

**FRED BUCHOLZ**

DUPAGE COUNTY RECORDER

FEB.01,2008

RHSP 1:18 PM

PLAT

09-08-130-029

074 PAGES

R2008-016698

Greater Tilly -

**DECLARATION OF  
CONDOMINIUM OWNERSHIP  
AND OF EASEMENTS,  
RESTRICTIONS, COVENANTS  
AND BY-LAWS FOR  
ACADIA ON THE GREEN BUILDING 2  
CONDOMINIUM ASSOCIATION**

**An Illinois Not-For-Profit Corporation**

**LOCATED AT THE PREMISES COMMONLY KNOWN AS**

**930 CURTISS AVENUE**

**DOWNERS GROVE, ILLINOIS**

**PURSUANT TO THE ILLINOIS CONDOMINIUM PROPERTY ACT**

271697 2/4m

This instrument prepared by  
and after recording mailed to:

Permanent Index Nos.: 09-08-130-029  
09-08-303-031

Laura E. Tilly  
Miner, Barnhill & Galland, P.C.  
14 W. Erie Street  
Chicago, Illinois 60610

57

**DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS  
AND BY-LAWS  
FOR  
ACADIA ON THE GREEN BUILDING 2  
CONDOMINIUM ASSOCIATION**

This DECLARATION is made and entered into by Acadia OTG, LLC, an Illinois limited liability company (hereinafter referred to as the "Developer"):

**WITNESSETH:**

WHEREAS, the Developer holds legal title to the parcel of real estate situated in the Village of Downers Grove, County of DuPage and State of Illinois, and legally described in Exhibit "A" attached hereto (the "Parcel");

WHEREAS, the Developer desires and intends by this Declaration to submit the Property to the provisions of the Act, as hereinafter defined; and is further desirous of establishing, for its own benefit and that of all future owners or occupants of the Property, and each part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use and maintenance thereof; and

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

NOW, THEREFORE, the Developer, as the legal title holder of the Parcel, as hereinafter defined, and for the purposes above set forth, DECLARES AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

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

1.1 ACT. The Condominium Property Act of the State of Illinois (765 ILCS 605/1 et seq.), as amended from time to time.

1.2 ASSOCIATION. Acadia On The Green Building 2 Condominium Association, an Illinois not-for-profit corporation, its successors or assigns, including any successor by merger with or into any other condominium regime in the Parcel.

1.3 BOARD. The board of directors of the Association, as constituted at any time or from time to time.

1.4 BUILDING. The structure located within the Parcel, forming a part of the Parcel and containing the Units, as shown by the Plat.

1.5 BY-LAWS. The By-Laws of the Association which are attached hereto as Exhibit "C", as the same may be amended from time to time as provided for therein.

1.6 COMMERCIAL OWNER. The owner of the Commercial Parcel, initially, the Declarant.

1.7 COMMERCIAL PARCEL. The parcel of real estate adjacent to the Property, legally described in Exhibit "F" attached hereto and made a part hereof.

1.8 COMMON ELEMENTS. All portions of the Property, except the Units, and including the Limited Common Elements, unless otherwise expressly specified herein. The Common Elements include, without limitation, the real estate (and easements and appurtenant thereto), walls, hallways, stairways, entrances and exits, lobby areas, mechanical equipment areas, storage areas (excepting those individual storage units designated as limited common elements), management office, laundry room, exercise room, bicycle storage areas, elevators, master television antenna system, if any (whether leased or owned), pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), central heating and ventilating systems (but excluding those individual heating, cooling and ventilating systems or equipment situated entirely within a Unit and serving only such Unit), public utility lines, structural parts of the Building, landscaping, including trees, shrubs, walking paths and other exterior improvements, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. Any

references to Common Elements, appearing on the Plat, as hereinafter defined (except references to Limited Common Elements), shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way.

1.9 COMMON EXPENSES. The proposed or actual expenses affecting the Property and areas adjacent to and serving or benefitting the Common Elements, including reserves, if any, lawfully assessed by the Board and including required contributions in connection with the Declaration of Covenants. Such expenses include, by way of example and not limitation, the expenses of administration (including management and professional services), maintenance, operation, repair, and replacement of the Common Elements; the cost of additions, alterations, or improvements to the Common Elements; the cost of insurance required or permitted to be obtained by the Board under Article 6 hereof; utility expenses for the Common Elements; any expenses designated as Common Expenses by the Act, this Declaration, or the By-Laws; if not separately metered or charged to the Unit Owners, the cost of waste removal, scavenger services, water, sewer, or other necessary utility services to the Property, a portion of maintenance costs owed by the Association pursuant to the Declaration of Covenants; and any other expenses lawfully incurred by or on behalf of the Association for the common benefit for all of the Unit Owners. Common Expenses shall include all maintenance or other costs due in connection with the Declaration of Covenants, even if such costs may be construed to be for the benefit of one or more Unit Owners, such as the maintenance of the Parking Spaces.

1.10 DECLARANT. Acadia OTG, LLC, an Illinois limited liability company, or any successor or assign of Declarant designated by the Declarant to act in such capacity.

1.11 DECLARATION. This instrument with all Exhibits hereto, by which the Parcel and Property are submitted to the provisions of the Act, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.

1.12 DECLARATION OF COVENANTS. That certain Declaration of Covenants, Conditions, Restrictions and Easements made by Developer, dated as of \_\_\_\_\_ and recorded on \_\_\_\_\_ with the DuPage County Recorder of Deeds as Document No. \_\_\_\_\_, creating certain easements and agreements between the Unit Owners and the Commercial Owner, to be administered by the Association on behalf of the Unit Owners, and providing for the maintenance and allocation of costs with respect to the easements and shared facilities.

1.13 DEVELOPER. Acadia OTG, LLC, an Illinois limited liability company, its successors and assigns, or such other persons or entities as it may from time to time designate.

1.14 DIRECTOR. A member of the Board.

1.15 DEVELOPMENT AREA. The real estate described in Exhibit "D" attached hereto, and all improvements thereon and rights appurtenant thereto. Exhibit "D" is attached hereto for information purposes only and no covenants, conditions, restrictions, easements, liens

or charges shall attach to any part of the real estate described therein except to the extent that portions thereof are described in Exhibit "A" hereto and subjected to provisions of this Declaration.

1.16 ELIGIBLE INSURER. An insurer or guarantor of a first Security Interest (as hereinafter defined) in a Unit which has notified the Association in writing of the Eligible Insurer's name and address that it has insured or guaranteed a first Security Interest in a Unit. Such notice will be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XIV.

1.17 ELIGIBLE MORTGAGEE. The holder of a first Security Interest in a Unit which has notified the Association in writing of the Eligible Mortgagee's name and address and that it holds a Security Interest in a Unit. Such notice will be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XIV.

1.18 LIMITED COMMON ELEMENTS. A portion of the Common Elements so designated in this Declaration or on the Plat as being reserved for the use of a certain Unit or Units to the exclusion of other Units. Any portion of the Common Elements which by the terms of this Declaration or by its nature or location is clearly intended to serve exclusively a certain Unit or Units (but less than all of the Units) or the Unit Owner or Unit Owners thereof (including, but not limited to, such fixtures and all associated pipes, ducts and wiring designed to provide utility services for the Units as may serve exclusively a single Unit or group of contiguous Units) shall be deemed a Limited Common Element. To the extent permitted by law, the Board may by rules and regulations from time to time designate other portions of the Common Elements as Limited Common Elements appurtenant to a Unit Ownership or Unit Ownerships. The Limited Common Elements shall include, but shall not be limited to, the following: (a) the interior surfaces of the perimeter walls, ceilings and floors which define the boundary planes of a Unit as lie outside the boundaries of such Unit; (b) perimeter doors which serve exclusively a single Unit; (c) any system or component part thereof (including, without limitation, furnaces, fittings, housings, ducts, flues, shafts, electrical wiring and conduits) which serves a Unit exclusively, to the extent that such system or component part is located outside the boundaries of a Unit; and (d) storage areas serving exclusively a particular Unit as identified at the time of conveyance. The Parking Spaces shall also be Limited Common Elements.

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

1.20 OCCUPANT. A person or persons in possession of a Unit, regardless of whether said person is a Unit Owner.

1.21 PARCEL. The entire tract of real estate described, which is hereby submitted to the provisions of the Act.

1.22 PARKING SPACES. The parking spaces designated as such on the Plat, or on any supplement or amendment to the Plat. Each Parking Space shall be a Limited Common Element.

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

1.24 PLAT. The plats of survey of the Property and all of the Units in the Property submitted to the provisions of the Act, said Plat being attached hereto as Exhibit "E" and made a part hereof and recorded with the recording of this Declaration, as the same may be amended or supplemented from time to time.

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

1.26 RECORD. To file in the Office of the Recorder of Deeds for DuPage County, Illinois.

1.27 SECURITY INTEREST. An interest in real property or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

1.28 TURNOVER DATE. The date on which any one of the following shall first occur:

- a) Thirty (30) days after the Declarant and/or the Developer has conveyed seventy-five percent (75%) of the Units to purchasers for value;
- b) The expiration of three (3) years from the date of the recording of this Declaration in the Office of the Recorder of Deeds of DuPage County; or
- c) The date designated in a written notice from the Developer to all of the Unit Owners as being the Turnover Date.

1.29 UNIT. A part of the Property within the Building including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and more specifically described in Article 3.

1.30 UNIT OWNER. The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit Ownership. For the purposes of Article 11 hereof, "Unit Owner" shall include any beneficiary of a trust, shareholder of a corporation or partner of a partnership holding legal title to a Unit Ownership.

1.31 UNIT OWNERSHIP. A part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.

## ARTICLE II

### SUBMISSION OF PROPERTY TO THE ACT

The Developer, as the owner in fee simple of the Property, expressly intends to, and by recording this Declaration, does hereby submit and subject the Property to the provisions of the Act and of this Declaration. Henceforth the Property shall be known as "Acadia On The Green Building 2 Condominiums".

## ARTICLE III

### UNITS AND COMMON ELEMENTS

3.1 DESCRIPTION AND OWNERSHIP. All Units are delineated on the Plat and listed on Exhibit "B". Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on the Plat including, without limitation, any pipes, ducts, flues, shafts, electrical wiring, and conduits, and individual heating, cooling, and ventilation systems or equipment situated entirely within a Unit and serving only such Unit.

3.2 LEGAL DESCRIPTION. The legal description of each Unit shall consist of the identifying letter and number of such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on the Plat and every such description shall be deemed good and sufficient for all purposes.

3.3 SUBDIVISION OR COMBINATION OF UNITS. No Unit Owner other than the Declarant or Developer shall, by deed, plat, court decree, or otherwise, combine or subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on the Plat. Except as provided by the Act or this Declaration, no Unit

Owner shall by deed, plat, court decree, or otherwise combine his Unit with another Unit. If a Unit Owner or Unit Owners combine his or their Units pursuant to the Act and this Declaration, they may, at their own expense, locate or relocate Common Elements affected or required thereby in accordance with the Act and this Declaration.

3.4 CERTAIN STRUCTURES NOT CONSTITUTING PART OF A UNIT.

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

3.5 SEPARATE MORTGAGES. Each Unit Owner shall have the right, subject to the provisions herein, to make a separate mortgage on his respective Unit Ownership. No Unit Owner shall have the right or authority to make or create or cause to be made or created any mortgage or other lien on or affecting the Property or any part thereof, except only to the extent of his respective Unit Ownership.

3.6 SEPARATE REAL ESTATE TAXES. Real estate taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or of any other lawful taxing or assessing body, are to be separately taxed to each Unit Owner for his Unit Ownership as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements and in such event such taxes shall be a Common Expense.

3.7 OWNERSHIP OF COMMON ELEMENTS. Each Unit Owner shall own the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit "B" attached hereto. The percentages of ownership interests set forth in Exhibit "B" have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, and except as specifically permitted under the Act and this Declaration, without unanimous written consent of all Unit Owners and all Eligible Mortgagees. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Common Elements corresponding to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit. The Common Elements shall remain undivided and no Unit Owner shall bring any action for partition.



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

3.9 USE OF THE COMMON ELEMENTS.

(a) Subject to the provisions of this Declaration, each Unit Owner shall have the non-exclusive right to use the Common Elements (except the Limited Common Elements and portions of the Property subject to leases or licenses made by or assigned to the Board) in common with all other Unit Owners, as may be required for the purposes of access to, ingress to, egress from, and use, occupancy, and enjoyment of the respective Unit owned by such Unit Owner and such other incidental uses as are permitted by this Declaration. Such rights to use the Common Elements and the Limited Common Elements shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws, and rules and regulations adopted or prescribed by the Board from time to time. In addition, the Association shall have the authority to lease, grant licenses or concessions, or grant easements with respect to parts of the Common Elements, subject to the provisions of this Declaration and the By-Laws. All income derived by the Association from leases, concessions, or other sources shall be held and used for the benefit of the members of the Association, pursuant to such rules, resolutions, or regulations as the Board may adopt or prescribe.

(b) The rights described in Subsection (a) above shall extend to the Unit Owners and other Occupants, members of the immediate family, guests, visitors, agents, servants, invitees, customers and licensees of the Unit Owner or other Occupant, subject to rules and regulations adopted or prescribed by the Board from time to time.

3.10 DESCRIPTION OF LIMITED COMMON ELEMENTS. The Limited Common Elements are such parts of the Common Elements serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, and designated as such in this Declaration, on the Plat or, to the extent permitted by law, by the Board through rules and regulations, or which by the nature or location thereof, or by the terms of this Declaration, are clearly intended to be reserved for or for the use of one or more Units to the exclusion of other Units. The Limited Common Elements appertaining to, or designated or reserved for or for the use of, or serving any Unit (alone or in conjunction with other Units) are hereinafter from time to time referred to as the Limited Common Elements of such Unit.

3.11 USE OF LIMITED COMMON ELEMENTS. Each Unit Owner and other Occupant shall have the right to (a) the exclusive use and possession of the Limited Common Elements serving exclusively the Unit of such Unit Owner or other Occupant, which right shall be appurtenant to and shall run with title to such Unit, and, except as otherwise expressly

permitted by this Declaration, shall not be separated from such Unit, and (b) the use and possession of the Limited Common Elements serving the Unit or such Unit Owner or other Occupant in common with one or more (but not all) other Units, which use and possession shall be to the exclusion of all other persons except the Unit Owner or other Occupant of any such other Unit to which such Limited Common Elements shall respectively appertain.

3.12 PARKING. The Parking Spaces identified on the Plat by numbers 1 through \_\_\_ shall be Limited Common Elements, and each Unit Owner shall have the right to the exclusive use and possession of at least one (1) Parking Space for the Unit to which they are assigned by the Developer or Declarant. Parking Spaces shall be assigned and used as hereinafter provided. Each Parking Space shall initially be assigned to Units owned by the Declarant at the time of Unit conveyance. The Declarant shall have the unrestricted right and power to sell and assign one or more Parking Spaces to a Unit Owner as appurtenant to his Unit (either at or after conveyance of the Unit). A Parking Space shall be assigned by the Declarant to a Unit Owner by an instrument (which may be the deed which conveys the Unit to its Unit Owner or another recordable instrument) executed by the Declarant, and recorded in the Office of the Recorder of Deeds of Cook County. From and after the date the Declarant no longer holds title to a Unit, the Declarant shall retain the unrestricted right and power to (a) from time to time, sell and assign to Unit Owners any Parking Spaces that have not theretofore been sold and assigned and (b) to assign any such Parking Spaces to the Association for such uses and subject to such rules and regulations as the Board may prescribe. A Parking Space may be assigned from one Unit to another as provided for and permitted under the Act in respect to the transfer of Limited Common Elements, but only with the written consent of the Eligible Mortgagee of the assigning Unit. Except for the Declarant or Developer, who shall have the right to lease Parking Spaces without any restrictions, a Parking Space may be leased only to an Occupant and for a term of not more than one (1) year. Except as to leases by the Developer or Declarant, notice of any such lease, together with a copy of the lease shall be delivered to the Association not later than ten (10) days after the date of the lease.

The Unit Owner of a Unit to which a Parking Space is assigned, shall have the right at all times to park one (1) passenger automobile or vehicle of comparable size in such Parking Space, subject to the rules and regulations adopted from time to time by the Board or pursuant to the Declaration of Covenants.

3.13 STORAGE AREAS OF THE BUILDING. Each Unit Owner shall be responsible for his personal property located in the storage areas of the Common Elements. The exclusive use and possession of the storage units in such areas shall be assigned initially to the respective Unit Owners as Limited Common Elements by the Developer or its agent and thereafter in such manner and subject to such rules and regulations as the Board may prescribe.

3.14 DISCLAIMER OF BAILEE LIABILITY. Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Unit Owner, the

Developer, nor the Declarant (and their respective successors and assigns) shall be considered a bailee of any personal property stored in the Common Elements (including property located in storage lockers), whether or not exclusive possession of any particular areas shall be given to any Unit Owner for storage purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

3.15 JOINT FACILITIES. To the extent that equipment, facilities, and fixtures within any Unit or Units shall be connected to similar equipment, facilities, or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owners shall be subject to the rules and regulations of the Board as may be imposed from time to time.

3.16 BOARD'S RIGHTS OF ENTRY. The Board or its agents, upon reasonable notice or, in the case of an emergency, without notice, shall have the right to enter any Unit or any of the Limited Common Elements when necessary in connection with any maintenance, repairs or construction for which the Board is responsible or permitted to do. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be repaired by the Board, as a Common Expense; provided, however, that the Board shall not be responsible for replacement of wall coverings affected by such maintenance, repairs or construction.

3.17 TRANSFER OF LIMITED COMMON ELEMENTS. The use of Limited Common Elements may be transferred between Unit Owners at their expense in accordance with the provisions of the Act.

3.18 EASEMENTS DUE TO ENCROACHMENTS. In the event that (i) by reason of the construction, repair, reconstruction, settlement, or shifting of the Building, any part of the Common Elements encroaches or shall thereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall thereafter encroach upon any part of the Common Elements, or any other Unit; or (ii) if by reason of the design or construction of utility and ventilation systems, any pipes, ducts, flues, shafts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit; then, in any such case, valid easements for the maintenance of such encroachment and for such use of the Common Elements are hereby established and shall exist for the benefit of such Unit, or the Common Elements, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Elements be created in favor of any Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by the other Unit Owners or has been created through intentional, willful, or negligent conduct of the Unit Owner or his agent.

3.19 UTILITY EASEMENTS. All suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair, or replace, conduits, cables, pipes, and wires, and other equipment into, over, under, along, and on any portion of the Common Elements for the purpose of providing the Property with utility services,

together with the reasonable right of ingress to and egress from the Property for said purpose. The Declarant, Board, or Association may hereafter grant other or additional easements for utility purposes and for other purposes including such easements as the Developer may from time to time request including, but not limited to, such easements as may be required to construct, keep, and maintain improvements upon the Common Elements, for the benefit of the Property, over, under, along, and on any portion of said Common Elements, and each Unit Owner hereby grants the Declarant, Board, or Association an irrevocable power of attorney to execute, acknowledge, and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair, and replace any pipes, wires, ducts, flues, shafts, conduits, public utility lines, components of the mechanical (including but not limited to heating and air conditioning), communications and television systems, if any, or structural components, which may run through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit boundaries.

The Declarant hereby reserves to itself and the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or Eligible Mortgagee of a Unit Ownership: (i) to record a supplement to the Plat showing the location of any or all of such utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built", and (ii) to record, from time to time, additional supplements, showing additions, modifications and deletions to any or all of such conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment. Once the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section 3.19 to such utility or other entity shall be limited to the area or areas located within ten feet on either side of the equipment of such utility or other entity shown on such supplement or additional supplement as such other area designated in the supplement by the Declarant or the Association. A power coupled with an interest is hereby granted to the Declarant and the Association, acting by and through their respective duly authorized officers, their respective successors, assigns, agents and designees, and each of them single without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit Ownership shall be deemed a grant of such power to each of said attorneys-in-fact, an acknowledgment of a consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to record any and all such supplements.

3.20 CABLE TELEVISION SYSTEM. Each Unit has been equipped with at least one outlet that can be activated for connection to the cable television system serving the Building, which outlet and system are integral parts of the Common Elements. Additional outlets for connection to the cable television system are obtainable only from the Association and may be installed only by the firm or individual authorized by the Board to make such installation, with the prior approval of the Board and the payment of any required additional fees. Unit Owners and Occupants are prohibited from making any modifications to or tampering with said outlet and from making any connections to the cable television system, and the Board may

charge any Unit Owner with the cost of locating and removing any unauthorized connections thereto and of repairing any modifications thereto.

3.21 BLANKET EASEMENT IN FAVOR OF THE DECLARANT AND OTHER PARTIES. The right of the Unit Owners to use and possess the Common Elements as set forth in Section 3.9(a) hereof shall be subject to a blanket easement over the Common Elements in favor of the Declarant and the Developer, and their respective representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Property or any part thereof, (ii) installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Parcel or any part thereof, including the right to restrict and regulate access to the Common Elements for the purposes of completing renovation of the Common Elements or Units, and (iii) the installation and maintenance of signs advertising the Units on the Parcel or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with marketing for sale of such Units and for such purposes as described in Article 14 hereof. The foregoing easements in favor of the Declarant and the Developer shall continue until such time as neither the Declarant nor the Developer holds legal title to, or the beneficiary interest in any trust holding legal title to, any Unit Ownerships, at which time such easements shall cease and be of no further force and effect without the necessity of any further action.

3.22 ASSOCIATION'S EASEMENT. A blanket easement over the Property is hereby granted in favor of the Association for the purpose of exercising its rights and performing its duties under this Declaration. The authorized representatives of the Association or the Board, or of the manager or managing agent for the Property, shall be entitled to reasonable access to, over and through the individual Units as may be required in connection with the operation, maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements.

3.23 EASEMENT FOR ACCESS TO GARAGE PARKING SPACES. An easement is hereby granted in favor of the Unit Owners owning Garage Parking Spaces for pedestrian access to the Parking Spaces owned by such Unit Owners over and across adjacent Parking Spaces to the extent such access is required to provide pedestrian access to such Unit Owners.

3.24 EASEMENTS RUN WITH THE LAND. All easements and rights described herein are easements appurtenant running with the land, and, so long as the Property is subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the undersigned, its successors, and assigns, and any Unit Owner, purchaser, mortgagee, and other person having an interest in the Property, or any part or portion thereof without any need for further reference thereto in any deed, mortgage or other evidence of obligation.

## ARTICLE IV

### MAINTENANCE, REPAIRS AND REPLACEMENTS OF UNITS

4.1 MAINTENANCE, REPAIRS AND REPLACEMENTS. The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of those portions, if any, of each Unit which contribute to the support of the Building, including, but not limited to, the Limited Common Elements, excluding, however, interior wall, ceiling, and floor surfaces and all interior doors, but including windows and window systems. In addition, the Association shall maintain, repair, and replace (a) all pipes, wires, conduits, ducts, flues, shafts, and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system servicing more than one Unit (including, without limitation, windows and window systems wherever located), exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Unit Owner under Section 4.2 hereof, or any other provision of this Declaration and (b) individual heating, cooling and ventilating systems and equipment situated entirely within the Unit and servicing only such Unit, including the fan and fan coil unit and heat pumps and compressors servicing only such Unit whether or not located within such Unit; provided, however, that the Board may charge the Unit Owners whose Unit are served by such heating, cooling and ventilating systems and equipment for the cost of such maintenance, repair and replacement. Pursuant to the Declaration of Covenants, the Association shall also be responsible for a portion of the maintenance costs for facilities shared with the Commercial Owner. Maintenance, repairs, and replacements of the Common Elements shall be furnished by the Association acting by and through the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.

4.2 BY THE UNIT OWNER. Except as otherwise provided in Section 4.1 hereof or Section 4.3 hereof, each Unit Owner shall furnish and be responsible for, at his own expense:

(a) All of the maintenance, repairs, and replacements within his own Unit and of the doors appurtenant thereto, and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures, plumbing fixtures or installations, and any pipes, ducts, flues, shafts, electrical wiring, and conduits; provided, however, that such maintenance, repairs, and replacements as may be required for the bringing of water, electricity, and other utilities to the Units, shall be furnished by the Board as part of the Common Expenses.

(b) All of the decorating within his own Unit and the Limited Common Elements servicing his Unit as may be required from time to time, including, but not limited to, painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors, and ceiling of his Unit, and such Unit Owner shall maintain such interior surfaces and the interior surfaces of any Limited Common Elements appurtenant to any portion of his Unit contiguous to his Unit in good

condition at his sole expense. Such maintenance and use shall be subject to the rules and regulations of the Board or Association as may be imposed from time to time. Each Unit Owner who shall elect to install in any portion of his Unit or Limited Common Elements appurtenant thereto (other than in bath and powder rooms) hard surface floor covering (i.e., tile, slate, ceramic, parquet, etc.) shall be first required to install a sound absorbent under cushion of such kind and quality as to prevent the transmission of noise to another Unit, and shall obtain approval of the Board prior to making such installation. If such prior approval is not so obtained, the Board may, in addition to exercising all of the other remedies provided for in this Declaration for breach of any of the provisions hereof, require such Unit Owner to cover all non-conforming work with carpeting, or may require removal of such non-conforming work, at the expense of the offending Unit Owner. In addition, each Unit Owner shall comply with such rules and regulations as the Board may from time to time adopt requiring carpeting of the floor surfaces in Units or Limited Common Elements appurtenant thereto or requiring other measures which the Board deems necessary or appropriate for the purpose of minimizing the transmission of sound between Units. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of each respective Unit Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board as may be imposed from time to time.

4.3 INSURANCE COVERAGE. In the event that any repair or replacement to the Common Elements (including Limited Common Elements) is made necessary by reason of any act or occurrence for which insurance is maintained by the Board and for which insurance proceeds are available, the Association, at its expense, shall be responsible for the repair or replacement of such Common Elements.

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

4.5 NEGLIGENCE OF UNIT OWNER. If, due to the negligent or willful act or omission of a Unit Owner, a member of his family, a household pet, or a guest or other authorized Occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs, or replacements shall be

required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Board.

4.6 ADDITIONS, ALTERATIONS, OR IMPROVEMENTS.

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

(b) Except as otherwise provided in this Declaration, no additions, alterations, or improvements shall be made by a Unit Owner to any part of the Common Elements and no additions, alterations, or improvements shall be made by a Unit Owner to his Unit where such work alters the wall or partition configuration, ceiling, perimeter doors or windows, floor load or otherwise affects the structure of the Unit or increases the cost of maintenance or repair of the Common Elements or insurance required to be carried by the Board hereunder, without the prior written consent of the Board. No change to any landscaping in the Common Elements, including alternation, removal or relocation of any tree, shrub or perennial flowering plant, shall be made without prior approval by the Unit Owners owning seventy five percent (75%) of the Units. No Unit Owner may create an access to or otherwise use any attic space or basement space within the Common Elements. Any addition, alteration or improvement of the Unit by the Unit Owner which shall affect in any way the structure of the Unit or any portion of the Common Elements shall be made in conformance with plans and specifications (including mechanical and electrical drawings as applicable) prepared or reviewed and approved by an architectural or engineering firm selected by the Developer or the Board. The cost of such drawings or review and approval shall be paid by the Unit Owner. The Board may condition its consent to the making of an addition, alteration, or improvement by a Unit Owner which affects the structure of the Unit or any portion of the Common Elements upon (a) the Unit Owner's agreement (i) to be solely responsible for the maintenance of such addition, alteration, or improvement, subject to such standards as the Board may from time to time set, (ii) to pay to the Association from time to time the additional cost of maintenance or insurance resulting from the addition, alteration, or improvement and (b) the execution by the Unit Owner of an indemnity agreement in form and substance satisfactory to the Association which may include, inter alia, provisions governing the time periods during which construction will be permitted, construction methods, delivery of building permits, and such other matters pertaining to construction as the Board may determine. If an addition, alteration, or improvement is made by a Unit Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

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



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

(iii) Ratify the action taken by the Unit Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section 4.6.

4.7 COMBINATION OR SUBDIVISION OF UNITS. Any Unit Owner or Unit Owners may, at their expense, combine, and the Declarant or Developer may combine or subdivide Units owned by them and locate or relocate Common Elements affected or required thereby on written application to the Board approved by a majority of the members of the Board. Such application shall contain the proposed reallocation to the new Units of the percentage ownership of the Common Elements and whether the Limited Common Elements, if any, previously assigned to the Unit or Units to be subdivided or combined should be assigned to each new Unit or to fewer than all the new Units created and requesting, if desired in the event of the combination of Units, that the new Unit be granted the exclusive right to use as a Limited Common Element a portion of the Common Elements within the Building adjacent to the new Unit. Such request to the Board shall be accompanied by an amendment to the Declaration and the Plat prepared in accordance with the relevant provisions of the Act. In the event of a combination of Units, such amendment may grant the Unit Owner of the new Unit the exclusive right to use, as a Limited Common Element, a portion of the Common Elements within the property adjacent to the new Unit. The subdivision and combination of Units shall be effective upon recording of such amendment to this Declaration, executed by the Owners of the Units involved, and the Plat. In the event of the combination of Units, if permitted by law, the Unit Owner of the new Unit may remove one of the entrance doors from the new Unit; provided, however, that (a) prior to doing so, the Unit Owner shall deliver to the Board for review and approval plans for such removal, (b) following such removal the wall of the Common Element corridor in which such door was located shall be restored to the same condition as the rest of such corridor, including installation of identical wall coverings, if any, and (c) such work shall be done at the Unit Owner's expense free of any liens or claims for lien in conformity with all applicable laws, statutes, codes and ordinances and to the satisfaction of the Board. So long as the Declarant or the Developer owns any Units, the Declarant or the Developer shall have the right, whether approved by the Board, to combine such Units and to designate, as a Limited Common Element appurtenant to the resulting Unit, the portion of the Common Element corridor located between or adjacent to such Units, by recording an amendment to this Declaration and the Plat in accordance with the Act.

## ARTICLE V

### ASSOCIATION

5.1 ASSOCIATION. The Association has been formed, prior to the recording hereof, as a not-for-profit corporation under the General Not-For-Profit Corporation Act of the State of Illinois and shall be the governing body for all of the Unit Owners and for the maintenance, repair, replacement, administration, and operation of the Property as provided in the Act, this Declaration and the By-Laws. All agreements and determinations lawfully made by the Association shall be deemed to be binding on all Unit Owners and their respective successors and assigns. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of the Unit Owners in accordance with the provisions contained herein.

5.2 MEMBERSHIP. There shall be only one class of membership in the Association. The Unit Owner of each Unit shall be a member of the Association. There shall be one membership per Unit Ownership. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership.

5.3 VOTING RIGHTS. One person with respect to each Unit Ownership shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as the "voting member" as designated in accordance with the terms of the By-Laws. Such voting member may be the Unit Owner or one of the group who compose the Unit Owner of a Unit Ownership, or be some person designated by such Unit Owner to act as proxy on his or their behalf which person must be a Unit Owner. The total number of votes of all voting members shall be one hundred (100), and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or their Unit Ownership as set forth in Exhibit "B", the Act, this Declaration or the By-Laws.

5.4 BOARD OF DIRECTORS. From and after the first meeting of the members of the Association after the Turnover Date, the Board shall consist of the number of individuals provided for in the By-Laws, each of whom shall be a Unit Owner. Prior to the first meeting of the members of the Association after the Turnover Date, the Board shall be constituted and elected as provided in Section 14.4 hereof.

5.5 MANAGING AGENT. The term of any management agreement covering the management of the Property entered into prior to the Turnover Date shall not exceed two (2) years from the date of recording of this Declaration in the Office of the Recorder of Deeds of DuPage County.

5.6 LIABILITY OF THE BOARD OF DIRECTORS. Neither the members of the Board nor the officers of the Association shall be liable to the Unit Owners for any mistake of

judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of acts of or contracts made by the Board and officers of the Association on behalf of the Unit Owners or arising out of their status as Board members or officers of the Association unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid, and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit, or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member of the Board or officer of the Association; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Board member or officer of the Association, or (b) any matter settled or compromised, unless, in the opinion of the independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such Board member or officer of the Association. It is also intended that the liability of any Unit Owner arising out of acts of the Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association, shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. Every agreement made by the Board or by the managing agent shall be only on behalf of the Unit Owners, shall provide that members of the Board or the managing agent, as the case may be, are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that each Unit Owner's liability thereunder, if any, shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements. Absence of such provision in any such agreement shall not alter the agency relationship in any way from that as described in the immediately preceding sentence in this Section 5.6.

5.7 COMMON AREA CAPITAL RESERVE ACCOUNT. The Board shall establish, maintain and administer a Common Area Capital Reserve Account for the Property, in connection with future maintenance, repair and replacement needs of the Common Elements.

## ARTICLE 6

### INSURANCE

6.1 INSURANCE COVERAGES. The Board shall have the authority to and shall obtain insurance for the Property as follows:

(a) Physical damage Insurance on the Property (but excluding additions, alterations, improvements and betterments to the Units), subject to the following conditions:

(i) Such insurance shall be "bare wall" insurance with respect to the Units;

(ii) The Property shall be insured for an amount not less than one hundred percent (100%) of its full insurable replacement cost on a blanket basis, including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date;

(iii) Replacement cost values are to be reviewed annually by an independent appraiser and the insurance policy or policies shall be endorsed with an agreed amount clause. The cost of any and all appraisals for insurance purposes shall be Common Expenses;

(iv) Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property, and such other perils as may be deemed appropriate by the Board; and

(v) Such insurance shall include glass coverage.

(b) Boiler and Machinery Insurance shall be obtained on a comprehensive, blanket basis covering all Building equipment, machinery and apparatus consisting of, but not limited to, boilers, heating apparatus, fired and unfired pressure vessels, air conditioning equipment and miscellaneous electrical apparatus and their appurtenant equipment on a repair or replacement basis. Limits of liability shall be determined by the Board but such limit shall be no less than Five Hundred Thousand Dollars (\$500,000.00) per accident.

(c) Commercial General Liability Insurance shall cover personal and bodily injury and property damage. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence with a general policy aggregate of Two Million Dollars (\$2,000,000.00) for personal and bodily injury or property damage. Such policy shall be endorsed to cover cross-liability claims of one insured against the other.

(d) Worker's Compensation and Employer Liability Insurance shall be in a minimum amount \$100,000.00 or such greater amount as is necessary to comply with applicable laws.

(e) Fidelity Insurance shall be in the form of a fidelity bond 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 its managing agent or of any other person handling funds of the Association, the Board or the Unit Owners in such amounts as shall be

required by the Act. Such bond shall delete any exclusion pertaining to persons who serve without compensation from any definition of "employee" or similar expression and shall contain a managing agent endorsement if available. If the Association employs any management company, such bond shall be in the full amount of association funds and reserves in the custody of the Association or the management company. The Board may also obtain Blanket Crime insurance covering money and securities on and off the premises and depositors' forgery coverage in amounts as the Board shall deem desirable.

(f) Directors and Officers Liability Insurance, insuring the directors and officers of the Association, in such amounts and providing such coverage as may be determined by the Board. Directors and officers liability coverage must extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or the By-laws.

(g) The Board shall obtain such other insurance as the Board shall deem desirable, which may include, without limitation, any or all of: Umbrella Liability; and Non-Owned and Hired Automobile Liability coverage, Employment Practices, Environmental Hazards and Equipment Breakdown.

The premium for the above described insurance and bond shall be Common Expenses.

6.2 INSURANCE CARRIERS. All insurance provided for in Section 6.1 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than VII according to BEST'S INSURANCE REPORTS or a substantially equivalent rating from a nationally-recognized insurance rating service. All such policies shall provide a minimum of thirty (30) days advance notice of cancellation in writing to the insureds thereunder unless such cancellation is for non-payment of premium in which case ten-day (10) advance written notice shall be sufficient.

### 6.3 INSUREDS.

(a) All policies of insurance of the character described in paragraphs (a) and (b) of Section 6.1: (i) shall name as insureds the Board, as trustees for the Unit Owners, in the percentages established in Exhibit "B" to this Declaration, and the Insurance Trustee described in Section 6.5 hereof, as the respective interests of all of such insureds may appear; (ii) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners whether such other insurance covers their respective Units and/or the additions and improvements made by such Unit Owners to their respective Units; (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act; (iv) shall contain an endorsement to the effect that such policy shall not be terminated for

nonpayment of premiums without at least thirty (30) days prior written notice to the Eligible Mortgagee of each Unit. Policies of insurance of the character described in subsection (a) of Section 6.1 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof; and (v) shall include the Developer as additional insured, in its capacity as a Unit Owner, manager, board member, or officer, when applicable. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in subsections (a) and (b) of Section 6.1, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

(b) All policies of insurance of the character described in subsections (c), (d), (e), and (f) of Section 6.1 shall name as insureds the Association, the Board, managing agent, and the other agents and employees of such Association, Board and managing agent and the Declarant and the Developer in his or its capacity as a Unit Owner and Board member and shall also provide coverage for each Unit Owner (but as to the insurance described in Section 6.1(c) hereof, only with respect to those portions of the Property not reserved for their exclusive use). In addition, all policies of insurance of the character described in subsections (a), (b) and (c) of Section 6.1 shall contain an endorsement or clause 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, their respective employees and agents, and the Unit Owners and Occupants.

6.4 PREMIUMS. The Association, for the benefit of the Unit Owners and the Eligible Mortgagee of each Unit, shall pay the premiums or obtain a binder on the policies of insurance described in subsection (a) of Section 6.1 at least thirty (30) days prior to the expiration date of the respective policies, and upon written request therefor, shall notify the Eligible Mortgagee of each Unit of such payment within ten (10) days after the date on which payment is made.

6.5 LOSSES. Loss, if any, under any policies of insurance of the character described in subsections (a) and (b) of Section 6.1 shall be adjusted with the Board, and the insurance proceeds on account of any such loss shall be paid and applied as follows:

(a) To the Board, as trustee for each of the Unit Owners in their respective percentages of ownership in the Common Elements as established in this Declaration, in the case of any one loss, of Fifty Thousand Dollars (\$50,000.00) or less in the aggregate, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, free from vendor's, mechanic's, materialman's, and other similar liens; or

(b) In the case of any one loss exceeding Fifty Thousand Dollars (\$50,000.00) in the aggregate, then the insurance proceeds shall be paid to LaSalle National Bank, which is hereby designated by the Developer to act as trustee for the Board (the "Insurance Trustee") pursuant to the Act for the purpose of collecting and disbursing the insurance proceeds described in this subsection (b). If such entity (or its successor appointed pursuant hereto) shall fail or cease for any reason to act as the Insurance Trustee, then the Board shall, pursuant to the Act, appoint as successor Insurance Trustee a corporation qualified to accept and execute trusts in the State of Illinois and having capital of not less than Five Million Dollars (\$5,000,000.00). Such proceeds, less the actual cost, fees, and expenses, if any, incurred in connection with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to such damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the restoration of the Property in accordance with the provisions of the Act. The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter into an insurance trust agreement further implementing the provisions of the Act and this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee

6.6 UNIT OWNER RESPONSIBILITY. Each Unit Owner shall be responsible for (i) physical damage insurance on the personal property in his Unit and anywhere on the Property, his automobiles, and any additions, alterations and improvements to his Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in his Unit); (ii) his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Unit Owners as above provided; and (iii) his additional living expenses. All policies of casualty insurance carried by each Unit Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners as above provided. For the purposes of this Section 6.6, "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including, without limitation, carpeting, flooring, wall covering, paint and paneling, toilets, fixtures and cabinetry. The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations and improvements to a Unit or any personal property of a Unit Owner or any other insurance for which a Unit Owner is responsible pursuant to this Section 6.6. Each Unit Owner shall obtain insurance covering their personal liability and compensatory (but not consequential) damages to another unit caused by the negligence of the Unit Owner or his or her guests, residents or invitees, or regardless of any negligence originating from the Unit. The personal liability of a unit owner or association member must include the deductible of the owner whose unit was damaged, any damage not covered by insurance required in this Article, as well as decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

If the Unit Owner does not purchase or produce evidence of insurance requested by the board, the directors may purchase the insurance coverage and charge the premium cost back to the Unit Owner. In no event shall the Board be liable to any person either with regard to its decision not to purchase the insurance, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

6.7 UNIT OWNER RELEASES. Each Unit Owner hereby waives and releases any and all claims which he may have against the Association, its officers, members of the Board, the Declarant, the Developer, the manager and managing agent of the Property, if any, and their respective employees and agents, for any damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance or would be covered by insurance for which such Unit Owner is responsible pursuant to Section 6.6. Each Unit Owner hereby waives and releases any and all right of subrogation under the policies described in Section 6.1 hereof against the Association and the Board.

6.8 SPECIAL ENDORSEMENT. Insurance required by Section 6.1 shall be endorsed to include substantially the following clause:

"This insurance shall not be prejudiced (i) by any act or neglect of any Unit Owner or occupant of the Building when such act or neglect is not within the control of the named insured (or Unit Owners collectively), or (ii) by failure of the named insured (or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the Building over which the named insured (or Unit Owners collectively) has no control."

6.9 DEDUCTIBLES. The Board shall have the right and obligation to select substantial deductibles to the insurance coverages required or permitted under Section 6.1 if the economic savings justifies the additional risk and if permitted by law. The deductibles shall be on a per occurrence basis irrespective of the number of insureds suffering injury or damage. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Common Expenses.

6.10 CERTIFICATES OF INSURANCE Contractors and vendors (except public utilities) doing business with the Association under contracts exceeding \$10,000 per year must provide certificates of insurance naming the Association, the Board, and the managing agent, if any, as additional insured parties.



## ARTICLE VII

### ASSESSMENTS

7.1 CREATION OF LIEN AND PERSONAL OBLIGATION. The Declarant and the Developer, for each Unit Ownership hereby covenant, and each Unit Owner by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be and is deemed to covenant and hereby agrees to pay to the Association such assessments or other charges or payments (including, without limitation, any parking fees) as are levied or charged pursuant to the provisions of this Declaration. Such assessments, fees or other charges or payments, together with interest thereon and costs of collection, if any, as herein provided, shall be a charge on the Unit Ownership and shall be a continuing lien upon the Unit Ownership against which each such assessment is made. Each such assessment, fee or other charge or payment, together with such interest and costs, shall also be the personal obligation of the Unit Owner at the time when the assessment, fee or other charge or payment is due.

7.2 PURPOSE OF ASSESSMENTS. Each Unit Owner shall be responsible for payment of his share of the Common Expenses and other charges incurred in conformance with the Declaration as provided in the Act, this Declaration and the By-Laws, and the Association shall levy assessments for such purposes promoting the health, safety, and welfare of the Unit Owners, administering the affairs of the Association, and paying Common Expenses and other charges.

7.3 PROCEDURE. Annual assessments shall be made and separate assessments may be made as provided in the By-Laws.

7.4 USER CHARGES. The Board, or the Declarant or Developer, acting pursuant to Section 14.4 hereof, may establish, and each Unit Owner shall pay, user charges to defray the expense of providing services, facilities, or benefits which may not be used equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such user charges may be billed separately to each Unit Owner benefitted thereby, or may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section 7.4, and the Board or the Declarant or the Developer may elect to treat all or any portion thereof as Common Expenses.

7.5 NON-USE AND ABANDONMENT. No Unit Owner shall be relieved of his obligation to pay his proportionate share of Common Expenses or waive liability for the assessments provided for herein by abandoning or not using his Unit or not using the Common Elements.

## ARTICLE VIII

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

#### 8.1 USE AND OCCUPANCY OF UNITS AND COMMON ELEMENTS.

Subject to the Declarant's and the Developer's rights set forth in Article 14, the Property shall be occupied and used only as follows:

(a) Each Unit, including (except as provided in Section 14.2) any Units owned by the Declarant or the Developer, shall be used only for housing and related common purposes for which the Property was designed and for those purposes set forth in subsection 8.1(n).

(b) That part of the Common Elements separating any two (2) or more adjoining Units which are owned by the same Unit Owner may be altered or removed to afford ingress and egress to and from such adjoining Units; provided, however that (i) such alteration or removal shall not impair or weaken the structural integrity of any Unit or any portion of the Common Elements; (ii) the Unit Owner shall furnish to the Board not less than thirty (30) days prior to the date Unit Owner desires to commence such work, plans detailing the work to be done; (iii) the Board consents to the performance of such work and grants the Unit Owner permission (by lease or license) to use the Common Elements separating the Units; (iv) the expense of such alterations shall be paid in full by the Unit Owner making such alterations; and (v) such Unit Owner shall pay in full the expense of restoring such Common Elements to their former condition prior to such alterations in the event such Units cease to be used together.

(c) There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements (except in areas designed for such purpose) without the prior written consent of the Board or except as hereinafter expressly provided.

(d) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Elements, except subject to reasonable rules and regulations of the Board.

(e) Each Unit Owner shall be obligated to maintain and keep his Unit in good condition and in good order and repair, at his own expense.

(f) If anything shall be done or kept in any Unit or in the Common Elements serving the Units which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board, the Unit Owner(s) responsible for such conditions causing any such increase shall pay to the Association, in addition to and along with all other assessments due hereunder, any increase resulting therefrom. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements.

(g) Except as specifically set forth herein to the contrary, Unit Owners shall not cause or permit anything to be placed on the outside walls of the Building and no sign, awning, canopy, shutter, radio, television antenna, or other equipment, fixtures or items of any kind shall be affixed to or placed upon the exterior walls or roof or any part thereof, nor shall any neon, flashing or seasonal holiday lights or decorations be affixed to the interior or exterior surfaces of windows or balconies; except, however, that seasonal lighting and decorating may be installed no earlier than the first day of December and must be removed no later than the fifteenth day of January, and the Board shall have the right to adopt rules and regulations in regard thereto. Unit Owners shall not cause or permit the enclosure (either partially or entirely) of any exterior portions of the Building.

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

(i) No animals or reptiles of any kind shall be raised, bred, or kept in any Unit, except for dogs and cats, small birds and fish of an Occupant, not to exceed two (2) pets per Unit (or such greater number as the Board shall approve in writing), provided that any such animals are of a breed or variety commonly kept as household pets in low-rise buildings; in the case of a dog, shall not weigh more than one hundred (100) pounds, or a Unit having two (2) dogs shall be restricted to a maximum combined weight of one hundred fifty (150) pounds; are not kept or bred for any commercial purpose; are not allowed to run loose on the Property; and do not, in the judgment of the Board constitute a nuisance to others. The weight limitation for a single dog shall not apply to any utility dog used by an occupant with a disability, such as sight or hearing assist dog, or similar purpose requiring highly specialized training. No pet shall be allowed in the Common Elements of the Building, except for ingress and egress. Any pet causing or creating an unreasonable disturbance, nuisance or noise shall be permanently removed from the Building upon three (3) days' written notice from the Board. The Board shall have the sole discretion to determine whether such a disturbance, nuisance or noise exists. Each Occupant shall be responsible for picking up after any animal kept in such Occupant's Unit, including, without limitation, removing any waste deposited by such animal anywhere on the Common Elements or anywhere on the Property. The Board may from time to time adopt rules and regulations governing the keeping of pets in the Units. Such rules and regulations may prohibit certain species of pets.

(j) No unlawful, noxious or offensive activity shall be carried on in any Unit or elsewhere on the Property, nor shall anything be done therein or thereon which shall constitute an annoyance or nuisance or which shall, in the judgement of the Board, cause unreasonable noise or disturbance to the other Occupants.

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

others or cause any damage to or overloading of any mechanical, electrical, heating, ventilating, air conditioning or plumbing system serving the Property. No Unit Owner shall overload the floors of any Unit in violation of the Village of Downers Grove Building Code or in excess of the load for which the Building was designed and constructed. The use of water-beds and similar furnishings and equipment which may cause floor overloads shall be subject to prior written Board approval. Structural changes and alterations may be made by the Declarant and/or the Developer in Units used by the Declarant and/or Developer as model Units and/or sales and marketing areas and in the adjacent Common Elements, as may be reasonably necessary to adapt the same to the uses permitted therein. Such changes may include the elimination or alteration of perimeter walls for the purpose of combining adjoining Units or improving access thereto or visibility thereof. No modifications or additions shall be made to the Common Elements without approval of the Board, except that religious insignias of a size no larger than six inches by six inches may be affixed to the exteriors of doors of Units and adjoining doorframes.

(l) No clothes, sheets, blankets, laundry of any kind, or other articles shall be displayed or hung out of any Unit or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris, and other unsightly materials. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board. No hanging or floor standing items may be placed in the Common Elements except with the prior written consent of the Board.

(m) No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in any Unit except as hereinafter provided in Section 8.1(n).

(n) The Unit restrictions in subsections (a) and (m) of this Section 8.1 shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his personal professional library therein; (ii) keeping his personal business or professional records or accounts therein; (iii) handling his personal business or professional telephone calls or correspondence therefrom; (iv) maintaining a computer or other office equipment within the Unit; or (v) utilizing secretarial help or having occasional business visitors. Such uses are expressly declared customarily incident to the principal resident use and not in violation of subsections (a) and (m) of this Section 8.1.

(o) Each Unit Owner shall deposit with the Board duplicate keys for all locks required for entry to his Unit.

(p) No vehicles exceeding twenty feet in length, including any trailer, including by way of example and not limitation, trucks, campers, recreational vehicles, vans or boats, shall be parked anywhere on the Common Elements, except that a passenger vehicle, including a passenger van, may be parked in a Parking Space.

(q) No alterations shall be made to the exterior of the Building without the prior written consent of the Board.

(r) No use of a Unit shall be conducted, maintained or permitted to the extent such use is in violation of the uses permitted hereunder or under any applicable laws, statutes, codes, regulations or ordinances governing the Property from time to time (including, without limitation, the relevant provisions of the Village of Downers Grove zoning ordinance).

(s) Smoking shall be prohibited anywhere in or on any interior areas of the Property other than in the Units.

(t) No Unit Owner may post "For Sale" or "For Rent" or any other commercial sign in or on the windows, balconies, or any other area of a Unit.

(u) The provisions of the Act, the Declaration and rules and regulations that relate to the use of individual Units and Common Elements shall be applicable to any person leasing a Unit Ownership and shall be deemed to be incorporated in any lease of a Unit. The Association may prohibit a tenant from occupying a Unit until the Unit Owner complies with the leasing requirements prescribed in Section 11.2 of this Declaration or as may be adopted by the Association. The Board may proceed directly against a tenant, at law or in equity, or under the provisions of Article IX of the Code of Civil Procedure, for any breach by a tenant of any covenants, rules, regulations or the By-Laws, without excluding any other.

(v) The use and enjoyment of the Property shall be subject to reasonable rules and regulations duly adopted by the Board from time to time; provided, that prior to adoption of any such rules, there shall first be held a meeting of the Unit Owners to discuss the proposed rules and all Unit Owners are furnished with a copy of the proposed rule and notice of the meeting as required by the Act.

## ARTICLE IX

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

9.1 **SUFFICIENT INSURANCE.** In the event the Building or improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus the capital reserves, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration, or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the reserve for replacements shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one-hundred eighty (180) days after said damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in

Article 10 hereof or to withdraw the Property from the provisions of this Declaration, and from the provisions of the Act as therein provided, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration, or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B, after first paying from the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

9.2 INSUFFICIENT INSURANCE.

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

(b) In the case of damage or other destruction in which fewer than one-half ( $\frac{1}{2}$ ) of the Units are rendered uninhabitable, upon the affirmative vote of not fewer than three-fourths ( $\frac{3}{4}$ ) of the Unit Owners voting at a meeting called for the purpose, the Building or other portion of the Property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the occurrence of the damage or other destruction. At such meeting the Board, or its representative, shall present to the members, an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner.

(c) In the case of damage or other destruction, upon the affirmative vote of not fewer than three-fourths ( $\frac{3}{4}$ ) of the Unit Owners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Any proceeds available from the withdrawal of any Limited Common Elements, will be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

9.3 EMINENT DOMAIN. In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal from the provisions of

the Act of such portion so taken may be made by the Board. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof under this Section 9.3 only, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Elements or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in that connection shall be divided by the Association among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit "B", after first paying from the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

9.4 REPAIR, RESTORATION OR RECONSTRUCTION. As used in this Article 9, "repair, restoration, or reconstruction" means restoring the improvements (excluding additions, alterations, improvements or betterments to a Unit) to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Elements having the same vertical and horizontal boundaries as before, unless, if allowed by the Act, other action is approved by Eligible Mortgagees representing a Majority of Unit Owners. Any repair, restoration or reconstruction shall be in accordance with law and this Declaration.

## ARTICLE X

### SALE OF THE PROPERTY

At a meeting duly called for such purpose, the Unit Owners, by affirmative vote of at least seventy-five percent (75%) of the total vote, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale was approved, the Board shall give written notice of such action to the Eligible Mortgagees entitled to notice under Section 13.1 of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale; provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection

thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by an appraisal, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. In the absence of agreement on an appraiser, such Unit Owner and the Board may each select a qualified appraiser, experienced in the appraisal of condominium units in metropolitan Chicago, Illinois, and the two (2) so selected, shall select a third appraiser, experienced in the appraisal of condominium units in metropolitan Chicago, Illinois, and the fair market value, as determined by a majority of the three (3) so selected, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The cost of the appraisal shall be divided equally between such Unit Owner and the Board, and the Board's share of said cost shall be a Common Expense.

## ARTICLE XI

### TRANSFER OF A UNIT

11.1 UNRESTRICTED TRANSFERS. Subject to Section 11.2 hereof, a Unit Owner may, without restriction under this Declaration, sell, give, devise, lease or otherwise transfer his entire Unit Ownership. Except as provided in Section 11.5 hereof, notice of any such unrestricted transfer, together with the name, telephone number and address (if other than the Property) of the new Unit Owner, in case of a sale of the Unit, shall be given to the Board, in the manner provided in this Declaration for the giving of notices, not less than ten (10) days prior to such transfer.

11.2 LIMITS ON LEASE TERMS. No Unit shall be leased by a Unit Owner, or occupied by an Occupant, for hotel or transient purposes or for a term of less than one (1) year and no portion of a Unit which is less than the entire Unit shall be leased. Not more than twenty five percent (25%) of the Units may be leased at any time. Notwithstanding the foregoing, the Declarant and/or the Developer may lease any or all Units owned by it to any person for any term for use as a residence. Except as provided in Section 11.5 hereof, each lease of any one or more Units shall be in writing and a copy of every such lease, shall be furnished to the Board on the first to occur of (a) ten (10) days after such lease is signed, or (b) the date of occupancy. The lessee under every such lease shall be bound by and subject to all of the obligations, under this Declaration, the By-Laws and the rules and regulations of the Association, of the Unit Owner making such lease and the failure of the lessee to comply therewith shall constitute a default under the lease which shall be enforceable by the Board or the Association, and the lease shall be deemed to expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any of said obligations. In addition to any other remedies provided for in this Declaration, by filing an action jointly against the tenant and Unit Owner, the Association may seek to enjoin such tenant from occupying a Unit or seek to evict such tenant under the provisions of Article IX of the Code of Civil Procedure for failure of the Unit Owner to comply with the leasing requirements prescribed by this Section 11.2 or elsewhere in this Declaration,



the By-Laws and the rules and regulations of the Association. The Board may proceed directly against such tenant, at law or in equity, or under the provisions of Article IX of the Code of Civil Procedure, for any other breach by such tenant of the provisions of this Declaration, the By-Laws or the rules and regulations of the Association. Prior to occupancy of a Unit by a lessee, the Unit Owner shall furnish to the Board the following information:

- (a) The name, address and telephone number (both home and business) of such lessee;
- (b) The names of all persons who will occupy the Unit; and
- (c) Such other information regarding such lessee and other Occupants as the Board may prescribe through rules and regulations.

11.3 FINANCING OF PURCHASE BY ASSOCIATION. The Board shall have authority to make such mortgage arrangements and other financing arrangements, and to authorize such special assessments proportionately among the respective Unit Owners, as the Board may deem desirable, in order to close and consummate the purchase or lease of a Unit, or interest therein, by the Association. However, no such financing arrangement may be secured by an encumbrance on any interest in the Property other than the Unit, or interest therein to be purchased or leased, and the percentage interest in the Common Elements appurtenant thereto.

11.4 EFFECT OF NON-COMPLIANCE. If any lease or sublease of a Unit Ownership is attempted or consummated without complying with the provisions of this Article 11, such lease or sublease shall be subject to the rights and options of the Board, and remedies available to the Board, hereunder or otherwise, including without limitation denial or termination of possession of the Unit.

11.5 MISCELLANEOUS.

(a) A transfer or lease of a Unit, or interest therein, by or to the Board, the Declarant or the Developer shall not be subject to the provisions of this Article 11. This Section 11.5(a) may not be amended or deleted without the prior written consent of the Declarant and the Developer, so long as either owns any Unit.

(b) The Association shall hold title to or lease any Unit, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, lease or sublease said Unit on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold for less than the amount paid by the Association to purchase said Unit unless Unit Owners owning not less than sixty-six and two-thirds percent (66 2/3%) of the total ownership of the Common Elements first authorize the sale for such lesser amount. All of the net proceeds from such a sale, lease or sublease shall be applied in such manner as the Board shall determine.

## ARTICLE XII

### REMEDIES

12.1 VIOLATIONS. Upon the occurrence of any one or more of the following events, the Board shall have the rights and remedies set forth in Section 12.2 of this Declaration:

(a) Failure by a Unit Owner to pay when due any sums required to be paid by such Unit Owner pursuant to the terms of this Declaration or the By-Laws for ten (10) days after written notice of such non-payment shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to cure such failure if such Unit Owner has been given two or more notices pursuant to this Section 12.1(a) during the twelve-month period immediately preceding such failure.

(b) Violation or breach by a Unit Owner (or any other Occupant of his Unit) of any provision, covenant or restriction of the Act, this Declaration, the By-Laws, any contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board, and continuation of such violation or breach for ten (10) days after written notice thereof shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to correct such violation or breach if such Unit Owner has been given one or more notices pursuant to this Section 12.1(b) during the twelve-month period immediately preceding such violation or breach.

12.2 REMEDIES. Upon the occurrence of any one or more of the events described in Section 12.1, the Board shall have the following rights and remedies:

(a) The Board shall have the right to immediate possession of the defaulting Unit Owner's Unit after service by the Board on such Unit Owner, in the manner set forth in Section 16.2, of a notice to quit and deliver up possession which right may be enforced by an action for possession under Article IX of the Code of Civil Procedure, as amended, or any other appropriate legal process.

(b) For a violation or breach described in Section 12.1(b), the Board shall have the right: (i) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove or do whatever else may be necessary to correct, at the expense of the defaulting Unit Owner, any such violation or breach or the cause of such violation or breach, and the Declarant, or Developer, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or (ii) to enjoin, abate, or remedy by a proceeding at law or in equity the continuance of any such violation or breach.

(c) Upon the occurrence of one of the events described in Section 12.1(a), including without limitation, failure by a Unit Owner to pay his percentage share of Common Expenses or his user charges, the Board shall have a lien on the interest of the defaulting Unit Owner's Unit Ownership in the amount of any sums due from such Unit Owner; provided,

however, that such lien shall be subordinate to the lien of an Eligible Mortgagee on the interest of such Unit Ownership. Except as hereinafter provided, the lien provided for in this Section 12.2(c) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall, to the extent permitted by law, extinguish the lien described in this Section 12.2(c) for any sums which became due prior to (i) the date of the transfer of title, or (ii) the date on which the transferee comes into possession of the Unit, whichever occurs first. However, the transferee of a Unit Ownership shall be liable for his share of any sums with respect to which a lien against the Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Unit Owners pursuant to a subsequently adopted annual revised or special assessment, and non-payment thereof by such transferee shall result in a lien against the transferee's Unit Ownership as provided in this Section 12.2(c).

(d) The Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the right of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit and thereupon an action may be filed by the Board against the defaulting Unit Owner for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him and ordering that all the right, title and interest of said defaulting Unit Owner in the Property shall be sold at a judicial sale, upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest in the Unit Ownership at such judicial sale. It shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments or other sums due hereunder or any liens, shall be paid to the defaulting Unit Owner. Upon the confirmation of such sale, the purchaser at such sale shall be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession.

(e) In addition to or in conjunction with the remedies set forth above, the Board or its agents shall have the right to bring an action at law or in equity against the Unit Owner or other Occupant of the Unit as permitted by law including, without limitation, an action (i) to foreclose a lien against the Unit Ownership, (ii) for damages, injunctive relief, or specific performance, (iii) for judgment or for the payment of money and the collection thereof, (iv) for any combination of the remedies set forth in this Article 12, or (v) for any other relief which the Board may deem necessary or appropriate. Any and all rights and remedies provided for in the Act, this Declaration, the By-Laws, any contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board may be exercised at any time and from time to time cumulatively or otherwise by the Board in its discretion. The failure of the Board to exercise any such rights or remedies to enforce any

provisions of this Declaration, the By-Laws or rules and regulations of the Board shall in no event be deemed a waiver of the right to do so thereafter.

(f) Upon the occurrence of one of the events described in Section 12.1(a), the Board may accelerate the maturity of the remainder of installments of Common Expenses due from such defaulting Unit Owner for the balance of the assessment year.

(g) All expenses incurred by the Board in connection with any actions, proceedings or self-help in connection with the exercise of its rights and remedies under this Article 12, including, without limitation, court costs, reasonable attorneys' fees and all other fees and expenses, and all damages, together with interest thereon at the rate of eighteen percent (18%), or such lesser rate charged by law should eighteen percent (18%) per annum be held to be in excess of the maximum legal rate allowable by law, shall be charged to and assessed against the defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all his personal property in his Unit or located elsewhere on the Property.

(h) In addition to all other remedies granted herein, the Board shall have the power to impose charges for late payments of a Unit Owner's proportionate share of Common Expenses, or any expenses or assessments lawfully agreed upon, and after notice and opportunity to be heard, levy reasonable fines for violation of this Declaration, the By-Laws or the rules and regulations of the Association.

12.4 ENFORCEMENT BY UNIT OWNERS. Any aggrieved Unit Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board by an action at law or in equity against the defaulting Unit Owner (or other Occupant of his Unit) upon a violation or breach described in Section 12.2(b) hereof against any person or persons either to restrain such violation or breach or to recover damages.

### ARTICLE XIII

#### RIGHTS OF ELIGIBLE MORTGAGEES

13.1 NOTICE TO ELIGIBLE MORTGAGEES. Each Unit Owner shall notify the Association of the name and address of his Eligible Mortgagee or its servicing agent, if any, and shall promptly notify the Association of any change in such information. The Association shall maintain a record of such information with respect to all Units. Each Eligible Mortgagee shall have the right to examine the books and records of the Association at any reasonable time and to have an audited statement of the Association's operations prepared for a fiscal year at its own expense. Upon the specific written request of an Eligible Mortgagee to the Board, the Eligible Mortgagee shall receive some or all of the following as designated in the request:

- (a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Unit Owner of the Unit covered by the Eligible Mortgagee's Security Interest;
- (b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Unit Owners;
- (c) Copies of notices of meetings of the Unit Owners and the right to be represented at any such meetings by a designated representative;
- (d) Notice of any proposed action which would require the consent of a specified percentage of Eligible Mortgagees pursuant to Section 13.2 hereof;
- (e) Notice of the decision of the Unit Owners to make any material amendment to this Declaration, the By-Laws, or the Articles of Incorporation of the Association;
- (f) Notice of substantial damage to or destruction of any Unit (in excess of \$1,000) or any part of the Common Elements (in excess of \$10,000);
- (g) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;
- (h) Notice of any default of any Unit Owner which is subject to the Eligible Mortgagee's Security Interest, where such default is not cured by the Unit Owner within thirty (30) days after the giving of notice by the Association to the Unit Owner of the existence of the default;
- (i) Copies of notice received by the Association of the cancellation or substantial modification of any insurance policy carried by the Association under Article 6 hereof; and
- (j) The right to be treated as an Eligible Mortgagee, as such term is defined by the guidelines of the Federal National Mortgage Association for purposes of Section 13.1.

The request of an Eligible Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to an Eligible Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by an Eligible Mortgagee hereunder and in the event of multiple requests from purported Eligible Mortgagees of the same Unit Ownership, the Association shall honor the most recent request received.

13.2 CONSENT OF ELIGIBLE MORTGAGEES.

(a) In addition to any requirements or prerequisite provided for elsewhere in this Declaration, the consent of Eligible Mortgagees holding in the aggregate Security Interests on at least fifty one percent (51%) or such higher percentage as set forth herein of the Unit Ownerships (by percentage of ownership in the Common Elements) which are subject to Security Interests held by Eligible Mortgagees will be required for the Association to do or permit to be done any of the following, other than rights reserved to the Declarant as Special Declarant Rights:

(i) Adoption of an amendment to this Declaration which changes or adds provisions to this Declaration relating to (1) voting rights; (2) assessments, assessment liens, or priority of assessment liens (as to which Eligible Mortgagees holding Security Interests on at least 51% of the Unit Ownerships, by percentages of ownership in the Common Elements); (3) reserves for maintenance, repair and replacement of Common Elements; (4) responsibility for maintenance and repair; (5) reallocation of undivided ownership interests or the rights to use Common Elements or Limited Common Elements (other than pursuant to Article VIII hereof); (6) redefinition of the boundaries of any Unit (except that in such case, only the Unit Owners of Units affected and Eligible Mortgagees of those Units need approve the action); (7) the convertibility of Units into Common Elements or vice versa; (8) expansion or contraction of the Property or the addition, annexation or withdrawal of real estate to or from the Property (other than pursuant to Article VIII hereof); (9) insurance or fidelity bonds; (10) the leasing of Units; (11) restrictions on a Unit Owner's right to sell or transfer a Unit; (12) restoration or repair of the Property (after hazard damage or partial condemnation); (13) any provisions which expressly benefit Eligible Mortgagees or guarantors or insurers of Security Interests (as to which Eligible Mortgagees holding Security Interests on at least 51% of the Unit ownerships, by percentages of ownership in the Common Elements); or (14) any other provision that could be considered material under Section 601.03d of the Fannie Mae legal requirements or any successor section.

(ii) The abandonment or termination of the Property as a condominium for reasons other than substantial destruction or condemnation of the Property [except that this action shall require the consent of Eligible Mortgagees holding Security Interests on at least 51% of the Units (by percentage of ownership in the Common Elements) which are subject to Security Interests held by Eligible Mortgagees];

(iii) The partition or subdivision of a Unit (except that in such case, only the Unit Owners of Units affected and Eligible Mortgagees of those Units need approve the action);

(iv) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements, (except for the granting of easements for public utilities or for purposes consistent with the intended use of the Property and except for the encumbrance, sale or transfer of an undivided ownership interest in connection with the

encumbrance, sale or transfer of a Unit Ownership), as to which a 51% Eligible Mortgagee approval is required;

(v) The sale of the Property, as to which a 51% Eligible Mortgagee approval is required;

(vi) The removal of a portion of the Property from the provisions of the Act and this Declaration, as to which a 51% Eligible Mortgagee approval is required;

(vii) The effectuation of a decision by the Association to terminate professional management and assume self-management of the Property as a condominium when professional management had been required previously by this Declaration or by an Eligible Mortgagee; or

(viii) The use of hazard insurance proceeds for losses to the Property (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such Units or Common Elements;

provided, that, such consent of Eligible Mortgagees will not be required with respect to any action under (i) through (viii) above which is permitted under this Declaration as the result of a taking of a portion or all of the Property by condemnation or eminent domain (including, without limitation, action taken pursuant to Section 10.3 hereof).

(b) Whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the Eligible Mortgagee within thirty (30) days after making the request for consent by certified or registered mail, postage prepaid, return receipt requested.

13.3 INSURANCE PROCEEDS/CONDEMNATION AWARDS. In the event of (i) any distribution of any insurance proceeds hereunder as a result of substantial damage to, or destruction of, any part of the Property, or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Property, any such distribution shall be made to the Unit Owners and their respective Eligible Mortgagees, as their interests may appear, or the Insurance Trustee as provided in Section 6.5 hereof, and no Unit Owner or other party shall be entitled to priority over the Eligible Mortgagee of a Unit with respect to any such distribution to or with respect to such Unit; provided, that, nothing in this Section shall be construed to deny to the Association the right to apply any such proceeds to repair or replace damaged portions of the Property or to restore what remains of the Property after condemnation or taking by eminent domain of a part of the Property.

13.4 VA APPROVALS. Anything herein to the contrary notwithstanding, whenever this Declaration or the By-Laws provide for the approval or consent of the Department of Veteran Affairs ("VA"), such approval or consent shall not be required unless the VA (a) has issued its condominium project approval of the Property and such project approval has not

terminated, (b) has issued a guarantee of the Security Interest on at least one (1) Unit which guarantee is then outstanding, (c) is the owner or holder of a Security Interest on a Unit, or (d) is the Owner of a Unit. Whenever required, such approval or consent shall be deemed granted unless the party seeking the consent or approval is advised to the contrary in writing within thirty (30) days of making the request for consent or approval.

13.5 INSPECTION OF BOOKS. The Association must maintain current copies of the Declaration, By-Laws, Rules, books, records and financial statements. The Association will permit any Eligible Mortgagee, Eligible Insurer or other Eligible Mortgagees of Units to inspect the books and records of the Association during normal business hours.

13.6 ENFORCEMENT. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them and by any available means, at law or in equity.

13.7 ATTENDANCE AT MEETINGS. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

#### ARTICLE XIV

##### DECLARANT'S AND DEVELOPER'S RESERVED RIGHTS

14.1 IN GENERAL. In addition to any rights or powers reserved or granted to the Declarant and/or the Developer under the Act, this Declaration or the By-Laws, the Declarant and/or the Developer shall have the rights and powers set forth in this Article 14. In the event of a conflict between the provisions of this Article and any other provisions of this Declaration or the By-Laws, the provisions of this Article 14 shall govern. Except as otherwise provided in this Article 14, the rights of the Declarant and/or the Developer under this Article 14 reserved or granted shall terminate at such time as the Declarant and/or the Developer is no longer vested with or control title to a Unit.

14.2 PROMOTIONAL EFFORTS. The Declarant and/or the Developer shall have the right, in its respective discretion, to maintain on the Property model Units, administrative, leasing or sales offices, or sales, leasing, management and display signs and other forms of advertising and, to the extent not prohibited by law, to come upon any portion of the Property for the purpose of showing the Property to prospective purchasers or lessees of Units, all without the payment of any fee or charge whatsoever other than the assessments payable by the Declarant and/or the Developer with respect to Units owned by the Declarant and/or the Developer. The Declarant and/or the Developer shall have a non-exclusive access easement over and across the roads and walkways located on the Property for ingress and egress to and from those portions of the Property, if any, which have not been made subject to the Act and this Declaration in order to exercise the rights reserved under this Article. The Declarant and/or the Developer shall have the power and right to lease and/or sell and convey any Unit owned by the Declarant and/or the



Developer to any person or entity which it deems appropriate in its respective sole discretion and it need not comply with the provisions of Sections 11.1 or 11.2 hereof; provided, however, that except for Units used as model Units or for administrative, leasing or sales offices, the use of Units owned by the Declarant or Developer shall be subject to the restrictions set forth in Section 8.1(a) and 8.1(n) hereof. The rights reserved to the Declarant and/or Developer herein to conduct sales, marketing or leasing activities or other promotional activities in the Common Elements (but not within Units owned by the Declarant or Developer) shall terminate on the date that Seller closes Seller's sales office at the Property for regularly scheduled business.

14.3 CONSTRUCTION. The Declarant and/or the Developer and their respective agents and contractors shall have the right and are hereby granted easements to come upon the Property to construct improvements thereon and to make alterations, repairs or improvements to the Property, and shall have the right to store equipment and materials used in connection with such work on the Property without payment of any fee or charge whatsoever.

14.4 CONTROL OF BOARD. Until the initial meeting of the Unit Owners (which shall occur no later than thirty (30) days after the Turnover Date) and the election of the initial Board as provided for in the By-Laws, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act, this Declaration or the By-Laws shall be held and performed by the Developer. The Developer may hold and perform such rights and obligations through the Board which, prior to the Turnover Date, shall consist of three (3) individuals designated by the Developer from time to time.

14.5 ASSIGNMENT BY THE DECLARANT AND/OR THE DEVELOPER. All rights which are specified in this Declaration to be rights of the Declarant and/or the Developer are assignable, mortgageable and transferable. Any successor to, or assignee of, the rights of the Declarant and/or the Developer hereunder (including, whether by foreclosure or deed-in-lieu of foreclosure) shall hold or be entitled to exercise the rights of the Declarant and/or the Developer, as applicable, hereunder as fully as if named as such party herein. No party exercising rights as the Declarant and/or the Developer hereunder shall incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

## ARTICLE XV

### DEVELOPMENT AREA

15.1 OTHER ASSOCIATIONS. The Parcel and Property are part of the Development Area which may be improved with some or all of the following improvements: commercial retail uses on the ground floor, parking areas, landscaped and walking areas, and other improvements relating thereto.

15.2 DECLARATION OF COVENANTS. The provisions of this Declaration are subject to the provisions of the Declaration of Covenants. Each Unit Owner, by acceptance of a

deed to a Unit Ownership, covenants and agrees that the obligations of the Declaration of Covenants, shall be the obligations of the Unit Owners collectively and each Unit Owner agrees to cause the Association to perform the obligations on behalf of the Unit Owners collectively and each Unit Owner individually agrees to be responsible for that portion of the cost of performing such undertaking equal to the respective Unit Owner's percentage of interest in the Common Elements. With respect to any cost incurred by the Association in the performance of any undertaking under the Declaration of Covenants, such costs shall be deemed a Common Expense, the payment of which shall be enforced in the same manner as any other Common Expense provided herein. In the event of any inconsistency between the provisions of this Declaration and the provisions of the Declaration of Covenants, the provisions of the Declaration of Covenants shall prevail unless such inconsistency is required to conform this Declaration with any requirement of the Act, in which event the provisions of this Declaration and of the Act shall prevail, but only to the extent that such requirements of the Act may not be waived by Unit Owners.

## ARTICLE XVI

### GENERAL PROVISIONS

16.1 LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class condominium development.

16.2 MANNER OF GIVING NOTICES. Notices provided for in this Declaration and in the Act shall be in writing and shall be addressed to the Board or Association, or any Unit Owner, as the case may be, at the Unit address of any member of the Board or any Unit Owner, as the case may be, or at such other address as herein provided. Any Unit Owner may designate a different address or addresses for notices to him by giving notice of his change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, postage prepaid, return receipt requested, or when delivered in person with written acknowledgment of the receipt thereof, or if addressed to a Unit Owner, when deposited in his mailbox at such address as he may have designated pursuant hereto or, if he has not so designated, in the Building or at the door of his Unit in the Building.

16.3 NOTICES TO ESTATE OR REPRESENTATIVES. Notices required to be given any devisee, heir, or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

16.4 CONVEYANCE AND LEASES. Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under a purchase contract therefore, and each tenant under a lease for a Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights,

and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in the Property, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

16.5 NO WAIVERS. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

16.6 CHANGE, MODIFICATION, OR RESCISSION. No provision of this Declaration affecting the rights, privileges and duties of the Declarant or the Developer may be modified without their respective written consent. The provisions of Article 13 and Section 13.2(c) and 16.10, and the following provisions of this Section 16.6 may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification, or rescission, signed and acknowledged by the President or a Vice President of the Board, and by all of the Unit Owners and all Eligible Mortgagees thereof. Other provisions of this Declaration may be changed, modified, or rescinded as provided in Section 16.10 hereof or by an instrument in writing setting forth such change, modification, or rescission, signed and acknowledged by the President or a Vice President of the Board, and approved by the Unit Owners having, in the aggregate, at least sixty-seven percent (67%) of the total vote, at a meeting called for that purpose; provided, however, that (i) all Eligible Mortgagees have been notified by certified mail of any change, modification or rescission, (ii) an affidavit by the Secretary of the Board certifying to such mailing is made a part of such instrument, and (iii) any provisions herein which specifically grant rights to Eligible Mortgagees may be amended only with the written consent of all such Eligible Mortgagees, except in those instances in which the approval of less than all Eligible Mortgagees is required. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of DuPage County, Illinois; provided, however, that no such change, modification or rescission, other than as provided in Section 16.10 and Section 4.7 hereof, shall materially change the boundaries of any Unit, the allocation of percentages of ownership in the Common Elements and votes in the Association, quorum and voting requirements for action by the Association, or liability for Common Expenses assessed against any Unit, except to the extent authorized by other provisions of this Declaration or by the Act.

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

16.8 PERPETUITIES AND OTHER INVALIDITY. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void

for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the current incumbent Mayor of the Village of Downers Grove and the incumbent President of the United States of America.


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

16.10 SPECIAL AMENDMENT. Developer 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 Security Interests, (iii) to bring this Declaration into compliance with the Act, and (iv) 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 Developer to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, 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 Developer to vote in favor of, make, execute and record Special Amendments. The right of the Developer to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Developer no longer holds or controls title to a Unit.

IN WITNESS WHEREOF, Acadia OTG, LLC, an Illinois limited liability company, has caused this Declaration to be executed by its duly authorized manager this 23<sup>rd</sup> day of January, 2008.

By: ACADIA OTG, LLC, an Illinois limited liability company

By: NEB Development, LLC, its Manager

By:   
\_\_\_\_\_  
Christopher Rintz, its Vice President



