

DECLARATION OF CONDOMINIUM OWNERSHIP AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS FOR BALAJI HOMES CONDOMINIUMS

This Declaration is made and entered into this _____ day of _____, 20____, by BALAJI PARTNERS, LLC, an Illinois Limited Liability Company, and BALAJI GROUP, LLC, an Illinois Limited Liability Company (hereinafter collectively referred to as “Declarant”).

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate in Aurora, Kane County, Illinois, which is legally described on Exhibit “A” attached hereto and made a part hereof (the “Development Area”);

WHEREAS, Declarant desires and intends by this Declaration to submit the Property (as hereinafter defined), including but not limited to all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto, to the provisions of the Condominium Property Act of the State of Illinois, as amended from time to time (the “Act”);

WHEREAS, Declarant further desires and intends by this Declaration to reserve to itself the right, but not the obligation, to submit the Additional Property (as hereinafter defined) to the provisions of the Act at a later date;

WHEREAS, Declarant further desires and intends by this Declaration to establish for its own benefit and for the benefit of all future owners and 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;

WHEREAS, the Property shall from and after the date of the Recording of this Declaration be known as Balaji Homes Condominiums, or such other name as may be subsequently adopted pursuant to the Act by the Board (as hereinafter defined);

WHEREAS, Declarant further desires and intends by this Declaration to declare that the 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 hereafter 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 the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property; and

WHEREAS, this Declaration and the By-Laws attached hereto as Exhibit "E" shall become effective upon Recordation in the Office of Recorder of Deeds of Kane County, Illinois.

NOW THEREFORE, the Declarant DECLARES as follows:

ARTICLE I

DEFINITIONS

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

Section 1.01: **"Act"** shall mean the "Condominium Property Act" of the State of Illinois (765 ILCS 605/1 et. seq.), as amended from time to time.

Section 1.02: **"Additional Property"** shall mean the real estate described in Exhibit "C" attached hereto, which may be annexed and added to the Parcel and Property pursuant to the terms of Article XIV hereof.

Section 1.03: **"Association"** shall mean the association of all the Unit Owners acting pursuant to the By-Laws through its duly elected Board.

Section 1.04: **"Board"** shall mean the Board of Managers of the Association as constituted at any time and from time to time as further provided in the By-Laws. In the event the Association is incorporated, the Board shall mean the Board of Directors of the incorporated Association.

Section 1.05: **"Building or Buildings"** shall mean the building or buildings located on the Parcel and forming part of the Property and containing one (1) or more of the Units.

Section 1.06: **"By-Laws"** shall mean the By-Laws of the Association, attached hereto as Exhibit "E", as may be amended from time to time.

Section 1.07: **"City"** shall mean and refer to the City of Aurora, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the City of Aurora as of the Recording of this Declaration.

Section 1.08: **"Common Elements"** means all portions of the Property except the Units, including the Limited Common Elements unless otherwise specified.

- Section 1.09: **“Common Expenses”** means the proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board.
- Section 1.10: **“Condominium Instruments”** means all documents and authorized amendments thereto Recorded pursuant to the provisions of the Act, including this Declaration, the By-Laws and the Plat.
- Section 1.11: **“Declarant”** means, collectively, BALAJI PARTNERS, LLC, an Illinois Limited Liability Company, and BALAJI GROUP, LLC, an Illinois Limited Liability Company, and their successors and assigns. Declarant is the “Developer” of the Property, as that term is defined in the Act.
- Section 1.12: **“Declaration”** shall mean this instrument, by which the Property is submitted to the provisions of the Act, together with the exhibits attached hereto and made a part hereof, and shall include amendments, if any, as may be adopted from time to time pursuant to the terms hereof.
- Section 1.13: **“Development Area”** shall mean the lot or lots, tract or tracts of land described on Exhibit “A” attached to this Declaration. The Development Area shall be comprised of both the Property that is submitted to the provisions of the Act and the terms of this Declaration and the Additional Property that may be annexed and added to the Property pursuant to the terms of Article XIV hereof.
- Section 1.14: **“Limited Common Elements”** means a portion of the Common Elements so designated in this Declaration as being reserved for the use of a certain Unit or Units, to the exclusion of other Units, or which, 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 Owners(s) thereof. Without limiting the generality of the foregoing, the Limited Common Elements shall include, without limitation, the following: (a) the interior surfaces of the perimeter walls, floors and ceilings which define the boundary planes of a Unit; (b) perimeter doors and windows, including glass, which serve exclusively a single Unit; (c) any system or component part thereof including, without limitation and to the extent applicable, furnaces, fittings, pipes, ducts, flues, shafts, electrical wiring and conduits which serve a Unit exclusively to the extent such system or component part is located outside the boundaries of the Unit; (d) the garage parking space assigned to each Unit, the exclusive use of which is outlined in the initial deed of conveyance of such Unit; and (e) portions of the Common Elements which have been

designated by this Declaration or the plat as Limited Common Elements including, but not limited to, patios, terraces and balconies.

Section 1.15: **“Majority”** or **“Majority of the Owners”** means the Owners of more than fifty percent (50%) in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.

Section 1.16: **“Occupant”** shall mean a Person or Persons, other than an Owner, in possession of a Unit.

Section 1.17: **“Owner”** or **“Unit Owner”** means the Person or Persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.

Section 1.18: **“Parcel”** shall mean the lot or lots, tract or tracts of land described on Exhibit “B” attached to this Declaration, as it may be amended from time to time, and that is submitted to the provisions of the Act.

Section 1.19: **“Person”** means a natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Section 1.20: **“Plat”** means the plat or plats of survey of the Parcel and of all Units in the Property attached to this Declaration as Exhibit “F”, as may be amended from time to time, which shall consist of a three dimensional horizontal and vertical delineation of all such Units and such other data as may be required by the Act.

Section 1.21: **“Property”** means all the land, property and space comprising the Parcel, all improvements and structures erected, constructed or contained therein or thereon, including the Building(s) and all easements, rights and appurtenances belonging thereto, and all fixtures, equipment and furnishings intended for the mutual use, benefit or enjoyment of the Owners, submitted to this Declaration and the provisions of the Act and as legally described in Exhibit “B” attached hereto.

Section 1.22: **“Record”** means to record in the Office of the Recorder of Deeds of Kane County, Illinois.

Section 1.23: **“Reserves”** means those sums paid by Owners which are separately maintained by the Board for purposes specified by the Board or the Condominium Instruments.

Section 1.24: “Unit” means a part of the Property designed and intended for any type of independent use and more specifically described in Article II and depicted on the Plat.

Section 1.25: “Unit Ownership” means title to both a part of the Property consisting of one (1) Unit and the undivided percentage interest in the Common Elements allocated thereto.

Section 1.26: “Voting Member” means one (1) person with respect to each Unit Ownership designated and entitled to vote at any meeting of the Owners.

ARTICLE II

UNITS

Section 2.01: **Description**

- (a) All Units are located on the Property, are delineated on the Plat by a distinguishing number or other symbol and are listed on and have the percentage ownership as set forth in Exhibit “D” attached hereto and made a part hereof. The legal description of each Unit shall refer to such identifying number or symbol.

- (b) Each Unit consists (or shall consist) of the space enclosed and bounded by the horizontal and vertical planes constituting the boundaries of such Unit as delineated on the Plat; provided, however, that no structural components of a Building, and no pipes, wires, conduits, ducts, flues, shafts, or public utility lines situated within a Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of said Unit.

Section 2.02: **Real Estate Taxes**

It is intended and understood that real estate taxes are to be separately taxed to each Owner for his or her Unit and his or her corresponding percentage of ownership in the Common Elements as provided in the Act. In the event that for any year such taxes are not separately taxed to each Owner, but are taxed on the Property as a whole, then each Owner shall pay his or her proportionate share thereof in accordance with his or her respective percentage of ownership interest in the Common Elements. Upon authorization by a two-thirds (2/3) vote of the members of the Board or by the affirmative vote of not less than a majority of the Owners at a meeting duly called for such purpose, the Board, acting on behalf of all Owners, shall have the power to seek relief from or in connection with the assessment or levy of any such taxes, special assessments or charges,

and to charge and collect all expenses incurred in connection therewith as Common Expenses.

Section 2.03: Combination of Units

Except as provided by the Act, no Owner (other than the Declarant) shall, by deed, plat, court decree or otherwise, combine or subdivide or in any other manner cause any Unit owned by such Owner (other than the Declarant) to be separated into any tracts or parcels different from the whole Unit as shown on the Plat. Notwithstanding the foregoing, the Declarant shall have the right at any time and from time to time to increase or decrease the size of a Unit or Units owned by the Declarant and the Declarant shall have the right in connection therewith to, at the Declarant's own expense, locate or relocate Common Elements affected or required by such change.

Section 2.04: Amendment of Plat

To the extent such data is available to the Declarant at the time this Declaration is Recorded, the Plat sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (a) the Parcel and its exterior boundaries; (b) the Building(s) and each floor thereof; and (c) each Unit in the Building(s) and said Unit's horizontal and vertical dimensions. However, the Declarant reserves unto itself, the right, from time to time, as further data becomes available, to amend the Plat so as to set forth the measurements, elevations, locations and other data required by the Act, with respect to the Building(s) and the Units now or hereafter constructed on the Parcel. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, acting by or through its duly authorized officers, its successors, or its designee, and their agents, and each of them singly, as attorney-in-fact, to amend the Plat, as described above, without notice to any Owner. Each deed, mortgage, or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgement of the consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Plat, as described above.

ARTICLE III

COMMON ELEMENTS

Section 3.01: Ownership of Common Elements

Each Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Owner as set forth in the schedule attached hereto as Exhibit "D" and by this reference made a part hereof as though fully set forth herein. The aforesaid percentages of ownership

interest have been computed and determined in accordance with the Act, and shall remain constant and may not be changed without unanimous approval of all Owners, except as otherwise provided in the Act; provided, however, that Declarant may change such percentages of ownership interest by Recording an amendment to this Declaration during the period of time Declarant has the authority to annex the Additional Property to the Property through an add-on amendment pursuant to the terms of Article XIV hereof. Said ownership interests in the Common Elements shall be undivided interests, and the Common Elements shall be owned by the Owners as tenants in common in accordance with their respective percentages of ownership as set forth in Exhibit "D". The ownership of each Unit and the Owner's corresponding percentage of ownership in the Common Elements shall not be separated.

Section 3.02: Use of the Common Elements

Each Owner shall have the right to use the Common Elements (except the Limited Common Elements) in common with all other Owners, as may be required for the purposes of access, ingress, and egress to and from and use, occupancy and enjoyment of the respective Unit owned by such Owner. Such right to use the Common Elements shall extend to each Owner, and the agents, servants, tenants, family members and invitees of each Owner. Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving his or her Unit exclusively. Such rights to use and possess the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act and of this Declaration and the By-Laws and the rules and regulations of the Board. The Board shall have the exclusive authority from time to time to adopt or amend administrative rules and regulations governing the use, occupancy and control of the Common Elements and Limited Common Elements. The Board shall have the authority to lease or to grant licenses or concessions with respect to parts of the Common Elements, subject to the provisions of the Declaration and By-Laws.

Section 3.03: Limited Common Elements

As further defined in Article I hereof, the Limited Common Elements are a portion of the Common Elements so designated in this Declaration as being reserved for the use of a certain Unit or Units, to the exclusion of other Units, or which, 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 Owners(s) thereof. 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. Each Owner shall have the right to the exclusive use and possession of the Limited Common Elements contiguous to and serving only his or her Unit and the Limited Common Elements access to which is available only through his or her

Unit. The right to the exclusive use and possession of the Limited Common Elements as aforesaid shall be appurtenant to and run with the Unit of such Owner benefitted by the Limited Common Element. Except as set forth in the preceding sentence, Limited Common Elements may not be transferred between or among Owners, except as provided within the Act.

Section 3.04: **Parking Spaces**

- (a) It is intended that the Property shall have multiple locations for parking, with parking spaces located both in certain portions of the exterior of the Property located outside of Buildings as well as interior parking spaces located in the garage(s) that will be included within each Building(s). Except for those garage parking spaces allocated to particular Units by the Declarant, as further provided in this Section, or as otherwise provided in this Declaration, all parking spaces shall be part of the Common Elements.
- (b) Upon the initial sale of a Unit, the Declarant shall allocate to such Unit one (1) parking space within the parking garage located in the Building where such Unit is located, which exclusive use shall be deemed to be appurtenant to and pass with the title to such Unit to which the same is allocated regardless of whether or not it is expressly so mentioned in the deed conveying title to the Unit. Such assigned garage parking space shall be considered a Limited Common Element for the Unit it is assigned to.
- (c) The garage parking space, upon allocation by the Declarant, shall not thereafter be separated from such Unit except by deed, lease or assignment of the exclusive use thereof to another Owner, as provided in the Act. The Declarant shall give the Board notice of the Unit to which the exclusive use of each garage parking space has been granted, which notice shall be conclusive upon the Board, the Association and all Owners as the rights of the Owner designated in such notice. Each deed, lease, mortgage or other instrument affecting such Unit, without also including such specific exclusive use of the parking space allocated to such Unit, shall be deemed and taken to include such exclusive use to such parking space even though not mentioned therein.

ARTICLE IV

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

Section 4.01: Submission of Property to the Act

The Parcel and the Property is hereby submitted to the Declaration, By-laws and the provisions of the Act, as amended from time to time.

Section 4.02: No Severance of Ownership

No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit without including therein both his or her interest in the Unit and his or her 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.

Section 4.03: Separate Mortgages of Units

Each Owner shall have the right, subject to the provisions herein, to make a separate mortgage or encumbrance on his or her own respective Unit, together with his or her respective ownership interest in the Common Elements. No Owner shall have the right or authority to make or create or permit to be made or created any mortgage or encumbrance or other lien on or affecting the Property or any part thereof, except only to the extent of his or her Unit and his or her respective ownership interest in the Common Elements.

Section 4.04: Utilities

Each Owner shall pay for his or her own telephone, electricity and other utilities which are separately metered or billed to each Owner for the Unit owned by such Owner by the respective utility company furnishing such utility. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses.

Section 4.05: Easements

- (a) **Encroachment.** In the event that, by reason of the construction, settlement or shifting of a Building, or the design or construction of any Unit, any part of the Common Elements encroaches, or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements or any

other Unit, or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and Common Elements, as the case may be, so long as all or any part of a Building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any Unit for use of any portion of the Common Elements if such encroachment occurred due to the willful conduct of said Owner or Owners.

- (b) **City and Utilities.** The City, providers of cable television, Commonwealth Edison Company, Northern Illinois Gas Company and all other public utilities serving the Property are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment and mains and detention basins, into and through the Common Elements for the purpose of providing services to the Property, together with the reasonable right of ingress to and egress from the Property for said purpose. The Declarant or the Board may hereafter grant other or additional easements for utility purposes for the benefit of the Property over, under, along and on any portion of the Common Elements, and each Owner and other persons which may have at any time any interest in the Property hereby grants to the Declarant and the Board an irrevocable power of attorney to execute, acknowledge and Record for and in the name of such Owner and other Persons such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to the Declarant, the Board and their respective representatives, employees and contractors to enter and work in any Unit to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, flues, shafts, conduits, public utility lines, components of the communications systems, if any, or structural components which may run through or in the floor, ceiling or walls of or in a Unit.
- (c) **Easements for Ingress and Egress.** The Declarant or the Board shall have the right to hereafter grant easements over and upon the Parcel for ingress and egress for motor vehicles and/or pedestrians for the benefit of adjacent property owners on such terms and conditions acceptable to the Declarant or the Board in its sole discretion.
- (d) **Easements Reserved by the Declarant and Developer.** The Declarant and its agents, employees, contractors, guests, invitees and licensees shall have the right and easement at all times to use the Common Elements (i) to perform any construction, maintenance, repair, renovation, restoration or rehabilitation of, in or under all or any part of the Property which the Declarant desires to perform; (ii) for the purpose of selling,

displaying and having ingress to and egress from one or more of the Units; and (iii) for the purpose of erecting, maintaining and displaying one or more of the signs desired by Declarant. Nothing in this Declaration shall in any way affect, alter, modify, amend or terminate any easements signed by the Declarant and Recorded prior to the Recording of this Declaration. The easements granted within this paragraph shall continue until such time as the rights of Declarant to submit the Additional Property to the Act has expired and Declarant no longer holds legal title to any Units, whichever is later, at which time such easements shall cease and be of no further force and effect without the necessity of any further action. The easements granted within this paragraph shall be deemed and taken to be covenants running with the land.

- (e) **Easements Run With the Land.** All easements and rights described herein are easements, appurtenant to and running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other Person having an interest in said land or any part or portion thereof.

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

Section 4.06: Easement in Favor of the Association

A blanket easement over the Property, including each Unit, 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 Association, 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.

Section 4.07: Security

The Association may from time to time, but is not obligated to, provide measures of security on the Property; however, the Association is not a provider of security and shall have no duty or obligation to provide any security on the Property. The obligation to provide security lies solely with each Owner individually. The

Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Section 4.08: **No Bailee**

Notwithstanding anything to the contrary contained in this Declaration, neither the Board, the Association, any Owner, nor the Declarant shall be considered a bailee of any personal property stored in the Common Elements and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

ARTICLE V

MAINTENANCE, REPAIRS AND REPLACEMENTS

Section 5.01: **By the Association**

The Association shall be responsible for the maintenance, repair, and replacement of the Common Elements as a Common Expense.

Section 5.02: **By the Owner**

- (a) Each Owner shall furnish and be responsible for, at his or her own expense, all of the maintenance, repairs and replacements within his or her own Unit and shall be obligated to maintain and keep his or her Unit in good order and repair.

- (b) Whenever the Board shall determine, in its sole discretion, that any maintenance, repair or replacement of any Unit is necessary to protect the Common Elements or any other portion of the Property, the Board may cause a written notice of the necessity for such maintenance, repair or replacement to be served upon such Owner, which notice may be served by delivering a copy thereof to any Occupant of such Unit, or by mailing the same to the Owner at the Unit. If such Owner fails or refuses to perform any such maintenance, repair or replacement within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance, repair and replacement to be performed. Provided, however, that in the event of the need for emergency maintenance, repairs and/or replacement, as determined by the Board, the Board shall have the right to perform such maintenance, repairs and/or replacement within or to the Unit or Limited Common Elements without any requirement to notify the Owner beforehand as provided above. In the event the Association performs any maintenance, repair and/or replacement to a Unit, the Owner of the Unit shall be responsible for all costs incurred by the Association in maintaining, repairing and/or replacing the Unit as well as all costs incurred by the Association in accessing the Unit, including, but not limited to, any

locksmith costs, and all such costs shall also be a lien against such Owner's Unit enforceable by the Association in the same manner as provided herein for unpaid assessments.

Section 5.03: Limited Common Elements

Each Owner shall be responsible, at his or her own expense, for the maintenance, repair and replacements of the Limited Common Elements benefitting his or her Unit, in whole or in part, except to the extent as otherwise directed by the Board or as is otherwise provided herein. At the discretion of the Board, the Association may perform, or cause to be performed, such maintenance, repairs and replacements of the Limited Common Elements, or any portion thereof, and the cost thereof shall be assessed in whole or in part to Owners benefited thereby, and further, at the discretion of the Board, the Board may direct such Owners to arrange for such maintenance, repairs and replacements, to pay the cost thereof with the funds of the Owner, and to procure and deliver to the Board such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Property from all mechanic's or materialmen's lien claims that may arise therefrom.

Section 5.04: Mechanic's Liens

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

Section 5.05: Damage Caused by Owner or Guest

If, due to the act, omission or neglect of an Owner, or of a member of his or her family or household pet or of a guest, invitee or other authorized Occupant or visitor of such Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, and maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, and in addition shall be liable for any attorneys' fees and costs incurred by the Association in correcting such damage.

Section 5.06: **Certain Facilities**

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

Section 5.07: **No Contractual Obligation**

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

ARTICLE VI

INSURANCE

Section 6.01: **Fire and Hazard Insurance**

- (a) The Board shall obtain, as a Common Expense, a policy or policies of insurance insuring the Common Elements, including the Limited Common Elements (including, but not limited to, the bare walls, floors and ceilings of the Units), and the Units providing coverage for special form causes of loss, and providing coverage, at the time the insurance is purchased and at each renewal date, in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage sufficient to rebuild the insured property in compliance with building code requirements subsequent to an insured loss, including: Coverage B, demolition costs; and Coverage C, increased cost of construction coverage. The combined total of Coverage B and Coverage C shall be no less than ten percent (10%) of each insured building value,

or Five Hundred Thousand Dollars (\$500,000.00), whichever is less. Such policies shall include, if agreeable to the insurer, coverage for the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof. Premiums for such insurance shall be Common Expenses. Insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to the Board as trustee for each of the Owners in their respective percentages of ownership interest in the Common Elements as established in the Declaration.

- (b) The Board may engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and this Declaration. The fees of such corporate trustee shall be a Common Expense. In the event of any loss in excess of fifty thousand dollars (\$50,000.00) in the aggregate, the Board shall engage a corporate trustee as aforesaid, or in the event of any loss resulting in the destruction of the major portion of one or more Units, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or Owner of any Unit so destroyed.
- (c) The proceeds of such insurance shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of a Building or one or more Units or shall be otherwise disposed of, in accordance with the provisions of this Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of the Act with respect to the application of insurance proceeds to reconstruction of a Building.

Section 6.02: General liability insurance

The Board shall have the authority to and shall obtain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Property in a minimum amount of One Million Dollars (\$1,000,000.00) or a greater amount deemed sufficient in the judgment of the Board, insuring the Board, the Association, the Declarant, the managing agent, and their respective employees and agents and all persons acting as agents. The Owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance coverage shall include a severability of interest endorsement which shall

preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners and a waiver of any rights to subrogation by the insuring company against any of the above named persons. The premiums for such insurance shall be Common Expenses.

Section 6.03: Directors and Officers Liability Coverage

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

Section 6.04: Fidelity bond

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

Section 6.05: Owner Coverage

Each Owner shall be responsible for his or her own insurance on the contents of his or her own Unit and furnishings and personal property therein, his or her personal property stored elsewhere on the Property, and his or her personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided. The premium for

such insurance shall be paid by the Owner directly to his or her own insurance company or agency.

Section 6.06: Unit Improvements and Betterments

The Board shall not be responsible for obtaining insurance on any improvements and betterments made by any Owner to his or her Unit unless and until such Owner shall request the Board in writing so to do, and shall make arrangements satisfactory to the Board to reimburse the Board for any additional premiums attributable thereto; and upon the failure of such Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such improvements and betterments. For purposes of this Article, "improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the Unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, built-in cabinets installed by Owners, or any other additions, alterations or upgrades installed or purchased by any Owner.

Section 6.07: Waiver and Release of Claims

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

Section 6.08: Other Types of Insurance

The Association shall have the right, but not the obligation, to obtain any other insurance including, but not limited to, workers compensation, employment practices, environmental hazards and equipment breakdown insurance, that the Board considers appropriate to protect the Association, the Owners, the officers, the directors, or the agents of the Association.

Section 6.09: Adjustment of Losses and Distribution of Proceeds

Any loss covered by one of the Association's insurance policies shall be adjusted by and with the Association. The insurance proceeds for that loss shall be payable to the Association, or to the insurance trustee provided for in this Article. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged Common Elements, the bare walls, ceilings, and floors of the Units, and then to

any improvements and betterments the Association may insure. Owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored or the Association has been terminated as trustee.

Section 6.10: Insured Parties and Waiver of Subrogation

Those insurance policies provided for in Sections 6.01 and 6.02 of this Article shall include each of the following provisions:

- (a) Each Owner and secured party is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.
- (b) The insurer waives its right to subrogation under the policy against any Owner in the Association or members of the Owner's household and against the Declarant, the Association and members of the Board.
- (c) The Owner waives his or her right to subrogation under the Association policy against the Declarant, the Association and members of the Board.

Section 6.11: Deductibles

In the event any of the insurance policies of the Association have a deductible, the Board may, in the case of a claim for damage to a Unit or the Common Elements on such policy, (i) pay the deductible amount as a Common Expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Owner(s) who caused the damage or from whose Unit(s) the damage or cause of loss originated, or (iii) require the Owner(s) of the Unit(s) affected to pay the deductible amount.

ARTICLE VII

ASSESSMENTS

Section 7.01: Assessments are a lien

Except as otherwise provided in the By-Laws, each Owner shall pay his or her proportionate share of the expense of administration, maintenance and repair of the Common Elements and of any other expenses incurred in conformance with the Declaration and By-Laws or otherwise lawfully agreed upon (which expenses are herein sometimes referred to as "Common Expenses") on the basis of his or her respective percentage of ownership as set forth in Exhibit "D" including amounts which may be assessed to establish an adequate reserve fund for maintenance, repair and replacement of Common Elements ("Reserves"). Such proportionate share of the Common Expenses for each Owner shall be in such

amounts and at such times as determined in the manner provided in this Declaration. If any Owner shall fail or refuse to make any such payment of the Common Expenses when due, the amount thereof plus costs and expenses of collection including, without limitation, reasonable attorneys' fees, shall constitute a lien on the interest of such Owner in the Property as provided in the Act; provided, however, said lien shall be subject as to priority to liens of first mortgages (or trust deeds) in accordance with Section 7.02 below. The lien for Common Expenses shall, in addition to being a lien on the Unit, be a personal obligation of the Owner, which personal obligation shall not pass to successors in title unless assumed by them.

Section 7.02: Association's Lien Subordinate to Mortgages

The lien for assessments and other charges provided for in Section 7.01 of this Article shall be subordinate to a mortgagee's mortgage on the Unit that was Recorded prior to the date that any such assessments and other charges became due. Except as hereinafter provided, the lien for assessments and other charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Unit. Where title to a Unit is transferred pursuant to a decree of foreclosure of a mortgagee's mortgage or by deed or assignment in lieu of foreclosure of a mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid assessments or other charges that became due prior to the date of the transfer of title to the extent provided by law. However, such sale or transfer shall not relieve the Unit from liability for any assessments or installments or other charges thereafter becoming due. Further, the transferee of the Unit shall be personally liable for his or her share of the assessments or other charges with respect to which a lien against his or her Unit has been extinguished pursuant to the preceding sentence where such assessments or other charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised annual assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Unit, as provided in this Article.

Section 7.03: Use of Assessments

The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Property, to administer the affairs of the Association, and to pay the Common Expenses, and shall be deemed to be held for the benefit, use, and account of all the Owners in the percentages set forth in Exhibit "D" hereto.

Section 7.04: Preparation of estimated annual budget

- (a) Each year, on or before November 1, the Board shall estimate the total amount necessary to pay the cost of all Common Expenses that will be required during the ensuing fiscal year for the rendering of all services, together with a reasonable amount considered by the Board to be

necessary for a reserve for contingencies and replacements. The annual budget shall set forth with particularity all anticipated Common Expenses by category as well as all anticipated assessments and other income. The budget shall also set forth each Owners' proposed Common Expense assessment for the ensuing calendar year, which shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Elements as set forth in Exhibit "D" attached hereto. The annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements, if any. Each Owner shall receive, at least twenty-five (25) days prior to the adoption thereof by the Board, a copy of the proposed annual budget.

- (b) Provided that, if the annual budget adopted by the Board in a given year would result in assessments payable in the current fiscal year exceeding one hundred and fifteen percent (115%) of the sum of all regular and special assessments payable during the preceding fiscal year, then the Board, upon written petition by Owners of Units with at least twenty percent (20%) of the ownership in the Common Elements delivered to the Board within fourteen (14) days of the Board action adopting the annual budget, shall call a meeting of the Owners within thirty (30) days of the date of delivery of the petition to consider the annual budget. Unless Owners of Units with over fifty percent (50%) of the ownership in the Common Elements cast votes at the meeting to reject the annual budget, whether or not a quorum is present, it is ratified.

Section 7.05: Initial Budget

The initial Board appointed by the Declarant, as provided for in the By-Laws, shall determine and adopt, prior to the conveyance of the first Unit hereunder, the initial annual budget for the initial period commencing with the first day of the month in which the sale of the first Unit is closed and ending on December 31st of the calendar year in which such sale occurs and shall continue to determine the annual budget for each succeeding calendar year until such time as the first Board elected, as provided in the By-Laws, takes office. Assessments shall be levied against the Owners during such period as provided in this Article.

Section 7.06: Payment period of assessments

The regular assessments shall be payable monthly by each Owner on or before the first (1st) day of the month. The Board of the Association, as herein provided, shall have the authority to fix the monthly assessments for each fiscal year.

Section 7.07: Capital Reserve

The Association shall build up and maintain reasonable and adequate monies for contingencies and replacements, which monies shall be segregated and

allocated for specific purposes (the "Capital Reserve"). Extraordinary expenditures not originally included in the annual budget which may become necessary during the year may be charged first against such portion of the Capital Reserve funds that remain unallocated. The Board shall determine, in a manner it deems fit, the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Elements and equipment owned by the Association as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. The Board may, but is not required to, have a reserve study performed from time to time to assist the Board in determining the appropriate level of the Capital Reserve. The Capital Reserve may be built up by special assessment or out of the annual assessment as provided in the budget. Each budget shall disclose that percentage of the annual assessment which shall be added to the Capital Reserve and shall also disclose (i) which portion thereof is for capital expenditures with respect to the Common Elements and (ii) which portion thereof is for capital expenditures with respect to property owned or to be owned by the Association. Special accounts set up for portions of the Capital Reserve to be used to make capital expenditures with respect to the Common Elements shall be held by the Association as agent and trustee for the Owners of Units with respect to which the Capital Reserve is held and such accounts shall be deemed to have been funded by capital contributions to the Association by the Owners.

Section 7.08: Initial Capital Contribution

At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association (or to the Declarant in the event that the Association has yet to be formed), an amount equal to two (2) times the first full monthly assessment for such Unit. This sum shall be used to initially fund the Reserves described in Section 7.07 hereof. Such Reserve contribution by the initial purchasers of Units shall be considered a capital contribution and shall not be refundable and shall not be applied as a credit against the Owner's monthly assessments.

Section 7.09: Change in Basis of Regular Assessments

If the annual assessment proves inadequate for any reason (including non-payment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under this Article by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner at least twenty-five (25) days prior to the adoption of said revised budget and assessment by the Board, and such revised budget and assessment shall take effect upon adoption by the Board or any date thereafter specified by the Board.

Section 7.10: **Special Assessments**

- (a) In addition to the annual assessments authorized in this Declaration, the Board, by majority vote, may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any extraordinary or non-recurring Common Expense or any Common Expense not set forth in the budget as adopted. Any such special assessments shall be fixed at a rate for all Units in proportion to that Unit's ownership percentage in the Common Elements, and the funds raised through such special assessment may only be used for the purpose(s) specified by the Board when passing the special assessment.

- (b) Provided that, if any special assessment adopted by the Board would result in the sum of all regular and special assessments payable in the current fiscal year exceeding one hundred and fifteen percent (115%) of the sum of all regular and special assessments payable during the preceding fiscal year, then the Board, upon written petition by Owners of Units with at least twenty percent (20%) of the ownership in the Common Elements delivered to the Board within fourteen (14) days of the Board action adopting the special assessment, shall call a meeting of the Owners within thirty (30) days of the date of delivery of the petition to consider the special assessment. Unless Owners of Units with over fifty percent (50%) of the ownership in the Common Elements cast votes at the meeting to reject the special assessment, it is ratified. However, special assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without the option of an Owner petition. As used in this section, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Owners.

- (c) Provided further that all assessments, including special assessments, for additions and alterations to the Common Elements or to Association-owned property not included in the adopted annual budget shall be subject to approval of Owners of Units with at least two-thirds (2/3) of the ownership in the Common Elements.

- (d) Special assessments adopted by the Board may be payable over more than one (1) fiscal year. With respect to special assessments payable over multiple years, when calculating whether the sum of all regular and special assessments payable in the current fiscal year exceed one hundred and fifteen percent (115%) of the sum of all regular and special assessments payable during the preceding fiscal year, the entire amount of the special assessment shall be deemed considered and authorized in the first (1st) fiscal year in which the assessment is approved.

Section 7.11: Itemized accounting of Common Expenses

Within a reasonable time after the close of the Association's fiscal year, the Board shall supply to all Owners an itemized accounting of the Common Expenses for the preceding fiscal year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessments, and showing the net excess or deficit of income over expenditures plus reserves. Such accounting may, but need not be, prepared by a certified public accountant.

Section 7.12: Failure to Prepare Estimated Budget

The failure or delay of the Board to prepare or serve the estimated annual budget on the Owners, as provided in this Article, shall not constitute a waiver or release in any manner of such Owner's obligation to pay assessments, as herein provided, whenever the same shall be determined, and in the absence of any estimated annual budget the Owners shall continue to pay the monthly assessment amount at the then existing monthly rate established for the previous period until the next monthly assessment which is due not less than ten (10) days after such new annual budget shall have been mailed or delivered.

Section 7.13: Statement of Account

Upon ten (10) days written notice to the Board and payment of a reasonable fee, if any, to be determined by the Board, any Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner as of the date of the statement.

Section 7.14: Association rights upon non-payment of assessments

Any assessments, other charges or expenses, including, but not limited to, regular assessments, special assessments and duly imposed fines, which an Owner is required to make or is liable for hereunder which are not paid when due shall be deemed delinquent. If an assessment, charge or expense is not paid when due, the Board shall have the right to assess a late fee for the delinquent payment and, if an assessment, charge or expense is not paid within thirty (30) days after the due date, the Board shall have those rights and remedies to enforce such collection as shall be provided or permitted by law and equity including, but not limited to, bringing suit for and on behalf of themselves and as representatives for all Owners, to enforce collection of the amount due, the costs of said suit, and other fees and expenses together with interest, including, but not limited to, reasonable attorney's fees, costs and managing agent fees associated with collection of unpaid assessments. Without limiting the foregoing, if any Owners shall fail to pay any assessments, charges or expenses required to be paid, the Board shall have such rights and remedies:

(A) The right to enforce the collection of such defaulting Owner's assessments, charges or payments, together with interest thereon, and all fees and costs including attorney's fees, managing agent fees and court costs, incurred in the collection thereof;

(B) The right to enforce and foreclose any lien which the Association has or which may exist for its benefit; and

(C) The right to take possession of such defaulting Owner's interest in his or her Unit, to maintain for the benefit of all the Owners an action for possession in the matter prescribed in the Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. seq.), as amended, and to execute leases of such defaulting Owner's interest in his or her Unit and apply rents derived therefrom against such unpaid assessments, charges or expenses.

Section 7.15: No waiver

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his or her Unit or the Common Elements, undertaking or performing the maintenance and other responsibilities, or by abandonment of his or her Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, or for the inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, the Declaration or with any order or directive of any municipality, other governmental authority or the Association.

ARTICLE VIII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Elements shall be owned, occupied and used subject to the following covenants and restrictions:

Section 8.01: General Use

No part of the Units, Common Elements or Limited Common Elements shall be used for other than housing and related common purposes for which the Property was designed. Each Unit shall be used only for housing and related common purposes permitted by this Declaration and for no other purpose. Provided, however, that nothing herein contained shall be construed in such a manner as

to prohibit an Owner from (a) maintaining his or her personal professional library in his or her Unit; (b) keeping his or her personal business or professional records or accounts in his or her Unit; or (c) handling his or her personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use of the Unit and not in violation hereof.

Section 8.02: Leases

All Owners leasing their Unit shall deliver a copy of the signed lease to the Board no later than the date of occupancy or ten (10) days after the lease is signed, whichever comes first. All leases shall be in writing. No Unit may be leased or rented for transient or hotel purposes or for a period of less than thirty (30) days. In the event that the Owner fails to comply with such leasing requirements, the Association may seek to evict a tenant from the Unit under Article IX of the Illinois Code of Civil Procedure. Furthermore, all provisions of this Declaration, the By-Laws and any rules and regulations adopted by the Board shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease executed or renewed. The Association is hereby expressly deemed to be a third party beneficiary of any such lease. Any violation of this Declaration, the By-Laws or any rules and regulations adopted by the Board shall be deemed a default under such lease and shall, regardless of the Owner's action or inaction in response to such default, entitle the Association to exercise any and all remedies under the lease or available at law or equity including, but not limited to, the right of the Board to proceed directly against a tenant, at law or in equity under the provisions of Article IX of the Illinois Code of Civil Procedure, for any breach by tenant of any provision of this Declaration, the By-Laws or rules and regulations adopted by the Board. The Board may further adopt rules and regulations related to leasing of Units.

Section 8.03: Use of Common Elements

The Common Elements shall be used only for access, ingress and egress to and from the respective Units by the respective families residing therein and their respective guests, household help and other authorized visitors, and for such other purposes which are incidental to the residential use of the respective Units.

Section 8.04: Prohibited Use

Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on a Building or contents thereof applicable for residential use without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on a Building or contents thereof, or which would be in violation of any law. The use, maintenance, and operation of the Common Elements shall not be obstructed, damaged or unreasonably

interfered with by any Owner, nor shall anything be stored in the Common Elements without the prior written consent of the Board except as herein expressly provided. No waste shall be committed in the Common Elements.

Section 8.05: Exterior Walls

Owners shall not cause or permit anything to be placed on the outside walls of a Building and no sign, awning, canopy or shutter shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Board.

Section 8.06: Animals and Pets

No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats or other common household pets owned by an Owner or other Occupant may be kept in the Units provided that they are not kept, bred, or maintained for any commercial purpose and that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Board to the Owner of the Unit containing such pet, and the decision of the Board shall be final. The Board may adopt such rules and regulations regarding the ownership and keeping of pets in Units and the use of Common Elements by pets as it deems reasonable and appropriate.

Section 8.07: Nuisances

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

Section 8.08: No unsightliness

No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

Section 8.09: Operation of Machinery

No Owner shall overload the electric wiring in a Building or operate any machines, appliances, accessories, or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

Section 8.10: **Parking**

Parking on the Property shall be subject to rules and regulations adopted by the Board including, but not limited to, rules calling for the removal by the Association of vehicles parked in violation of the Declaration, By-Laws or any rules and regulations and rules limiting and/or prohibiting the parking of certain types of vehicles, boats, trailers, snow mobiles, campers, or any similar type items on the Property.

Section 8.11: **Trash and Garbage**

No waste, refuse or rubbish shall be permitted in the Limited Common Elements and/or the Common Elements, except in the facilities specifically provided therefore.

Section 8.12: **Signs**

No "For Sale" or "For Rent" signs, advertising, or other displays shall be maintained or permitted on any part of the Property except at such location and in such form as shall be determined by the Board; provided that the right is reserved by the Declarant and its agents, to maintain on the Property until the sale of the last Unit, all models, sales offices, and advertising signs, banners, and lighting in connection therewith, at such locations and in such forms as Declarant shall determine, together with the right of ingress, egress, and transient parking therefor through the Common Elements in favor of Declarant, its agents, licensees, designees and its prospective purchasers and lessees.

Section 8.13: **Common Elements and Improvements**

- (a) The Board may authorize and charge as Common Expenses (or in the case of Limited Common Elements, may charge the Owners benefited thereby) the cost of the additions, alterations or improvements to the Common Elements. The cost of any such work to the Common Elements may be paid out of the annual assessments or out of a special assessment subject to the provisions of Article VII, Section 7.10 of this Declaration.
- (b) No additions, alterations or improvements shall be made by an Owner to any part of the Common Elements (including the Limited Common Elements) and no additions, alterations or improvements shall be made by an Owner to his or her Unit where such work alters a wall or partition, configuration, ceiling, perimeter doors or windows, or otherwise affects the structure of the Unit or increases the cost of insurance required to be carried by the Board hereunder without the prior written consent of the Board. Any Owner desiring to make any such addition, alteration or improvement shall be required to submit the plans and specifications

showing the nature, kind, shape, height, materials, color and location of same to the Board, or an architectural committee appointed by the Board, for its prior written approval. The Board, or architectural committee appointed by the Board, shall review such submitted proposal for its harmony or external design and location in relation to surrounding structures as well as the overall appropriateness of the aesthetic appearance of such proposed item(s) as determined in the sole discretion of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement by an Owner under this Section upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Association from time to time the additional costs of maintenance of insurance as a result of the addition, alteration or improvement.

- (c) If an addition, alteration or improvement to the Units and/or Common Elements or otherwise covered by subsection (b) of this Section is made by an 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 Owner to remove the addition, alteration or improvement and restore the Property to its original condition, all at the Owner's expense; or
 - (ii) If the Owner refuses or fails to properly perform the work required under (i) within a timeframe established by the Board, then the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or
 - (iii) Ratify the action taken by the 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.
- (d) Any Owner may make alterations, additions or improvements within his or her Unit that are not visible from outside the Unit and are not covered by subsection (b) of this Section without the prior written approval of the Board, but in any event such Owner shall be responsible for any damage to other Units, the Common Elements and/or the Property as a result of such alterations, additions or improvements.

Section 8.14: Unit Decorating

Each Owner shall furnish and be responsible for, at his or her own expense, all of the decorating within his or her own Unit from time to time including, without

limitation, painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Buildings, shall be subject to the rules and regulations of the Board.

Section 8.15: Satellite Dishes and Antennas

No satellite dish, radio or television antennas shall be affixed or placed upon the Common Elements (excluding those portions of the Limited Common Elements which are appurtenant to only one (1) Unit), including the outside walls of any of the Buildings in the Association or roof or any part thereof, without the prior written consent of the Board. The Board may proscribe further restrictions regarding satellite dishes, radio and television antennas in the rules and regulations. This provision, however, is not intended to interfere with the Owners' rights to adequate reception under the 1996 Telecommunications Act or other present, or future, federal or Illinois statute.

Section 8.16: Rules and Regulations

- (a) The Board shall have, and is hereby granted, the power, following a meeting of the Owners called for the specific purpose of discussing the proposed rules and regulations or modifications thereto, to adopt reasonable rules and regulations not inconsistent with the Declaration or By-Laws, or to amend, modify or otherwise alter and enforce previous rules and regulations bearing upon the use, manner of occupancy, maintenance, administration, operation, conservation and beautification of the Property, including the Common Elements and the Units, and for the health, comfort, safety and general welfare of the Owners. The rules and regulations, and any new rule or regulation, shall be evidenced in writing by the Board.
- (b) Notice of the Owners' meeting called for the specific purpose outlined in this Section shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements for Owners' meetings in the By-Laws and the Act, except that no quorum is required at the meeting of the Owners.
- (c) Any rule or regulation that is applied to the Units shall be applied uniformly and the entire Property shall at all times be maintained subject to such rules and regulations. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of the Act, the Articles of Incorporation of the Association, this Declaration or the By-Laws. Furthermore, no rule or

regulation shall prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a Unit.

- (d) Without limiting the foregoing, and without limiting any of the other rights and powers granted to the Association and/or Board in this Declaration, the By-Laws, the Act or other applicable law, the Board may, after notice and an opportunity to be heard, levy a reasonable charge upon the Owners for a violation of a rule or regulation.

Section 8.17: **Reserved Rights**

Notwithstanding anything to the contrary in this Declaration:

- (a) Structural changes and alterations may be made by the Declarant in Units and Common Elements used by the Declarant or its agents as a model unit and/or sales and marketing areas, as may be reasonably necessary in Declarant's opinion to adapt the same to such uses; and
- (b) The Declarant and its agents further reserve the right at all times to use unsold Units and Common Elements for storage, offices, sales, models, transient parking and related purposes, until all Units on the Property have been sold.

ARTICLE IX

DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

Section 9.01: **Sufficient Insurance**

In the event the improvements forming a part of the Property, or any portion thereof, including any Unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one hundred and eighty (180) days after said damage or destruction, the Owners elect either to sell the Property as hereinafter provided in Article XI 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 as provided in the Act.

Section 9.02: **Insufficient Insurance**

In the event the Property or the improvements thereon so damaged or destroyed are not insured against the peril causing the loss or damage, or the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction and the Owners and all other parties in interest do not voluntarily make provision for reconstruction of the improvements within one hundred and eighty (180) days after said damage or destruction, then the provisions of the Act in such event shall apply.

Section 9.03: **Extent of Repair, Restoration or Reconstruction**

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

ARTICLE X

EMINENT DOMAIN

- (a) In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provisions 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 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 Owner's percentage interest therein. Proceeds available from the withdrawal of any Limited Common Element will be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Owner shall cease.
- (b) The Association shall represent the 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 and award available in that connection shall be divided by the Association among all Owners according to each Owner's percentage of ownership in the Common Elements as set forth in Exhibit "D" attached hereto, after first paying from the share of each Owner the amount of any unpaid liens on his or her Unit, in the order of priority of such liens.

ARTICLE XI

SALE OF THE PROPERTY

- (a) Owners with not less than seventy-five percent (75%) of the total votes in the Association may, by affirmative vote at a meeting of Owners duly called for such purpose, elect to sell the Property. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale; provided, however, that any Owner who did not vote in favor of such action and who has filed written objection thereto with the manager or 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 or her interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such Owner.
- (b) If there is a disagreement as to the value of the interest of an Owner who did not vote in favor of the sale of the Property, that Owner shall have a right to designate an expert in appraisal or property valuation to represent him or her, in which case, the prospective purchaser of the Property shall designate an expert in appraisal or property valuation to represent him or her, and both of these experts shall mutually designate a third expert in appraisal or property valuation. The three (3) experts shall constitute a panel to determine by vote of at least two (2) of the members of the panel, the value of that Owner's interest in the Property.

ARTICLE XII

REMEDIES

Section 12.01: Abatement and Enjoinment

The violation of any restriction, covenant, provision, condition, rule or regulation adopted by the Board, or the breach of any covenant or provision herein

contained or contained in the By-Laws, shall give the Board the right, in addition to the rights set forth elsewhere in this Declaration:

- (a) to enter upon that part of the Property, including any Unit, where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Declarant or its successors or assigns, or the Board or its agents, shall not thereby be deemed guilty in any manner of trespass or conversion of or damage to property; or
- (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

Section 12.02: Other Remedies of the Board

In addition to or in conjunction with the remedies set forth in this Declaration, in the event of a violation by an Owner, or an Owner's tenants, guests, pets, family members, or other invitees, of the Act, this Declaration, the By-Laws, or rules and regulations of the Board, the Board may, after notice and an opportunity to be heard, levy reasonable fines and the Board or its agents shall have the right to bring an action at law or in equity against the Owner and/or others as permitted by law including, without limitation, (i) to foreclose a lien against the Unit Ownership, (ii) for damages, injunctive relief or specific performance, (iii) for judgment or for the payment of money and the collection thereof, (iv) for any combination of the remedies set forth in this Article, or (v) for any other relief which the Board may deem necessary or appropriate. Any and all rights and remedies provided for in this Article 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 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.

Section 12.03: Involuntary Sale

If any Owner (either by his or her own conduct or by the conduct of any other Occupant of his or her Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and such violation shall not be cured within thirty (30) days after notice in writing from the Board, or shall re-occur more than once after such notice, then the Board shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Owner to continue as an Owner and to continue to occupy, use or control his or her Unit, and thereupon an action in equity may be filed by the Board against said defaulting Owner for a decree of mandatory injunction against said defaulting Owner or Occupant or, in the

alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use or control the Unit owned by him or her on account of said violation, and ordering that all the rights, title and interest of said defaulting Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from reacquiring his or her interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and any other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to said defaulting Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and 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.

Section 12.04: **Costs and Expenses**

All expenses incurred by the Association and Board in connection with the enforcement of the provisions of the Act, this Declaration, the By-Laws or rules and regulations of the Board, or in connection with the exercise of the Association's rights and remedies under this Article, including, without limitation, court costs and attorney's fees and expenses, administrative and/or management company fees and charges pursuant to the terms of any existing management agreement, and other fees and expenses, and all damages liquidated or otherwise, together with interest thereon at the then highest rate allowable by law until paid, shall be charged to and assessed against the defaulting Owner, and shall be added to and deemed part of his or her respective share of the Common Expenses, and the Association shall have a lien for all of the same upon the Unit Ownership of such defaulting Owner and upon all of his or her additions and improvements thereto and upon all of his or her personal property in his or her Unit or located elsewhere on the Property.

Section 12.05: **Managing Agent Fees**

Any and all managing agent fees and costs associated with the collection of delinquent assessments and/or curing an Owner's or Unit Occupant's breach or violation of the Declaration, By-Laws and/or rules and regulations shall be assessed back to the defaulting Owner's account and become an additional obligation of such delinquent Owner. To assist the Association in collecting delinquent assessments and/or curing violations of the Declaration, By-Laws and/or rules and regulations from the Owners, the managing agent may perform

the following duties: prepare and issue delinquency notices, prepare and issue statutory and other demand letters, order an ownership (tract) search to verify current ownership of the delinquent Unit, prepare and record a lien against the delinquent Unit for unpaid assessments and any such other services performed in an effort to assist the Association in the collection of delinquent assessments or curing breaches or violations of the Declaration, By-Laws and rules and regulations. The managing agent is entitled to receive a reasonable fee for such services performed, as more fully outlined in the management agreement entered into between the agent and the Association.

Section 12.06: Mortgage Foreclosure Fees

All expenses and fees, including, but not limited to, managing agent fees, attorney's fees and court costs, incurred by the Association as a result of the Association being included as a defendant in a mortgage foreclosure action shall be assessed back to the Owner sued in such foreclosure action and become part of that Owner's assessment account.

Section 12.07: Owner Enforcement

Enforcement of the provisions contained in this Declaration, the By-Laws or rules and regulations may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Unit Ownership to enforce any lien created hereunder.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.01: Administration

The administration of the Property shall be vested in the Board, which shall consist of the number of persons, and who shall be elected in the manner, provided for in the By-Laws. The Association shall be the governing body for all of the Owners for the maintenance, repair, replacement, administration and operation of the Common Elements and for such other purposes as are provided in this Declaration, the By-Laws and articles of incorporation. The Association is responsible for the overall administration of the Property through its duly elected Board and the duties and powers of the Association and Board shall be those set forth in this Declaration, the By-Laws, the articles of incorporation and the Act. The Board of the Association shall be deemed to be the Board referred to herein and in the Act.

Section 13.02: **Notices**

Notices provided for in this Declaration, the By-Laws, the rules and regulations or the Act shall be in writing, and shall be addressed to the Board or Association, or any Owner, as the case may be. Notices addressed to an Owner shall be addressed to such Owner's Unit, or at such other address as herein provided. The President of the Association is hereby designated as the person to mail and receive all notices to the Association as provided for in this Declaration, the By-Laws, the rules and regulations or the Act; provided, however, that the Board may designate a different address for notices to the Board or the Association, or designate a different officer or the managing agent to receive notices for the Association, by giving written notice of same to all Owners. Any Owner may also designate a different address for notices by giving written notice of such change of address to the Board. Any notice required to be sent to any Owner under the provisions of this Declaration, the By-Laws, the rules and regulations or the Act shall be deemed to have been delivered when mailed by United States mail, postage prepaid, to the last known address of such Owner as it appears on the records of the Association at the time of such mailing, or upon personal delivery to the Owner, or when deposited at the door of the Owner's Unit or in his or her mailbox. Notices to the Board or to the Association shall be deemed delivered when mailed, postage prepaid, by United States certified or registered mail to the Board or Association. Additionally, notices sent to an Owner may be sent via electronic transmission, including e-mail, or other equivalent technological means if the Owner has provided his or her written authorization to the Association to provide notices via such methods.

Section 13.03: **Notice to Decedent**

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

Section 13.04: **Rights and Obligations**

Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, and each tenant under a lease of 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 any interest or estate in said land, and shall inure to the benefit of such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of

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

Section 13.05: No Waiver

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.

Section 13.06: Amendment

Except as herein provided in this Declaration or the Act, the provisions of this Declaration may only be changed, amended, modified or rescinded by an instrument in writing setting forth such change, amendment, modification or rescission, signed and acknowledged by the President and Secretary of the Board, and approved in writing by Owners having at least sixty-seven percent (67%) of the total ownership percentage in the Common Elements. Provided, however that no provision of this Declaration affecting or creating any of the rights, options, privileges or duties of the Declarant may be changed, amended, modified or rescinded in any way without the prior written approval of the Declarant. Any change, amendment, modification or rescission of this Declaration made in accordance with this Declaration shall be effective upon Recording of such instrument in the Office of the Recorder of Deeds, Kane County, Illinois.

Section 13.07: Special Amendment

The Declarant reserves the right and power to record a special amendment (the "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration: (a) to comply with requirements of the Federal National Mortgage Association, the Governmental National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans 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; (b) to include any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Unit Ownerships; (c) to bring this Declaration into compliance with the Act; or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the

foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and Record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall continue until such time as the rights of Declarant to submit the Additional Property to the Act has expired and Declarant no longer holds legal title to any Units, whichever is later.

Section 13.08: 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.

Section 13.09: Land Trust Owners' Exculpation

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 beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, and undertakings chargeable or created under this Declaration against such Unit Ownership. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of title to such Unit Ownership.

Section 13.10: Severability

Each covenant, condition, restriction and easement contained herein shall be considered to be an independent and separate right or obligation, and in the event one or more of such covenants, conditions, restrictions or easements shall for any reason be held to be invalid or unenforceable by legislation, judgment, court order or otherwise, all remaining covenants, conditions, restrictions and easements shall nevertheless remain in full force and effect.

Section 13.11: **Rule Against Perpetuities**

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 rules restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits with respect to real property or interests therein, then such provisions shall continue only until twenty-one (21) years after the death of the last to die of the now living lawful descendants of Barack Obama, the forty-fourth President of the United States of America.

Section 13.12: **Liens**

In the event any lien exists against two (2) or more Units and the indebtedness secured by such lien is due and payable, the Owner of any such Unit so affected may remove such Unit and the undivided interest in the Common Elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such Unit. In the event such lien exists against the Units or against the Property, the amount of such proportional payment shall be computed on the basis of the percentage set forth in this Declaration. Upon payment as herein provided, it is the duty of the encumbrancer to execute and deliver to the Owner a release of such Unit and the undivided interest in the Common Elements appertaining thereto from such lien. The Owner of such Unit shall not be liable for any claims, damages, or judgments entered as a result of any action or inaction of the Board of the Association other than for mechanics' liens as hereinafter set forth. Each Owner's liability for any judgment entered against the Board or the Association, if any, shall be limited to his or her proportionate share of the indebtedness as set forth herein, whether collection is sought through assessment or otherwise. An Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of his or her Unit, or caused by his or her own conduct. If, as a result of work expressly authorized by the Board, a mechanic's lien claims is placed against the Property or any portion of the Property, each Owner shall be deemed to have expressly authorized it and consented thereto and shall be liable for the payment of his or her Unit's proportionate share of any due and payable indebtedness.

Section 13.13: **Headings and Gender**

The headings and captions contained herein are inserted for convenient reference only and shall not be deemed to construe or limit the Sections and Articles to which they apply. Whenever from the context it is appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and each term stated in either the masculine or feminine shall include the masculine, feminine and neuter pronouns.

Section 13.14: **Indemnification and Liability of Directors and Officers**

- (a) The members of the Board and officers thereof shall not be liable to the Owners for any mistake of judgment or for any acts or omissions made as such members of the Board or officers, except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud.

- (b) The Association and Owners shall indemnify and hold harmless each of such directors on the Board or officers against all contractual and other liabilities to others arising out of contracts made by such Owners or officers on behalf of the Owners or the Association, unless any such contract shall have been made criminally, fraudulently, or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amounts paid or received in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer. Provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as a director or officer.

- (c) Notwithstanding any other provisions of this Section, expenses incurred in defending a civil or criminal action, suit or proceeding shall, unless the Board determines otherwise, be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Board director or officer to repay such amount, if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized by this Section.

- (d) The indemnification and advancement of expenses provided by or granted under this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent,

and shall inure to the benefit of the heirs, executors and administrators of such a person.

- (e) If the Association has paid indemnity or has advanced expenses to a director or officer, then the Association shall report the indemnification or advance in writing to the Voting Members with or before the notice of the next meeting of the Voting Members.
- (f) The indemnification and advancement of expenses provided by or granted under this Section shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the heirs, executors, and administrators of that person.
- (g) Any payments made to any indemnified person under this Section or under any other right to indemnification shall be deemed to be an ordinary and necessary business expense of the Association, and payment thereof shall not subject any person responsible for the payment, or the Board, to any action for corporate waste or to any similar action.
- (h) It is also intended that the liability of any Owner arising out of any contract made by the Board, or out of the aforesaid indemnity in favor of the members of the Board and the officers shall be limited to such proportion of the total liability thereunder as his or her Unit bears to the total number of Units of the Association. Every agreement made by the Board or officers on behalf of the Owners shall provide that the members of the Board or officers, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners) and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his or her Unit bears to the total number of Units of the Association.

Section 13.15: **Determination of Board to Be Binding**

All matters of dispute or disagreement between Owners or with respect to interpretation or application of the provisions of this Declaration or the By-Laws shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

Section 13.16: **Conflicts**

In the event of any conflict between the provisions of the articles of incorporation of the Association, this Declaration, the By-Laws and the rules and regulations of the Board, the articles of incorporation shall control over this Declaration, the By-Laws and the rules and regulations, this Declaration shall control over the By-Laws and the rules and regulations, and the By-Laws shall control over the rules and regulations.

Section 13.17: Covenant in the Event of Dissolution of the Association

In the event the Association is dissolved, all Owners and titleholders of any portion of the Property agree that all provisions contained herein regarding maintenance, repair and replacement in, on or to the Property shall still apply and that this Declaration shall be in full force and effect.

Section 13.18: Mortgage Holder Information

Within fifteen (15) days of the Recording of a mortgage or trust deed against a Unit given by the Owner of that Unit to secure a debt, the Owner shall inform the Association of the identity of the lender together with a mailing address at which the lender can receive notices from the Association.

Section 13.19: WAIVER OF IMPLIED WARRANTY OF HABITABILITY AND OTHER WARRANTIES

Illinois courts have held that every contract for the construction of a new home in Illinois carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. The courts have also held that this “Implied Warranty of Habitability” does not have to be in writing to be a part of the contract and that it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defect in workmanship which may not easily be seen by the buyer. However, the courts have also held that a seller-builder and buyer may agree in writing that the Implied Warranty of Habitability is not included as a part of their particular contract. Each buyer of a Unit from Declarant agreed in the purchase contract that the Declarant has excluded and disclaimed the Implied Warranty of Habitability and all other implied warranties, whether created judicially, statutorily or by common law, including the implied warranty of fitness for a particular purpose. Such exclusion and disclaimer shall apply to and bind any subsequent Owner of a Unit and, accordingly, no Owner of a Unit shall have the right to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

ARTICLE XIV

ANNEXING ADDITIONAL PROPERTY

- (a) Declarant reserves the right, within ten (10) years of the date of the Recording of this Declaration, to annex and add to the Parcel and Property and thereby add to the condominium created by this Declaration, by Recording an amended Plat or Plats in accordance with Section 5 of

the Act and an amendment or amendments to the Declaration in accordance with Section 6 of the Act, all or a portion of the Additional Property legally described in Exhibit "C" attached hereto and hereby made a part hereof. No rights or interest of any character whatsoever in all or any portion of the Additional Property shall attach to any Unit or Owner except as to that portion, if any, that is annexed and added to the Parcel and Property, as described in Exhibit "B" attached hereto as Exhibit "B" may be amended from time to time, by an amendment to this Declaration.

- (b) Each such add-on amendment shall include the following, all in accordance with Section 25 of the Act:
 - (i) an amended Exhibit "B" which shall amend said Exhibit by setting forth the amended description of the Parcel and Property to include that portion of the Additional Property being annexed and added, as well as setting forth the legal description of the Units added by such amendment as well as all previous Units;
 - (ii) separate legal descriptions of such portion of the Additional Property being annexed and added and the remainder of the Additional Property, if any;
 - (iii) an amended Plat showing the boundaries of such portion of the Additional Property and of the entire Property and Parcel as amended, and delineating the additional Units located on such portion of the Additional Property; and
 - (iv) an amended Exhibit "D" which shall amend Exhibit "D" attached hereto by setting forth the amended percentages of the undivided interests in the Common Elements (as amended and added to by such add-on amendment) allocated to each Unit (including all previous Units and the Units added by such add-on amendment).
- (c) The percentages of undivided ownership interest in the Common Elements as amended by each such add-on amendment, and as set forth in the amended Exhibit "D", shall be determined and adjusted in the following manner:
 - (i) The aggregate value of all of the Units including the newly added Units, shall be deemed to be the new value of the Property as a whole. "Value" as used in this paragraph shall be determined by the Declarant as of the date of the Recording of such add-on amendment. Such determination by the Declarant shall be conclusive and binding upon all Owners, mortgagees and other parties.

- (ii) The percentages of undivided ownership interest in the entire Common Elements, including the newly added Common Elements, shall be allocated among all the Units, by dividing the value of each Unit by the value of the Property as a whole.

Each and all of the provisions of the Declaration and the Exhibits attached hereto, as amended by each such successive add-on amendment and the amended Exhibits attached thereto, shall be deemed to apply to each and all of the Units, including all such newly added Units, and to all of the Common Elements, including all newly added Common Elements.

The Recording of such an add-on amendment shall not alter or affect the amount of any liens for Common Expenses due from any Owners prior to such Recording, nor the respective amounts assessed to or due from Owners for Common Expenses or other assessments prior to such Recording.

- (d) The lien of any mortgage encumbering any Unit, together with its appurtenant percentage of undivided ownership interest in the Common Elements, shall automatically be deemed to be adjusted and amended when an add-on amendment is Recorded, in accordance with the respective percentage of undivided ownership interest in the Common Elements for such Unit as set forth in the amended Exhibit "D" attached to such add-on amendment, and the lien of such mortgage shall automatically attach in such percentage to the Common Elements as then constituted.
- (e) Each and all of the Owners, and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors and assigns, by their acceptance of any deed or mortgage or other interest in or with respect to any Units, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration which may amend, adjust and reallocate from time to time their respective percentages of undivided ownership interest in the Common Elements as hereinabove provided; and hereby further agree to each and all of the provisions of each and all of said add-on amendments which may hereafter be Recorded in accordance with the foregoing provisions of this Declaration.
- (f) Each and all of the Owners of all existing Units and of all added Units hereafter, and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors and assigns, by their acceptance of any deed or mortgage or other interest in or with respect to any of such Units, further acknowledges, consents and agrees, as to each such add-on amendment this is Recorded, as follows:

- (i) The portion of the Additional Property described in each such add-on amendment shall be governed in all respects by the provisions of this Declaration.
- (ii) The percentage of ownership in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such Recorded add-on amendment and upon the Recording of each such add-on amendment, the amount by which such percentage appurtenant to a Unit is reduced, as set forth in each such Recorded add-on amendment, shall thereby be released and divested from such Owner and re-conveyed and re-allocated among the other Owners as set forth in each such Recorded add-on amendment.
- (iii) Each deed, mortgage or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the percentage of ownership in the Common Elements appurtenant to each Unit shall, upon the Recording of each such add-on amendment, be divested pro tanto to the reduced percentage set forth in such add-on amendment and vested among the other Owners, mortgagees and others owning an interest in the other Units in accordance with the terms and percentages of each such Recorded add-on amendment.
- (iv) A right to revocation is hereby reserved by the grantor in each such deed, mortgage and other instrument of a Unit to so amend and re-allocate the percentages of ownership in the Common Elements appurtenant to each Unit.
- (v) The foregoing provisions of this Declaration contain clauses designed to accomplish a shifting of the Common Elements. None of the said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Elements can be accomplished.
- (g) Neither the Additional Property nor any portion thereof is required to be added to the Parcel and Property. Portions of the Additional Property may be added to the Parcel and Property at different times without limitation as to what order such additions are made.
- (h) The maximum number of Units to be located on the Additional Property not hereby submitted to the provisions of the Act is _____ Units. All improvements on any portion of the Additional Property to be added shall be substantially completed before such portion of the Additional Property is added to the Parcel and Property.

- (i) The structures, improvements and Units located on the Additional Property not hereby submitted to the provisions of the Act shall be compatible with the configuration of the improvements on the Parcel hereby submitted to the provisions of the Act in relation to density, use, quality of construction and architectural style.
- (j) An appurtenant easement over and on the Common Elements is reserved to Declarant for the purpose of doing what is reasonably necessary and proper in conjunction with improvements to be constructed on the Additional Property.

END OF TEXT OF DECLARATION

This instrument was prepared by, and upon recording return to:

KEAY & COSTELLO, P.C.
128 South County Farm Road
Wheaton, Illinois 60187
(630) 690-6446

STATE OF ILLINOIS)
)
COUNTY OF KANE) SS

IN WITNESS WHEREOF, Declarant has caused its name to be signed hereto by its duly authorized officer on the day and year set forth below.

EXECUTED this _____ day of _____, 20____.

By: BALAJI PARTNERS, LLC, an Illinois Limited Liability Company, and BALAJI GROUP, LLC, an Illinois Limited Liability Company

By: _____

Its: _____

I, _____, a Notary Public, hereby certify that on the above date, _____ of BALAJI PARTNERS, LLC, an Illinois Limited Liability Company, and BALAJI GROUP, LLC, an Illinois Limited Liability Company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ of the Declarant, appeared before me and acknowledged that he/she signed this instrument as his/her free and voluntary act, and as the free and voluntary act of said Declarant, for the uses and purposes therein set forth.

BY: _____

LIST OF EXHIBITS

- EXHIBIT "A"** - Legal Description of Development Area
- EXHIBIT "B"** - Legal Description of Parcel and Property
- EXHIBIT "C"** - Legal Description of Additional Property
- EXHIBIT "D"** - List of Units and Percentage Interest in the Common Elements
- EXHIBIT "E"** - By-Laws
- EXHIBIT "F"** - Plat