay the deductible amount as a common expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Unit Owners who caused the damage or from whose Units the damage or cause of loss originated, or (iii) require the Unit Owners of the Units affected to pay the deductible amount.

The Board must obtain directors and officers liability coverage at a level deemed reasonable by the Board, if not otherwise established by this Declaration or Bylaws. Directors and officers liability coverage must extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or this Declaration and Bylaws of the Association. The coverage required by this subsection shall include, but not be limited to, coverage of defense of non-monetary actions; defense of breach of contract; and defense of decisions related to the placement or adequacy of insurance. The coverage required by this subsection shall include as an insured: past, present, and future Board members while acting in their capacity as members of the Board of Directors; the managing agent; and employees of the Board of Directors and the managing agent.

The Board shall also have authority to and shall obtain workmen's compensation insurance and other liability insurance as it deems desirable insuring individually and severally, each Unit Owner (as to the Common Elements only), Mortgagees, if any (as to the Common Elements only) the Association, its officers, directors and Board, the Trustee, the Developer, the Managing Agent, and their respective officers, directors, employees, agents and all persons acting as agents, if any, from liability in connection with the use, management, existence and ownership of the Property and the streets and sidewalks adjoining the Property and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Each Unit Owner shall be included as an additional insured but only with respect to that portion of the Property not reserved for such Unit Owner's exclusive use. The Trustee, the Developer and each employee and officer of any joint venture of the Developer shall be included as additional insureds in their capacity as Unit Owner or member of the Board. Such insurance shall also contain a waiver of subrogation rights by the insurer against any of the above-named insured persons, and a waiver of any defenses based upon invalidity arising from the acts of the insured. Premiums for such insurance shall be a Common Expense. The Board shall retain in safe-keeping any public liability policy for twenty-three (23) years after the expiration date of the policy.

UNOFFICIAL COPY

The Association shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the Association, for the maximum amount of coverage available to protect funds in the custody or control of the Association, plus the Association reserve fund. All management companies that are responsible for the funds held or administered by the Association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The Association has standing to make a loss claim against the bond of the managing agent as a party covered under the bond. The fidelity bond must be in the full amount of Association funds and reserves in the custody of the Association or the management company. 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 expressions.

The Board shall also have authority to and may obtain errors and omissions insurance and any other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the Property and each member of the Board and officer of the Association, and member of any committee appointed pursuant to the Bylaws of the Association from liability arising from the fact that said person is or was a director or officer of the Association, or a member of such a committee. The premiums for such insurance shall be a Common Expense.

The Board shall also have the authority to and shall obtain any other insurance reasonably required by the Veterans Administration, the Federal Housing Authority, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any Mortgagee, in such amounts, from such sources and in such forms as it deems desirable.

All policies procured by the Board shall provide that coverage shall not be prejudiced by: (a) any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association or (b) failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control.

All policies of insurance shall contain standard mortgage clause endorsements in favor of each Mortgagee as its respective interest may appear and to the extent possible shall provide that such policy shall not be cancelled, terminated or substantially modified without at least thirty (30) days' prior written notice to each Mortgagee.

The premiums for all insurance in connection with the Common Elements shall be a Common Expense. However, at the option of the Board, and upon written notice to all Unit Owners, premiums for insurance shall be separately billed to each Unit Owner in proportion to his corresponding percentage of ownership in the Common Elements; provided, however, that

UNOFFICIAL COPY

any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units may, at the discretion of the Board, be assessed to such Units.

The Board shall notify insured persons concerning the cancellation of insurance obtained pursuant to the terms of this Paragraph 16(b).

The Board may engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and this Declaration. The fees of such corporate trustee shall be a common expense. In the event of any loss in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate, the Board shall engage a corporate trustee as aforesaid, or in the event of any loss resulting in the destruction of the major portion of one or more Units, the Board shall engage a corporate trustee as aforesaid upon the written demand of the Mortgagee or owner of any Unit so destroyed.

Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of a release of the insurance company's liability under such policy from the Board, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant thereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the Trustee, the Developer, the manager and Managing Agent of the Property, if any, and their respective employees and agents, and all tenants and others holding through or under the Trustee and Developer, for damage to the Common Elements, the Units, or to any personal property located in the Units 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; provided that this waiver and release shall be effective only if it does not affect the right of the insured under the applicable insurance policy to recover thereunder.

Each Unit Owner shall be responsible for obtaining his own insurance on the contents of his own Unit and on the contents of the Limited Common Elements serving his Unit, as well as his additions and improvements thereto, decorating, furnishings and personal property therein, and personal property stored elsewhere on the Property. In addition, in the event a Unit Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that his liability, loss or damage is covered by the liability insurance and

UNOFFICIAL COPY

insurance against loss or damage by fire and such other hazards obtained by the Board for all of the Unit Owners, as above provided, said Unit Owner may, at his option, obtain such additional insurance. In no event shall any insurance obtained by the Board under this Paragraph 16(b) be brought into contribution with insurance procured by Unit Owners or their respective Mortgagees in respect of their Units. The Board may require condominium Unit Owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another Unit caused by the negligence of the Unit Owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the Unit. The personal liability of a Unit Owner or Association member must include the deductible of the Unit Owner whose Unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

(c) Eminent Domain. If the state, a political subdivision or any corporation, agency, or authority shall seek to exercise a power of eminent domain against any of the Common Elements, the Board promptly after receiving notice thereof, shall notify each Unit Owner and each Mortgagee. The Board, on behalf of the Association, shall represent the Unit Owners in any condemnation proceedings and may negotiate, settle, or enter into agreements with the condemning authority on behalf of the Unit Owners. Each deed, mortgage, trust deed or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to the Board as attorney-in-fact for the Unit Owners, and an acknowledgement of and consent to such power. After the appropriate compensation has been paid by such authority and such authority becomes vested with fee simple title (or such lesser estate, interest, or easement) to the Common Elements or any portion thereof, the Board may authorize the President of the Association to execute and record an amendment to the Declaration for the purpose of withdrawing such portion of the Common Elements from the provisions of the Declaration. Such amendment to the Declaration shall contain an amended plat of survey of the condominium area. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of common Elements shall be allocated on the basis of each Unit Owner's percentage interest therein and shall be paid to the Unit Owners and their respective Mortgagees, as their interests appear. The proceeds available from the withdrawal of any Limited Common Element shall be distributed in accordance with the interests of those entitled to their use, as determined by the Board.

If the state, a political subdivision, or any corporation, agency or authority shall seek to exercise a power of eminent domain against any of the Units or any portion thereof, all Unit Owners affected shall, promptly after receiving notice thereof, notify the Association. After the appropriate compensation has been paid by such authority and such authority becomes vested with fee simple title (or such lesser estate, interest or easement) to such Units or portion thereof, the Board may authorize the President of the Association to execute and record an amendment to

UNOFFICIAL COPY

the Declaration for the purpose of withdrawing such property from the provisions of the Declaration. Such amendment to the Declaration shall also contain an amended plat of survey of the condominium area and a reallocation of the percentage of interest in the Common Elements appurtenant to each Unit as hereinafter provided. No assessments attributable to the period after the recording of the amendment to the Declaration shall be required for such withdrawn Unit or portion thereof, and the percentage of interest in the Common Elements appurtenant to such Unit or a portion thereof shall be reallocated among the remaining Units on the basis of 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 reasonably determined by the Board, and such reduced percentage of interest shall be used in computing future assessments. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, to be determined by the Board, and need not be the Unit's percentage interest in the Common Elements.

17. MAINTENANCE, REPAIRS AND REPLACEMENTS; RESERVE AND MAINTENANCE FUNDS.

(a) Maintenance, Repairs and Replacements of Units. Each Unit Owner, at his own expense, shall furnish and be responsible for all maintenance of, repairs to and replacements within his own Unit. Whenever the Board shall determine, in its discretion, that maintenance or repair of any Unit is necessary to protect the Common Elements or any other portion of the Property, the Board may cause a written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may, be served by delivering a copy thereof to any occupant of such Unit, or by mailing the same by certified or registered mail addressed to the Unit Owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair so be performed at the expense of such Unit Owner.

(b) Maintenance, Repairs and Replacements of Limited Common Elements. Except as otherwise specifically set forth in this Declaration, the Bylaws, or the rules and regulations of the Association, all maintenance, repairs and replacements of the Limited Common Elements shall be furnished by the Association, unless the Board directs any one or more Unit Owners in the name and for the account of such Unit Owners, to arrange for any maintenance, repairs and replacements to the Limited Common Elements serving the Units owned by such Unit Owners, to pay the cost thereof with the funds of such Unit Owners, and to procure and deliver to the Board such lien and waivers and contractor's and sub-contractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's claims that might arise

UNOFFICIAL COPY

therefrom. Upon a direction given by the Board under the preceding sentence, the affected Unit Owner shall comply with such direction.

The cost of all maintenance, repairs and replacements to the Limited Common Elements furnished by the Association shall be part of the Common Expenses, subject to the Bylaws, rules and regulations of the Association, provided, that at the discretion of the Board, any maintenance, repairs or replacements to the Limited Common Elements required by the Declaration, the Bylaws or the rules and regulations of the Association to be performed by any Unit Owner may be furnished by the Association and the cost thereof billed in whole or in part to the Unit Owners benefitted thereby.

(c) Maintenance, Repairs and Replacements of Common Elements and Off-Site Facilities. Maintenance, repairs and replacements of the Common Elements (other than the Limited Common Elements) and of any off-site facilities, equipment or property required to be maintained, repaired, or replaced by the owners of the Property or any portion thereof pursuant to the Declaration, the Declaration of Covenants or any other recorded document affecting the Property or any portion thereof shall be furnished by the Association and the cost of all such maintenance, repairs and replacements shall be part of the Common Expenses, subject to the Bylaws, rules and regulations of the Association. Maintenance of off-site facilities, equipment and property shall include (i) maintenance of the storm water retention ponds located on the Golf Course and serving the Property and of the entrance ways to the Property located or to be located at Euclid Avenue and Camp McDonald Road, in accordance with the Declaration of Covenants, and (ii) after dedication of Country Club Drive to the City, maintenance of the landscaping, street lights and poles (except for the southernmost street light and pole adjacent to Euclid Avenue in the middle of the right of way), gateposts, walls and sprinkler system located in the right of way of Country Club Drive, including, without limitation, paying the cost of operating said sprinkler system and the electricity necessary therefor.

(d) Discharge of Liens. The Board may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute lien against the Property or Common Elements, rather than against a particular Unit and its corresponding percentage of ownership in the Common Elements. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses (including attorney's fees and expenses) incurred by reason of such lien.

(e) Damage to Units or Common Elements. If, due to the act or neglect of a Unit Owner, or of his agent, servant, tenant, family member, invitee, licensee or household pet, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or any maintenance, repair or replacements are required which would otherwise be a Common Expense,

UNOFFICIAL COPY

then such Unit Owner shall pay for such damage or such maintenance, repairs and replacements, as may be determined by the Association, to the extent not covered by the Association's insurance.

(f) Access to Units. The authorized representatives of the Association, Board or Managing Agent with approval of the Board shall be entitled to reasonable access to the individual Units, Limited Common Elements and Special Limited Common Elements as may be required in connection with the preservation thereof in the event of any emergency, or to effect such other repairs, improvements, replacements, or maintenance within, of, or, to the Common Elements, Limited Common Elements or Special Limited Common Elements or any equipment, facilities or fixtures affecting or serving other Units, the Common Elements, Limited Common Elements or Special Limited Common Elements. Any liability, loss or damage incurred or caused by such entry shall be borne by the Association as a Common Expense.

(g) Reserve and Maintenance funds.

(i) An initial working capital and contingency reserve fund ("Initial Working Capital and Contingency Reserve") and an insurance reserve fund shall be established from the moneys deposited by the Unit Owners at each closing for such purpose.

(ii) A maintenance reserve fund ("Maintenance Reserve") for the maintenance, repair and replacement of the Common Elements and the off-site facilities described in subparagraph 17(c) shall be established from the moneys deposited by the Unit Owners at each closing for such purpose and shall be supplemented by regular assessments paid by the Unit Owners (other than Trustee and Developer). Whenever funds are expended from the Maintenance Reserve, the Board shall have the authority to cause such funds to be replaced from regular assessments so that the Maintenance Reserve always contains funds in a minimum amount, as determined by the Board from time to time.

(iii) Other funds and reserves shall be established by the Board, out of moneys deposited by the Trustee and the Unit Owners at each closing or otherwise, in such amounts as are required by any statute, ordinance or regulation of any governmental or quasi-governmental entity having or obtaining jurisdiction over the Property.

The Board shall administer such funds or reserves pursuant to the Declaration, Bylaws and its own rules and regulations, but the Board shall not be required to obtain Unit Owners' or Mortgagees' approval for any assessment made in order to replenish such funds or reserves.

UNOFFICIAL COPY

18. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. Except as otherwise set forth in the Declaration, no alteration of any Common Elements (including, without limitation, the Limited Common Elements and the Special Limited Common Elements), or any additions or improvements thereto, shall be made by any Unit Owner. The foregoing notwithstanding, any Unit Owner may, with the prior written consent of the Developer if required by any provision hereof and with the prior written consent of the Architectural Control Commission, make such alterations, additions and improvements to the Limited Common Elements appurtenant to such Unit Owner's Unit as are not prohibited by any provision hereof. No alteration of, or addition to, the landscaping, fences and walls on the Common Elements shall be made without the prior written consent of the Developer until the expiration of the rights of the Trustee and the Developer to submit Additional Parcels to the Act. No fencing, walls, hedges or similar obstructions shall be constructed or placed on the Property which obstruct the lines of sight from any of the Units to the Golf Course or any part thereof, excepting such fencing, walls, hedges and similar obstructions as the Developer may construct from time to time. The Board may authorize and charge as part of the Common Expenses the cost of alterations, additions and improvements of any of the Common Elements, as provided in the Bylaws, subject however, to the limitations contained in this Declaration. Any Unit Owner may make alterations, additions or improvements within his Unit without the prior written approval of the Board or the Architectural Control Commission, provided the same do not affect the Common Elements (including the Limited Common Elements and the Special Limited Common Elements) or the exterior appearance or structural integrity of the Building in which such Unit is situated, but such Unit Owner shall be responsible for any damage to other Units, the Common Elements, the Property, or any part thereof, resulting from such alterations, additions or improvements. No antennas other than those which may be placed on any Building by the Developer shall be placed on the exterior of any Building on the Property without the prior written consent of (i) the Developer, prior to the expiration of the rights of the Trustee to submit Additional Parcels to the Act, and (ii) the Architectural Control Commission. Until the expiration of the rights of Trustee to submit Additional Parcels to the Act, this grammatical paragraph shall not be amended or deleted without the prior written consent of the Developer.

Until the expiration of the rights of the Trustee to submit Additional Parcels to the Act, no material alterations to the Recreational Facilities shall be made without the prior written consent of the Developer and all legal title holders of any portion of the Future Development Parcel not submitted to the Act, other than those who have released all of their rights pursuant to subparagraph 8(d)(iii) hereof, subject to the preceding limitation (and without limiting Paragraph 17 (c)), the Association shall have the duty to provide for the landscaping, gardening, planting, cleaning, maintenance, repair and replacement of the Recreational Facilities and for furnishings and equipment to be used therewith and to provide any other materials, supplies, furniture, labor, services or alterations necessary or proper for the maintenance and operation of the Recreational Facilities in a first class manner. If the Association shall default in any of the foregoing

UNOFFICIAL COPY

obligations relating to the Recreational Facilities and if such default shall continue for thirty (30) days after notice thereof in writing to the Board, then and in such event, Developer shall have the right (but not the obligation) to do or remedy the same or cause the same to be done and the reasonable amount of money expended by either of them in connection therewith shall be a demand obligation owing by the Association to the Developer, hearing interest at the Interest Rate from the date written demand for repayment thereof is given until the repayment thereof by the Association. Any such amount expended by the Developer as aforesaid shall be a common expense which the Association shall assess and levy against the Unit Owners, but the Board shall not be required to obtain Unit Owners' approval for any assessment made hereunder. The Association shall promptly remit payments received thereon to the Developer. This second paragraph of Paragraph 18 cannot be amended or deleted without the prior written consent of (i) Developer, prior to the expiration of the rights of Trustee to submit Additional Parcels to the Act, and (ii) all legal title holders to any portion of the Future Development Parcel not submitted to the Act, including, if applicable, Trustee, other than those legal title holders who have released all of their rights pursuant to subparagraph 8(d)(iii) hereof.

19. DECORATING. Each Unit Owner, at his own expense, shall furnish and be responsible for all decorating within his own Unit and, except as expressly set forth herein, Limited Common Elements serving his Units as may be required from time to time, including painting, wall papering, window washing, cleaning, paneling, floor covering, draperies, window shades, storm and screen doors (provided that, except as the Architectural Control Commission shall otherwise determine, all such storm and screen doors shall be aluminum and shall be painted white and all storm doors shall contain clear glass), curtains, lighting and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his Unit and interior surfaces of the covered garage space or spaces serving his Unit and such Unit Owner shall maintain said interior surfaces in good condition at his sole expense, as may be necessary from time to time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Unit Owner shall have the right to decorate such interior surfaces from time to time as he may see fit and at his sole expense. Notwithstanding anything herein to the contrary, decoration and finishing of the exterior of the Buildings and the exterior of all covered garage spaces and any redecoration or refinishing of such Limited Common Elements shall be furnished by the Association, except as otherwise set forth in the Bylaws and herein. The exterior decoration and furnishing of the Buildings, including, without limitation, the storm and screen doors serving each Unit, and of the exterior of any and all of the covered garage spaces shall not be altered without the prior written consent of (i) Developer, so long as either (x) Trustee owns any Unit or (y) the rights of Trustee to submit Additional Parcels to the Act have not expired, and (ii) the Architectural Control Commission. Decoration of the Common Elements (other than those Limited Common Elements to be maintained by each Unit Owner) and any redecoration of Units, to the extent such redecoration of Units is made necessary by damage to

UNOFFICIAL COPY

Units caused by maintenance, repair or replacement of the Common Elements by the Association, shall be furnished by the Association, and the cost of such decorating or redecorating shall be a Common Expense. The interior and exterior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of the Unit Owner of that Unit. The Unit Owner of any Unit or portion thereof which is located above a Unit or portion thereof owned by another Unit Owner shall install and maintain in every room of his Unit, other than the bathrooms, kitchen and utility room thereof, wall-to-wall carpeting of a quality which, in the Architectural Control Commission's reasonable judgment, is equal to or better than the carpeting originally installed therein. This Paragraph 19 shall not be amended or deleted prior to the expiration of the rights of the Trustee and the Developer to submit Additional Parcels to the Act.

20. ENCROACHMENTS. If any portions of the Common Elements encroach upon any Unit, or if any Unit encroaches upon any portion of the Common Elements or any other Unit as a result of the construction, repair, reconstruction, settlement, movement or shifting of any of the Buildings, a valid mutual easement shall exist in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of such encroachments, so long as the same shall exist. A valid easement shall not exist in favor of any Unit Owner who creates an encroachment by his intentional, willful or negligent conduct or that of his agent.

21. 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. The following words are defined as follows:

(i) "Current Tenant" shall mean a person that is occupying a Unit as of the date of the March 28, 2007 Amendment to the Declaration.

(ii) "New Tenant" shall be defined as a person who occupies a Unit for the first time subsequent to the March 28, 2007 Amendment to the Declaration.

(iii) "Owner Occupied Unit" shall be any Unit, which is occupied by one or more titleholders. A titleholder shall mean the holder of a fee interest, a beneficiary or land trust or shareholder of a corporation holding a fee interest in the Unit. Units in which "Immediate Family Members" of a titleholder reside, shall also be considered Owner Occupied Units.

(iv) "New Owner" shall be any person(s) or entity receiving title by purchase or other transfer from any owner at the time of or after the March 28, 2007 Amendment to the Declaration.

(v) "Non-Owner" occupied unit shall mean all units except those which are Owner Occupied Units.

UNOFFICIAL COPY

(vi) "Immediate Family Members" shall only include an owner's parents, grandparents, children, grandchildren and siblings.

(b) All units which are leased or occupied by a Non-Owner at the time of adoption of the March 28, 2007 Amendment to the Declaration shall be "grandfathered" and shall not be subject to the provisions of the March 28, 2007 Amendment for a period of ten (10) years from the date of the recording of the March 28, 2007 Amendment or until such time the Unit becomes owner occupied or is sold, whichever is first to occur. Upon the Unit becoming owner occupied, the Unit shall thereafter be subject to all other provisions of this Section.

(c) Any Unit may be leased or otherwise occupied, without restriction, to a member or members of the owner's immediate family as defined above. Subleasing is prohibited except where an owner-occupied Unit is leased to a member or members of the owner's immediate family. A "Notification to Lease" must be submitted to the Board, and the Board has the right to require that the proposed lessee furnish proof of identity and relationship to the owner.

(d) In the event of a hardship including, but not limited to, relocation of the owner due to employment, health or other situations, and the inability of the Unit Owner to sell the Unit because of adverse market conditions or the like, the Unit Owner may request a hardship exemption from the Board. The Board may grant permission to the Unit Owner to lease his Unit to a specified lessee for a period of not less than twelve (12) months or more than ten (10) years. At the expiration of each term, if hardship to the Unit Owner continues the Unit Owner shall apply to the Board before renewing any expiring lease or seeking a New Tenant for the Unit. The granting of a hardship exemption and the renewal of any lease is at the sole discretion of the Board.

(e) Owners must notify the Board of Directors of their intent to exercise their right to lease or to have their Unit occupied by a person other than an owner or an Immediate Family Member under this provision. The Owner shall provide the Board of Directors with a copy of the lease agreement and the names of all individuals who shall occupy the Unit no later than the date the Unit becomes Non-Owner occupied.

(f) In the event the owner of a Unit permits his Unit to become Non-Owner occupied without complying with the provisions of the March 28, 2007 Amendment to the Declaration, or in the event the tenant(s) occupying the Unit, in the sole discretion 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 the March 28, 2007 Amendment to the Declaration upon the New Tenant and the Unit Owner, by personal delivery or by certified mail, return receipt requested, and the failure of the tenant to vacate the Unit within such 30-day period, may initiate a forcible entry and detainer action against the New Tenant, 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 New

UNOFFICIAL COPY

Tenant and the Unit Owner to prevent the Unit from continuing to be Non-Owner occupied. All attorneys' fees and court costs shall be assessed to the Unit Owner of the Unit in violation of the provisions of the March 28, 2007 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.

(g) The seller of any Unit shall be required to provide the purchaser's name, address and telephone number, along with the address being sold, to the Board prior to obtaining a letter from the Board regarding the status of the payment of assessments for the Unit. It shall be the duty and responsibility of the selling Unit Owner to inform a purchaser of their unit, at the time of entry into a contract for the sale of their unit, of the requirements of the March 28, 2007 Amendment.

(h) The provisions of the Condominium Property Act, the Declaration, Bylaws 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 and shall be deemed to be incorporated in any lease. With regard to any lease, the Unit Owner leasing the Unit shall deliver a copy of the signed lease to the Board or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or ten (10) days after the lease is signed, whichever occurs first. In addition to any other remedies, by filing an action jointly against the tenant and the Unit Owner, the Association may seek to enjoin a tenant from occupying a Unit or seek to evict a tenant under the provisions of Article IX of the Code of Civil Procedure for failure of the lessor-Unit Owner to comply with the leasing requirements prescribed by the Act or by the Declaration, Bylaws, and rules and regulations. 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 other breach by a tenant of any covenants, rules, regulations or Bylaws. A Unit Owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a Unit Owner under the Act, the condominium instruments, or rules and regulations of the Association; and such an attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void.

22. USE AND OCCUPANCY RESTRICTIONS. No part of the Property shall be used for other than housing and the related recreational and other common purposes for which the Property was designed, subject to the provisions of the Declaration, Bylaws and rules and regulations of the Board or Association. Each Unit or any two or more adjoining Units used together shall be used as a residence or for such other purpose permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units, provided the cost of making such alterations is paid in full by the Unit Owner or Owners making such alterations, as provided in the Declaration and Bylaws. The foregoing restrictions as to residence shall not, however, be construed in such manner as to prohibit a Unit Owner from (a) maintaining his personal professional library; (b) keeping his personal business

UNOFFICIAL COPY

or professional records or accounts; or (c) handling his personal business or professional telephone calls or correspondence such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

The Common Elements shall be used only by the Unit Owners and their tenants, agents, servants, family members, licensees and invitees for access and ingress to and egress from the respective Units and for such other purposes incidental to residential use of the Units; provided, however, that the Recreational Facilities and any parking area, office area or other special area designed for a specific use shall be used for the purposes approved by the Board. Said use and the maintenance and operation of the Common Elements shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, easement or license presently in existence or granted by the Board or by the Trustee at some future time, affecting any part or all of said Common Elements.

23. REMEDIES

(a) In General. In the event of any default or violation of the provisions of the Act, Declaration, Bylaws or rules and regulations of the Board or Association by any Unit Owner (either by his own conduct or by any other occupant of his Unit), the Association, or its successors or assigns, or the Board, or its agents, shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, Bylaws, Forcible Entry and Detainer Act, or said rules and regulations, or which may be available at law or in equity, and may prosecute an action or other proceeding against such defaulting Unit Owner, Occupant and/or others:

(i) for enforcement or foreclosure of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, without notice and without regard to the value of such Unit or the ownership interest or the solvency of such Unit Owner;

(ii) for damages;

(iii) for an injunction or specific performance;

(iv) for the right to take possession of the Unit, rent the Unit and apply the rents received to payment of unpaid assessments and interest accrued thereon;

(v) to sell the Unit at a judicial sale, as hereinafter in this Paragraph 23 provided; or

UNOFFICIAL COPY

- (vi) for any combination of the above or for any other relief.

Any Unit Owner aggrieved by any violation by the Association, Board or any other Unit Owner of the provisions of the Declaration, Bylaws or the rules and regulations of the Board or Association shall have the right, by any proceedings available at law or in equity, of recovery of damages or for injunctive relief, or both.

(b) Association Self-help. In the event of any default or violation by any Unit Owner set forth in Paragraph 23(a) hereof, the Association, the Board and the Managing Agent, if so authorized by the Board, shall have the authority to correct such default or violation and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner and shall be added to and deemed part of his respective share of the Common Expenses and the Association shall have a first lien for all of the same upon the defaulting Unit Owner's Unit, his ownership interest in the Common Elements, together with any refrigerator, stove, or other appliance or personal property which was sold along with the Unit by the Trustee or the Developer; provided, however, that such lien shall be subordinate to the lien of a prior recorded encumbrance on the interest of such Unit Owner, except for the amount of the proportionate share of said Common Expenses which becomes due and payable from and after the Priority Date.

(c) Injunctive Relief. In the event of any default or violation by any Unit Owner or Occupant set forth in Paragraph 23(a) hereof, and if such default or violation shall continue for ten (10) days after notice to the Unit Owner or Occupant in writing from the Board, or shall occur repeatedly during any ten (10) day period after such written notice or request to cure such violation from the Board, then the Board shall have the power to file an action against the defaulting Unit Owner or Occupant for a judgment or injunction against the Unit Owner or Occupant, requiring the defaulting Unit Owner or Occupant to comply with the provisions of this Declaration, Bylaws and the rules or regulations adopted by the Board and granting other appropriate relief, including money damages.

(d) Involuntary Sales. In the event the Association has the right to foreclose a lien on a Unit by reason of any default or violation by any Unit Owner set forth in paragraph 23(a) hereof, the Association and the Board shall have the power to sell the Unit at a judicial sale, following a foreclosure of such lien in like manner as in the case of foreclosure of a mortgage against real property. The proceeds of any judicial sale shall first be paid to discharge court costs, court reporter charges, title charges, reasonable attorneys' fees and costs and all other expenses of the proceedings and sale, and all such items shall be taxed against the defaulting Unit Owner in a final judgment. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale and the expiration of any applicable redemption periods, the purchaser shall thereupon

UNOFFICIAL COPY

be entitled to a deed to the Unit and to the appurtenant ownership interest in the Common Elements 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. It shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and all other expenses of the proceeding and sale, and all damages liquidated or otherwise, together with interest thereon at the Interest Rate until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Association shall have a first lien for all of the same, as well as for nonpayment of his respective share of the Common Expenses, upon the Unit, the appurtenant ownership interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto and any refrigerator, stove or other appliance or personal property which was sold along with the Unit by Trustee or Developer; provided, however, that such lien shall be subordinate to the lien of a prior recorded encumbrance on the interest of such Unit Owner, except for the amount of the proportionate share of such Common Expenses which became due and payable from and after the date on which the said encumbrance owner or holder either takes possession of the Unit, accepts a conveyance of any interest therein (other than as a security) or causes a receiver to be appointed.

(e) Cumulative Rights; No Waiver of Rights. Any and all rights and remedies provided for in this Paragraph 23 may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board, and the failure of the Association or Board to enforce any of the covenants, conditions or restrictions set forth herein shall not be deemed to be a waiver of said covenants, conditions or restrictions.

24. RESERVATION OF RIGHT TO ANNEX ADDITIONAL PARCELS. The Trustee intends hereafter, but shall not be obligated, to develop and improve the Future Development Parcel, or a portion thereof, with multifamily structures, streets and additional Recreational Facilities. Trustee intends, but shall not be obligated, to submit a part or all of the Future Development Parcel to the provisions of the Act as any one or more such improvements are completed on part or all of the Future Development Parcel, or thereafter, as hereinafter provided in this Paragraph 24; provided, however, the improvements, structures, buildings and Units upon any such portion of the Future Development Parcel so submitted shall be substantially compatible with the configuration of the Property in relation to density, quality, size, floor plan, style, use and construction. At present, the Trustee intends, but shall not be obligated, to submit the Future Development Parcel to the Act in stages. At present, the Trustee intends, but shall not be obligated, to build 16 Units on the Parcel and 634 additional Units on Tracts A and B described on Exhibit E hereto.

UNOFFICIAL COPY

As of the date hereof, neither Trustee, nor Developer has any rights in, or rights to acquire, Tract C described on Exhibit E hereto. Notwithstanding the foregoing, if said Tract C is acquired and becomes part of the Future Development Parcel pursuant to Paragraph 1(r) above, the Trustee intends, but shall not be obligated, to build up to 264 additional Units thereon.

No portion of the Future Development Parcel shall be submitted to the Act unless prior to such submission (i) the improvements located on such portion of the Future Development Parcel have been substantially completed and (ii) notice has been sent that such submission will occur (which notice shall include a copy of the Amended Declaration, as defined hereafter, to be recorded to effectuate such submission) to each of the Federal Housing Administration, the Veterans Administration and the Federal National Mortgage Association which holds, insures or guarantees any mortgage encumbering any Unit.

Subject to the foregoing restrictions, the Trustee, its successors and assigns, and the Developer, pursuant to Section 25 of the Act, hereby reserve the right from time to time, within ten years from the date hereof or such longer period as may be allowed by the Act, to annex and to add to the Parcel and Property, and thereby to add to the plan of condominium ownership created by the Declaration, without notice thereof to any Unit Owner or Mortgagee, all or any portion of the Future Development Parcel. Any part of the Future Development Parcel which has actually been submitted to the Act, pursuant to the provisions of this Paragraph 24, is referred to herein as an "Additional Parcel". No rights or interest of any character whatsoever in all or any portion of the Future Development Parcel shall attach to any Unit except to that portion of the Future Development Parcel described in a recorded amendment to this Declaration (an "Amendment") annexing and adding such portion of the Future Development Parcel to the Parcel and Property and submitting such portion of the Future Development Parcel to the Act as part of the plan of condominium ownership created by this Declaration.

The Trustee, acting by and through its duly authorized officers, and its successors, assigns or designee, and the Developer, hereby reserve the power to amend the legal description of the Parcel, and to shift and reallocate from time to time the percentages of undivided ownership interest in the Common Elements appurtenant to each Unit to the percentages set forth in any such Amendment recorded pursuant to this Paragraph 24; provided, however, that the percentages of interest appurtenant to any Unit shall never be increased without the consent of the Unit Owner of said Unit.

The reallocation of percentage interests, adjustment to voting rights, and rights and changes in liability for Common Expenses in any Amendment recorded under this Paragraph 24, shall be computed on the basis of the value of each Unit in relation to the value of the Property as a whole.

UNOFFICIAL COPY

The order in which any portions of the Future Development Parcel are submitted to the Act, the boundaries of the portions and the location of improvements on any Additional Parcel are to be determined by the Developer in its discretion; provided, however, that no more than 15 Units shall be constructed on each acre of any portion of the Future Development Parcel submitted to the Act pursuant to this Paragraph 24.

Each Unit Owner, by acceptance of a deed thereto, and each Mortgagee by acceptance of a mortgage or trust deed, acknowledges, consents and agrees, as to each Amendment recorded pursuant to this Paragraph 24, as follows:

(a) The Additional Parcel described in each such Amendment shall be governed in all respects by the provisions of the Declaration.

(b) The percentage of undivided ownership interest in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such Amendment, and, upon the recording of such Amendment, the amount by which such percentage of undivided ownership interest in the Common Elements appurtenant to the Unit of a Unit Owner is reduced, as set forth in such Amendment, shall thereby automatically be deemed released and divested from such Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in such Amendment.

(c) Each deed, mortgage, trust deed or other instrument affecting a Unit shall be deemed subject to the conditional limitation that the percentage of undivided ownership interest in the Common Elements appurtenant to said Unit shall, upon the recording of any Amendment, be divested pro tanto to the reduced percentage set forth in such Amendment and vested among the other Unit Owners, Mortgagees and any others owning an interest in the other Units in accordance with the terms and percentages stated in such Amendment.

(d) The percentage of undivided ownership interest in the Common Elements appurtenant to each Unit shall include and be deemed to include any additional Common Elements annexed hereto by each Amendment recorded under this Paragraph 24. Each deed, mortgage, trust deed or other instrument affecting a Unit shall be deemed to include such additional Common Elements, and the ownership of any such Unit and lien of any mortgage or trust deed thereon shall automatically include and attach to such additional Common Elements at the time such Amendment is recorded.

(e) The recording of each such Amendment shall not alter the amount of the lien for the Common Expenses assessed to a Unit prior to such recording.

UNOFFICIAL COPY

(f) Each Unit Owner and his successors and assigns, by accepting title to the Unit and appurtenant interest in the Common Elements, agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Paragraph 24 to comply with the Act.

The Trustee may agree by a recorded document executed by Trustee to terminate its rights or any part thereof under this Paragraph 24 at any time before the expiration of such rights.

25. AMENDMENT. Prior to the expiration of the rights of Trustee to submit Additional Parcels to the Act, the Trustee and the Developer shall have the authority, without joinder or consent of any other party, to make any amendment to the Declaration (a "Corrective Amendment") necessary to clarify any apparently conflicting provisions of the Declaration and/or to correct any mistakes or errors of a clerical nature resulting from typographical or similar errors, including without limitation, an amendment of the legal description of the Future Development Parcel. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Trustee, acting by and through its duly authorized officers, and the Developer or a designee thereof, and their agents and each of them singly, as attorney-in-fact, to amend the Declaration by any Corrective Amendment. Each deed, mortgage, trust deed or other instrument with respect to a Unit and the acceptance thereof shall be deemed a grant of such power to each of said attorney-in-fact, an acknowledgement of and consent to such power, and shall be deemed to reserve to each of said attorney-in-fact the power to amend the Declaration by any Corrective Amendment.

In addition to amendments of the Declaration pursuant to the provisions of Paragraphs 3, 7, 14, 16, 24, and the first paragraph of this Paragraph 25, subject to the rights of First Mortgagees as provided in Paragraph 14 hereof, and subject to the restrictions on amendments hereof contained in the Declaration, following the affirmative vote of Unit Owners owning not less than two-thirds (2/3) of the total ownership of the Common Elements at a meeting or meetings duly called for such purpose, the Declaration may be changed, modified or rescinded by an instrument in writing, signed by the President of the Association and acknowledged by the Secretary thereof, setting forth such change, modification or rescission; provided, however, that all First Mortgagees which have complied with Paragraph 26 hereof have been notified by certified mail of such change, modification or rescission, and an affidavit by the Secretary of the Association certifying to such mailing and the vote of the Unit Owners is made a part of such instrument. The City shall also be notified of any change or modification to or rescission of this Declaration.

Any change, modification or rescission of the Declaration shall be effective upon recording of such instrument in the Office of the Recorder of Deeds of Cook County, Illinois; provided, however, that no provisions in the Declaration may be changed, modified or rescinded so as to conflict with the provisions of the Act.

UNOFFICIAL COPY

26. NOTICES. Notices provided for in the Act, Declaration or Bylaws shall be in writing, and shall be addressed to the Association or Board as follows:

c/o President of the Rob Roy Country Club Village Association,
addressed to his Unit;

or at such other address as hereinafter provided. Such notices shall be addressed to any Unit Owner, as the case may be, at his Unit, or at such other address as hereinafter provided. Such notices shall be addressed to any Mortgagee at the address provided to the Association by such Mortgagee for that purpose, or at such other address as hereafter provided; provided, however, notwithstanding any provision of the Declaration or the Bylaws, the Association shall not be obligated to give any notice to any Mortgagee unless such Mortgagee has previously notified the Association in accordance herewith of the address to which notices to such Mortgagee should be sent. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner or Mortgagee may designate a different address for notices to him by giving written notice of such change of address to the Association. Notices addressed as above shall be deemed delivered when received, if mailed by United States registered or certified mail, or when delivered in person.

Upon written request to the Board in the manner provided herein, any Mortgagee shall be given a copy of all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit is subject to such Mortgagee's mortgage or trust deed.

27. DESCRIPTION OF CONDOMINIUM. As of the date hereof, the Developer contemplates that, when completed, Rob Roy Country Club Village will consist of 650 Units contained, in approximately 187 duplex, fourplex and sixplex buildings with architecture of the traditional American style and Recreational Facilities, including swimming pools, tennis courts and clubhouses. If Trustee acquires Tract C on Exhibit E hereto, Developer contemplates constructing up to 85 additional Units thereon of similar types and styles. The foregoing is intended only as a general description of Rob Roy Country Club Village as presently contemplated by the Developer and nothing herein shall be construed to limit the right of the Trustee and the Developer, which right is hereby expressly reserved and granted to the Trustee and the Developer, to modify and alter the number, configuration, style, type and size of the Buildings and Units to be constructed on the Parcel and on the Future Development Parcel subject to the provisions of paragraph 24 hereof, including, without limitation, to modify and alter the size of, and the number of bedrooms to be contained in, the Units.

UNOFFICIAL COPY

28. GOLF COURSE.

(a) Waiver. The Golf Course is not part of the Parcel or the Future Development Parcel and is not owned by Developer or Trustee, although certain persons holding direct or indirect interests in the Developer own or intend to acquire direct or indirect interests in the Golf Course. There are no contracts or agreements for use of the Golf Course by Unit Owners and such use shall be only as permitted from time to time by the owner of the Golf Course. Notwithstanding the foregoing, the Developer intends that the Golf Course and the Property, including all Additional Parcels, be part of a golf course-residential community for the mutual benefit of the Unit Owners and the present and future owners and users of the Golf Course. To effectuate such intention, the Trustee and the owner of the Golf Course have entered into the Declaration of Covenants. To further such intention, and in consideration of execution of the Declaration of Covenants by the owner of the Golf Course, the Trustee, on behalf of and for itself, the Association, the Unit Owners, all Occupants, all agents, contractors, guests, invitees and tenants of the Unit Owner, and all Occupants, and the successors and assigns of each of them, waive any claim, action or right accruing to any or all of them against any person now or hereafter owning the Golf Course or any direct or indirect interest therein (including any beneficial interest therein), the respective agents, licensees, invitees, successors and assigns of such persons owning the Golf Course or any interest therein (including any beneficial interest therein) and any manager or managing agent of the Golf Course, for damage or injury to person or property arising out of use of the Golf Course, except that no golfer shall be hereby absolved from his gross negligence or willful misconduct. Each Unit Owner, by acceptance of the deed conveying his Unit, for himself and all those claiming under him, shall be deemed to have agreed to, confirmed and ratified such waiver.

(b) Acquisition of Golf Course. Subject to the rights of the City to acquire the Golf Course pursuant to the Annexation Agreement described in Paragraph A.6. of the recitals hereto, following the affirmative vote of the Board and of Unit Owners owning not less than two-thirds (2/3) of the total ownership of the Common Elements at a meeting duly called for such purpose, the Association may acquire the Golf Course and annex the Golf Course to the Property, if the owner of the Golf Course has agreed to sell or convey the Golf Course to the Association (the owner of the Golf Course not being obligated to do so). Such annexation shall be achieved by an amendment to the Declaration in accordance with the provisions of Paragraph 25 hereof. Any such amendment shall include an amended plat of survey of the condominium area, showing the Golf Course as part of the Property. Subject to the provisions of the Annexation Agreement requiring the Golf Course be available for use by the general public, upon annexation of the Golf Course to the Property, the Golf Course shall become part of the Common Elements and the Recreational Facilities and shall be operated pursuant to rules and regulations promulgated from time to time by the Board.

UNOFFICIAL COPY

29. COMMERCIAL ENTERTAINMENT. Certain principals of the Developer or of any of the entities constituting the Developer may from time to time hold interests in entities which may have interests in or rights to receive a portion of, the profits arising from the providing of cable television, a master antenna service and other commercial entertainment services to the Property, including any Additional Parcels.

30. PERPETUITIES AND RESTRAINTS ON ALIENATION. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the descendants of the now incumbent President of the United States, who are living on the date hereof.

31. RIGHTS AND OBLIGATIONS. Each grantee of the Trustee and their successors and assigns, by the acceptance of a deed of conveyance, a mortgage or a trust deed, accepts said deed, mortgage or trust deed, as the case may be, subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by the Declaration. 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 any interest or estate in said land, and shall inure to the benefit of such grantee or purchaser in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

All rights granted to Trustee and Developer under this Declaration and the attached Bylaws shall inure to, and all obligations of Trustee and Developer thereunder shall be binding upon, the following respective successors and assigns of Trustee and Developer:

(a) Upon any voluntary conveyance of legal title to the Future Development Parcel or any portion thereof (other than in lieu of foreclosure), if the instrument conveying the Future Development Parcel or such portion thereof explicitly so provides, the grantee shall be deemed a successor to the interests of Trustee and Developer hereunder and under the Bylaws (except that if said grantee is a land trust said land trust shall be deemed a successor to the rights of Trustee thereunder and its beneficiary shall be deemed a successor to the rights of Developer thereunder).

(b) Upon any conveyance of the Future Development Parcel or any portion thereof in lieu of foreclosure or by a sheriff's deed or marshal's deed following foreclosure proceedings, including any such conveyance to American National Bank and Trust Company of Chicago, Developer's construction lender, the grantee shall succeed to the rights of Trustee and Developer under this Declaration and the Bylaws without the necessity of any explicit assignment of said

UNOFFICIAL COPY

rights (except that if said grantee is a land trust said land trust shall be deemed a successor to the rights of Trustee thereunder and its beneficiary shall be deemed a successor to the rights of Developer thereunder).

(c) Upon any voluntary assignment of the beneficial interest in Trustee (other than in lieu of foreclosure or in lieu of a Uniform Commercial Code sale), if the instrument assigning said beneficial interest explicitly so provides, the assignee shall be deemed a successor to the rights of Developer hereunder and under the Bylaws.

(d) In the event of a Uniform Commercial Code sale of the interest of Developer as beneficiary of Trustee or the assignment of said beneficial interest in lieu of such a sale or in lieu of foreclosure, the purchaser at such sale, including, if applicable, American National Bank and Trust Company of Chicago, Developer's construction lender, shall succeed to the rights of Developer under this Declaration and the Bylaws without the necessity of any explicit assignment of said rights.

(e) Trustee and Developer or either of them may collaterally assign their respective rights hereunder and under the Bylaws to a lender, including American National Bank and Trust Company of Chicago, Developer's construction lender, as security for financing for the construction of Units or other improvements on the Parcel or the Future Development Parcel. In the event such lender realizes upon its rights under such collateral assignment, such lender shall be deemed a successor to the rights of Trustee and Developer or either of them, as the case may be.

All references in this Declaration, including in this Paragraph 31, and in the Bylaws to Trustee or Developer shall include their respective successors and assigns described in this Paragraph 31 (i) from and after the date each of such successors and assigns succeeds to the interests of Trustee and Developer or either of them as set forth herein-above and (ii) with respect only to that portion of the Future Development Parcel in which each of such successors or assigns obtains an interest. Subject to the provisions of Paragraph 13(a) above, (i) no successor or assign of Trustee or Developer described in subparagraph 31(b), (d) or (e) above shall be liable for any amount accruing under this Declaration or the Bylaws prior to the date such successor or assign succeeds to the interest of Trustee and Developer or either of them, as the case may be, and (ii) no successor or assign of Trustee or Developer shall be liable for any act or omission (other than payment of any amount accruing under this Declaration or the Bylaws) of Trustee or Developer occurring before the date such successor or assign succeeds to the interest of Trustee and Developer or either of them, as the case may be. No Person shall be deemed a successor or assign of Trustee and Developer or either of them solely by reason of receiving a conveyance of one or more Units from Trustee or Developer.

UNOFFICIAL COPY

32. LAND TRUSTEE AS UNIT OWNER. In the event title to any Unit is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder shall be considered Unit Owners for all purposes and they 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. No claim shall be made against any such titleholding 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 any such lien or obligation shall continue to be a charge or lien upon the Unit and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Unit.

33. GENERAL PROVISIONS.

(a) Until such time as the Board provided for in this Declaration is formed, the Developer shall exercise all the powers, rights, duties and functions of the Board.

(b) No covenants, restrictions, conditions, obligations, or provisions contained in the 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.

(c) The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of operation of a first-class condominium.

(d) The headings and captions contained herein are inserted for convenient reference only and shall not be deemed to construe or limit the Paragraphs and subparagraphs to which they apply.

(e) If any provision or provisions, or if any portion of any provision or provisions, in the Declaration or the Bylaws is found by a court of law to be illegal, invalid, unlawful, void or unenforceable as written, then it is Trustee's intent that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable; that the remainder of the Declaration and the Bylaws shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein; and that the rights, obligations and interests arising under the remainder of the Declaration and the Bylaws shall continue in full force and effect.

(f) Gender References. Any reference in this Declaration or in the Bylaws to one gender shall include reference to any other gender.

UNOFFICIAL COPY

34. EXECUTION OF DECLARATION BY TRUSTEE. The Declaration is executed by CENTRAL NATIONAL BANK IN CHICAGO, as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under this Declaration that CENTRAL NATIONAL BANK IN CHICAGO, as Trustee as aforesaid, and not personally, has joined in the execution of the Declaration (Trustee hereby warrants that it possesses full power and authority to execute the Declaration) for the sole purpose of subjecting the titleholding interest and the trust estate under said Trust No. 24978 to the terms of the Declaration as hereinbefore provided; that any and all obligations, duties, covenants and agreements of every nature herein set forth by CENTRAL NATIONAL BANK IN CHICAGO, as Trustee as aforesaid, to be kept or performed, are intended to be kept, performed and discharged by the beneficiaries under said Trust No. 24978 or their successors, and not by CENTRAL NATIONAL BANK IN CHICAGO personally; and further that no duty shall rest upon CENTRAL NATIONAL BANK IN CHICAGO, either personally or as such Trustee, to sequester trust assets, rentals, avails or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation express or implied, arising under the terms of this Declaration, except where said Trustee is acting pursuant to direction as provided by the terms of said Trust No. 24976, and after the Trustee has first been supplied with funds required for the purpose. In event of conflict between the terms of this Paragraph and of the remainder of the Declaration on any question of apparent liability or obligation resting upon said Trustee, the exculpatory provision hereof shall be controlling.

UNOFFICIAL COPY

EXHIBIT A

PLAT OF SURVEY

Exhibit "A" is the Plat of Survey of the Parcel and of all Units in the Property submitted to the provisions of the Illinois Condominium Property Act, and is attached to the original Declaration recorded with the Recorder of Deeds of Cook County, Illinois, as amended from time to time.

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

UNOFFICIAL COPY

EXHIBIT B PERCENTAGE OF OWNERSHIP INTEREST IN THE COMMON ELEMENTS

Stage	Building	Dwelling	Percentage
1	187	A	0.14200%
1	187	B	0.14672%
1	187	C	0.16093%
1	187	D	0.15755%
1	187	E	0.12712%
1	187	F	0.13997%
1	186	A	0.14200%
1	186	B	0.14672%
1	186	C	0.16093%
1	186	D	0.15755%
1	186	E	0.12712%
1	186	F	0.13997%
1	12	J	0.16904%
1	12	K	0.21029%
1	11	L	0.19202%
1	11	M	0.21502%
2	177	J	0.16904%
2	177	M	0.21502%
3	184	A	0.14200%
3	184	B	0.14672%
3	184	E	0.12712%
3	184	F	0.13997%
3	174	K	0.21029%
3	174	M	0.21502%
3	10	J3	0.20285%
3	10	K	0.21029%
3	172	J3	0.20285%
3	172	M	0.21502%
4	182	A	0.14200%
4	182	B	0.14672%
4	182	C	0.16093%
4	182	D	0.15755%
4	182	E	0.12712%
4	182	F	0.13997%
4	181	A	0.14200%
4	181	B	0.14672%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
4	181	C	0.16093%
4	181	D	0.15755%
4	181	E	0.12712%
4	181	F	0.13997%
4	175	J	0.16904%
4	175	L	0.19202%
4	171	K	0.21029%
4	171	M	0.21502%
5	179	A	0.14200%
5	179	B	0.14672%
5	179	C	0.16093%
5	179	D	0.15755%
5	179	E	0.12712%
5	179	F	0.13997%
5	176	K	0.21029%
5	176	L	0.19202%
5	170	K	0.21029%
5	170	M	0.21502%
5	169	M	0.21502%
5	169	M	0.21502%
5	168	K	0.21029%
5	168	M	0.21502%
5	167	J3	0.20285%
5	167	M	0.21502%
6	185	A	0.14200%
6	185	B	0.14672%
6	185	C	0.16093%
6	185	D	0.15755%
6	185	E1	0.13591%
6	185	F	0.13997%
6	180	LE	0.12712%
6	180	RF	0.13997%
6	180	C	0.16093%
6	180	D	0.15755%
6	180	RE	0.12712%
6	180	LF	0.13997%
6	178	L1	0.19785%
6	178	J3	0.20285%
6	13	L	0.19202%
6	13	J3	0.20285%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
7	183	A	0.14200%
7	183	B	0.14672%
7	183	E1	0.13591%
7	183	F	0.13997%
7	164	J3	0.20285%
7	164	M	0.21502%
8	173	K	0.21029%
8	173	L1	0.19785%
8	166	K	0.21029%
8	166	M	0.21502%
8	88	A	0.14200%
9	88	B	0.14672%
9	88	LC	0.16093%
9	88	LD	0.15755%
9	88	RD	0.15755%
9	88	RC	0.16093%
9	163	I	0.16904%
9	163	M	0.21502%
9	165	J	0.16904%
9	165	M	0.21502%
10	161	J	0.16904%
10	161	M	0.21502%
10	81	A	0.14200%
10	81	B	0.14672%
10	81	C	0.16093%
10	81	D	0.15755%
10	81	E1	0.13591%
10	81	F	0.13997%
10	158	J3	0.20285%
10	158	M	0.21502%
10	162	K	0.21029%
10	162	L1	0.19785%
11	89	A	0.14200%
11	89	B	0.14672%
11	89	C	0.16093%
11	89	D	0.15755%
11	89	E1	0.13591%
11	89	F	0.13997%
11	157	LM	0.21502%
11	157	RM	0.21502%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
11	160	J3	0.20285%
11	160	M	0.21502%
12	159	J3	0.20285%
12	159	K	0.21029%
12	82	A	0.14200%
12	82	B	0.14672%
12	82	E1	0.13591%
12	82	F	0.13997%
12	156	J3	0.20285%
12	156	M	0.21502%
12	154	J3	0.20285%
12	154	M	0.21502%
13	84	A	0.14200%
13	84	B	0.14672%
13	84	C	0.16093%
13	84	D	0.15755%
13	84	E1	0.13591%
13	84	F	0.13997%
13	150	M	0.21502%
13	150	K	0.21029%
13	83	A	0.14200%
13	83	B	0.14672%
13	83	LC	0.16093%
13	83	LD	0.15755%
13	83	RC	0.16093%
13	83	RD	0.15755%
13	155	K	0.21029%
13	155	M	0.21502%
14	145	L1	0.19785%
14	145	J3	0.20285%
14	147	M	0.21502%
14	147	J3	0.20285%
14	151	M	0.21502%
14	151	J3	0.20285%
14	146	J3	0.20285%
14	146	M	0.21502%
14	4	A	0.14200%
14	4	B	0.14672%
14	4	C	0.16093%
14	4	D	0.15755%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
14	4	E1	0.13591%
14	4	F	0.13997%
15	86	A	0.14200%
15	86	B	0.14672%
15	86	LC	0.16093%
15	86	LD	0.15755%
15	86	RD	0.15755%
15	86	RC	0.16093%
15	149	J3	0.20285%
15	149	K	0.21029%
15	153	L1	0.19785%
15	153	J	0.16904%
15	148	M	0.21502%
15	148	J3	0.20285%
15	152	K	0.21029%
15	152	M	0.21502%
15	142	J3	0.20285%
15	142	K	0.21029%
15	141	J3	0.20285%
15	141	M	0.21502%
17	85	LR	0.13226%
17	85	LS	0.11292%
17	85	LT	0.13726%
17	85	LU	0.12070%
17	85	RR	0.13226%
17	85	RS	0.11292%
17	85	RT	0.13726%
17	85	RU	0.12070%
17	143	LM	0.21502%
17	143	RM	0.21502%
17	144	J3	0.20285%
17	144	K	0.21029%
17	140	M	0.21502%
17	140	J3	0.20285%
17	139	M	0.21502%
17	139	K	0.21029%
18	90	LR	0.13226%
18	90	LS	0.11292%
18	90	LT	0.13726%
18	90	LU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
18	90	RR	0.13226%
18	90	RS	0.11292%
18	90	RT	0.13726%
18	90	RU	0.12070%
18	137	J3	0.20285%
18	137	K	0.21029%
18	132	L1	0.19785%
18	132	M	0.21502%
18	131	L1	0.19785%
18	131	J3	0.20285%
18	91	LR	0.13226%
18	91	LS	0.11292%
18	91	LT	0.13726%
18	91	LU	0.12070%
18	91	RR	0.13226%
18	91	RS	0.11292%
18	91	RT	0.13726%
18	91	RU	0.12070%
19	92	LR	0.13226%
19	92	LS	0.11292%
19	92	LT	0.13726%
19	92	LU	0.12070%
19	92	RR	0.13226%
19	92	RS	0.11292%
19	92	RT	0.13726%
19	92	RU	0.12070%
19	138	L1	0.19785%
19	138	J3	0.20285%
19	136	M	0.21502%
19	136	J3	0.20285%
19	134	K	0.21029%
19	134	M	0.21502%
19	129	Q	0.16904%
19	129	Q	0.16904%
19	125	J3	0.20285%
19	125	K	0.21029%
20	135	Q	0.16904%
20	135	Q	0.16904%
20	130	M	0.21502%
20	130	J3	0.20285%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
20	93	LR	0.13226%
20	93	LS	0.11292%
20	93	LT	0.13726%
20	93	LU	0.12070%
20	93	RR	0.13226%
20	93	RS	0.11292%
20	93	RT	0.13726%
20	93	RU	0.12070%
21	126	K	0.21029%
21	126	L1	0.19785%
21	127	J3	0.20285%
21	127	M	0.21502%
21	128	J3	0.20285%
21	128	K	0.21029%
21	133	LM	0.21502%
21	133	RM	0.21502%
21	94	LR	0.13226%
21	94	LS	0.11292%
21	94	LT	0.13726%
21	94	LU	0.12070%
21	94	RR	0.13226%
21	94	RS	0.11292%
21	94	RT	0.13726%
21	94	RU	0.12070%
21	95	LR	0.13226%
21	95	LS	0.11292%
21	95	LT	0.13726%
21	95	LU	0.12070%
21	95	RR	0.13226%
21	95	RS	0.11292%
21	95	RT	0.13726%
21	95	RU	0.12070%
22	14	J3	0.20285%
22	14	M	0.21502%
22	16	L1	0.19785%
22	16	M	0.21502%
22	17	J3	0.20285%
22	17	K	0.21029%
23	22	J3	0.20285%
23	22	M	0.21502%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
22	96	LR	0.13226%
22	96	LS	0.11292%
22	96	LT	0.13726%
22	96	LU	0.12070%
22	96	RR	0.13226%
22	96	RS	0.11292%
22	96	RT	0.13726%
22	96	RU	0.12070%
22	97	LR	0.13226%
22	97	LS	0.11292%
22	97	LT	0.13726%
22	97	LU	0.12070%
22	97	RR	0.13226%
22	97	RS	0.11292%
22	97	RT	0.13726%
22	97	RU	0.12070%
22	98	LR	0.13226%
22	98	LS	0.11292%
22	98	LT	0.13726%
22	98	LU	0.12070%
22	98	RR	0.13226%
22	98	RS	0.11292%
22	98	RT	0.13726%
22	98	RU	0.12070%
23	18	RQ	0.16904%
23	18	LQ	0.16904%
23	19	K	0.21029%
23	19	M	0.21502%
23	21	K	0.21029%
23	21	M	0.21502%
23	23	J3	0.20285%
23	23	M	0.21502%
23	99	LR	0.13226%
23	99	LS	0.11292%
23	99	LT	0.13726%
23	99	LU	0.12070%
23	99	RR	0.13226%
23	99	RS	0.11292%
23	99	RT	0.13726%
23	99	RU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
23	100	LR	0.13226%
23	100	LS	0.11292%
23	100	LT	0.13726%
23	100	LU	0.12070%
23	100	RR	0.13226%
23	100	RS	0.11292%
23	100	RT	0.13726%
23	100	RU	0.12070%
23	101	RR	0.13226%
23	101	RS	0.11292%
23	101	RT	0.13726%
23	101	RU	0.12070%
23	101	LR	0.13226%
23	101	LS	0.11292%
23	101	LT	0.13726%
23	101	LU	0.12070%
24	20	K	0.21029%
24	20	L	0.19785%
24	25	J3	0.20285%
24	25	K	0.21029%
24	30	K	0.21029%
24	30	L1	0.19785%
24	31	O	0.18257%
24	31	Q	0.16904%
24	102	LR	0.13226%
24	102	LS	0.11292%
24	102	LT	0.13726%
24	102	LU	0.12070%
24	102	RR	0.13226%
24	102	RS	0.11292%
24	102	RT	0.13726%
24	102	RU	0.12070%
24	103	LR	0.13226%
24	103	LS	0.11292%
24	103	LT	0.13726%
24	103	LU	0.12070%
24	103	RR	0.13226%
24	103	RS	0.11292%
24	103	RT	0.13726%
24	103	RU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
25	15	O	0.18257%
25	15	P	0.18527%
25	24	K	0.21029%
25	24	M	0.21502%
25	26	P	0.18527%
25	26	Q	0.16904%
25	27	J3	0.20285%
25	27	K	0.21029%
25	28	L1	0.19785%
25	28	J3	0.20285%
25	29	O	0.18257%
25	29	P	0.18527%
25	104	LR	0.13226%
25	104	LS	0.11292%
25	104	LT	0.13726%
25	104	LU	0.12070%
25	104	RR	0.13226%
25	104	RS	0.11292%
25	104	RT	0.13726%
25	104	RU	0.12070%
25	105	R	0.13226%
25	105	S	0.11292%
25	105	T	0.13726%
25	105	U	0.12070%
25	106	LR	0.13226%
25	106	LS	0.11292%
25	106	LT	0.13726%
25	106	LU	0.12070%
25	106	RR	0.13226%
25	106	RS	0.11292%
25	106	RT	0.13726%
25	106	RU	0.12070%
26	32	J3	0.20285%
26	32	K	0.21029%
26	33	LO	0.18257%
26	33	RO	0.18257%
26	34	J3	0.20285%
26	34	M	0.21502%
26	35	L1	0.19785%
26	35	J3	0.20285%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
26	36	O	0.18257%
26	36	P	0.18527%
26	37	L1	0.19785%
26	37	M	0.21502%
26	107	LR	0.13226%
26	107	LS	0.11292%
26	107	LT	0.13726%
26	107	LU	0.12070%
26	107	RR	0.13226%
26	107	RS	0.11292%
26	107	RT	0.13726%
26	107	RU	0.12070%
26	67	LR	0.13226%
26	67	LS	0.11292%
26	67	LT	0.13726%
26	67	LU	0.12070%
26	67	RR	0.13226%
26	67	RS	0.11292%
26	67	RT	0.13726%
26	67	RU	0.12070%
27	38	LO	0.18257%
27	38	RO	0.18257%
27	39	K	0.21029%
27	39	M	0.21502%
27	40	K	0.21029%
27	40	L1	0.19785%
27	41	M	0.21502%
27	41	J3	0.20285%
27	45	L1	0.19785%
27	45	J3	0.20285%
27	49	P	0.18527%
27	49	Q	0.16904%
27	66	LR	0.13226%
27	66	LS	0.11292%
27	66	LT	0.13726%
27	66	LU	0.12070%
27	66	RR	0.13226%
27	66	RS	0.11292%
27	66	RT	0.13726%
27	66	RU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
27	65	LR	0.13226%
27	65	LS	0.11292%
27	65	LT	0.13726%
27	65	LU	0.12070%
27	65	RR	0.13226%
27	65	RS	0.11292%
27	65	RT	0.13726%
27	65	RU	0.12070%
27	64	LR	0.13226%
27	64	LS	0.11292%
27	64	LT	0.13726%
27	64	LU	0.12070%
27	64	RR	0.13226%
27	64	RS	0.11292%
27	64	RT	0.13726%
27	64	RU	0.12070%
28	42	K	0.21029%
28	42	L	0.19785%
28	43	P	0.18527%
28	43	Q	0.16904%
28	51	K	0.21029%
28	51	L1	0.19785%
28	55	O	0.18257%
28	55	P	0.18527%
28	63	LR	0.13226%
28	63	LS	0.11292%
28	63	LT	0.13726%
28	63	LU	0.12070%
28	63	RR	0.13226%
28	63	RS	0.11292%
28	63	RT	0.13726%
28	63	RU	0.12070%
28	114	LR	0.13226%
28	114	LS	0.11292%
28	114	LT	0.13726%
28	114	LU	0.12070%
28	114	RR	0.13226%
28	114	RS	0.11292%
28	114	RT	0.13726%
28	114	RU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
28	115	LR	0.13226%
28	115	LS	0.11292%
28	115	LT	0.13726%
28	115	LU	0.12070%
28	115	RR	0.13226%
28	115	RS	0.11292%
28	115	RT	0.13726%
28	115	RU	0.12070%
29	44	LP	0.18527%
29	44	RP	0.18527%
29	46	K	0.21029%
29	46	M	0.21502%
29	47	L1	0.19785%
29	47	J3	0.20285%
29	48	LQ	0.16904%
29	48	RQ	0.16904%
29	50	LP	0.18527%
29	50	RP	0.18527%
29	52	J3	0.20285%
29	52	K	0.21029%
29	53	J3	0.20285%
29	53	M	0.21502%
29	54	J3	0.20285%
29	54	K	0.21029%
29	60	LR	0.13226%
29	60	LS	0.11292%
29	60	LT	0.13726%
29	60	LU	0.12070%
29	60	RR	0.13226%
29	60	RS	0.11292%
29	60	RT	0.13726%
29	60	RU	0.12070%
30	57	LM	0.21502%
30	57	RM	0.21502%
31	56	L1	0.19785%
31	56	J3	0.20285%
31	58	LR	0.13226%
31	58	LS	0.11292%
31	58	LT	0.13726%
31	58	LU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
31	58	RR	0.13226%
31	58	RS	0.11292%
31	58	RT	0.13726%
31	58	RU	0.12070%
31	61	LR	0.13226%
31	61	LS	0.11292%
31	61	LT	0.13726%
31	61	LU	0.12070%
31	61	RR	0.13226%
31	61	RS	0.11292%
31	61	RT	0.13726%
31	61	RU	0.12070%
31	62	LR	0.13226%
31	62	LS	0.11292%
31	62	LT	0.13726%
31	62	LU	0.12070%
31	62	RR	0.13226%
31	62	RS	0.11292%
31	62	RT	0.13726%
31	62	RU	0.12070%
32	109	LR	0.13226%
32	109	LS	0.11292%
32	109	LT	0.13726%
32	109	LU	0.12070%
32	109	RR	0.13226%
32	109	RS	0.11292%
32	109	RT	0.13726%
32	109	RU	0.12070%
32	110	RR	0.13226%
32	110	RS	0.11292%
32	110	RT	0.13726%
32	110	RU	0.12070%
32	110	LR	0.13226%
32	110	LS	0.11292%
32	110	LT	0.13726%
32	110	LU	0.12070%
32	111	LR	0.13226%
32	111	LS	0.11292%
32	111	LT	0.13726%
32	111	LU	0.12070%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
32	111	RR	0.13226%
32	111	RS	0.11292%
32	111	RT	0.13726%
32	111	RU	0.12070%
32	117	R	0.13226%
32	117	S	0.11292%
32	117	T	0.13726%
32	117	U	0.12070%
32	118	LR	0.13226%
32	118	LS	0.11292%
32	118	LT	0.13726%
32	118	LU	0.12070%
32	118	RR	0.13226%
32	118	RS	0.11292%
32	118	RT	0.13726%
32	118	RU	0.12070%
32	119	LR	0.13226%
32	119	LS	0.11292%
32	119	LT	0.13726%
32	119	LU	0.12070%
32	119	RR	0.13226%
32	119	RS	0.11292%
32	119	RT	0.13726%
32	119	RU	0.12070%
33	112	LR	0.13226%
33	112	LS	0.11292%
33	112	LT	0.13726%
33	112	LU	0.12070%
33	112	RR	0.13226%
33	112	RS	0.11292%
33	112	RT	0.13726%
33	112	RU	0.12070%
33	5	L1	0.19785%
33	5	J3	0.20285%
33	6	K	0.21029%
33	6	M	0.21502%
33	7	O	0.18257%
33	7	P	0.18527%
34	3	LR	0.13226%
34	3	LS	0.11292%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
34	3	LT	0.13726%
34	3	LU	0.12070%
34	3	RR	0.13226%
34	3	RS	0.11292%
34	3	RT	0.13726%
34	3	RU	0.12070%
35	113	LR	0.13226%
35	113	LS	0.11292%
35	113	LT	0.13726%
35	113	LU	0.12070%
35	113	RR	0.13226%
35	113	RS	0.11292%
35	113	RT	0.13726%
35	113	RU	0.12070%
35	108	LR	0.13226%
35	108	LS	0.11292%
35	108	LT	0.13726%
35	108	LU	0.12070%
35	108	RR	0.13226%
35	108	RS	0.11292%
35	108	RT	0.13726%
35	108	RU	0.12070%
36	59	LR	0.13226%
36	59	LS	0.11292%
36	59	LT	0.13726%
36	59	LU	0.12070%
36	59	RR	0.13226%
36	59	RS	0.11292%
36	59	RT	0.13726%
36	59	RU	0.12070%
36	2	R	0.13226%
36	2	S	0.11292%
36	2	T	0.13726%
36	2	U	0.12070%
36	116	LR	0.13226%
36	116	LS	0.11292%
36	116	LT	0.13726%
36	116	LU	0.12070%
36	116	RR	0.13226%
36	116	RS	0.11292%

UNOFFICIAL COPY

Stage	Building	Dwelling	Percentage
36	116	RT	0.13726%
36	116	RU	0.12070%
37	1	LR	0.13226%
37	1	LS	0.11292%
37	1	LT	0.13726%
37	1	LU	0.12070%
37	1	RR	0.13226%
37	1	RS	0.11292%
37	1	RT	0.13726%
37	1	RU	0.12070%
37	8	RJ	0.16904%
37	8	LJ	0.16904%
37	9	K	0.21029%
37	9	M	0.21502%
Total			100.00000%

UNOFFICIAL COPY

EXHIBIT C

FIRST CONSOLIDATED, AMENDED AND RESTATED BYLAWS OF ROB ROY COUNTRY CLUB VILLAGE ASSOCIATION

All terms used in the following Bylaws shall have the same meanings as they have in the Declaration of Condominium Ownership for Rob Roy Country Club Village, to the extent such terms are defined therein, which Declaration is recorded in the office of the Recorder of Deeds of Cook County, Illinois. The terms "member" or "members" as used in these Bylaws mean and shall refer to "Unit Owner" or "Unit Owners", as the case may be, from time to time, as defined in the Declaration.

ARTICLE I Members (Unit Owners)

Section 1. ELIGIBILITY. The Members of ROB ROY COUNTRY CLUB VILLAGE ASSOCIATION, an Illinois not-for-profit organization ("Association"), shall consist of the respective Unit Owners of the property known as the ROB ROY COUNTRY CLUB VILLAGE project and located in Prospect Heights, Illinois (called "Property"), in accordance with the respective percentages of ownership interest in the Common Elements of the Property owned by the respective Unit Owners. The Association shall have one class of membership. If a Unit Owner is a trust, then the member shall be the beneficiaries of such trust, and if a Unit Owner or such beneficiary is a corporation or partnership, the member may be an officer, partner or employee of such Unit Owner or beneficiary.

Section 2. SUCCESSION. The membership of each Unit Owner shall terminate when said person, trust, corporation or partnership, as set forth in Article I, Section 1, above, ceases to be a Unit Owner, and, upon the sale, transfer or other disposition of such person's or entity's ownership interest in the Property, said person's or entity's membership in the Association shall automatically be transferred to the new Unit Owner succeeding to such ownership interest.

Section 3. REGULAR MEETINGS. The Unit Owners shall hold an annual meeting, one of the purposes of which shall be to elect members of the Board. The first regular annual meeting of Association members (the "First Meeting") may be held, subject to the terms hereof, on any date, at the option of the First Board, provided, however, that said First Meeting shall be held not later than the later of (i) sixty (60) days after Trustee has sold and delivered its deed for

UNOFFICIAL COPY

and possession of 75% of the Units to be constructed on the Parcel and the Future Development Parcel or three years after the recording of the Declaration, whichever is earlier, or (ii) such later date as shall be permitted by the Act. Subsequent to the First Meeting, a regular annual meeting of Unit Owners shall be held every year not less than 60 days after the end of the Association's fiscal year, provided, however, that no such annual meeting need be held in the fiscal year immediately following the fiscal year during which the First Meeting is held if the date set for such meeting is less than one year after the First Meeting. Written notice of any membership meeting shall be mailed or delivered giving Unit Owners no less than ten (10) and no more than thirty (30) days' notice of the time, place, and purpose of such meeting, except that notice may be sent, to the extent the condominium instruments or Rules adopted thereunder expressly so provide, by Electronic Transmission consented to by the Unit Owner to whom the notice is given, provided that a Board member or Officer or his agent certifies in writing to the delivery by electronic means. Said meetings shall be in Cook County, Illinois.

Section 4. SPECIAL MEETINGS. Special Meetings of the Unit Owners may be called by the President, by a majority of the Directors of the Board, or by Unit Owners having at least twenty percent (20%) of the votes entitled to be cast at such meeting. Notice of any Special Meeting shall be given in the same manner as is provided herein for notice of regular annual meetings of members. Matters to be submitted at Special Meetings of the Unit Owners shall first be submitted to the Board at least ten (10) days prior to the Special Meeting. At the Special Meeting the President shall announce a list of matters to be considered by the Unit Owners.

Section 5. DELIVERY OF NOTICE OF MEETINGS. Notices of meetings shall be mailed to a Unit Owner at the address given to the Board by said Unit Owner for such purpose, or to the Unit Owner's Unit, if no address for such purposes has been given to the Board.

Section 6. VOTING. Voting shall be on a percentage basis. The percentage vote to which each Unit is entitled is the percentage interest of the undivided ownership of the Common Elements appurtenant thereto. The aggregate number of votes for all Unit Owners shall be one hundred (100), and shall be divided, from time to time, among the respective Unit Owners in accordance with their respective percentages of ownership interest in the Common Elements at that time. If any Unit Owner consists of more than one person, the voting rights of such Unit Owner shall not be valid if divided but shall be exercised as if the Unit Owner consists of only one person, in accordance with the proxy or other designation made by one of the persons constituting such Unit Owner. Where there is more than one Unit Owner of a Unit, if only one of the multiple owners is present at a meeting of the Association, he or she shall be entitled to cast all the votes allocated to that Unit. If more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners. There is majority agreement when any one of the multiple owners cast the votes allocated to that Unit without protest being made promptly to the person presiding over

UNOFFICIAL COPY

the meeting by any of the other owners of the Unit. The Developer may exercise all voting rights with respect to the Units owned by the Trustee.

Matters subject to the affirmative vote of not less than two-thirds of the votes of Unit Owners at a meeting duly called for that purpose shall include, but not be limited to: (1) merger or consolidation of the Association; (2) 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 (3) the purchase or sale of land or of Units on behalf of all Unit Owners.

If at any time, thirty percent (30%) or fewer of the Units by number possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage vote of members specified herein or in the Declaration shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

Section 7. QUORUM. The presence, in person or by proxy, of twenty percent (20%) of the Unit Owners at any meeting of the Association shall constitute a quorum unless the Unit Owners holding a majority of the percentage interest in the Association provide for a higher percentage, provided that in voting on amendments to the Association's bylaws, a Unit Owner who is in arrears on the Unit Owner's regular or separate assessments for sixty (60) days or more, shall not be counted for purposes of determining if a quorum is present, but that Unit Owner retains the right to vote on amendments to the Association's bylaws.

ARTICLE II Board of Directors

Section 1. NUMBER, ELECTION AND TERM OF OFFICE. The Board of Directors of the Association (referred to in the Condominium Property Act of the State of Illinois as the "board of managers," and sometimes referred to herein as the "Board") shall consist of eleven (11) members (hereinafter referred to as "directors"), except that the First Board shall consist of only three (3) directors. Directors shall be elected at the regular annual meeting of Association members, except that the First Board shall be appointed by the Developer. In each election for directors every Unit Owner shall have the right to vote, in person or by proxy, his percentage of ownership of the Common Elements multiplied by the number of directors to be elected. Each Unit Owner may cumulate his vote for one candidate or may distribute his vote among as many candidates as he shall see fit. Those candidates, receiving the greatest number of votes shall be deemed elected. At the First Meeting, the six candidates receiving the greatest amount of votes shall be deemed elected as directors for a term of two years and until their respective successors shall be elected and qualified, and the five candidates receiving the next highest amount of votes shall be deemed elected as directors for a term of one year and until their

UNOFFICIAL COPY

respective successors shall be elected and qualified. Thereafter, every director shall hold office for a term of two years and until his successor shall be elected and qualified. The members of the First Board shall hold office until the First Meeting. Any director may be elected to succeed himself.

Section 2. QUALIFICATION. Except for members of the First Board, each director shall be one of the Unit Owners (or, if a Unit Owner is a trustee of a trust, a director may be a beneficiary of such trust, and if a Unit Owner or such beneficiary is a corporation or partnership, a director may be an officer, partner or employee of such Unit Owner or beneficiary, as the case may be). If a director shall cease to meet such qualifications during his term, he shall thereupon cease to be a director and his place on the Board shall be deemed vacant. If there are multiple Unit Owners of a single Unit, only one of the multiple Unit Owners shall be eligible to serve as a member of the Board at any one time. The Board may disseminate to the Unit Owners biographical and background information about candidates for election to the Board if 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 the Board does not express a preference in favor of any candidate. Any proxy distributed for Board elections by the Board must give Unit Owners the opportunity to designate any person as the proxy holder and 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.

Section 3. VACANCIES. The remaining members of the Board may fill a vacancy on the Board by a two-thirds (2/3) vote until the next annual meeting of Unit Owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by Unit Owners holding twenty percent (20%) of the votes of the Association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. A meeting of the Unit Owners shall be called for the purpose of filling a vacancy on the Board no later than thirty (30) days following the filing of a petition signed by Unit Owners holding twenty percent (20%) of the votes of the Association requesting such a meeting.

Section 4. MEETINGS. A regular meeting of the Board shall be held at least four times annually, one of which regular meetings shall be held within ten (10) days following the regular annual meeting of Unit Owners. Special Meetings of the Board can be called by the President or twenty-five percent (25%) of the members of the Board. A director's attendance at a meeting shall constitute his waiver of notice of such meeting. All meetings of the Board shall be open to 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 of Managers finds that such an action is probable or imminent, (ii) discuss the appointment, employment, engagement or dismissal of an employee, independent contractor,

UNOFFICIAL COPY

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 shall take place at a meeting of the Board of Managers or portion thereof open to any Unit Owner. Any Unit Owner may record the proceedings at meetings of the Board of Managers or portions thereof required to be open by tape, film, or other means. The Board may prescribe reasonable rules and regulations to govern the right to make such recordings.

Notice of every meeting of the Board of Managers shall be given to every Board member at least forty-eight (48) hours prior thereto, unless the Board member waives notice of the meeting pursuant to subsection (a) of Section 18.8 of the Act. In addition, notice of every meeting of the Board shall be posted in entranceways, elevators, or other conspicuous places in the condominium at least forty-eight (48) hours prior to the meeting of the Board except where there is no common entranceway for seven (7) or more Units, the Board may designate one or more locations in the proximity of these Units where the notices of meetings shall be posted.

Notice of every meeting of the Board of Managers shall also be given at least forty-eight (48) hours prior to the meeting, or such longer notice as the Condominium Property Act may separately require, to: (i) each Unit Owner who has provided the Association with written authorization to conduct business by Acceptable Technological Means, and (ii) to the extent that the condominium instruments of the Association require, to each other Unit Owner, as required by subsection (f) of Section 18.8 of the Act, by mail or delivery, and that no other notice of a meeting of the Board of Managers need be given to any Unit Owner.

Board members may participate in and act at any meeting of the Board of Managers 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.

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

Section 5. REMOVAL. Prior to the First Meeting, any director may be removed from office without cause by the Developer. Thereafter, any director may be removed from office for cause by the vote of two-thirds (2/3) of the total undivided ownership of the Common Elements.

UNOFFICIAL COPY

Section 6. COMPENSATION. Directors shall receive no compensation for their services unless such compensation is expressly provided for by resolution duly adopted by the members of the Association.

Section 7. QUORUM. Seven (7) directors shall constitute a quorum except as to the First Board as to which two (2) directors shall constitute a quorum. If a quorum is not present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 8. POWERS AND DUTIES. The powers and the duties of the Board shall include, but shall not be limited to, the following matters:

- (a) to elect and remove the officers of the Association as hereinafter provided;
- (b) to administer the affairs of the Association and the Property;
- (c) to engage the services of an agent (hereinafter sometimes called the "Managing Agent") to maintain, repair, replace, administer and operate the Property or any part thereof for all of the Unit Owners, upon such terms and for such compensation and with such authority as the Board may approve pursuant to and in accordance with the Declaration and the Bylaws; provided however, that the First Board may ratify and approve a management agreement between the Association and a Managing Agent for a fixed monthly rate payable by the Association as a common expense, which ratification and approval shall not be subject to the provision of Article IV, Section 6 hereof;
- (d) to formulate policies for the administration, management and operation of the Property and the Common Elements, including without limitation the Recreational Facilities;
- (e) to adopt and amend rules and regulations covering the details of the operation and use of the Property, after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations. Notice of the meeting shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements of Section 18(b) of the Condominium Property Act, except that no quorum is required at such meeting of the Unit Owners. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution, including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of the Condominium Property Act or the condominium instruments. No

UNOFFICIAL COPY

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 condominium Unit;

(f) to provide for the maintenance, repair, and replacement of the Common Elements, including without limitation the Recreational Facilities, to perform all of the obligations of the Board and the Association arising with respect to the Recreation Easement, to pay for the foregoing with respect to the Common Elements (including the Recreational Facilities) and to approve payment vouchers or to delegate such approval to the officers of the Association or to the Managing Agent. Nothing in this subsection (f) shall be deemed to invalidate any provision in the Declaration or Bylaws 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 terms "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 18(a)(8)(iv) of the Act, 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;

(g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and attorneys, and 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 the Common Elements, and to delegate any such powers to the Managing Agent (and any such employees or other personnel who may be the employees of a Managing Agent);

(h) to appoint committees of the Board and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(i) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deems advisable;

UNOFFICIAL COPY

(j) to prepare, adopt and distribute the annual budget for the Property and provide the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses, as hereinafter provided, and to levy and expend assessments;

(k) to enter into agreements, grant licenses or concessions pertaining to or grant easements over certain areas of the Common Elements including, without limitation, the Recreational Facilities;

(l) to obtain adequate and appropriate kinds of insurance;

(m) to provide for the owning, conveying, encumbering, leasing of and to otherwise deal with any Units conveyed to or purchased by the Association;

(n) to keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;

(o) to have access to each Unit from time to time as may be necessary for maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units;

(p) to maintain the retention ponds located on the Golf Course, the landscaped entryways located at Camp McDonald Road and at Euclid Road, and to perform all other obligations required to be performed by the owner of the Property, the Unit Owners and the Association pursuant to the Declaration of Covenants;

(q) to acquire the Golf Course and annex it to the Common Elements, with the consent of the Unit Owners as provided in the Declaration;

(r) unless otherwise provided herein or in the Declaration, to comply with the instructions of a majority of the Unit Owners (as said majority is defined in the Declaration), as expressed in a resolution duly adopted at any regular annual or Special Meeting of the Unit Owners;

(s) to exercise all other powers and duties of the Board of Managers or Unit Owners as a group referred to in the Condominium Property Act of the State of Illinois, and all powers and duties of a board of managers or the Board referred to in the Declaration or these Bylaws;

UNOFFICIAL COPY

(t) to pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium;

(u) to impose charges for late payment of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, to levy reasonable fines for violation of the Declaration, Bylaws, and rules and regulations of the Association;

(v) by a majority vote of the entire Board, to assign the right of the Association to future income from Common Expenses or other sources, and to mortgage or pledge substantially all of the remaining assets of the Association;

(w) to record the dedication of a portion of the Common Elements to a public body for use as, or in connection with, a street or utility where authorized by the Unit Owners under the provisions of Section 14.2 of the Condominium Property Act;

(x) to 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 Condominium Property Act, and 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 of the condominium on a bulk identical service and equal cost per Unit; 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;

(y) to seek relief on behalf of all Unit Owners when authorized pursuant to Subsection (c) of Section 10 of the Condominium Property 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;

(z) 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 Human Rights Act and any applicable local ordinances, in the exercise of its powers with respect to the use of Common Elements or approval of modifications in an individual Unit;

(aa) to accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Association with respect to

UNOFFICIAL COPY

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 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;

(bb) to adopt and amend rules and regulations (1) authorizing electronic delivery of notices and other communications required or contemplated by the Condominium Property 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 any 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 Condominium Property Act or any condominium instrument; and

(cc) in the performance of their duties, the officers and members of the Board shall exercise the care required of a fiduciary of the Owners.

Section 9. LIMITATION OF BOARD'S POWER. Notwithstanding the provisions in this Article or elsewhere in the Declaration or these Bylaws, the Board shall not have the power or duty to act in any way which materially prejudices the development of the Property or the Future Development Parcel, as contemplated in the Declaration. The Association shall have no authority to forbear the payment of assessments by any Unit Owner.

Section 10. NON-DELEGATION. Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board or the Association, or to the directors or officers of the Association, any powers or duties which, by law, have been delegated to the Unit Owners.

Section 11. ADDITIONAL VOTING PROVISIONS. (a) Except as provided in subsection (b) in connection with Board elections, a Unit Owner may vote by proxy executed in writing by the Unit Owner or by his duly authorized attorney in fact. The proxy must bear the date of execution and, unless the condominium instruments or the written proxy itself provide otherwise, the proxy is invalid after 11 months from the date of its execution; to the extent the condominium instruments or rules adopted thereunder expressly so provide, a vote or proxy may be submitted by Electronic Transmission, provided that any such Electronic Transmission shall either set forth or be submitted with information from which it can be determined that the Electronic Transmission was authorized by the Unit Owner or the Unit Owner's proxy;

UNOFFICIAL COPY

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

(c) If a rule adopted at least 120 days before a Board election or the Declaration or Bylaws provide for balloting as set forth in this subsection, Unit Owners may not vote by proxy in Board elections, but may vote only (i) by submitting an Association-issued ballot in person at the election meeting; or (ii) by any Acceptable Technological Means; instructions regarding the use of electronic means for voting shall be distributed to all Unit Owners not less than ten (10) and not more than thirty (30) days before the election meeting, and the Board shall give Unit Owners not less than twenty one (21) days' prior written notice of the deadline for inclusion of a candidate's name on the ballots; the deadline shall be no more than seven (7) days before the instructions for voting using electronic or Acceptable Technological Means is distributed to Unit Owners; every instruction notice must include the names of all candidates who have given the Board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or Acceptable Technological Means the opportunity to cast votes for candidates whose names do not appear on the ballot; a Unit Owner who submits a vote using electronic or Acceptable Technological Means may request and cast a ballot in person at the election meeting, thereby voiding any vote previously submitted by that Unit Owner;

(d) If a written petition by Unit Owners with at least twenty percent (20%) of the votes of the Association is delivered to the Board within thirty (30) days after the Board's approval of a rule adopted pursuant to subsection (b) or subsection (c), the Board shall call a meeting of the Unit Owners within 30 days after the date of delivery of the petition. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the rule, the rule is ratified;

UNOFFICIAL COPY

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

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

(g) In the event of a resale of a Unit, the purchaser of a Unit from a seller pursuant to an installment contract to 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 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 an installment contract shall be made available to the Association or its agent. For purposes of this section "installment contract" shall have the same meaning as set forth in Section 1(e) of "the Dwelling Unit Installment Contract Act."

ARTICLE III Officers

Section 1. DESIGNATION. At the regular meeting of the Board held within ten (10) days following the regular annual meeting of Unit Owners, the directors present at said meeting shall elect the following officers of the Association by a majority vote:

(a) a President, who shall be a member of the Board, shall preside over the meetings of the Board and of Unit Owners, who shall be the chief executive officer of the Association, and who shall execute Amendments to the Declaration as provided for in the Declaration or in the Act;

(b) a Vice President, who shall be a member of the Board, who shall, in the absence or disability of the President, perform the duties and exercise the powers of the President;

(c) a Secretary, who shall be a member of the Board, who shall keep the minutes of all meetings of the Board and of the Unit Owners, and who shall, in general,

UNOFFICIAL COPY

perform all the duties incident to the office of Secretary, and is hereby designated as the person to mail and receive all notices as provided for in the Condominium Property Act and in this Declaration;

(d) a Treasurer, who shall be a member of the Board, who shall keep the financial records and books on account and the manner in which such records and books are kept and reported;

(e) such additional officers as the Board shall see fit to elect.

Section 2. POWERS. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officers or impose such limitation or restrictions upon the powers of any officer as the Board may see fit.

Section 3. TERM OF OFFICE. Each officer shall hold office for the term of one year and until his successor shall have been elected and qualified. Any officer may be elected to succeed himself.

Section 4. VACANCIES. Vacancies in any Office shall be filled by the Board by a majority vote of the remaining members thereof at a Special Meeting of said Board. Any officer so elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by a majority vote of the Board at a Special Meeting thereof.

Section 5. COMPENSATION. The officers shall receive no compensation for their services unless such compensation is expressly provided for by resolution duly adopted by a majority of the members of the Association.

ARTICLE IV

Assessments

Section 1. ANNUAL BUDGET. The Board shall prepare and distribute to all Unit Owners a detailed proposed annual budget, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The budget shall also set forth each Unit Owner's proposed common expense assessment. Each Unit Owner shall receive, at least twenty-five (25) days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes, and including without limitation, salaries, wages, payroll taxes, legal and accounting fees, supplies, materials, parts,

UNOFFICIAL COPY

services, maintenance, repairs, replacements, landscaping, gardening, snow removal, insurance, fuel, power, water (including water for the Units) and all costs of maintaining offsite facilities to be maintained by the Unit Owners or the Association pursuant to the Declaration of Covenants. Such budget shall also set forth all items required to be set forth by Paragraph 8(d)(ii) of the Declaration relating to the monthly Recreation Fee, if any, payable by the Developer. Such budget shall also set forth each Unit Owner's proposed regular assessments, other anticipated assessments, and other income, including, the estimated net available cash income for the year from the lease, operation or use of parts of the Common Elements including, without limitation, the Recreational Facilities. To the extent that the assessments and other cash income collected from the Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, the surplus or deficit, as the case may be, shall also be taken into account. The annual budget shall provide for a reserve for contingencies for the year and a reserve for replacements, in reasonable amounts as determined by the Board.

Section 2. ASSESSMENTS.

(a) The estimated annual budget for each fiscal year and any amendments or changes thereto shall be approved by the Board. On or before the first day of the first month and of each succeeding month of the year covered by the annual budget, each Unit Owner, except as provided in subparagraphs (b) and (c) of this Section 2, shall pay, as his respective monthly assessment for the Common Expenses, one-twelfth (1/12) of his proportionate share of the Common Expenses, as that term is defined in and subject to the terms of the Declaration, for such year as shown by the annual budget. Except as provided in subparagraphs (b) and (c) of this Section 2, such proportionate share for each Unit Owner shall be in accordance with his respective ownership interest in the Common Elements, as set forth, from time to time, in Exhibit B to the Declaration. In no event, however, shall any Unit Owner's assessment increase during the first fiscal year of the Association by a percentage greater than the percentage increase for the period covered by such fiscal year in the Consumer Price Index of Chicago, Illinois for all urban consumers, issued from time to time by the Federal Bureau of Labor Standards, as adjusted.

(b) Notwithstanding anything in subsection 2(a) to the contrary, subject to those limitations contained in the Act and in subsection 2(c) below, if upon review of the estimated annual budget for any fiscal year, the Board determines that that portion of any item of the estimated Common Expenses related to the Limited Common Elements and attributable to one or more types of Units is disproportionate to the aggregate percentage of ownership of the Common Elements attributable to all Units of such one or more types (such one or more types of Units being referred to hereafter as "Disproportionately Costly Units"), then during such fiscal year, the Unit Owners of each of the Disproportionately

UNOFFICIAL COPY

Costly Units shall, during each month of such fiscal year pay additional monthly assessments ("Additional Assessments") equal to one-twelfth of an amount determined by multiplying:

(x) the excess of

(i) the amount of such Item of the estimated Common Expenses attributable to the Disproportionately Costly Units, over

(ii) the product of the aggregate percentage of ownership of the Common Elements attributable to all of the Disproportionately Costly Units, multiplied by the amount of such item of the Common Expenses attributable to all Units,

times

(y) a fraction, the numerator of which is such Unit Owner's percentage of ownership of the Common Elements and the denominator of which is the aggregate percentage of ownership Of the Common Elements attributable to all of the Disproportionately Costly Units.

If appropriate, the Board may levy additional series of Additional Assessments for any fiscal year, if the Board determines that there is more than one item of estimated Common Expenses related to the Limited Common Elements which is disproportionately attributable to one or more type of Units, as provided above. For each fiscal year for which the Board levies one or more series of Additional Assessments, the aggregate amount of all Additional Assessments payable by all Unit Owners for such entire fiscal year shall not be included in the Common Expenses for the purpose of computing the regular monthly assessments owed by each Unit Owner pursuant to subsection 2(a) of this Article IV. In the event that during any fiscal year the disproportionate expenditures actually made with respect to any group of Disproportionately Costly Units are less than the aggregate amount of all Additional Assessments paid during such fiscal year by the Unit Owners of such Disproportionately Costly Units, then the Board shall apply such excess in reduction of any future assessments owed by the payors thereof, shall arrange for the return of an equitable portion of such Additional Assessments to the respective payors thereof or shall make such other arrangements as the Board shall determine are equitable. Whenever reference is made herein to type or types of Units, the Board may utilize the types of unit designated by the Developer during its sales program or may classify the Units by any other method which the Board determines is reasonably related to the equitable reapportionment of the Common Expenses.

UNOFFICIAL COPY

Nothing in Section 5 or Section 6 of this Article IV shall limit or otherwise be deemed applicable to the rights of the Board to levy Additional Assessments pursuant to this Section 2(b).

(c) Subsections 2(a) and (b) of this Section 2 notwithstanding, the Trustee, the Developer, or any assignee of the Developer's interest as beneficiary of the Trustee, in lieu of paying its proportionate share of the Common Expenses as a Unit Owner, may, at its election, pay the difference (if any) remaining after deducting (i) the amount due to the Association from the Unit Owners other than the Trustee, the Developer, or any assignee of the Developer's interest as beneficiary of the Trustee, pursuant to the Declaration and this Section 2, from (ii) the aggregate actual operating expenses (hereinafter defined) from time to time required to be paid in connection with the operation of the Property, provided, that in no case shall the Trustee, the Developer or any assignee of the Developer's interest as assignee of the beneficiary of the Trustee pay less than its proportionate share of the Common Expenses. For purposes of this subparagraph, "aggregate actual operating expenses" means all costs and expenses incurred in the operation of the Common Elements, but not including any costs for the Maintenance Reserve or any other reserves or any expenditure for capital improvements or replacements to the Common Elements.

(d) (i) Notwithstanding anything in the Declaration to the contrary, except as provided in subsection (iii) below, if an adopted budget or any separate assessment by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding one hundred fifteen percent (115%) of the sum of all regular and separate assessments payable during the preceding fiscal year, the Board, upon written petition by Unit Owners with twenty 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 or separate assessment. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the budget or separate assessment, it is ratified. Each Unit Owner shall receive notice, in the same manner as provided for in the Condominium Property Act for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget and regular assessments pursuant thereto or to adopt a separate (special) assessment.

(ii) Any Common Expense not set forth in the budget or any increase in assessment over the amount adopted in the budget shall be separately assessed against all Unit Owners.

UNOFFICIAL COPY

(iii) Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Unit Owner approval or the provisions of item (i) above or item (iv) below. As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners.

(iv) Assessments for additions and alterations to the Common Elements or to Association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds of the total votes of all Unit Owners.

(v) The Board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by items (iii) and (iv), the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

(e) In connection with expenditures for the Limited Common Elements, the Board may provide for the assessment of only those Units to which such Limited Common Elements are assigned. In the event that the Board shall not approve an estimated annual budget or shall fail to determine new monthly assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay each month the amount of his respective monthly assessment as last determined. Each Unit Owner shall pay his monthly assessment on or before the first day of each month to the Managing Agent or as may be otherwise directed by the Board. Pursuant to rules and regulations duly adopted by the Board, the Board or the Managing Agent, at the direction of the Board, may assess a late charge against any Unit Owner who fails to pay the monthly assessment on his Unit when due. No Unit Owner shall be relieved of his obligation to pay his assessment by abandoning or not using his Unit or the Common Elements.

Section 3. PARTIAL YEAR OR MONTH. For the first fiscal year, the annual budget shall be as approved by the First Board. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner, except as provided in the second paragraph of Section 2 of this Article IV, shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the first day of the month following the date of closing the purchase of his Unit, each Unit Owner shall pay his assessment for the current month which assessment shall be in proportion to his respective ownership interest in the Common Elements for the number of months and days remaining of the period covered by the current annual budget, and which assessment shall be as computed by the Board.

UNOFFICIAL COPY

Section 4. ANNUAL REPORT. Within ninety (90) days after the end of each fiscal year covered by an annual budget, or as soon thereafter as shall be practicable, the Board shall annually supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves, and such other information as the Board may deem desirable. Such annual report shall be available for inspection, upon request, by any bona fide prospective purchaser of a Unit. The Association shall use generally accepted accounting principles in fulfilling any accounting obligation under the Condominium Property Act. At the end of the Association's fiscal year and after the Association has approved any end-of-year fiscal audit, if applicable, if the fiscal year ended with a surplus of funds over actual expenses, including budgeted reserve fund contributions, the Board has the authority, in its discretion, to dispose of the surplus in any one or more of the following ways: (i) contribute the surplus to the Association's reserve fund; (ii) return the surplus to the Unit Owners as a credit against the remaining monthly assessments for the current fiscal year; (iii) return the surplus to the Unit Owners in the form of a direct payment to the Unit Owners; or (iv) maintain the funds in the operating account, in which case the funds shall be applied as a credit when calculating the following year's budget.

If the fiscal year ends in a deficit, the Board has the authority, in its discretion, to address the deficit by incorporating it into the following year's annual budget.

If twenty percent (20%) of the Unit Owners of the Association deliver a petition objecting to the action under this Section within thirty (30) days after notice to the Unit Owners of the action, the Board shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition. At the meeting, the Unit Owners may vote to select a different option than the option selected by the Board. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the Board's selection and select a different option, the Board's decision is ratified.

Section 5. SUPPLEMENTAL BUDGET. Subject to the provisions of the Act, and Section 2(d) above, in the event that during the course of any year, it shall appear to the Board: (a) that the monthly assessments determined in accordance with the estimated annual budget for such year are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, (b) that there is any non-recurring Common Expense or any Common Expenses not set forth in the annual budget as adopted, or (c) that an assessment must be made to replenish any reserves provided for pursuant to Paragraph 17(b) of the Declaration, then the Board shall prepare and approve a supplemental budget or statement of non-recurring Common Expense or statement of other expense covering the estimated deficiency for the remainder of

UNOFFICIAL COPY

such year, provided that prior to the Board's approval thereof, the Board has caused to be furnished to each Unit Owner a copy of the supplemental budget or statement of non-recurring Common Expense or statement of other expense and a notice (in the same manner as is provided in Article I of these Bylaws for membership meetings) of the meeting of the Board concerning approval thereof. After the adoption by the Board of the supplemental budget or statement of non-recurring Common Expense or statement of other expense, a supplemental assessment shall be made to each Unit Owner for his proportionate share thereof, subject, nevertheless, to the following rules: Any non-recurring Common Expense, any Common Expense not set forth in the estimated annual budget as adopted, and any increase in assessment over the amount adopted in the estimated annual budget shall be separately assessed against all Unit Owners, subject to the Trustee's and the Developer's obligations to make contributions (if any) pursuant to Section 2 of this Article IV.

Section 6. EXPENDITURES. Except for capital expenditures and contracts and other expenditures and agreements specifically authorized by the Declaration and Bylaws, the Board shall not approve any single expenditure in excess of Ten Thousand Dollars (\$10,000) unless required for emergency repair, protection or operation of the Common Elements, nor enter any contract for more than three (3) years without the prior approval of two-thirds (2/3) of the total ownership of the Common Elements.

Section 7. LIEN. It shall be the duty of every Unit Owner to pay his proportionate share of the Common Expenses, as set forth from time to time in the Declaration and as assessed in the manner herein provided, and the Association shall have a lien therefor pursuant to Paragraph 13(a) of the Declaration.

Section 8. RECORDS AND STATEMENT OF ACCOUNT. The Board shall cause to be kept detailed and accurate records, in chronological order, of the receipts and expenditures affecting the Common Elements, specifying and itemizing the common expenses incurred. Payment vouchers may be approved in such a manner as the Board may determine.

The Board shall, upon receipt of ten (10) days written notice to it or the Association from a Unit Owner or from the encumbrancer of a Unit, and upon payment of a reasonable fee, furnish to any Unit Owner or encumbrancer a statement of said Unit Owner's account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

Section 9. DISCHARGE OF LIENS. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common Elements, rather than a lien against only a particular Unit and its corresponding percentage interest in the Common Elements. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners

UNOFFICIAL COPY

responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees and expenses, incurred by reason of such lien.

Section 10. **HOLDING OF 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 Unit Owners and such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the sole benefit, use and account of all the Unit Owners in the percentages set forth from time to time in Exhibit B to the Declaration.

ARTICLE V

Use and Occupancy Restrictions

The Declaration and the Bylaws have been created and executed for the common good of the Property and all Unit Owners. Each Unit Owner, by accepting a deed to his Unit subject to the Declaration and the Bylaws, agrees that for the common good his use, occupancy and enjoyment of his Unit and the Common Elements will be governed by the Declaration and the Bylaws.

Section 1. **GENERAL.** No unlawful, obnoxious or offensive activities shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

Each Unit Owner shall maintain his Unit in good condition and in good order and repair, at his own expense, and shall not do or allow anything to be done in his Unit or the Common Elements which may increase the cost or cause the cancellation of insurance on other Units or on the Common Elements. No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside his Unit, or which may be visible from the outside of his 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 his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Architectural Control Commission or the Managing Agent, acting in accord with the Architectural Control Commission's direction. No owner of a Unit, except as provided below, shall display, hang, store or use any sign outside his Unit, in a hallway or elsewhere, or which may be visible from the outside of his Unit, without the prior written permission of the Board or the Managing Agent, acting in accord with the Board's direction.

UNOFFICIAL COPY

Section 2. ANIMALS. No animals shall be raised, bred or kept in any Unit or the Common Elements, except for dogs and cats (but not more than 2 animals per Unit), small birds and fish of a Unit Owner, provided said animals are of a breed or variety commonly kept as household pets, are not kept or bred for any commercial purpose, are not allowed to run loose on the 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 bred or 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.

Section 3. TRASH. Trash, garbage and other waste shall be kept only in sanitary containers inside the covered parking area assigned to the Unit, and such containers shall be brought to the central area designated by the scavenger service serving a Unit and shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations duly adopted by the Board. After emptying, the containers shall promptly be returned to said parking area.

Section 4. USE BY TRUSTEE. Anything stated in these Bylaws notwithstanding, during the period of sale by the Trustee of any Units, the Trustee and the Developer and the Developer's agents, employees, contractors and sub-contractors, and their respective agents and employees, shall be entitled to access and ingress to and egress from any Building and the Property as may be required for purposes of said sale of Units. While the Trustee owns any of the Units, the Trustee and the Developer, and the Developer's agents and employees, and their respective agents and employees, may use and show one or more of its unsold Units as a model Unit or Units and may use one or more of such unsold Units as a sales office, and may maintain signs in connection therewith as Developer, in its reasonable discretion, determines are desirable. The Trustee shall have the right, as a Unit Owner, to lease one or more of such unsold Units, subject to the terms and provisions of the Declaration and these Bylaws. This Section cannot be amended or deleted without the consent of Developer so long as either (i) Trustee's rights to submit Additional Parcels to the Act have not expired or (ii) Trustee or Developer holds legal title to any Unit.

Section 5. PARKING AND STORAGE. 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 outdoor parking area, patio, balcony or area constituting part of the Common Elements, except in storage areas specifically designated for such use by the Board or by the Managing Agent, acting in accord with the Board's direction; provided, however, that a reasonable amount of wood logs may be stored on the patio or balcony of those Units equipped with a wood burning fireplace. No recreational or camping vehicles or