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Declaration of
Party Wall Rights, Covenants,
Conditions, Restrictions and Easement

For

762-768 WEST 26TH STREET TOWNHOME ASSOCIATION

PREPARED BY:

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**DECLARATION
OF
PARTY WALL RIGHTS,
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
762-768 WEST 26TH STREET TOWNHOME ASSOCIATION**

THIS DECLARATION is made and entered into on the date hereinafter set forth by as trustee under Marquette National Bank, a national banking association, as trustee under a Dated January 26, 1990 a/k/a Trust #12262, (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner and legal title holder of certain real estate in the County of Cook, State of Illinois which real estate is legally described in Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, the beneficiary of the Declarant presently intend to market a development containing Townhouse Units, as hereinafter defined, together with common areas which will require uniformity and continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in the Townhouse Units; and

WHEREAS, the beneficiary of the Declarant have deemed it desirable for the efficient preservation of the values and amenities of the proposed development to create an agency to which shall be delegated and assigned the powers of maintaining and administering the Common Area, as hereinafter defined, and administering and enforcing the covenants and restrictions hereinafter contained and created; and

WHEREAS, there may be incorporated under the laws of the State of Illinois, the 762-768 West 26th Street Townhomes Association for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires to establish for its own benefit and the mutual benefit all future owners, tenants and occupants of the aforesaid development and real estate and any part thereof, certain easements or rights in, over under, upon along and across said development and real estate and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof;

NOW THEREFORE, the Declarant hereby declares that only the

real estate described in Exhibit "A" and such additions thereto as may hereafter be made is and shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements. The Declarant does hereby further declare that the following easements, covenants, restrictions, conditions and burdens, uses privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquired right, title or interest in any portions of the real estate (2) be binding upon and inure to the benefit of each Owner (as hereinafter defined); held, sold and conveyed subject thereto.

ARTICLE I

DEFINITIONS

Section 1.01. "Association" shall mean and refer to 762-768 West 26th Street Townhomes Association, a corporation which may be formed under the general Not For Profit Corporation Act of the State of Illinois.

Section 1.02. "Property" shall mean and refer to that certain real estate described in Exhibit "A" and such additions thereto as may hereafter be fought within the jurisdiction of the Association.

Section 1.03. "Common Area" shall mean all portions of the Property intended for the common and exclusive use and enjoyment of all members of the Association and such uses thereto by way of easement or other grant as may be granted for the common and exclusive use and enjoyment of the Owners. The Common Area shall generally include open space, driveways, walkways and green areas, and shall not include any Assessment Parcels or Townhouse Units.

Section 1.04. "Townhouse Unit" shall mean a residential housing unit consisting of a group of rooms which may be attached to one or more other Townhouse Units by common party walls and which are designed or intended for the exclusive use as living quarters for one family, as hereinafter defined, and located upon the Property.

Section 1.05. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Assessment Parcel, as hereafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the beneficiaries of the Declarant to the extent of the number of Assessment Parcels owned by the Declarant and also includes the interest of said beneficiaries or of Declarant

as contract seller of any Assessment Parcel.

Section 1.06. "Member" shall mean and refer to any person or entity who holds membership in the Association.

Section 1.07. "Declarant" shall mean and refer to Marquette National Bank, a national banking association, as trustee u/t/a dated January 26, 1990 a/k/a Trust #12262.

Section 1.08. "Assessment Parcel" shall mean and refer to a portion of a Lot in 762-768 West 26th Street Townhomes, being a Subdivision of all or any part of the Property and the Adjoining Parcel, designated as such in any recorded Assessment Plat of any such Lot and upon which a Townhouse Unit is constructed.

Section 1.09. "Board" shall mean the Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provisions of Article III.

Section 1.10. "Occupant" shall mean any person or persons other than the Owner in possession of a Townhouse Unit.

Section 1.11. "Family" shall mean one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, together with his or their domestic servants, maintain a common household in a Townhouse Unit.

Section 1.12. "Bylaws" shall mean the Bylaws of the 762-768 West 26th Street Townhomes Association, a copy of which is attached as Exhibit "B" hereto and by this reference made a part hereof.

ARTICLE II

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Assessment Parcel which is subject by covenants of record to assessment by the Association, including a contract seller, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Assessment Parcel which is subject to assessment by the Association. Ownership of such Assessment Parcel shall be the sole qualification of membership.

Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successor in interest, if any, owns one or more Assessment Parcels. Voting rights with regard to each member are set forth in Article III hereof.

ARTICLE III

VOTING RIGHTS AND BOARD OF DIRECTORS

Section 3.01. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those owners as defined in Article II, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Assessment Parcel in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Assessment Parcel, all such persons shall be Members. The vote for such Assessment Parcel shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Assessment parcel.

Class B. The Class B Members shall be the beneficiaries of the Declarant. The Class B members shall be entitled to three (3) votes for each Assessment Parcel in which it holds the interest required for membership by Article II, provided that the Class B membership shall cease and be converted to Class A membership on the date which is three (3) years from the recording date of this Declaration. In the event additional property is annexed pursuant to the provisions of Article XII hereof, the three (3) year period shall be applicable from the date Declarant records the Supplementary Declaration(s) annexing such property provided, however, that such Supplementary Declaration(s) are recorded within the initial three (3) year period.

Section 3.02. The provisions of Section 3.01 hereof shall be mandatory. No owner of any interest in any Assessment Parcel shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of his obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such owner shall be of any force and effect for any purpose.

Section 3.03 The Association shall have a Board of three (3) directors who shall be elected by the Members of the Association at such intervals as the corporate charter and Bylaws of the Association shall provide, except the vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the corporate charter or Bylaws and that the first Board may be

appointed by the Declarant (or its beneficiaries or designee) and shall be three (3) in number. The Association shall have such officers as shall be appropriate from time to time who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the charter or Bylaws, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of its Members. The corporate charter and Bylaws of the Association may include such provisions for the indemnification of its officers and directors as shall be permissible by law.

Section 3.04. The Association, being a Not For Profit corporation, shall not distribute to its Members any sums in the nature of dividends upon its shares. To the extent that funds shall not be required for current expenditures or for such reserves, the next monthly assessments may, in the discretion of the Board, be eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required, but such reinstatement or increase shall not be retroactive.

Section 3.05. Whenever possible, the Association shall perform its functions and carry out duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Property or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

Section 3.06. The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Assessment Parcels and the use thereof.

Section 3.07. The books and records to be kept by the Board shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a first mortgage lien on an Assessment Parcel at such reasonable time or times during the normal business hours as may be requested by the Owner or by the holder of said first mortgage lien.

ARTICLE IV

PROVISIONS RELATING TO THE COMMON AREA

Section 4.01. Every Member shall have a perpetual right and non-exclusive easement in, over, upon, along, across and to the Common Area for ingress and egress and use of the open spaces and other common facilities and the Common Area shall be for the common use and enjoyment of each Member, and such easement shall be appurtenant to and shall pass with the title to every Assessment Parcel subject to the following provisions:

(a) The right of the Association on behalf of the Members to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes to the Class B membership, if any, has been recorded, agreeing to such dedication or transfer. In the event Class B membership has ceased, then two-thirds (2/3) of the votes of the Class A membership shall be required to make such dedication or transfer effective.

(b) As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the beneficiaries of the Declarant and its contractors, subcontractors, and their respective agents and employees shall, for sales and construction purposes only, have the right of use of certain Assessment Parcels and the Common Area and facilities thereof without charge during the sales period on the Property to aid in its marketing.

Section 4.02. There shall be upon the Common Area such driveways or portions thereof and walks as shall be necessary to provide ingress and egress to and from the Assessment Parcels for the use and benefit of the Owners of the Assessment Parcels and their guests and invitees, and such landscaping, and walks, benches and spaces for the parking of motor vehicles as the beneficiaries of the Declarant shall from time to time determine and shall be in compliance with such governmental laws, ordinances and regulations as shall be in effect during the development of the Property. The use of driveways and parking spaces in the Common Area shall be regulated by the Association. There may also be upon the Common Area such facilities for the housing of tools, vehicles and equipment, and such other structures and facilities as shall be reasonably necessary for the carrying out of the duties imposed upon the Association hereunder, or as the Association may determine to erect from time to time.

Section 4.03. There may be upon the Common Area fences of such design as the Association shall determine from time to time,

and as shall be in conformity with all applicable governmental laws, ordinances and regulations.

Section 4.04. Any Member may delegate, in accordance with the Bylaws, his right of ingress and egress to the Common Area to the members of his family, occupants, guests, invitees, or contract purchasers who reside on the Property.

Section 4.05. Each Owner shall be entitled to an undivided percentage ownership interest in common in the Common Area. The percentage interest of each Owner shall be equal to the percentage interest of every other Owner. Each of such ownership interests in the Common Area shall be an undivided interest, and the Common Area shall be owned by the Owners as tenants in common in equal shares. The ownership of each Assessment Parcel shall not be conveyed separate from the percentage of ownership in the Common Area corresponding to said Assessment Parcel. The undivided percentage of ownership in the Common Area corresponding to any Assessment Parcel shall be deemed conveyed or encumbered with that Assessment Parcel, even though the legal description in the instrument conveying or encumbering said Assessment Parcel may refer only to the fee title to that Assessment Parcel.

Section 4.06. Declarant, its beneficiaries, agents, employees, guests and invitees shall have the right and easement of ingress and egress in, over, under, upon, along and across the Common Area for sales and construction purposes until Declarant has conveyed all of the Assessment Parcels to the purchasers thereof.

Section 4.07.

(a) The Association shall have the right and duty to build, construct, reconstruct, repair and maintain the Common Area.

(b) The Association shall have the right of ingress and egress over and upon the Common Area for any and all purposes connected with the use, maintenance, construction, operation, repair and reconstruction of the Common Area.

(c) The Association, through resolutions of the Board, shall have the right to adopt rules and regulations governing the use, maintenance and administration of the Common Area and for the health, comfort, safety and general welfare of persons using the Common Area.

Section 4.08. Notwithstanding any provisions herein to the contrary, the easements hereinafter created shall be subject to:

(a) The right of Declarant to execute all documents and do all other acts and things affecting the property which, in the Declarant's opinion, are desirable in

connection with the Declarant's rights hereunder.

(b) Easements of record on the date hereof, and any easements which may hereafter be granted by Declarant to any public utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water mains and pipes, or any other utility services serving any Assessment Parcel.

Section 4.09. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

Section 4.10. The Common Area will be subject to utility easements for sanitary and storm sewers, water, gas, electricity, telephone and any other necessary utilities. If any such utilities are not installed or any easements not created for same prior to conveyance of the Common area, the Association shall grant such easement or easements upon request of the Declarant or upon its own resolution for the proper operation of the Property. The conveyance by Declarant of the Common Area, and future additions thereto, is subject, without further reference in any such conveyance, to a reservation in favor of Declarant that it shall have the right thereafter to create such easements. Illinois Bell Telephone Company, Commonwealth Edison Company, Northern Illinois Gas Company, and all other public and private utilities serving the Property are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Common Area and those portions of Assessment Parcels which are not improved with Townhouse Units for the purpose of providing utility services to the Property or any other portion of the Development Area.

Section 4.11. In the event that, by reason of the construction, reconstruction, repair, movement, settlement or shifting of any structures located on the Property, any such structure encroaches or shall hereafter encroach upon any portion of the Property which is not owned by the owner of the encroachment, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of the owner of such encroachment; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any owner if such encroachment or use is detrimental to or materially interferes with the reasonable use and enjoyment of the Property burdened thereby and if incurred due to the willful conduct of the owner of such encroachment.

ARTICLE V

MAINTENANCE OF TOWNHOUSE UNITS

Section 5.01. The Association shall determine the need for any may carry out or cause to be performed all maintenance and repair to the exteriors of the Townhouse Units including, without limitation, all masonry walls, including the foundations thereof, roofs, gutters and downspouts made necessary and desirable in the discretion of the Association as a result of natural or ordinary wear and deterioration. The Association shall, in addition, determine the need for and shall carry out or cause to be performed all such maintenance and repair of all water, sewer, gas, telephone, and electrical lines incorporated in and forming a part of the Townhouse Units as originally constructed that service more than one Townhouse Unit and shall not include the maintenance or repair of any furnaces, water heaters, stoves, refrigerators, washing machines or household appliances, (provided, however, that the Association shall be responsible for the maintenance, repair and replacement, if necessary, of the sump pumps located in certain Townhouse Units which serve more than one Townhouse Unit, glass surfaces, patio and porch areas, patio and porch windows and doors, electrical fixtures, air conditioners and compressors, or any other portion of said unit which services only one Townhouse Unit or the interior of any Townhouse Unit or portion thereof. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Assessment Parcel is subject. The obligations of the Association as contained in this Section 5.01 shall be limited, however, to the extent that there are funds available in the Association's account from the assessments collected pursuant to Article VI hereof. In addition, the maintenance and repair of water softeners which are located in certain Townhouse Units and serve more than one Townhouse Unit shall be the responsibility of the Owners served by such water softeners.

Section 5.02. The Association shall pay, as agent and on behalf of the Owners and out of the funds furnished to it by them for such purpose, all taxes and other governmental impositions levied upon the Common Area or any part thereof.

Section 5.03. Each Owner shall have the obligation to maintain in good condition and repair his glass surfaces, windows, front entry doors, electrical fixtures, patio, porch, lawn (including the lawn area adjacent to the Assessment Parcel), fences and walkways located on his Assessment Parcel. Privacy fences which separate one Assessment Parcel from another shall be maintained by the Owners of the respective Assessment Parcels which said fences benefit. Upon the failure of any Owner to maintain those areas not the maintenance responsibility of the Association, the Association, through its agents and employees, is hereby granted the right to enter upon the Assessment Parcel

and make such reasonable repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, and the costs thereof shall become a lien upon the Assessment Parcel in the same manner as provided in Article VI for nonpayment of maintenance assessments. Notwithstanding anything herein to the contrary, the Association may elect, through its agents and employees, to perform any or all of the obligations imposed on each Owner, and provided any such obligation is performed uniformly amongst all Assessment Parcels, the costs thereof may be paid for by the Association from its operating budget.

Section 5.04. The Association shall have the right to draw water from individual Townhouse Units as required for the efficient performance of its duties hereunder. The Association shall pay for all water/sewer bills incurred on the Property and each Owner shall be assessed for an equal share of said bills, regardless of whether or not water usage is individually metered.

Section 5.05. Any action by the Association which could affect the Owner's easement in the Common Area (mortgage, conveyance or dedication of the Common Area or annexation, merger, consolidation or dissolution of the Association) must have the consent of not less than two-thirds (2/3) of each class of Members.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.01. The Declarant, for each Assessment Parcel owned within the Property, hereby covenants, and each Owner of any Assessment Parcel by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or the conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements or such other improvements upon the Property, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Assessment Parcel against which each such assessment is made. Each such assessment, together with such interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Assessment Parcel at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 6.02. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the Property and in particular for the improvement and maintenance of the property, services and facilities devoted to this purpose and

related to the use and enjoyment of such Common Area, and of the Townhouse Units situated upon the Property. Such uses shall include, but are not limited to, the cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area and of the maintenance of the exteriors of the Townhouse Units (except as otherwise provided herein) as may from time to time be authorized by the Board, and other facilities and activities, including, but not limited to, mowing grass, caring for the grounds, landscaping, equipment, street lighting, if any, all sanitary and storm sewer and water lines, structures and appurtenances (other than those maintained by any governmental authority or utility company), perimeter fencing, if any, and other charges required by this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, replacements, taxes, and other charges as specified herein. In addition, water, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Unit Owners shall be paid for by the Association from the maintenance fund. In the event any utilities which benefit the Common Area are directly charged to any Owner, the Association will reimburse such Owner for any such expense. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund.

Section 6.03. The Board shall be authorized to fix the annual assessment in the amount sufficient to meet the costs and expenses as contained in Section 6.02 hereof provided.

Section 6.04. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement (including those items of maintenance and repair set forth in Section 5.01 hereof) of a described capital improvement upon the Common Area, including the necessary fixtures and personal property relating thereto, if any. Such special assessment shall be approved in the same manner as any increase in the Estimated Cash Requirements as described in Section 6.01 of the By-Laws.

Section 6.05. Both annual and special assessments must be fixed at a uniform rate for all Townhouses and shall be collected on a monthly basis.

Section 6.06. The annual assessments provided for herein shall commence for all Townhouses within the Property on the first day of the month following the conveyance of the first Townhouse. The Board shall fix the amount of the annual assessment against each Assessment Parcel at least thirty (30) days in advance of each annual assessment period and in lieu

thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of annual assessment shall be due on the first day of each month. An Owner shall first be liable for payment of the full monthly assessment on the 1st day of the month following conveyance of title to him. This payment shall be in addition to the prorated portion of the monthly assessment which Owner shall pay as of the date title to his Townhouse is conveyed. The Association shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Townhouse Parcel have been paid and, if not paid, the amount of any such deficiency. Such certificates shall be conclusive evidence of payment of any assessment therein.

Section 6.07. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the respective Assessment Parcel and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to an Assessment Parcel, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, except that the court shall restrain the defaulting Owner from reacquiring his interest at such judicial sale.

Section 6.08. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed on the Assessment Parcels provided, however, that such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Assessment Parcel which became due and payable subsequent to the date the holder of said mortgage takes possession of the Assessment Parcel, accepts a conveyance of any interest in the Assessment Parcel or has a receiver appointed in a suite to foreclose his lien.

ARTICLE VII

INSURANCE

Section 7.01. The Association shall be responsible for procuring and maintaining comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring the Association from liability in connection with the ownership and/or use of the Common Area. The

Association shall be further responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable provided that such policies shall (i) provide that such policies may not be canceled or substantially modified without at least ten (10) days written notice to the Association and all mortgagees of record of the Common Area; (ii) provide that all mortgagees of record of the Common Area shall have the right to pay overdue insurance premiums and to obtain new coverage in the event the existing insurance policy lapses; (iii) provide for coverage in the amount of one hundred (100%) percent of full replacement value; and (iv) contain standard mortgage clause endorsements in favor of the mortgagee(s) of the Common Area, as their respective interests may appear. The Association may also obtain such other kinds of insurance as the Association shall from time to time deem prudent and desirable. The Association shall also maintain fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association, naming, as the insured, the Declarant so long as it has an insurable interest, and the Association and written in an amount which is no less than one and one-half (1-1/2) times the insured's estimated annual expenses and reserves. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premium or otherwise substantially modified without thirty (30) days prior written notice to all holders of first mortgages of record.

Section 7.02. Each Owner shall procure and maintain in full force at all times insurance covering his Townhouse Unit consisting of, or providing all the protections afforded by, the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief, to one hundred (100%) percent of the full insurable value thereof, with loss payable on the basis of the cost replacement without deduction for depreciation, less a deductible amount of no more than five hundred (\$500.00) dollars and naming the Association as a co-insured on each policy. Such insurance shall be written by companies reasonably acceptable to the Association. A certificate of insurance evidencing such coverage shall be furnished to the Association and new certificates evidencing the renewal of each expiring policy of insurance shall be furnished to the Association in each case at least ten (10) days prior to the expiration date of the expiring insurance. In the event the Townhouse Unit or any portion thereof, shall be damaged or destroyed by fire or other casualty, the Owner shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly as possible to at least as good as condition as existed immediately prior to such damage or destruction and in the same architectural style and design as originally constructed and shall conform in all respect to the laws or ordinances regulating the construction

or reconstruction. In the event of the total or substantial destruction of all of the Townhouse Units, the architectural design of the Townhouse Units to be rebuilt and the materials to be used in constructing the same shall be agreed upon among the Owners thereof, and in the absence of agreement, the rebuilt Townhouse Units shall be substantially similar in architectural design as the original Townhouse Units and shall be constructed of comparable materials.

Section 7.03. Upon failure of any Owner to procure and maintain the insurance required in Section 7.02 hereof or, in the event the Board, in its discretion, determines that the Townhouse Unit is underinsured, the Board shall have the authority to procure such insurance and/or additional insurance, as the case may be, and the costs thereof shall become a lien upon the Assessment Parcels in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 7.04. All repair, restoration or rebuilding pursuant to the provisions of this Article VII shall be carried out under such supervision and direction as the Board shall deem appropriate in order to assure the expeditious and correct completion of the work concerned, and the Owner or Owners of each Townhouse Unit which shall have been damaged or destroyed shall fully cooperate with, and abide by all instructions and directions of, the Association in connection therewith.

Section 7.05. In the event of such damage or destruction of a Townhouse Unit, the holder of the mortgage encumbering said Townhouse Unit shall allow the proceeds of any insurance required pursuant to Section 7.02 hereof to be utilized in restoring the Townhouse Unit pursuant to the terms of this Article.

Section 7.06. In the event of any damage or destruction to the exterior portion of a Townhouse Unit and the loss is covered by policies of insurance, the Board shall have the authority to settle and adjust any claim under such policies without the consent of the respective Owner.

Section 7.07. In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Association and proceeds, together with any Capital Reserves being held for such part of the Common Area shall, in discretion of the Board, either (i) be applied to pay the assessments levied by the Association, (ii) be distributed to the Owners and their respective mortgagees, as their interest may appear, in accordance with their respective interest in the Common Area or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners. Any acquisition by the Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally described the real estate affected, is executed by the Association and recorded.

ARTICLE VIII

INTERIM PROCEDURE

Section 8.01. Until each of the various Assessment Parcels shall have been conveyed by the Declarant to the first Owner thereof (or to such Owner's nominee), the beneficial owner of the Declarant shall, with respect to each such unsold Assessment Parcel, have all the rights granted to the Owners.

Section 8.02. Until the initial meeting of the Members, the Declarant (or its beneficiaries or designees) may appoint the Board which shall have the same powers and authority as given to the Board generally.

Section 8.03. The powers granted to the beneficiaries of the Declarant by Section 8.02 hereof shall include, without limitation, the power to assess upon and collect from the individual Owners, their respective proportionate shares of the funds required for the carrying out of all the duties and obligations of the Association.

ARTICLE IX

RESTRICTIONS RELATING TO PROPERTY

Section 9.01. Each Assessment Parcel conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

Section 9.02. The Assessment Parcels shall be used only for residential purposes, as a private residence, and no professional business or commercial use shall be made of the same, or any portion thereof or resident's use of an Assessment Parcel endanger the health or disturb the reasonable enjoyment of any other Owner or resident, except as provided in Section 7.01(b) herein and provided further, that the Assessment Parcel restrictions contained in this Section shall not be construed in such manner as to prohibit an Owner from (a) maintaining his personal, professional library therein; (b) keeping his personal, business or professional records or accounts therein; or (c) handling his personal, business or professional telephone calls or correspondence therefrom.

Section 9.03. No buildings other than Townhouse Units shall be located on each Assessment Parcel.

Section 9.04. Except as hereinafter provided in Section 9.06 hereof, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used as a residence at any time, either temporarily or

permanently.

Section 9.06. No advertising sign except one "For Rent" or "For Sale" sign of not more than five square feet per Townhouse Unit, billboards, unsightly objects, or noisances shall be erected, placed or permitted to remain on the Townhouse Unit except as provided in Section 9.16 hereof.

Section 9.07. The foregoing covenants of this Article IX shall not apply to the activities of the beneficiaries of the Declarant. The beneficiaries of the Declarant may maintain, while engaged in construction and sales activities, on or upon such portions of the property as said beneficiaries determine, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, signs and construction trailers.

Section 9.08. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Assessment Parcel, except dogs, cats or other common household pets may be kept, provided that they are not kept, bred, or maintained for commercial purposes.

Section 9.09. All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Townhouse Units and streets, and shall be regularly removed from the Property, and shall not be allowed to accumulate thereon.

Section 9.10. Drying of clothes shall be confined to the interior of the Townhouse Units.

Section 9.11. Owners shall not cause or permit anything to be placed on the outside walls, rail, patios, or porches, and under porches, of any of the Townhouse Units and no sign, awning, canopy, shutter, radio, television antenna, or such other apparatus shall be affixed to or placed upon the exterior walls, rail, patios, or porches of any Townhouse Unit, or any part thereof, without the prior written approval of the Board. Patios shall be constructed at grade as a concrete slab only. It shall not be permitted to install a stairway connecting a porch with a patio or any other portion of any Assessment Parcel. Nor shall it be permitted to enclose the sides of any porch or patio, except that the sides of a porch may be enclosed with approved screening.

Section 9.12. An Owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouse Units or their owners. The storm water management facilities shall be treated as an unsubdivided interest of each of the Unit Owners, Association, or a governmental agency empowered to maintain and repair the facilities.

Section 9.12. There shall be no change in any exterior color of any Townhouse Unit from the color scheme existing upon the date of the recording of this Declaration without the prior written approval of the Association.

Section 9.13. No nuisance, noxious or offensive activity shall be carried on the Property nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or Occupants.

Section 9.14. Each Assessment Parcel is hereby declared to be the subject to an easement and right to and in favor of the Association and each and all of its employees, agents and instrumentalities to go upon such Assessment Parcel for reasonable inspection thereof from time to time and for the purpose of carrying out any and all of the obligations and functions with respect to such Assessment Parcel and the Townhouse Unit located thereon as are herein imposed upon or permitted to the Association. Each Assessment Parcel is further declared to be subject to an easement in favor of any adjoining Assessment Parcel to the extent necessary to permit the maintenance, supply, repair, and servicing of utility services to the various Assessment Parcels and Townhouse Units located thereon.

Section 9.15. The Owner of each Assessment Parcel shall from time to time grant such additional easements and rights over, across, on, under and upon his Assessment Parcel as may be reasonably necessary in connection with the supply of any of the utilities described in Section 4.10 hereof to any part of the Property.

Section 9.16. The Board may adopt such other rules and regulations from time to time governing the use and enjoyment of the Common Area and the use of the Assessment Parcels as the Board, in its sole discretion, deems appropriate or necessary.

Section 9.17. Parking areas and driveways shall be used for parking operable automobiles only and shall not be used for parking campers, trailers, snowmobiles, boats, or any vehicles which because of their size cannot be parked inside the garage of a Townhouse Unit, nor for any other purpose. The Board may authorize such vehicles parked in violation of this provision to be towed away and any such towing charge shall become a lien upon the Assessment Parcel of the owner of the vehicle in the same manner as provided in Article VI hereof for non-payment of maintenance assessments.

Section 9.18. Each Assessment Parcel and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Assessment Parcel to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Assessment Parcel, including roof structures which overhang and encroach upon the servient Assessment Parcel or Common Area, provided that the construction

of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the dominant tenement provided, however, that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not to be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section 9.18. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvements, material or other obstacle was placed in or over the easement area.

Section 9.19. No building, fence, wall or other structure or landscaping shall be commenced, erected or maintained upon the Property except such as are installed or approved by the Declarant in connection with the initial development of the Townhouse Units upon the Property, nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration made to the exterior portion of any Townhouse Unit, therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same and the grading plan and landscape plan shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee of three (3) or more persons appointed by the Board. In the event the Board, or its architectural committee, fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, or in the event no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Section 9.19 will be deemed to have been fully complied with. The Board or its architectural committee shall, in addition, have the right to approve the general contractor responsible for performing the work in connection with the restoration of the exterior portion of any Townhouse Unit in the same manner as approval of plans and specifications is obtained.

Section 9.20. Until such time as title to any Assessment Parcel is conveyed to a bona fide purchaser, the Declarant reserves the right to lease such Assessment Parcels upon such terms and conditions as the Declarant may, in its sole discretion, approve provided, however, that no Townhouse Unit shall be leased by an Owner for hotel or transient purposes or for a term less than six (6) months and no portion of a Townhouse Unit which is less than the entire Townhouse Unit shall be

leased. Each lease of any one or more Townhouse Units shall be in writing and a copy of every such lease, as and when executed, shall be furnished to the Board. The lessee under every such lease shall be bound by and subject to all of the obligations under the Declaration and Bylaws, of the Owner making such lease and any rules and regulations issued in connection herewith and the failure of the lessee to comply therewith shall constitute a default under the lease which shall be enforceable by the Board of the Associations, and the lease shall be deemed to expressly so provide. The Owner making such lease shall not be relieved thereby from any of said obligations.

ARTICLE X

PARTY WALLS

Section 10.01. All dividing walls which straddle the boundary line between Assessment Parcels and which stand partly upon one Assessment Parcel and partly upon another, and all walls which serve two or more Townhouse Units, shall at all times be Parcels upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the length or any part of the length thereof for the support of any building constructed to replace same, and shall have the right to maintain in or on said wall any pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained.

Section 10.02. No owner of any Assessment Parcel nor any successor in interest to any such owner shall have the right to extend said party wall in any manner either in length, height or thickness.

Section 10.03. In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the owner of any Assessment Parcel upon which such party wall may rest shall have the obligation to repair or rebuild such wall and the owner of each Assessment Parcel upon which such wall shall rest, be served or benefitted by shall pay his apportioned portion of the cost of such repair or rebuilding. All such repair or rebuilding shall be done within a reasonable time, in a workmanlike manner with materials comparable to those used in the original wall and shall conform in all respects to the laws or ordinances regulating the construction of building in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

Section 10.04. The foregoing provision of this Article notwithstanding, the owner of any Assessment Parcel, or other interested party, shall retain the right to receive a larger

contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any owner, or other interested part, to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's or other person's successor in title.

Section 10.05. The title of each owner to the portion of each party wall within such Townhouse Unit is subject to a cross easement in favor of the adjoining owner for joint use of said wall.

ARTICLE XI

MISCELLANEOUS PROVISIONS RESPECTING MORTGAGES

The following provisions are intended for the benefit of each holder of a recorded first mortgage or trust deed encumbering an Assessment Parcel ("First Mortgagee") and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

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

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

(i) to examine current copies of this Declaration, the Bylaws, rules and regulations and the books and records of the Association during normal business hours;

(ii) to receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statement which are prepared and distributed by the Association to the Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, 5% of more of the First Mortgagees (by

number) shall be entitled to have such an audited statement prepared at their expense;

(iii) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(iv) to receive written notice of any decision by the Owners to make a material amendment to the Declaration, By-Laws contained herein or Articles of Incorporation;

(v) to receive written notice of any lapse, cancellation or modification of any insurance policy or fidelity bond maintained by the Association; and

(vi) to receive written notice of any action which would require the consent of a specified percentage of First Mortgagees.

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

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

(i) by act or omission seek to abandon or terminate the Association and/or abrogate this Declaration, or to abandon, partition, subdivide, encumber, sell or transfer the Common Area;

(ii) change the obligations of any Owner for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) use hazard insurance or condemnation proceeds for losses to any Property for other than the repair, replacement or construction of such improvements;

(iv) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of Townhouse Units, the exterior maintenance

of Townhouse Units, or the maintenance of the Common Area; or

(v) fail to maintain the insurance required in Section 7.01.

(e) Unless the First Mortgagees of the individual Assessment Parcels representing at least fifty-one percent (50%) of the votes in the Association have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(i) amend the provisions of this Declaration concerning reserves, assessments, assessment liens or subordination of assessment liens, reallocating interests in the Common Area or rights to use, expansion or contraction of the Property or addition, annexation or withdrawal of the property to or from this Declaration, voting rights, responsibility for maintenance and repairs, insurance or fidelity bonds and leasing of units;

(ii) impose any restrictions on an Owner's right to sell or transfer his Unit; or

(iii) terminate professional management of the Property and assume self-management thereof.

(f) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Area if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or if damage shall occur to an Assessment Parcel in excess of One Thousand Dollars (\$1,000.00), notice of such event shall also be given.

(g) If any Assessment Parcel or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, Insurer or Guarantor of said Assessment Parcel will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle the Owner of a Assessment Parcel or other party to priority over such First Mortgagee with respect to the distribution to such Assessment Parcel of the proceeds of any award settlement.

(h) First Mortgagees may, singly or jointly, pay taxes or other charges which are in default and which may become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a new policy, for such Common Area and such First Mortgagees shall be owed immediate reimbursement from the Association.

be substantially completed prior to annexation. Any future improvements to be constructed on portions of the Adjoining Parcel will be consistent with the initial improvements on the Property in terms of quality of construction.

ARTICLE XIII

MISCELLANEOUS

Section 11.01. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Owner found to be in violation by a court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorney's fees incurred by the Association in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Owner's Assessment Parcel, enforceable as other liens herein established. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.02. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 11.03. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the Owner of any Assessment Parcel subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive period of ten (10) years, subject to amendment as hereinafter set forth. The covenants and restrictions of this Declaration may be amended during the first fifty (50) year period or within any successive ten (10) year period by an instrument signed by those Members (Class A and Class B) entitled to cast seventy-five percent (75%) of the total votes as provided in Article III, Section 3.01 hereof and then properly recorded. These covenants and restrictions may also be canceled or amended by an instrument signed by sixty-seven percent (67%) of Owners executed and recorded within ninety (90) days of the expiration of any successive ten (10) year period, such cancellation or amendment to be effective on the date of commencement of the ten (10) year period in question. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of Recorder of Cook County, Illinois, and a true, complete copy of such instrument shall be transmitted to each Owner promptly.

Section 11.04. If and to the extent that any of the

covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of William Clinton, President of the United States of America, and James Edgar, Governor of the State of Illinois, living at the date of Declaration.

Section 13.05. Any notices required to be sent to any member of the Association or to an Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such member or Owner as it appears on the records of the Association at the time of such mailing.

Section 13.06. If at any time or times the Board shall deem it necessary or advisable to re-record this Declaration of any part hereof in the Office of the Recorder of DuPage County, Illinois, in order to avoid the expiration hereof or of any of the covenants, easements, agreements or other provisions here contained under any of the provisions of Chapter 162 of the Illinois Compiled Statutes 5/0.01 et. seq. presently in force, or any other law or statute of similar purport, they shall submit the matter to a meeting of the Members called upon not less than ten (10) day's notice, and unless at such meeting at least two-thirds (2/3) of Members shall vote against such re-recording, the Association shall have, and is hereby granted, power to so re-record this Declaration or such part thereof, and such re-recording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and rerecorded document executed and acknowledged by each of them.

Section 13.07. All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Property and their grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the property or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easement and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

Section 13.08. An amplification of and in addition to the provisions contained in Article VI, Section 6.07, in the event of any default of any owner, the Association may and shall have the right and remedy as shall otherwise be provided or permitted by law, including the right to take possession of such Owner's interest and Assessment Parcel for the benefit of all other owners by an action for possession in the manner prescribed in Article IX of the Code of Civil Procedure, Chapter 735, Illinois Compiled Statutes.

Section 13.09. Notwithstanding anything in the Declaration to the contrary, with regard to the provisions of Section 13.03, Section 6.08 and Article XI, no amendment to, change or modification of these Sections and/or Article shall be effective unless such change or amendment shall be first consented to, in writing, by all mortgagees of record of such Assessment Parcels.

Section 13.10. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class cooperative housing development.

Section 13.11. Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Assessment Parcels, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting an Assessment Parcel, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to right reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to any Assessment Parcel or any part of the Adjoining Parcel.

UNOFFICIAL COPY

PA162762

EXHIBIT 'A'

PARCEL 1:

LOT 1 AND LOT 4 TOGETHER WITH THE EAST 1/2 OF THE VACATED 14 FOOT ALLEY WEST OF AND ADJOINING SAID LOTS 1 TO 4 IN BLOCK 2 OF ADAM MURRAY'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE NORTH-SOUTH 14 FOOT ALLEY VACATED BY ORDINANCE PASSED JULY 12, 1990 LYING EAST AND ADJOINING LOTS 2 AND 3 IN BLOCK 2 IN ADAM MURRAY'S ADDITION TO CHICAGO IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N. #17-28-130-021-0000 and 17-28-130-022-0000

Property Address: 762-768 W. 26th Street, Chicago, Illinois 60616

Property of Cook County Clerk's Office

EXHIBIT "8" TO THE
DECLARATION FOR
762-768 WEST 26TH STREET TOWNHOME ASSOCIATION

THE BY-LAWS OF
762-768 WEST 26TH STREET TOWNHOME ASSOCIATION

ARTICLE I

PURPOSE AND POWERS

1. **PURPOSES.** The purposes of this Association are to act on behalf of its members collectively, as its governing body for civic functions and other purposes, with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property and for the promotion of the health, safety and welfare of the members of the Association. These By-Laws are attached as Exhibit "8" to the Declaration for the Wheaton Townes Townhome Association ("Declaration"). All terms used herein shall have the meanings set forth in the Declaration.

2. **POWERS.** The Association shall have and exercise all powers as are now or may hereafter be granted by the General Not-for-Profit Corporation Act of the State of Illinois, the Act, the Declaration and these By-Laws.

3. **PERSONAL APPLICATION.** All present or future Owners, tenants, and their agents and employees, and any other person that might use the facilities of the Townhome in any manner, shall be subject to the provisions of the Declaration and these By-Laws. The mere acquisition or rental of a Dwelling Unit or the mere act of occupancy of a Dwelling Unit will signify that the Declaration and these By-Laws are accepted, ratified, and will be complied with. In the event of a conflict between these By-Laws and the Declaration, the Declaration shall control.

ARTICLE II

OFFICES

1. **REGISTERED OFFICE.** The Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board may from time to time designate.

2. **PRINCIPAL OFFICE.** The Association's principal office

shall be maintained on the Property and shall be a separate office form the Registered Office as designated by the Board.

ARTICLE III

MEETINGS OF MEMBERS

1. BOARD OF MANAGERS; ASSOCIATION. The direction and administration of the property shall be vested in a board of Managers (hereinafter and hereinafter sometime referred to as "Board"), consisting of three (3) persons who shall be elected in the manner hereinafter provided. The Board shall consist of three (3) persons until the initial meeting of the Voting Members and shall remain at three (3) Voting Members at that time. The Unit Owners, as described in the Declaration and these By-Laws, hereinafter mentioned, acting collectively through the Board, shall be known as the Wheaton Townes Townhome Association organized under the laws of the State of Illinois (herein called the "Association"). The provisions of these Articles shall constitute the initial and basic By-Laws of the Board and/or Association, as referred to in the Act. Each member of the board shall be one (1) of the Unit Owners; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director, officer or employee of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager or such other legal entity, shall be eligible to serve as a member of the Board. If there are multiple Owners of a single Unit, only one shall be eligible to serve as a Board member at any one time. Every Unit Owner, upon an Owner of a Unit or Units, shall be a member of the Association and shall remain a member of said Association until such time as his Ownership ceases, at which time the new Owner thereof shall become a member of the Association. The Association may issue certificates to evidence membership therein.

2. TIME FOR ELECTION OF INITIAL BOARD OF MANAGERS. The initial meeting of the Voting Members shall be held upon not less than twenty-one (21) days written notice given by the Developer, but in any event, the initial meeting of the Voting Members shall be held not later than sixty (60) days after a conveyance by the Developer of seventy-five (75%) percent of the Units or three (3) years after the recording of this Declaration, whichever is earlier, provided, however, the words "seventy-five percent (75%) of the Units" as used in the preceding clause of this sentence shall mean seventy-five percent (75%) of the sum of the Units

3. ADMINISTRATION OF PROPERTY PRIOR TO ELECTION OF INITIAL BOARD OF MANAGERS. Until the election of the initial Board, the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board of Managers by the Act, and in the Declaration and By-Laws, shall be held and

performed by the Developer. If the initial Board is not elected by the Unit Owners at the time so established, the Developer shall continue in office for a period of thirty (30) days, whereupon written notice of his resignation shall be sent to all of the Unit Owners entitled to vote at such election.

Within sixty (60) days following the election of a majority of the Board, other than the Developer or its employees or agents, the Developer shall deliver to the Board:

a. All original documents as recorded or filed pertaining to the Property, its administration and the Association, such as the Declaration, By-Laws, Articles of Incorporation, other townhouse instruments, annual reports, minutes and code of regulations, reports, contracts, leases or other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the Developer, or an officer or agent of the Developer, as being complete copy of the actual document recorded as filed.

b. A detailed accounting by the Developer setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property and copies of all insurance policies and a list of any loans or advances to the Association which are outstanding.

c. Association funds which shall have been at all times segregated from any of the monies of the Developer.

d. A schedule of all real or personal property, equipment and fixtures, if any, belonging to the Association, including documents transferring the property, warranties, if any for all real and personal property and equipment, deeds, title insurance policies and all tax bills.

e. A list of all litigation, administrative action and arbitrations involving actions taken or which may be taken by the Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents relating to disputes involving Unit Owners and originals of all documents relating to everything listed in this subparagraph.

f. Any contract, lease or other agreement made prior to the election of a majority of the Board of Managers, other than the Developer, by or on behalf of Unit Owners, individually or collectively, the Unit Owners' Association or the Board of Managers which extend for a period of more than two (2) years from the recording of the Declaration shall be subject to cancellation by more than one-half (1/2) of the votes of the Unit Owners, other than the Developer, cast at a special meeting of members called for that purpose during a period of ninety (90) days following

expiration of the two (2) year period. At least sixty (60) days prior to the expiration of the two (2) year period, the Board of Managers or, if the Board is still under Developer control, then the Board of Managers or the Developer shall send notice to every Unit Owner notifying them of this provision, what contracts, leases and other agreements are affected and the procedure for calling a meeting of the Unit Owners for the purpose of voting on termination of such contracts, leases or other agreements. During the ninety (90) day period, the other party to the contract, lease or other agreement shall also have the right of cancellation.

4. VOTING RIGHTS OF UNIT OWNERS. There shall be only one (1) person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as a "Voting Member". Such Voting Member may be the Owner or, if the Unit is owned by more than one (1) Owner, then one (1) of the group composed of all of the Owners of that individual Unit, or may be some person designated by such Unit Owner or Owners, as the case may be, to act as proxy (said proxy bearing the date of its execution) on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by written notice to the Board by the Owner or Owners. If, in the case of multiple individual Owners of a Unit, no designation is given to the Board, then the Board, at its election, may recognize any individual Owner of the Unit as the Voting Member of such Unit. The Declarant may exercise the voting rights with respect to any Unit owned by the Declarant as set forth in Article III of the Declaration.

5. MEETINGS.

a. QUORUM; PROCEDURE. As to members, the presence, in person or by proxy, at any meeting of the Voting Members (without regard to their number) having at least twenty percent (20%) of the total votes, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members present may adjourn the meeting from time to time. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members have a majority of the total votes present at such meeting. For purposes of election of the Board of Managers, in the event of a resale of a condominium Unit, the purchaser of a Unit from a seller other than the Developer pursuant to an installment contract for purchase, shall, during such times as he or she resides in the Unit, be counted towards a quorum for purposes of election of members of the Board of Managers at any meeting of the Unit Owners called for said purpose and shall have the right to vote for the election of members of the Board of Managers and to be elected to and serve on the Board of Managers unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted

towards a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agent. For the purposes of this subparagraph, "installment contract" shall have the same meaning as set forth in Chapter 765, ILCS, Section 605/1(e) of "Dwelling Unit Installment Contract", approved August 11, 1967, as amended.

When 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 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 which would otherwise be applicable.

b. ANNUAL MEETING OF UNIT OWNERS. The first annual meeting of the Voting Members shall be held upon not less than twenty-one (21) days not more than thirty (30) days prior written notice given by the Declarant. Thereafter, there shall be an annual meeting of the Voting Members on the first Tuesday of May of each succeeding year, at Seven o'clock p.m., on the Property, or at such other place, time or date as may be designated by written notice of the Board delivered to the Voting Members not less than twenty-one (21) days not more than thirty (30) days prior to the date fixed for said meeting. At each annual meeting of Unit Owners, the voting Members shall, by a majority of the total of votes present at such meeting, elect members of the Board of Managers (or after incorporation of said Townhome Association, a Board of Directors).

c. SPECIAL MEETING OF UNIT OWNERS. Special meetings of the Voting Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings may be called by written notice by the President, Board of Managers or by twenty percent (20%) of the Unit Owners. Said notice shall be given to the Voting Members not less than ten (10) days nor more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

d. NOTICES OF MEETINGS. Notices of meetings required to be given herein shall be given pursuant to the provisions of Paragraph 9 of Article XI of the Declaration. Said notices shall be given at the times set forth in this Article IV, Paragraph 5, Article V, Paragraph 1 and Article IX, of these by-laws.

e. ORDER OF BUSINESS AT MEETINGS OF UNIT OWNERS. The order of business at all meetings of the Owners of Units shall be as follows:

- (i) Roll call;
- (ii) Proof of Notice of meeting or waiver of notice;
- (iii) Reading of minutes of preceding meeting;
- (iv) Reports of officers;
- (v) Reports of committees;
- (vi) Election of inspectors of election;
- (vii) Election of Board of Managers;
- (viii) Unfinished business; and
- (ix) New business.

ARTICLE V

BOARD OF DIRECTORS

1. **BOARD MEMBERS.** As to said Board, there shall be three (3) members, and two (2) members of said Board shall constitute a quorum. Until the initial meeting of Voting Members, the Board shall consist of three (3) members, two (2) of whom shall constitute a quorum. All Board members shall thereafter be elected annually from amongst the Unit Owners, and the three (3) candidates receiving the highest number of votes shall be elected. A candidate for election to the Board, or such candidate's representative, has the right to be present at the counting of the ballots for such election to the Board, or such candidate's representative, has the right to be present at the counting of the ballots for such election. The Board may disseminate to Unit Owners biographical and background information about candidates for elections to the Board if no preference is expressed in favor of any candidate and 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. Any proxy distributed for Board election shall give Unit Owners the opportunity to designate any person as the proxy holder and gives the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name. All members of the Board shall serve for their terms as hereinabove stated or until their successors are duly elected or appointed and qualified, but members of the Board may succeed themselves, except as provided in subparagraph C as herebelow set forth. Vacancies on the Board and for officers may be filled by majority vote of the remaining Board members until the next 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, and that a meeting of the Unit Owners shall be called for purposes of filling a vacancy of the Board no later than thirty (30) days following the filing of a petition signed by said Unit Owners requesting such a meeting. The property shall be managed by the Board, and the Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt and the provisions of the Act, however, the Board shall meet at least four (4) times annually. All Board meetings shall be open, except as hereinafter indicated, to all Unit Owners or their proxies or persons holding proxies on behalf of Unit Owners, all of whom shall sign the register immediately prior to the time of the meeting indicating the name(s) of the Unit Owner, the Unit represented, the name of Voting Member therefor and any other pertinent information the Board of Managers deems necessary. Meetings of the Board of Managers shall be open to any Unit Owner, except for the portion of any meeting held:

(i) To discuss when an action against or on behalf of the Association has been filed and is pending in a court or administration tribunal, or when the Board of Managers finds that such an action is probable or imminent;

(ii) To consider information regarding appointment, employment or dismissal of an employee; or

(iii) To discuss violations of rules and regulations of the Association or a Unit Owner's unpaid share of Common Expenses.

Any vote on these matters, however, shall be taken at a meeting, or portion thereof, open to any Unit Owner and any Unit Owner may record the proceeding at meetings required to be open by the Act by tape, film or other means. The Board may prescribe reasonable rules and regulations to govern the right to make such recordings. This notice provision shall prevail unless otherwise specifically provided in the Declaration or in the Act. The Board is hereby empowered and authorized to engage the services of a manager or managing agent in this regard.

b. **OFFICERS' APPOINTMENT.** The Board shall appoint, by majority vote from among its members, a President, who shall preside over both its meetings and those of the Voting Members (Association), a Secretary, who shall keep the minutes of all meetings of the Board and of the Voting Members of the Association and who shall, in general, perform all the duties incident to the office of Secretary, including the mailing and receipt of all notices and execution of amendments to any condominium instrument as provided elsewhere as herein stated, and a Treasurer to keep the financial records and books of account. The Board may also appoint, by majority vote, such other officers as it deems

appropriate. An officer may be removed by a majority vote of the Board of Directors and upon such removal, the Board, by majority vote, shall appoint his successor for the remainder of said officer's term or until a Unit Owners' meeting in accordance with the provisions of subparagraph a as hereinabove set forth.

c. **REMOVAL OF BOARD MEMBERS.** Any Board member or successor Board members may be removed from office, either with or without cause, by affirmative vote of the Voting Member having at least a majority of the total votes cast at any special meeting at which a quorum is present and called for the purpose. A successor, to fill the unexpired term of a Board member removed, may be elected by majority vote of the Voting Members at the same meeting or at the next meeting, in accordance with the provisions of subparagraph a as hereinabove set forth.

d. **ANNUAL AND SPECIAL MEETINGS; NOTICES.** An annual meeting of the Board shall be held immediately following the annual meeting of the Unit Owners and at the same place. Special meetings of the Board shall be held upon call by the President or by any member of the Board on not less than forty-eight (48) hours notice in writing to each Unit Owner and the Board delivered in accordance with the provisions Section 13.05 of the Declaration. Any Unit Owner or member of the Board may in writing waive notice of a meeting or consent to the holding of a meeting; without notice or consent to any action of the Board without a meeting.

Each Unit Owner shall receive notice in the same manner as is provided by the Act, as amended, in effect at the time of the recording of the Declaration, and by the Declaration for meetings of the Unit Owners, of any meeting of the Board of Managers concerning the adoption of the proposed annual budget or any increase or establishment of an assessment.

e. **COMPENSATION OF BOARD MEMBERS AND OFFICERS.** Neither Board members nor officers shall receive any compensation for their services.

2. **GENERAL POWERS AND DUTIES OF THE BOARD.** Without limiting the general powers which may be provided by law, the Declaration and the Act, the Board shall have the following general powers and duties:

a. To administer the affairs of the Association and the Property;

b. To elect the officers of the Association as hereinabove provided;

c. To engage the services of a manager or managing agent who shall manage and operate the Property and the Common Elements thereof, upon such terms and for such compensation and

with such authority as the Board may approve; provided, that no management agreement any run for a period of beyond two (2) years, except for any contract originally negotiated by Developer or Declarant which shall not exceed one (1) year and which shall not bind the Association unless it includes a right of termination without cause that the Association can exercise any time after the transfer of control and which right of termination shall not require payment of any penalty or advance notice of more than sixty (60) days. Any contract lease or other agreement made prior to the election of a majority of the Board of Managers other than the Developer by or on behalf of Unit Owners, individually or collectively, the Association or the Board of Managers other than the Developer by or on behalf of Unit Owners, individually or collectively, the Association or the Board of Managers, which extends for a period of more than two (2) years from the recording of the Declaration, shall be subject to cancellation by more than one-half (1/2) of the votes of the Unit Owners other than the Developer cast at a special meeting of the Voting Members called for that purpose during a period of sixty (60) days following expiration of the two (2) year period, the Board of Managers, or, if the Board is still under Developer control, then the Board of Managers or the Developer shall send notice to every Unit Owner notifying them of this provision, what contracts, leases and other agreements are affected and the procedure for calling a meeting of the Unit Owners for the purpose of voting on terminating such contracts, lease or other agreements. During the sixty (60) day period, the other party to the contract, lease or other agreement shall also have the right of cancellation. The Board may not enter into a contract with a current Board member or with a corporation or partnership in which a Board member has twenty five percent (25%) or more interest, unless notice of intent to enter into the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition.

d. To formulate policies for the administration, management and operation of the Property and Common Elements thereof;

e. To adopt administrative rules and regulations governing the administration, management, operation and use of the Property and the Common Elements (as more fully described in subparagraph k. as hereinafter set forth);

f. To provide for the operation, care, upkeep, maintenance, replacement and improvement of the Common Elements and payments therefor, including the establishment of user fees for portions thereof, and to approve payment vouchers or to delegate

such approval to the officers or the manager or managing agent; however, nothing in this subsection shall be deemed to invalidate any provision in this Declaration or By-Laws which places a limit on expenditures for capital additional to or capital improvements to the Common Elements (other than for purposes of repairing, replacing or restoring them) by the Board without prior approval of the Unit Owners. For purposes of this subsection, capital additions and capital improvements shall include structural and non-structural additions and improvements;

g. To provide for the designation, hiring and removal of employees and other personnel, including accountants, 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 manager or managing agent (and any such employees or other personnel who may be the employees of the managing agent);

h. Preparation, adoption and distribution of the annual budget for the Property, including estimating the amount of the annual budget and providing the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses, as hereinafter provided;

i. To comply with the instructions of a majority of the Voting Members (unless a greater plurality is required with respect to any issue or matter as elsewhere herein specified) as expressed in a resolution duly adopted at any annual or special meeting of the Voting Members;

j. Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by it;

k. Adoption and amendment of rules and regulations covering the details of the operation and use of Property, after meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations and which conforms to the requirements of Section 18.1 of the Act, however, no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution, nor may any rules or regulations conflict with the provisions of the Act or the Declaration.

l. To have access to each Unit from time to time as may be necessary for the 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;

m. Pay real property taxes, special assessments and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or other lawful taxing or assessing body which are authorized by law to be assessed and levied upon the real property of the condominium and to seek relief on behalf of all Unit Owners when authorized pursuant to Chapter 765, ILCS, Section 605/9.1 and 605/9.2 of the Act from or in connection with the assessment or levying of real property taxes, special assessments and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body;

n. Impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, By-Laws and rules and regulations of the Association;

o. Unless the Declaration or these By-Laws expressly provide to the contrary, assign its right to future income, including the right to receive Common Elements;

p. 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 a vote of two-thirds (2/3) of the Unit Owners at a meeting duly held for said purpose.

q. To reasonably accommodate the needs of a handicapped Unit Owner as required by Chapter 765, ILCS, Section 605/19.4 of the Act as to the use of Common Elements or approval of modifications to an individual Unit.

r. To exercise all other powers and duties of the Board of Managers or Unit Owners as a group referred to in the Act and all powers and duties of the Board of Managers referred to in the Declaration or By-Laws.

3. **SPECIFIC POWERS AND DUTIES OF THE BOARD.** The Board, for the benefit of the Board, the Association and all Unit Owners (including the Declarant, but solely in its capacity as a Unit Owner), shall acquire and shall pay for, out of the maintenance fund hereinafter provided, the following:

a. **CASUALTY INSURANCE.** A policy or policies of insurance insuring the Common elements and the Units against loss or damage by the perils of fire, lightning and those contained in standard extended coverage (board form), with vandalism and malicious mischief endorsements for the full insurable replacement cost of the common Elements and the Units, written in the name of and with the proceeds thereof payable to the Board of Managers (or directors), as trustee for each of the Owners. Prior to obtaining any such policy or policies in insurance, or any renewal thereof,

except for the initial policy or policies obtained by the Developer, the Board, at its election, may from time to time obtain an appraisal from a qualified appraiser for the purpose of determining the full replacement value of the Common Elements and the units for the amount of insurance to be effected pursuant hereto. The cost of any and all such appraisals shall be Common Expenses. Each Owner shall notify the Board in writing of any additions or alterations to his Unit resulting in increased value thereof and he shall be responsible for any deficiency in any insurance loss recovery resulting from his failure to so notify the Board. All Such policies of insurance shall:

(i) Contain standard mortgage clause endorsements in favor of each mortgagee of each Unit, if any, as their respective interests may appear with such modifications as may be required by the Act, or a "Special Condominium Endorsement" or its equivalent if required by any governmental or quasi governmental agency;

(ii) Provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Owner;

(iii) Provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event of the Owners' election to sell the Property or remove the Property from the provisions of the Act;

(iv) Contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to the mortgagee of each Unit;

(v) Contain a clause or endorsement whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant, the Developer, the managing agent, if any, their respective employees and agents, and Owners and Occupants;

(vi) Contain a "Replacement Cost Endorsement" and

(vii) Include the Declarant or Developer as an additional party insured in its capacity only as Unit Owner and Board member.

The Board may engage the services of a bank or trust company authorized to do trust business in Illinois and having a capital of not less than Fifteen Million and no/100 (\$15,000,000.00) Dollars to act as Insurance Trustee and to receive and disburse the insurance proceeds resulting from any loss upon such terms as the Board shall determine consistent with the provisions of the Declaration. In the event the lowest of three (3) bids from reputable contractors for making all repairs required by any such

loss shall exceed Fifty Thousand and no/100 (\$50,000.00) Dollars, the Board, upon written demand of the mortgagee of any Unit, shall engage the services of an Insurance Trustee as aforesaid. The fees of such Insurance Trustee shall be Common Expenses. The proceeds of such insurance shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of the Buildings or shall be otherwise disposed of in accordance with the provisions of the Declaration and the Act; and that rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein or in any mortgage contained, at all times be subject to the provisions in the Act with respect to the application of insurance proceeds to reconstruction of the Buildings. The Board shall notify insured persons concerning the cancellation of insurance obtained pursuant to the terms as herein stated.

Each Unit Owner shall inform the Board in writing of additions, alterations or improvements made by said Unit Owner to his Unit and the value thereof, which value shall be included in the full replacement insurable cost for insurance purposes. If a Unit Owner fails to inform the Board as provided above and a penalty is assessed in the adjustment law settlement, the Unit Owner shall be responsible for such penalty.

b. **LIABILITY INSURANCE.** Comprehensive public liability insurance, including liability for injuries to and death of persons and property damage in such limits as it shall deem desirable (but not less than One Million and no/100 (\$1,000,000.00) Dollars for any one (1) person injured and for any one (1) occurrence, and One hundred Thousand and no/100 (\$100,000.00) Dollars solely for property damage), and other liability insurance, as it may deem desirable, insuring each Unit Owner, the Association, its officers, members of the Board, the Developer, the manager, and managing agent of the Buildings, if any, and their respective employees and agents from liability in connection with the Ownership and/or use of the Property and insuring the officers of the Association and members of the Board against liability for good faith actions beyond the scope of their respective authorities.

The above referred to insurance shall cover claims of one (1) or more of the insured parties against the other insured parties. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above named insured persons. The insurance shall provide that it shall not be canceled or substantially modified, by any party, without at least ten (10) days prior written notice to the Association, and to each First Mortgage who is listed in said policy. Premiums for such insurance shall be Common Expenses.

c. **WORKMEN'S COMPENSATION; OTHER INSURANCE.** Workmen's compensation insurance to the extent necessary to comply with any applicable laws and such other forms of insurance as the Board, in its judgment, elects from time to time to procure.

d. **FIDELITY BOND.** The Board shall have the authority to and shall obtain a fidelity bond, or insurance similar to same, indemnifying the Association, the Board and the Unit Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or the managing agent, or of any other person handling the funds of the Association, the Board or the Unit Owners in such amounts as the Board shall deem desirable. The premium for such fidelity bond shall be a Common Expense.

The Board shall also have the authority to and shall obtain such insurance, as it deems desirable, 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 these By-Laws 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 amount of coverage for any such fidelity bond or bonds shall be no less than an amount equal to three (3) months aggregate assessments on all Units, plus the amount held in reserve by the Association pursuant to Article IX, Paragraph 2 as hereinafter set forth. All fidelity bonds shall provide that they may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and any FNMA mortgage servicer.

e. **ADDITIONAL FIDUCIARY INSURANCE COVERAGE.** The Board shall also require that all officers, employees or other persons who either handle or are responsible for funds administered by the Association shall obtain fiduciary insurance coverage covering the maximum account of funds that will be in the custody of the Association, plus the Association's reserve fund, the premium to be a Common Expense. In addition, all management companies who either handle or are responsible for funds held or administered by the Association which covers the maximum amount of Association funds that will be in the custody of the management company plus the Association's reserves, the premium to be a Common Expense. The management company, and for all other monies of the management company consistent with the provisions of the Act.

f. **ADDITIONAL EXPENSES.** Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure, to pay for pursuant to the terms of these restrictions or By-Laws or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Property or for the enforcement of the Declaration;

g. **CERTAIN MAINTENANCE OF UNITS.** Maintenance and repair of any Unit as provided in the Declaration and maintenance and repair of any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements or any on the portion of the Buildings, when the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Owner or Owners; provided, that the Board shall levy a special assessment against such Unit Owner for the costs of said maintenance or repair. The Board, or its agents, may enter any Unit when necessary to determine whether any construction or maintenance is necessary and further to perform such maintenance and repairs. It may likewise enter any attic for inspection, maintenance, repair or construction. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

h. **CAPITAL ADDITIONS AND IMPROVEMENTS.** The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital additions and improvements other than for purposes of replacing or restoring portions of the Common Elements subject to all the provisions of the Declaration, having a total cost in excess of Three Thousand and no/100 (\$3,000.00) Dollars, nor shall the Board authorize any structural alterations, capital, additions to, or capital improvements of the Common Elements requiring an expenditure in excess of Three Thousand and no/100 (\$3,000.00) Dollars without, in each case, the prior approval of the Voting Members holding two-thirds (2/3) of the total votes cast at a duly convened meeting of Unit Owners.

i. **CERTAIN UTILITY SERVICES TO UNITS.** The Board may pay from the maintenance fund for water charges and taxes, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners. However, the Board may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of his share of such expenses as determined by the Board. The Board reserved the right to levy additional assessments against any Owner, to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund.

4. **VOUCHERS.** All vouchers for payment of expenditures by the Board shall be signed by such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Board.

5. RULES AND REGULATIONS; MANAGEMENT.

a. RULES. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property and for the health, comfort, safety and general welfare of the Owners and Occupants of said Property, subject, however, to the provisions of Article V, Paragraph 2.k as hereinabove set forth. Written notice of such rules and regulations shall be given to all Owners and Occupants, and the entire Property shall at all times be maintained subject to such rules and regulations.

b. RECORDS OF THE ASSOCIATION - AVAILABILITY FOR EXAMINATION. The Board of Managers shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Unit Owners or their mortgagees and their duly authorized agents or attorneys:

(i) Copies of the recorded Declaration, By-laws and any amendments, Articles of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board of Managers shall be available. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this subparagraph (i) for examination and copying.

(ii) Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Elements specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred, and copies of all contracts, leases or other agreements entered into by the Association shall be maintained.

(iii) The minutes of all meetings of the Association and the Board of Managers shall be maintained. The Association shall maintain these minutes for a period of not less than seven (7) years.

(iv) Ballots for all elections to the Board and for any other matter voted on by the Unit Owners and proxies related thereto, to be maintained for a period of not less than one (1) year.

(v) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Chapter 805, ILCS, Section 105.107.05 of the General Not-For-Profit Corporation Act of 1986 of the State of Illinois, as amended, shall be maintained.

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

(vii) Where a request for records under this Section is made in writing to the Board of Managers or its agent, failure to provide the requested record or to respond within thirty (30) days shall be deemed a denial by the Board of Managers.

(viii) If the Board of Managers fails to provide records properly requested under subparagraph (a) within the time period provided in subparagraph (b), the Unit Owner may seek the appropriate relief including an award of attorney's fees and costs.

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

d. **UNITS OWNED BY A LAND TRUST.** With respect to Units owned by a land trust, if a trustee designates, in writing, a person to cast votes on behalf of the Unit Owner, that designation shall remain in effect until a subsequent document is filed with the Association.

e. **ASSOCIATION - NOT-FOR-PROFIT ACTIVITIES.** Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

6. LIABILITY OF THE BOARD OF MANAGERS.

a. **LIABILITY TO OWNERS.** Neither the Declarant (or its beneficiaries), the Developer, the members of the Board nor the Officers of the Association shall be liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such de facto or de jure board members and officers, except for any acts or omissions found by a court of law to constitute willful misconduct in the performance of duty.

b. **LIABILITY TO THIRD PARTIES.** The Owners and, to the extent permitted by law, the Association shall indemnify and hold harmless the Declarant (and its beneficiaries), the Developer, each of the members of the Board and each of the officers against all contractual and other liabilities to others arising out of contract made by or other act of the Declarant (and its beneficiaries), the Developer, the Board and Officers on behalf of the Owners or the Association, or arising out of their de facto or de jure status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall apply against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amount paid in settlement, reasonably incurred in connection with the defense of any claim, action, suit

or proceeding, whether civil, criminal, administrative or other in which the Declarant (and its beneficiaries), the Developer, any member of the Board or officers may be involved by virtue of such person being or having been having served as such member of officer; provided, however, that such indemnity by the Association shall not be operative with respect to in any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for willful misconduct in the performance of his duties as such member or officer, or in any matter settled or compromised, unless, in the opinion of independent counsel selected by the Board (who may be counsel regularly retained by the Association) there are no reasonable grounds for such person or officer being adjudged liable for willful misconduct in the performance of his duties as such member or officer. The Board shall have authority to purchase and maintain insurance on behalf of the officers and members of the Board against any expenses (including attorney's fees), liability or settlement based on asserted liability, incurred by them against such liability or settlement under the provisions of this paragraph. The costs of any such insurance shall be a Common Expense. It is also intended that the liability of any Owner arising out of any contract made by the Board, the officers, Declarant (or the beneficiaries of Declarant, the Developer, or out of such proportion of the total liability thereunder as such Owner's percentage of ownership in the Common Elements bears to the total percentage of ownership in the Common Elements of all Owners. Every contract made by the Board, the officers, the Declarant (or the beneficiaries of Declarant), the Developer or the managing agent on behalf of the Owners shall provide that they are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners) and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as such Owner's percentage of ownership in the Common Elements bears to the total percentage of ownership in the common Elements of all Owners. If the Board or Association elects to or is required to indemnify or hold harmless a Board member or officer pursuant to this paragraph, the Board reserves the right to provide defense for such member and to settle or compromise any claim against such individuals.

ARTICLE VI

OFFICERS

1. **OFFICERS.** The officers of the Association shall be a President, One (1) or more Vice Presidents, if any, a Secretary, a Treasurer and such assistants to such officers as the Board may deem appropriate. All officers shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board. Officers may succeed themselves. The President, Secretary

and Treasurer shall be directors and all other officers may, but need not be, directors.

2. **VACANCY OF OFFICE.** Any officer may be removed at any meeting of the Board by the affirmative vote of the majority of the directors in office, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof until the next 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 and that a meeting of the Unit Owners shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the filing of a petition signed by said Unit Owners requesting such a meeting.

3. **POWERS OF OFFICERS.** The respective officers of the Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers of an Illinois Not-For-Profit Corporation, including without limitation, the following:

a. The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the Owners and at all meetings of the Board and shall execute amendments to the Declaration and these By-Laws as provided for in the Act;

b. The Vice President shall, in the absence or the disability of the President, perform the duties and exercise the powers of such office and other duties assigned by the Board. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the capacity of President on an interim basis.

c. The Secretary shall keep minutes of all meetings of the Owners and of the Board and shall have charge of such other books, papers and documents as the Board may prescribe and shall be responsible for giving and receiving all notices to be given to or by the Association under the Act, the Declaration or these By-Laws.

d. The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Association books of accounts kept for such purpose. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

4. **OFFICERS' COMPENSATION.** The officers shall receive no compensation for their services, except as expressly provided by a resolution duly adopted by the Voting Members.

ARTICLE VII

INSTRUMENTS, CHECKS, DEPOSITS AND FUNDS

1. EXECUTION OF INSTRUMENTS. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument including amendments to the Declaration or these By-Laws which must be executed by the Association, in the name of and on behalf of the Association and such authority may be general or confined to specific instances. In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President or a Vice President and attested to by the Secretary or an Assistant Secretary of the Association.

2. PAYMENTS. All checks, drafts, vouchers or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Association.

3. BANK ACCOUNTS. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board shall elect.

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

ARTICLE VIII

FISCAL MANAGEMENT

1. FISCAL YEAR. The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable.

2. ANNUAL STATEMENT. Within reasonable time after the close of each fiscal year, but in no event later than May 1st of the following year, the Board shall furnish each Owner with an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the Annual Assessment budget, and showing the net excess or deficit of income over expenditures, plus reserves.

ARTICLE IX

ASSESSMENTS - MAINTENANCE FUND

1. ANNUAL BUDGET.

a. PREPARATION AND PASSAGE. Each year on or before December 1, the board shall estimate in the form of a detailed budget the total amount necessary to pay the cost of wages, materials, insurance, services, supplies and fees which will be required during the ensuing calendar/fiscal year for the acquisition of all such goods and services, together with a reasonable amount determined by the Board for a reserve for contingencies and replacements (the "estimated cash requirement"). The proposed budget shall set forth each Owner's Common Expense assessment. The estimated cash requirement shall be assessed to Owners according to each Owner's percentage of ownership in the Common Elements. Each Owner shall receive, at least thirty (30) days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portion are intended for capital expenditures or repairs or payment of any real estate taxes. Each Owner shall receive notice, in the same manner as is provided in the Condominium Property Act for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget or any subsequent increase or decrease therein, or establishment of an assessment. In the event any budget that is adopted differs from the proposed budget, then immediately after adoption, the Board shall distribute to each Owner a detailed annual budget as adopted by the Board, setting forth with particularity all anticipated Common Expenses by category as well as all anticipated assessments and other income.

b. RATIFICATION. If an adopted budget requires assessment against the Owners in any fiscal/calendar year exceeding one hundred fifteen percent (115%) of the assessments for the preceding year, the Board, upon written petition by Owners holding twenty percent (20%) of the votes in the Association filed within fourteen (14) days of the Board's adoption, shall call a meeting of the Association within thirty (30) days of the date of filing of the petition to consider the budget. Unless a majority of votes of the Owners are cast at such meeting to reject the budget, it is ratified, whether or not a quorum is present. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Property, and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

c. PAYMENT. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each Owner, jointly and severally, if there be more than one (1) Owner for any

Unit, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of his (or their) total assessment made pursuant to this Paragraph 1.

d. **ACCOUNTING.** On or before May 1st of each calendar/fiscal year following the initial meeting of Owners, the Board shall supply to all Owners an itemized accounting of the Common Expenses for the preceding calendar/fiscal year actually incurred or paid, together with an indication of which portions were for capital expenditures or repairs or payment of any 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. Such accounting may be prepared by a certified public accountant. Any amount accumulated in excess of the amount required for expenditures and reserves may be credited according to each Owner's percentage of ownership in the Common Elements to the next monthly installments due from the Owners under the current year's estimate, until exhausted. Upon written request of any governmental or quasi-governmental agency or corporation, the Association, within a reasonable time, shall prepare and furnish an audited financial statement of the Common Expenses and budget for the immediately preceding fiscal year.

e. **FORECLOSURE.** The Purchaser of a condominium Unit at a judicial foreclosure sale, or a mortgagee who received a title to a Unit by deed in lieu of foreclosure or judgment by common law strict foreclosure, or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law, shall have the duty to pay the Unit's proportionate share of the Common Expenses for the Unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking possession pursuant to such court order.

f. **RESPONSIBILITY OF VOLUNTARY TRANSFEREES FOR UNPAID ASSESSMENTS.** In a voluntary transfer of a Unit, the transferee of the Unit shall be jointly and severally liable with the transferor for all unpaid assessments against the latter up to the time of transfer, without prejudice to the transferee's right to recover from the transferor the amounts paid by the transferee therefor. However, any such transferee shall be entitled to a statement from the Board or President or managing agent of the Association, as the case may be, setting forth the amount of the unpaid assessments against the transferor due the Association and such transferee shall not be liable for, nor shall the Unit conveyed by subject to a lien for, any unpaid assessments made by the Association against the transferor in excess of the amount therein set forth. The Board may charge a reasonable amount for issuing said statement.

2. RESERVES.

a. **MAINTENANCE.** The Board shall accumulate and maintain a reasonable reserve for contingencies and replacements. The reserve shall include funds to cover any deductible amounts contained in insurance policies procured by the Board pursuant to the Declaration or By-laws. Extraordinary or other expenditures not included in the annual budget which may become necessary during the year, shall be charged first against such reserves.

b. **SPECIAL ASSESSMENTS.** If the reserves and the budgeted estimated cash requirements prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may at any time levy a supplemental assessment, which shall be assessed to the Owners according to their percentage of ownership in the Common Elements. Prior to the levying of such supplemental assessment, each Owner shall receive notice, in the same manner as provided for membership meetings, of any meeting of the Board concerning the adoption of such supplemental assessment. Subsequent to the Board's adoption of the supplemental assessment, the Board shall serve notice of such supplemental assessment of all Owners by a written statement setting forth the amount and reasons therefor. Such supplemental assessment shall become effective with the next succeeding monthly Common Expense assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of supplemental assessment; provided that any such supplemental assessment shall be subject to approval by the affirmative vote of the Owners having at least two-thirds (2/3) of the total votes at a meeting of the Association duly called for the purpose of approving such supplemental assessment if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to the greater of five (5) times the Unit's most recent Common Expense assessment calculated on a monthly basis or Three Hundred Dollars (\$300.00). All Owners shall be personally liable for and obligated to pay their respective adjusted monthly amounts.

3. **INITIAL BUDGET.** When the first elected Board hereunder takes office, it shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days after such election and ending December 31 of the current fiscal/calendar year in which such election occurs. Assessments shall be levied against the Owners during such period as provided in this Article.

4. **FAILURE TO PREPARE ANNUAL BUDGET.** The failure or delay of the Board to prepare or serve the annual or adjusted estimate budget on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay his share of the Common Expenses, as herein provided, whenever the same shall be determined. In the absence of any annual budget, each Owner shall continue to pay the monthly Common Expense assessment at the rate established for the immediately preceding period until the new

annual budget is adopted and the new monthly Common Expense assessment thereunder is effective. Upon the adoption of the budget, each Owner will be personally liable for the monthly Common Expense assessment payments thereunder.

5. **REQUEST BY ENCUMBRANCER AS TO COMMON EXPENSE.** Any encumbrancer may from time to time request in writing a written statement from the manager or Board setting forth the unpaid Common Expenses with respect to the Unit covered by its encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid Common Expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Unit may pay any unpaid Common Expenses payable with respect to such Unit and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid at the same rank as the lien of its encumbrance.

6. **STATUS 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 the owners and for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be deemed to be held for the benefit use and account of all the Owners in the percentages set forth in Exhibit "C"; provided, however, that sums deposited by any Owner as a capital contribution to the Association, or denominated as such by the Board, and reserves established pursuant to this Article, shall be deemed contributions to the capital of the Association and shall be held and administered as such unless and until the Board shall otherwise determine.

7. **NON-PAYMENT.**

a. **LATE CHARGES, COLLECTION AND FORECLOSURE OF LIEN.** If an Owner shall fail to pay his monthly Common Expense assessment or any other charges when due, he shall be charged late charge as determined by the Board for each thirty (30) day period (or portion thereof) during which said amounts remain unpaid. If an Owner is in default in the monthly payment of the at least one Common Expense assessment or any other charges for thirty (30) days, the Board may bring suit for and on behalf of the Association, and as representative of all Owners, to enforce collection thereof or to foreclose the lien thereof as hereinafter provided; and there shall be added to the amount due the costs of said suit, and other fees and expenses together with legal interest and reasonable attorneys' fees to be fixed by the court.

b. **LIEN.** To the extent permitted by a decision, statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the Unit Ownership of the Owner involved when payable and

may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Such lien shall take effect and be in force when and as provided in the Condominium Property Act; provided, however, that first encumbrances owned or held by any bank, insurance company, savings and loan association or other lender shall have priority to the lien for unpaid Common Expense assessments which become due and payable on or subsequent to the date on which the encumbrancer either takes possession of the Unit, accepts a conveyance of any interest in the Unit Ownership or causes a receiver to be appointed in a suit to foreclose its lien; and provided further that any First Mortgagee who obtains title to a Unit Ownership pursuant to the conditions provided in the mortgage or foreclosure of the mortgage, will not be liable for such Unit's unpaid assessments and charges which accrue prior to the acquisition of title to such Unit Ownership. Except as hereinabove provided in Paragraph 5 of this Article, any second mortgage shall at all times be subordinate in lien rights to the Association's lien for assessments, whether or not the Association has recorded a document evidencing such lien.

c. **CUMULATIVE RIGHTS.** In addition to the foregoing, the Board or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Owner shall fail to pay his proportionate share of the Common Expenses or of any other expenses required to be paid hereunder when due, such rights and remedies shall include (1) the right to enforce the collection of such defaulting Owner's share of such expenses together with interest thereon at the maximum rate permitted by law, late charges, and all fees and costs (including reasonable attorneys' fees whether or not awarded by a court) incurred in the collection thereof; and (2) the right to take possession in the manner prescribed by Article IX of the Illinois Code of Civil Procedure Chapter 95, Section 5.9-101 et seq.), as may from time to time be amended and to execute leases of such defaulting Owner's interest in the Property and apply the rents derived therefrom against such expenses and other monetary obligations of the defaulting Owner.

d. **FORBEARANCE OF ASSESSMENTS.** The Association shall have no authority to forbear the payment of assessments by any Owner.

8. **NON-USE OR ABANDONMENT.** No owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Elements or abandonment of his Unit. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

9. **SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the assessments provided for herein shall be subordinate to the lien of

any bona fide first mortgage placed at any time on a Unit by a First Mortgagee. Each holder of a bona fide first mortgage on a Unit who obtains title or comes into possession of that Unit pursuant to the remedies provided in the mortgage, foreclosure, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid assessments or charges which become payable prior to the first to occur of acquisition of title, decree of foreclosure or possession of the Unit.

10. INITIAL CAPITAL CONTRIBUTION. Upon the closing of the sale of each dwelling Unit by the Developer to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount at least equal to two (2) months' Annual Assessment at the rate in effect with respect to the Dwelling Unit as of the closing, which amount shall be held and used by the Association for its working capital needs.

ARTICLE X

RESALE

1. DOCUMENTS. In the event of any resale of a Unit by an Owner other than the Declarant or Developer such Owner shall obtain from the Board and shall make available for inspection to the prospective purchaser, upon demand, the following:

a. A copy of the Declaration, By-Laws, other condominium instruments and any rules and regulations.

b. A statement of any lien, including a statement of the account of the Unit setting forth the amounts of unpaid assessments and other charges due and owing.

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

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

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

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

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

h. A statement that any improvements or alterations

made to the Unit, or the Limited Common Elements assigned thereto, by the prior Owner are in good faith believed to be in compliance with the condominium instruments.

2. **WRITTEN REQUEST.** The President of the Association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing; and within twenty (20) days of the request.

3. **FEE.** A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or the Board to the Unit owner requesting such information.

ARTICLE XI

AMENDMENT

The provisions of these By-Laws may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President and Secretary of the Board, and certifying that the Owners having at least a majority of the total votes have approved such amendment at a meeting of the Association duly called for such purpose, and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all First Mortgagees, no less than ten (10) days prior to the date of such affidavit.

Notwithstanding the foregoing, an amendment to these By-Laws which falls within the parameters of Article X of the Declaration shall not be effective without the prior written approval of sixty-seven (67%) percent of all First Mortgagees. Until such date as Declarant has conveyed title to all the Units, no provision of these By-Laws may be changed, modified or rescinded and no provision may be added without the prior written consent of the Declarant and Developer. Any change, modification or rescission shall be effective upon recording such instrument in the office of the Recorder of Deeds, Cook County, Illinois.