

**DECLARATION OF CONDOMINIUM OWNERSHIP FOR
TURNBERRY OF BUFFALO GROVE CONDOMINIUM**

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**DECLARATION OF CONDOMINIUM OWNERSHIP FOR
TURNBERRY OF BUFFALO GROVE CONDOMINIUM**

This Declaration is made by and entered into by Concord Homes, Inc., a Delaware corporation (“Declarant”).

RECITALS:

Declarant intends to submit and subject portions of the Development Area to this Declaration and the Act. Initially, the Condominium Property shall consist of that portion of the Development Area which is legally described in Exhibit B, with all improvements thereon and appurtenances thereto. If, upon the recording hereof, less than all of the Development Area is made part of the Condominium Property, then, from time to time thereafter, the Declarant shall add additional portions of the Development Area to the Condominium Property as “Added Property” by Recording supplements to this Declaration, as more fully provided in Article Eight. As Supplemental Declarations are Recorded, the Condominium Property will expand to include more and more portions of the Development Area. It is anticipated that there will be two buildings constructed on the Development Area which will be part of the same condominium. However, in the event that there are two separate condominiums, Declarant reserves the right to amend this Declaration to grant easements and provide cost sharing arrangements with respect to portions of the Development Area which will serve both condominiums.

The Condominium Association shall be responsible for the administration of the condominium, the maintenance, repair and replacement of the Common Elements and shall set budgets and fix assessments to pay the expenses incurred in connection with such duties. Each Owner of a Unit shall be assessed to pay his proportionate share of the Common Expenses required to operate the Condominium, all as more fully provided for in this Declaration.

The Declarant shall retain certain rights set forth in this Declaration with respect to the Condominium Property and the Condominium Association including, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, the right to come upon the Property in connection with efforts to promote the sale or rental of Units and other rights reserved in Article Eleven.

NOW, THEREFORE, Declarant as record title holder of the Parcel and the Property, hereby declares as follows:

ARTICLE ONE
Definitions

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

1.01 ACCESS DRIVE: The access drive which is designated as “Access Easement” pursuant to Grant of Easement Recorded July 1,2004, as Document Number 5593529 and which is depicted on Exhibit F attached hereto.

1.02 ACT: The Condominium Property Act of the State of Illinois, as amended from time to time.

1.03 ASSOCIATION MAINTAINED SIDEWALK: The sidewalk which is located on property adjacent to the Development Area and which is designated as “Pedestrian Access Easement” pursuant to (i) Grant of Easement Recorded July 1,2004, as Document No. 5593528, and (ii) Grant of Easement to be Recorded (at which time this Declaration will be amended to include the recording information), and which is depicted on Exhibit F attached hereto.

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

1.05 BUILDING: That portion of the Development Area which consists of a structure which contains residential units and/or indoor parking spaces, including, without limitation, the structural components of such structure, the entryways, corridors, stairways, roofs, and other portions of the structure.

1.06 BY-LAWS: The By-Laws of the Condominium Association which are attached hereto as Exhibit E.

1.07 COMMON ELEMENTS: All of the Condominium Property, except the Units.

Without limiting the foregoing, the Common Elements shall include structures located in the

Common Elements below ground and which serve the Condominium Property as storm water management facilities.

1.08 COMMON EXPENSES: The expenses of administration (including management and professional services) of the Property; except as otherwise specifically provided herein, the cost of maintenance, repair, and replacement of the Common Elements; except as specifically provided herein, the cost of additions, alterations, or improvements to the Common Elements; the cost of maintenance (including snow removal), repair and replacement of the Association

Maintained Sidewalk; to the extent not otherwise maintained by the owner of the real estate on which the Access Drive is located, the cost of maintenance (including snow removal), repair and replacement of the Access Drive; the cost of insurance required or permitted to be obtained by

Board under Article Five; utility expenses for the Common Elements; any expenses designated as

Common Expenses by the Act, this Declaration, or the By-Laws; if not separately metered or charged to the Owners, the cost of waste removal, scavenger services, water, sewer, or other necessary utility services to a Building; and any other expenses lawfully incurred by or on behalf of the Condominium Association for the common benefit of all of the Owners.

1.09 CONDOMINIUM ASSOCIATION OR ASSOCIATION: The Turnberry of Buffalo Grove Condominium Association, an Illinois not-for-profit corporation, its successors and assigns.

1.10 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.11 COUNTY: Lake County, Illinois.

1.12 DECLARANT: Concord Homes, Inc., a Delaware corporation, its successors and assigns.

1.13 DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and none of the covenants, conditions, restrictions and easements contained herein shall burden any portion of the Development Area, unless and until such portion is made part of the Condominium Property by this Declaration or any Supplemental Declaration.

1.14 EXCLUSIVE LIMITED COMMON ELEMENTS: With respect to each Unit, the following Limited Common Elements shall be Exclusive Limited Common Elements:

- (a) Perimeter doors, door frames, windows and window frames which serve the Unit;
- (b) The interior surface of the perimeter walls, ceilings and floors which define the boundary planes of the Unit;
- (c) Any system or component part thereof which serves the Unit exclusively to the extent that such system or component part is located outside the boundaries of the Unit;
- (d) Any deck, patio, terrace or balcony which serves or is designated on the Plat as serving the Unit exclusively; and
- (e) The Storage Area, if any, assigned to the Unit.

1.15 FIRST MORTGAGE: A bona fide first mortgage, first trust deed or equivalent security interest covering a Unit Ownership.

1.16 FIRST MORTGAGEE: The holder of a First Mortgage.

1.17 GARAGE: A portion of the Common Elements which is delineated and designated on the Plat as a Garage and which includes Parking Spaces.

1.18 LIMITED COMMON ELEMENTS: A portion or portions of the Common Elements which are designated by this Declaration or the Plat as being a Limited Common Element appurtenant to and for the exclusive use of Owners of one or more, but less than all, of the Units. Any deck, patio, terrace, or balcony adjoining or serving a Unit, shall be a Limited Common Element appurtenant to such Unit. See Section 1.12 for the definition of those Limited Common Elements which shall be Exclusive Limited Common Elements hereunder.

1.19 MUNICIPALITY: The Village of Buffalo Grove, Illinois, its successors and assigns.

1.20 NON-CONDOMINIUM PROPERTY: Those portions of the Development Area which, from time to time, are not part of the Condominium Property.

1.21 OWNER: A Record owner, whether one or more Persons, of fee simple title to any Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.22 PARCEL: The real estate which is legally described in Exhibit B hereto from time to time, together with all rights appurtenant thereto, as Exhibit B may be supplemented from time to time.

1.23 PARKING SPACE: A portion of the Garage which is delineated on the Plat and designated as a Parking Space and which consists of a parking space for one (1) motor vehicle. A Parking Space shall be a Limited Common Element appurtenant to the Unit to which it is assigned hereunder from time to time. Each Parking Space shall be delineated on the Plat and identified with a distinguishing number or other symbol.

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

1.25 PLAT: The plat or plats of survey attached hereto as Exhibit C, as such exhibit may be amended or supplemented from time to time, which set forth the measurements, elevations, and locations of the Condominium Property, the location of the planes which constitute the perimeter boundaries of each Unit, a distinguishing number or other symbol to identify each Unit and such other data as may be required by the Act or this Declaration.

1.26 PROPERTY OR CONDOMINIUM PROPERTY: All the land, property, and space comprising the Parcel, all improvements and structures erected, constructed or contained therein, thereon or thereunder, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment

of the Owners, hereby or hereafter submitted and subjected to the provisions of this Declaration and the Act as part of the Condominium Property.

1.27 RECORD: To record, or to be of record, with the Recorder of Deeds of the County.

1.28 RESIDENT: An individual who lawfully resides in a Unit.

1.29 STORAGE AREA: A portion of the Common Elements which is delineated on the Plat and designed as a Storage Area and which is assigned to a Unit on Exhibit D.

1.30 TURNOVER DATE OR TRANSFER DATE: The date on which anyone of the following shall first occur:

(a) Sixty (60) days after Declarant has conveyed seventy-five (75) Units to purchasers for value (being 75% of the number of Units which the Declarant believes may be made subject to this Declaration);

(b) The expiration of three (3) years after the date of the Recording of this Declaration;

(c) The date designated in written notice from the Declarant to all of the Owners as being the Turnover Date;

(d) The date which control of the Condominium Association must be turned over to the Owners as required under the Act.

1.31 UNADDED PORTIONS OF THE BUILDING: As defined in Section 8.04.

1.32 UNDIVIDED INTEREST: The percentage of ownership interest in the Common Elements appurtenant to a Unit as herein and hereafter allocated on Exhibit D hereto, as Exhibit D may be amended from time to time.

1.33 UNIT: A part of the Condominium Property designed or intended for independent use and having lawful access to a public way. Each Unit shall consist of the space enclosed and bounded by the planes constituting the boundaries of such Unit as shown on the Plat and the fixtures and improvements located wholly within such boundaries which serve such Unit exclusively. A Unit shall not include the following, wherever located:

(a) any structural components of the Condominium Property; or

(b) any component of a system which serves more than one Unit where such component is an integral part of such system and is not intended to serve the Unit exclusively.

Each Unit is identified on the Plat by a distinguishing number or other symbol. The legal description of each Unit shall refer to such identifying number or symbol and every such description shall be deemed good and sufficient for all purposes, as provided in the Act.

1.34 UNIT OWNERSHIP: A part of the Condominium Property consisting of one Unit and its Undivided Interest.

1.35 VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Four.

ARTICLE TWO

Scope of Declaration and Certain Property Rights

2.01 REAL ESTATE SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Parcel and Property, expressly intends to and, by Recording this Declaration, does hereby subject and submit the Parcel and Property to the provisions of the Act and this Declaration. Declarant shall have the right to subject additional portions of the Development Area to the provisions of the Act and this Declaration as provided in Article Eight. Nothing in this Declaration shall be construed to obligate the Declarant to subject to the Act and this Declaration any portion of the Development Area other than those portions which are part of the Parcel or which are added to the Parcel and Property by Supplemental Declarations Recorded by the Declarant pursuant to Article Eight. None of the covenants, conditions, restrictions and easements contained in this Declaration shall burden any portion of the Development Area unless and until such portion is or becomes part of the Parcel and Property.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the Condominium Property, and their respective heirs, successors, personal representatives or assigns, regardless of whether the deed or other instrument which creates or conveys the interest makes reference to this Declaration.

2.03 ENCROACHMENTS: In the event that, by reason of the construction, repair, reconstruction, settlement or shifting of the Condominium Property or any part thereof, (i) any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or (ii) any part of any Unit encroaches or shall hereafter encroach upon any part of any other Unit or the Common Elements, then, in any such case, there shall be deemed to be an easement in favor of the Owners for the maintenance and use of any of the Common Elements which may encroach upon a Unit and there shall be deemed to be an easement in favor of any Owner for the exclusive use of any part of his Unit which shall encroach upon the Common Elements or any other Unit; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful or negligent conduct of such Owner or his agent.

2.04 OWNERSHIP OF COMMON ELEMENTS: Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Owners. Each

Unit's corresponding percentage of ownership in the Common Elements (Undivided Interest) has been determined by Declarant as required under the Act to be as set forth in Exhibit D attached hereto. Exhibit D may not be changed without unanimous written approval of all Owners and all First Mortgagees, except as hereinafter provided in Section 5.06 or 5.07, Article Eight or as permitted under the Act. The Common Elements shall remain undivided and no Owner shall bring any action for partition.

2.05 OWNERS' RIGHTS TO USE THE COMMON ELEMENTS:

(a) Each Owner shall have the right to use the Common Elements (except the Limited Common Elements or portions occupied pursuant to leases, licenses or concessions made by the Board) in common with all other Owners, as may be required for ingress and egress to and from his respective Unit, and for such other purposes not prohibited hereunder.

(b) Each Owner shall have the right to the exclusive use and possession of the Exclusive Limited Common Elements which serve his Unit. Each Owner shall have the right to the nonexclusive use, in common with other Owners, of the Limited Common Elements which serve his Unit and the Units of such other Owners.

(c) The rights to use and possess the Common Elements, including the Limited Common Elements, as herein provided, shall extend to each Owner, and the agents, servants, tenants, and invitees of each Owner and such rights and easements shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws, and the reasonable rules and regulations of the Board.

2.06 LEASE OF COMMON ELEMENTS: The Board shall have the right and authority, subject to the provisions of this Declaration and the By-Laws, to lease or grant licenses or concessions with regard to parts of the Common Elements (other than Limited Common Elements). The rental, fees and terms of any such lease, license or concession shall be determined by the Board and any and all proceeds therefrom shall be used to pay the Common Expenses and shall be taken into account in the preparation of the annual budget.

2.07 UTILITY AND ACCESS EASEMENTS: Each Owner of a Unit, the Declarant and each owner of Non-Condominium Property shall have a non-exclusive easement for vehicular and pedestrian access over and across driveways and walkways from time to time located on the Condominium Property, including, without limitation, those driveways and walkways which provide access to public ways. All public utilities and cable television franchisees serving the Condominium Property are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Condominium Property for the purpose of providing utility services to the Development Area. The County, the Municipality and any other governmental authority which has jurisdiction over the Development Area or which undertakes to provide services to the Development Area are hereby granted and reserved access easements for ingress and

egress to, over and across the Condominium Property for the purpose of providing any such services. The owners from time to time of portions of the Development Area which are not part of the Condominium Property are hereby granted and reserved a perpetual, non-exclusive easement of access over and across the private drives located on the Common Elements.

2.08 ADDITIONAL EASEMENTS: In addition to the easements provided for herein, the Board, on behalf of all of the Owners, shall have the right and power (a) to grant such easements with respect to the Common Elements (except the Limited Common Elements) as the Board deems necessary and proper, including, without limitation, access easements for emergency and service vehicles operated by any governmental authority or private enterprise and/or easements related to the installation and operation of a cable or satellite television system or other communication systems and/or (b) with the consent of any other party subject thereto, to cancel, alter, change or modify any easement which affects the Condominium Property and does not benefit an Owner, as the Board shall, in its discretion, determine. Without limiting the foregoing, until such time as the Declarant no longer holds title to a portion of the Development Area, the Board shall grant such easements as the Declarant may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements or portions of the Development Area which are not part of the Condominium Property or to provide owners of the Development Area with necessary utility services. Each Person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Unit Ownership, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Condominium Association and duly Recorded.

2.09 BOARD'S RIGHT OF ENTRY: The Board or its agents, upon reasonable notice or, in the case of an emergency, without notice, shall have the right to enter any Unit, including any of the appurtenant Limited Common Elements, when necessary in exercise of its authority under Section 3.02, or in connection with any maintenance, repair and replacement for which the Board is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board, as a Common Expense.

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

2.11 REAL ESTATE TAXES: In the event that a real estate tax bill is issued for a particular year (the "Tax Year") with respect to portions of the Development Area which,

as of December 31 of the Tax Year, consisted of (i) Non-Condominium Property and Condominium Property; (ii) more than one Unit, and/or (iii) Common Elements and no Units, then the following provisions shall apply:

(a) If the bill for the Tax Year covers Non-Condominium Property and Condominium Property, the bill shall be apportioned among the Condominium Property and each portion of the Non-Condominium Property by the Declarant in its reasonable judgment upon review of the relevant records of the County Assessor, to the extent available;

(b) Each Non-Condominium Property Owner shall be responsible for the payment of that portion, if any, of the bill for the Tax Year which is apportioned to Non-Condominium Property owned by such Non-Condominium Property Owner;

(c) The portion of the tax bill for the Tax Year which is apportioned to Condominium Property shall be paid by the Owners of Units in the Condominium Property as provided in this subparagraph. The Owner of each Unit in the Condominium Property (other than the Declarant) shall pay, as such Owner's share of the tax bill for the Tax Year, an amount equal to 2.4% of the purchase price paid for the Unit when first purchased from Declarant, multiplied by a fraction, the numerator of which shall be the number of days during the Tax Year that such Unit was owned by an Owner other than the Declarant and the denominator of which shall be 365 ("Sold Unit's Share of Taxes"). Declarant may reduce a Sold Unit's Share of Taxes by a fraction determined by Declarant in its sole and absolute discretion, which fraction shall be applied to reduce the Sold Unit's Share of Taxes for all Units. Each Sold Unit's Share of Taxes, as reduced, shall be paid to or as directed by the Declarant in such amounts and at such times as directed by the Declarant. If the total of all Sold Unit's Share of Taxes, as reduced, for the Tax Year is less than the portion of the tax bill for the Tax Year which is apportioned to the Condominium Property, the Declarant shall pay the difference. If the total amount actually paid by Owners other than Declarant pursuant to this subparagraph exceeds the amount of the tax bill for the Tax Year apportioned to the Condominium Property, then the excess (the "Excess") shall be retained and/or disbursed, as determined by the Board in its reasonable discretion, using one of the following options or a combination of the following options:

(i) Return some or all of the Excess to the Owners who made the required payment with each such Owner receiving an amount equal to the amount of the portion of the Excess being returned multiplied by a fraction, the numerator of which shall be the amount paid by the Owner and the denominator of which shall be the total amount paid by all Owners (other than Declarant); and/or

(ii) Retain some or all of the Excess and add it to the Capital Reserves.

(d) The Condominium Association shall use its best efforts to collect amounts due hereunder prior to the due date of the installments of the tax bill for the Tax Year; provided, that, if insufficient funds are received from the Owners and the Declarant to pay the portion of the bill allocated to the Condominium Property, the Condominium Association shall advance the difference. Any amounts due from an Owner to the

Condominium Association under this Section shall be a charge hereunder and, if not paid when due, the Condominium Association shall have all remedies provided for in Section 6.01 and Article Seven hereof.

(e) The Condominium Association shall have the right and power to engage the services of a real estate tax consultant, an attorney and/or an accountant to assist the Condominium Association in determining the amounts due from each Owner and the Declarant with respect to a tax bill hereunder, to challenge the real estate tax assessments or bills, or to collect amounts due hereunder from an Owner. The fees for such services shall be Common Expenses hereunder.

2.12 LEASE OF UNITS AND PARKING SPACES: Any Owner shall have the right to lease all (and not less than all) of his Unit and/or Parking Space subject to Section 11.02 and to the following provisions:

(a) No Unit shall be leased for less than six (6) months or for hotel or transient purposes.

(b) Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration.

(c) Each Owner who leases his Unit and/or Parking Space shall be required to furnish the Condominium Association with a copy of the lease and shall promptly notify the Condominium Association of any change in status of the lease. The Condominium Association shall maintain a record of such information with respect to all leased Units and Parking Spaces.

(d) A Parking Space may only be leased to a Resident.

2.13 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 Condominium Property or Common Elements, rather than against a particular Unit Ownership. 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 attorney's fees and expenses) incurred by reason of such lien.

2.14 STORAGE AREAS: A Storage Area shall be assigned to each Unit on Exhibit D. Each Storage Area which is assigned to a Unit shall be an Exclusive Limited Common Element. Until each Storage Space is assigned to a Unit on Exhibit D, the Storage Area shall be deemed to be assigned to Units owned by Declarant. The use of Storage Areas shall at all times be subject to reasonable rules and regulations adopted from time to time by the Board.

ARTICLE THREE
Use, Occupancy and Maintenance of the Property

3.01 MAINTENANCE, REPAIR AND REPLACEMENT OF COMMON ELEMENTS:

(a) Except as otherwise specifically provided in this Declaration, decorating, maintenance, repair and replacement of the Common Elements shall be furnished by the Association as part of the Common Expenses, including, without limitation, portions thereof which serve both the Condominium Property and the Unadded Portions of the Building (defined in Section 8.04). Without limiting the foregoing, the Condominium Association shall be responsible for (i) the maintenance, repair and replacement of the sidewalk located on the Common Elements which is subject to a public pedestrian access easement; (ii) the continued maintenance, repair and replacement of the detention area, storm sewer lines and all appurtenances thereto, now or hereafter located on the Property, in order to maintain them in good order and repair and in full compliance with the ordinances of the Municipality and any other governmental agency; (iii) maintenance, repair and replacement of the Association Maintained Sidewalk; and (iv) to the extent not otherwise maintained by the owner of the real estate on which the Access Drive is located, maintenance (including snow removal), repair and replacement of the Access Drive.

(b) With respect to a particular category or class of Limited Common Elements (other than the Exclusive Limited Common Elements appurtenant to a Unit), instead of furnishing the maintenance, repair or replacement of such category or class of Limited Common Elements as a Common Expense, the Board may, in its discretion, (i) require each Owner to furnish such services to the Limited Common Elements which are appurtenant to his Unit at his own expense, or (ii) furnish such services to the Limited Common Elements but assess the cost thereof directly to the Owners of Units benefited thereby on the basis of Undivided Interests, in equal shares or such other reasonable basis as the Board shall deem appropriate.

(c) The maintenance, repair and replacement of balconies and patios shall be furnished by the Condominium Association and the cost thereof shall not be a Common Expense but shall be shared by the Owners of Units which have balconies and patios as Limited Common Elements, on the basis of Undivided Interests, equal shares, or such other reasonable basis as the Board shall deem appropriate.

(d) The Condominium Association shall provide snow removal from the public walks which are located on or adjacent to the Parcel, and shall store excess snow in appropriate off-street locations, and shall not in any way impede the Municipality's snow removal operations on public streets.

3.02 MAINTENANCE, REPAIR AND REPLACEMENT OF UNITS AND EXCLUSIVE LIMITED COMMON ELEMENTS:

(a) Except as provided in Section 3.01(d), each Owner shall furnish and be responsible, at his expense, for all of the maintenance, repairs and replacements within his Unit and the Exclusive Limited Common Elements appurtenant to his Unit and shall keep them in good condition and repair. The Board may, in its discretion, cause maintenance services to be performed within a Unit or to the Exclusive Limited Common Elements appurtenant thereto upon the request of an Owner and may charge a reasonable fee for such services. Without limiting the foregoing, to the extent that insurance carried by the Condominium Association covers damage to a Unit or the Exclusive Limited Common Elements appurtenant thereto (including, without limitation, broken windows, or perimeter doors), the Condominium Association shall make any insurance proceeds received by the Condominium Association as a result of any such damage available to the Owner to pay for or reimburse the Owner for payment of the cost of repairing the damage.

(b) Except as provided in Section 3.01(d), whenever the Board shall determine, in its discretion, that any maintenance, repair, or replacement of any Unit or the Exclusive Limited Common Elements is necessary to protect the Common Elements or any other portion of the Condominium Property (i) if such work is made necessary through the fault of the Owner, then the Board may direct the Owner thereof to perform such maintenance, repair, or replacement and pay the cost thereof to the extent not covered by insurance, if any, carried by the Condominium Association, including, without limitation, the deductible amount under any applicable insurance policy, or (ii) if such work is made necessary through no fault of the Owner, then the Board may cause the work to be done and may, in its discretion, assess the cost thereof directly to the Owners of the Units, or Exclusive Limited Common Elements appurtenant thereto, with respect to which the work is done on the basis of Undivided Interests, equal shares or such other reasonable basis as the Board shall deem appropriate. If an Owner fails or refuses to perform any such maintenance, repair, or replacement within a reasonable time after being so directed by the Board pursuant to the preceding sentence, then the Board may cause such maintenance, repair, or replacement to be performed at the expense of such Owner. The determination of whether or not the work is made necessary through the fault of the Owner shall be made by the Board and such determination shall be final and binding.

3.03 ADDITIONS, ALTERATIONS OR IMPROVEMENTS:

(a) The Board may authorize and charge as a Common Expense (or in the case of Limited Common Elements may charge the Owners benefited thereby) any additions, alterations, or improvements to the Common Elements. Subject to the provisions of Section 6.06, the cost of any such work to the Common Elements may be paid out of a special assessment.

(b) Without the prior written consent of the Board, an Owner shall not (x) make any additions, alterations or improvements (including, without limitation, installation of storm windows, storm doors, plantings, landscaping, or painting, staining, or changes to the color of exterior surfaces of the Building or any deck, patio, terrace or balcony) to any part of the Common Elements which is visible from outside of the Unit or (y) make any additions, alterations or improvements to his Unit or to the Exclusive Limited Common

Elements appurtenant thereto where such work alters the structure of the Unit or increases the cost of insurance required to be carried by the Association hereunder. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement by an Owner (i) upon the Owner's agreement that any addition, alteration or improvement will be substantially similar in quality of construction and design to any similar addition, alteration or improvement then on the Condominium Property and (ii) upon Owner's agreement either (A) 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 (B) to pay to the Condominium Association from time to time the additional cost of maintenance and/or insurance as a result of the addition, alteration or improvement. If an addition, alteration or improvement 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:

- (1) Require the Owner to remove the addition, alteration or improvement and restore the Condominium Property to its original condition, all at the Owner's expense; or
- (2) If the Owner refuses or fails to properly perform the work required under (1), then, subject to the provisions of Section 7.01, the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or
- (3) 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.

3.04 DAMAGE CAUSED BY OWNER: If, due to the act of or the neglect of an Owner or occupant of a Unit or a guest, invitee or pet of an Owner or occupant, damage shall be caused to a part of the Condominium Property and maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then the Owner shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Board, to the extent not covered by insurance, if any, carried by the Condominium Association, including, without limitation, the deductible amount under any applicable insurance policy.

3.05 USE RESTRICTIONS:

- (a) Except as provided in Article Eleven or in subsections (b) and (c) of this Section, each Unit shall be used only as a residence and no industrial business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Condominium Property.
- (b) No Resident shall be precluded with respect to his Unit, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

(c) To the extent permitted under applicable laws and ordinances, a Resident may conduct an in-home business in a Unit.

(d) Each Parking Space shall only be used to park one (1) automobile.

3.06 SPECIAL SERVICES: Any Board may furnish to a Unit Owner or Unit Owners special services relating to the use and occupancy of a Unit or Units and may charge the cost of providing such services to the Owner or Owners who benefit from the service. Without limiting the foregoing, the Condominium Association may contract with a provider of a special service, such as satellite TV service, cable TV service, internet access or other similar service, either make such service available to all Units or offer such service to each of the Owners on a voluntary basis. The Board may charge the Owner of each Unit which receives any such service for the reasonable cost of providing such service, which may be allocated in equal shares for each of the Units which is served, on the basis of Undivided Interests or on such other reasonable basis as the Board may deem appropriate. Any amount charged to a Owner for services furnished pursuant to this Section shall be due and payable at such time or times as designated by the Board and failure to pay any such amount shall give rise to a lien provided for in Section 6.01.

3.07 USE AFFECTING INSURANCE: Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Condominium Property or contents thereof, applicable for residential use, without prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Condominium Property, or contents thereof, or which would be in violation of any law.

3.08 SIGNS: Except as provided in Article Eleven, no "For Sale", "For Rent" or any other sign of any kind or other form of solicitation or advertising or window display shall be erected, maintained or permitted on the Condominium Property unless permitted pursuant to reasonable rules or regulations adopted by the Board from time to time. Without limiting the foregoing, the Board may from time to time designate an area within the Common Elements which may be used to display "for rent" and/or "for sale" signs of such size as not to be designated from time to time by the Board.

3.09 ANIMALS: No animals shall be kept or raised in the Common Elements. No pet may be kept or raised for commercial purposes. The Board may from time to time adopt rules and regulations governing the keeping of pets in the Units. Such rules and regulations may prohibit certain species of pets or pets of more than a specified weight from being kept in the Units. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from a Unit 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. For purposes hereof, a "pet" is a domesticated animal kept for pleasure rather than utility.

3.10 ANTENNAE: Subject to applicable federal, state and local laws, ordinances and regulations, no mast, satellite dish, antennae or other structure for transmitting or

receiving messages or programs by radio or television shall be erected, permitted or maintained in or upon any part of the exterior of the Condominium Property without the prior written approval of the Board.

3.11 OTHER STRUCTURES: No structure of a temporary character, including, without limitation, a trailer, recreational vehicle, mobile home, tent, solarium, greenhouse, shack or other out-building shall be used, stored or maintained anywhere in or on the Condominium Property either temporarily or permanently, except as expressly approved, in writing, by the Board.

3.12 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to any part of the Condominium Property which would impair the structural integrity of the Building or other permitted structure located on the Condominium Property.

3.13 PROSCRIBED ACTIVITIES: No noxious or offensive activity shall be carried on in the Condominium Property and nothing shall be done in the Condominium Property, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of the Units.

3.14 NO UNSIGHTLY USES: No clothes, sheets, blankets, laundry of any kind, or other similar articles shall be hung out on any part of the Common Elements except as permitted by rules and regulations of the Board. The Condominium Property shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

3.15 RULES AND REGULATIONS:

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

(b) Without limiting the foregoing, the Board may levy a reasonable charge upon the Owners for a violation of a rule or regulation, in accordance with the procedures set forth in Section 7.05.

3.16 CERTAIN UTILITY COSTS:

(a) Certain utility costs incurred in connection with the use, operation and maintenance of the Common Elements may not be separately metered and billed to the Condominium Association. If the charges for any such utilities are metered to individual Units rather than being separately metered for the Common Elements, then the following shall apply:

(i) If in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost for such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(ii) If in the opinion of the Board, the Owner of a Unit is being billed disproportionately for costs allocable to the Common Elements, then the Condominium Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which, in the reasonable determination of the Board, is properly allocable to the Common Elements and the amount thereof shall be Common Expenses hereunder.

(b) Certain utility costs, such as water and sewer costs, may be billed to the Condominium Association on a Building by Building basis. If this occurs, then the Condominium Association may charge to, and collect from, the Owners of Units in a Building amounts necessary to pay the bills issued with respect to the Building, on such terms as the Board deems to be fair, reasonable and appropriate. For example, the Condominium Association may (but shall not be obligated to) submeter each Unit and charge the Owner of the Unit on a periodic basis for the portion of the bill for the Building which includes the Unit based on actual usage. Alternatively (or in addition) the Condominium Association may (i) require an Owner to pay an amount each month which the Board believes will approximate what the utility costs allocable to the Owner's Unit will be and (ii) make appropriate adjustments periodically to reflect the actual costs allocable to the Unit.

3.17 COMBINATION OF UNITS: Subject to the provisions of Article Eleven, with the prior approval of the Board, which approval shall not be unreasonably withheld, the Unit Owner of two adjacent Units, including Units located next to each other or a Unit which is located in the airspace above another Unit ("Adjacent Units") shall be permitted to remove a portion of the wall, ceiling, floor or other partition in the Common Elements between the Adjacent Units (at the Unit Owner's sole cost and expense) in order to permit access between the Adjacent Units so that the Adjacent Units may be combined and used together as one home. In such case, the Unit Owner of the Adjacent Units shall have the exclusive right to use and enjoy the portion of the Common Elements between the Adjacent Units which has been removed and shall be solely responsible for the maintenance of such area. If the Unit Owner of the Adjacent Unit desires to separate the Adjacent Units for use and occupancy as separate homes, the Unit Owner shall so notify the Board and shall restore the wall, ceiling, floor, or other partition between the Units to the condition which the wall, ceiling, floor or other partition was in before it was removed or otherwise altered by the Unit Owner of the Adjacent Units. From and after the restoration of such wall, ceiling, floor, or other partition, the portion of the Common Elements which had previously been used by the Unit Owner of the Adjacent Units shall be maintained by the Condominium Association. In the event of the removal of a portion of the wall, ceiling, floor or other partition in the Common Elements between Adjacent Units as provided for in this Section, the Adjacent Units shall each continue to be individual Units for purposes of this Declaration and the Undivided Interest assigned to each of the Adjacent Units shall not be changed.

3.18 FLOOR COVERING: An Owner (other than Declarant) who desires to install or replace flooring in his or her Unit must first apply for and receive approval from the Board. The Board may from time to time adopt rules and regulations governing the installation or replacement of floor covering.

3.19 WINDOW TREATMENT: In order to achieve uniformity in the exterior appearance of the Property and the Building, each Owner shall install in all windows of his Unit visible from the exterior of the Building shades, draperies, curtains or other window coverings having a white colored lining or surface.

3.20 PARKING SPACES: Each Parking Space shall initially be assigned to a Unit owned by the Declarant. The Declarant shall have the unrestricted right and power to sell and assign one or more Parking Spaces to an Owner (either at or after conveyance of the Unit). A Parking Space shall be assigned by the Declarant to a Unit by a deed or other instrument executed by Declarant and delivered to the Owner and Recorded. A copy of the assigning instrument shall be delivered to the Condominium Association. From and after such time as the Declarant no longer holds title to a portion of the Development Area, all unassigned Parking Spaces shall no longer be Limited Common Elements hereunder and shall be used and occupied subject to rules, procedures and fees established from time to time by the Board. The Condominium Association shall maintain a record reflecting to which Unit each Parking Space is assigned. The Owner of a Unit to which a Parking Space is assigned hereunder may (with the prior written consent of the First Mortgagee, if any, of the Unit) assign the Parking Space to another Unit following the procedures required under the Act. The Owner of a Unit to which a Parking Space is assigned hereunder may lease the Parking Space, but only to a Resident.

ARTICLE FOUR The Condominium Association

4.01 THE CONDOMINIUM ASSOCIATION: Declarant shall cause the Condominium Association to be incorporated as a not-for-profit corporation. The Condominium Association shall be the governing body for all of the Owners and for the administration and operation of the Property as provided in the Act, this Declaration and the By-Laws. All agreements and determinations lawfully made by the Condominium Association shall be deemed to be binding on all Owners and their respective successors and assigns.

4.02 MEMBERSHIP:

(a) There shall be only one class of membership in the Condominium Association. The Owner of each Unit shall be a member of the Condominium Association. There shall be one membership per Unit Ownership. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership. The Condominium Association shall be given written notice of a proposed change of ownership of a Unit within ten (10) days prior to such change.

(b) One individual shall be designated as the “Voting Member” for each Unit Ownership. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners.

4.03 THE BOARD: From and after the Turnover Date, the Board shall consist of the number of individuals provided for in Section 5.01 of the By-Laws, each of whom shall be an Owner or a Voting Member. The Board shall be elected at each annual meeting of the Owners as provided in the By-Laws.

4.04 VOTING RIGHTS: Whenever a vote of the Owners of the Condominium Association is required, at any meeting of such Owners or otherwise, such votes shall be cast by the Voting Members or their proxies; provided that a contract purchaser of a Unit from a contract seller other than the Declarant, shall have the right to vote for directors of the Condominium Association after the Turnover Date unless such contract seller expressly retains such right in writing. Except as otherwise specifically required under the Act, this Declaration or the By- Laws, each Voting Member shall have a vote equal to the Undivided Interest assigned to each Unit which he or she represents.

4.05 MANAGING AGENT: The term of any management agreement covering the management of the Condominium Property entered into prior to the Turnover Date shall not exceed two years, and shall be terminable for cause by the Condominium Association on thirty (30) days written notice and without cause or payment of a termination fee by either party on ninety (90) days written notice.

4.06 DIRECTOR AND OFFICER LIABILITY: None of the directors or officers of the Condominium Association whether elected or designated by the Declarant shall be personally liable to the Owners or the Condominium Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Condominium Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to the Owners, the Condominium Association or others arising out of contracts made by or other acts of the directors and the officers on behalf of the Owners, the Condominium Association or others arising out of their status as directors or officers unless any such contract or act 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, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, administrative, or other, in which a director or officer may be involved by virtue of such person being or having been a director or officer; provided, however, that such indemnity shall not be operative with respect to (i) 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 duties as a director or officer, or (ii) 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 person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as a director or officer.

ARTICLE FIVE
Insurance/Condemnation

5.01 HAZARD INSURANCE: The Board shall have the authority to and shall obtain insurance for the Condominium Property against loss or damage by fire and such other hazards as may be required under the Act, as the Board may deem desirable, or as reasonably required by First Mortgages, for the full insurable replacement cost of the Common Elements and the Units. Anything herein to the contrary notwithstanding, unless otherwise determined by the Board or required by the Act, the insurance obtained by the Condominium Association shall only cover restoration of a Unit to the condition the Unit would have been in if the Unit were decorated and finished with the floor, wall and ceiling coverings, decorating, fixtures and furnishings which were originally offered by the Declarant as part of the base purchase price for the Unit (“Standard Items”) and shall not include any Improvements and Betterments. For purposes hereof “Improvements and Betterments” are hereby defined to consist of and include any decorating, fixtures and furnishings installed or added to and located within the boundaries of the Unit, including, without limitation, electrical fixtures, appliances, air conditioning and heating equipment, water heaters or built-in cabinets, where such items were installed by, or at the request of, the Owner of the Unit in addition to, or as an upgrade from, the Standard Items; however, Improvements and Betterments shall not be deemed to include the replacement of a Standard Item which is of comparable quality to the Standard Item which was replaced. Premiums for such insurance shall be Common Expenses. Such 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 accordance with their Undivided Interests. All such policies of insurance (i) shall contain standard mortgage clause endorsements in favor of the First Mortgagees as their respective interests may appear, (ii) shall provide that the insurance, as to the interests of the Board, shall not be invalidated by any act or neglect of any Owner, (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, such option shall not be exercisable if the Owners elect to sell the Condominium Property or remove the Condominium Property from the provisions of the Act, (iv) to the extent possible, shall provide that such policy shall not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days’ written notice to the First Mortgagee of each Unit Ownership, (v) shall contain waivers of subrogation with respect to the Condominium Association and its directors, officers, employees and agents (including the managing agent), Owners, occupants of the Unit, First Mortgagees, the Declarant and shall name all such parties as additional insured parties as their interests may appear, and (vi) shall comply with applicable requirements of the Act and of Fannie Mae.

5.02 INSURANCE TRUSTEE/USE OF PROCEEDS: 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 Common Expenses. In the event of any loss in excess of \$100,000.00 in the aggregate, the Board shall engage a corporate trustee as aforesaid. 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 First Mortgagee or any Owner of any Unit so destroyed. The rights of First Mortgagees under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act and this Declaration with respect to the application of insurance proceeds to the repair or reconstruction of the Units or Common Elements. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of a release from the Board of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

5.03 OTHER INSURANCE: The Board shall also have the authority to and shall obtain such other insurance as the Board deems necessary or appropriate or which is required under the Act or under applicable requirements or guidelines of Fannie Mae, including, without limitation, the following:

- (a) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in, on or about the Condominium Property or upon, in or about the streets, private drives and passageways and other areas adjoining the Condominium Property, in such amounts as the Board shall deem desirable (but not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence).
- (b) Such workers compensation insurance as may be necessary to comply with applicable laws.
- (c) Employer's liability insurance in such amount as the Board shall deem desirable.
- (d) Fidelity bond indemnifying the Condominium Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Condominium Association or of any other person handling the funds of the Condominium Association, the Board or the Owners in such amount as the Board shall deem desirable or as required by the Act or the applicable requirements of Fannie Mae.
- (e) Directors and officers liability insurance.

(f) Such insurance shall be in such amounts and with such deductible amounts as are required by applicable law or the requirements of Fannie Mae and shall include cross liability claims of one or more insured parties against other insured parties. To the extent possible, all of such policies shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Condominium Association and First Mortgagees who specifically request such notice. The premiums for such insurance shall be Common Expenses.

5.04 OWNER'S RESPONSIBILITY: Unless expressly advised to the contrary by the Board, each Owner shall obtain his own insurance on the Improvements and Betterments within the Owner's Unit (as defined in section 5.01) and the contents of the Owner's Unit and furnishings and personal property therein, and the Owner's personal property stored elsewhere on the Condominium Property, and the Owner's 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, and the Board shall have no obligation whatsoever to obtain any such insurance coverage on behalf of the Owners. Except as expressly determined by the Board, the Board shall not be responsible for obtaining insurance on Improvements and Betterments and shall not be obligated to apply any insurance proceeds from policies it is obligated to maintain hereunder to restore the affected Unit to a condition better than the condition existing prior to the making or installation of Improvements and Betterments.

5.05 WAIVER OF SUBROGATION: The Condominium Association and each Owner hereby waive and release any and all claims which it or he may have against any other Owner, the Condominium Association, its directors and officers, the Declarant, the manager and the managing agent, 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, and to the extent this release is allowed by policies for such fire or other casualty insurance.

5.06 REPAIR OR RECONSTRUCTION:

(a) In the case of damage by fire or other disaster to a portion of the Condominium Property (a "Damaged Improvement") where the insurance proceeds are sufficient to repair or reconstruct the Damaged Improvement, then the proceeds shall be used by the Condominium Association to repair or reconstruct the Damaged Improvement.

(b) In the case of damage by fire or other disaster to a portion of the Condominium Property where the insurance proceeds are insufficient to repair or reconstruct the Damaged Improvement as provided under the Act or the Damaged Improvement cannot be reconstructed as originally designed and built because of zoning, building or other applicable laws, ordinances or regulations, the following procedure shall be followed:

(1) A meeting of the Owners shall be held not later than the first to occur of (i) the expiration of thirty (30) days after the final adjustment of the insurance claims or (ii) the expiration of ninety (90) days after the occurrence which caused the damage.

(2) At the meeting, the Board shall present a plan for the repair or reconstruction of the Damaged Improvement and an estimate of the cost of repair or reconstruction, together with an estimate of the amount thereof which must be raised by way of special assessment and a proposed schedule for the collection of a special assessment to pay the excess cost.

(3) A vote shall then be taken on the question of whether or not the Damaged Improvement shall be repaired or reconstructed based on the information provided by the Board under (2) above, including the proposed special assessment. The Damaged Improvement shall be repaired or reconstructed and the proposed special assessment shall be levied only upon the affirmative vote of Voting Members representing at least three-fourths (3/4) of the votes cast.

(4) If the Voting Members do not vote to repair or reconstruct the Damaged Improvement at the meeting provided for in (1) above, then the Board may, at its discretion, call another meeting or meetings of the Owners to reconsider the question of whether or not the Damaged Improvement shall be repaired or reconstructed. If the Voting Members do not vote to repair or reconstruct the Damaged Improvement within 180 days after the occurrence which caused the damage, then the Board may (but shall not be obligated to) in its discretion Record a notice as permitted under the Act.

(5) If (i) the Voting Members do not vote to repair or reconstruct the Damaged Improvement under Subsection (4) above, and (ii) the Board does not Record a notice as permitted under the Act, then the Board may, with the consent of Owners representing 75% of the Undivided Interests of Units and First Mortgagees representing 75% of the Units (by number) subject to First Mortgages, amend this Declaration to withdraw the Property from the Act, as permitted under the Act. If the Property is withdrawn, then the amendment shall provide that the Property shall be owned by the Owners of Units as tenants-in-common with each Owner's interest being determined based on the relative Undivided Interests of the Units prior to the withdrawal. The payment of just compensation, or the allocation of any insurance or other proceeds shall be made to the Owners and First Mortgagees, as their interests may appear, on an equitable basis, determined by the Board, as provided in the Act. From and after the effective date of the amendment referred to above in this paragraph, the Owner of a Unit located in the Property which is withdrawn shall have no responsibility for the payment of assessments which would have been payable with respect to the Unit if the amendment had not been Recorded.

(c) If the Damaged Improvement is repaired or reconstructed, it shall be done in a workmanlike manner and the Damaged Improvement, as repaired or reconstructed, shall be substantially similar in design and construction to the improvements on the

Condominium Property as they existed prior to the damage, with any variations or modifications required to comply with applicable law.

(d) If the Damaged Improvement is not repaired or reconstructed, then the damaged portion of the Building shall be razed, or secured and otherwise maintained in conformance with the rules or standards adopted from time to time by the Board.

5.07 CONDEMNATION:

(a) In the case of a taking or condemnation by competent authority of any part of the Condominium Property, the Condominium Association shall, if necessary, restore the improvements in the remaining portion of the Condominium Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards paid to the Condominium Association shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either (i) applied to pay the Common Expenses or (ii) distributed to the remaining Owners and their respective First Mortgagees, as their interests may appear, based on their current Undivided Interests. Each Owner appoints the Condominium Association as attorney-in-fact for the purpose of representing him in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements or any part thereof.

(b) In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Act and the court which has jurisdiction of the action shall adjust the Undivided Interests of the remaining Units in a just and equitable manner and as provided under the Act, and if the court fails to make such adjustment, such adjustment may be made by the Board. The President and Secretary of the Condominium Association shall execute and Record an instrument on behalf of the Condominium Association as required by the Act which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of property and adjustments, if any, in the Undivided Interests as a result of an occurrence covered by this Section. From and after the effective date of the amendment referred to in the preceding sentence, the Owner of a Unit which is removed in part or in whole from the provisions of this Declaration shall only be liable for the payment of assessments based on the Undivided Interest, if any, allocated to the Unit in the amendment.

ARTICLE SIX Assessments

6.01 CREATION OF LIEN AND PERSONAL OBLIGATION: The Declarant, for each Unit Ownership, hereby covenants, and each Owner of a Unit Ownership, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be and is deemed to covenant and hereby agrees to pay to the Condominium Association such assessments or other charges or payments as are levied

pursuant to the provisions of this Declaration. Such assessments, or other charges or payments, together with interest thereon and costs of collection, if any, as herein provided, shall be a charge on the Unit Ownership and shall be a continuing lien upon the Unit Ownership against which each such assessment is made. Each such assessment, or other charge or payment, together with such interests and costs, shall also be the personal obligation of the Owner of such Unit Ownership at the time when the assessment or other charge or payment is due.

6.02 PURPOSE OF ASSESSMENTS: The assessments levied by the Condominium Association shall be exclusively for the purposes of promoting the recreation, health, safety, and welfare of members of the Condominium Association, to administer the affairs of the Condominium Association, and to pay the Common Expenses.

6.03 ASSESSMENTS: Each year at least sixty (60) days before the end of the Condominium Association's fiscal year, and at least thirty (30) days before final adoption thereof, the Board shall furnish each Owner with a proposed budget for the ensuing fiscal year which shall show the following, with reasonable explanations and itemizations:

- (a) The estimated Common Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Common Expenses;
- (c) The estimated net available cash receipts from sources other than assessments, including, without limitation, receipts from any leases, licenses or concessions;
- (d) The amount of the "Annual Assessment", which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above, minus excess funds, if any, from the current year's operation;
- (e) That portion of the Annual Assessment which shall be payable by the Owner with respect to his Unit each month until the next Annual Assessment or revised Annual Assessment becomes effective, which monthly portion shall be equal to one twelfth (1/12th) of the Annual Assessment multiplied by the Unit's Undivided Interest.

6.04 PAYMENT OF ASSESSMENTS: On or before the first day of the fiscal year, and on or before the first day of each and every month thereafter until the effective date of the next Annual Assessment, each Owner of a Unit shall pay to the Condominium Association, or as it may direct, that portion of the Annual Assessment, which is payable by such Owner. Anything herein to the contrary notwithstanding, prior to the first conveyance of a Unit by Declarant to a bona fide purchaser for value, all expenses relating to the administration, operation, maintenance, repair and replacement of the Condominium Property shall be paid by the Declarant and during such period there shall be no Annual Assessments or other assessments payable to the Condominium Association.

6.05 REVISED ASSESSMENT: If the Annual Assessment proves to exceed funds reasonably needed, then the Board may decrease the assessments payable under Section 6.03 as of the first day of a month by the giving of written notice thereof (together with a revised budget for the balance of the year and reasons for the decrease) not less than ten (10) days prior to the effective date of the decreased assessment.

6.06 SPECIAL ASSESSMENT: The Board may levy a special or separate assessment (i) to pay (or build up reserves to pay) extraordinary expenses incurred (or to be incurred) by the Condominium Association for a specific purpose including, without limitation, to make major repairs, additions, alterations or improvements to the Common Elements, or (ii) to cover an unanticipated deficit under the current or prior year's budget. If required under the Act, a separate or special assessment shall be approved, in advance, by action of the Unit Owners. Each Owner shall be responsible for the payment of the amount of the special assessment multiplied by his Unit's Undivided Interest. The Board shall serve notice of a separate or special assessment on all Owners who will be required to pay such separate or special assessment by a statement in writing giving the amount and reasons therefor, and the separate or special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the current or prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.07 ANNUAL REPORT: Within a reasonable time after the close of the Condominium Association's fiscal year, the Board shall furnish each Owner with an itemized account of the Common Expenses for such fiscal year actually incurred or paid, together with an indication of which portions of the Common Expenses for such fiscal year were incurred or paid for capital expenditures or repairs or the payments of real estate taxes, if any, and with a tabulation of the amounts collected for the Annual Assessment and showing the net excess or deficit of income over expenditures, plus reserves.

6.08 CAPITAL RESERVE: The Condominium Association shall segregate and maintain a special reserve accounts to be used solely for making capital expenditures in connection with the Common Elements, including a reserve fund for replacements (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Elements and equipment owned by the Condominium 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 Condominium Association in connection with its duties hereunder. The Capital Reserve may be built up by separate or special assessments or out of the Annual Assessment as provided in the budget. 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 Condominium 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 Condominium Association by the Owners. The budgets which will be adopted from time to time by the Boards appointed by the Declarant prior to the Turnover Date shall include

reserve buildups which the Board deems to be appropriate based on information available to the Board. Boards elected by the Owners after the Turnover Date may use different approaches from those used by Boards appointed by the Declarant for the buildup of reserves or as, permitted under the Act, may choose not to provide for the buildup of reserves for certain capital expenditures or deferred maintenance for repairs or replacements of the Common Elements. If the Board chooses not to provide for the buildup of reserves for a particular anticipated expenditure or if the buildup of reserves that the Board does provide for in its budgets does not result in sufficient funds to pay for the expenditure when the expenditure must be made, then (i) neither the Board nor any of its past or present members shall be liable to the Condominium Association or the Owners for failing to provide for sufficient reserves and (ii) the Board shall have the right and power (subject to the procedural requirements of the Act, this Declaration or the By-Laws) to either levy a separate or special assessment to raise the funds to pay the expenditure or to borrow funds to pay the expenditure and repay the borrowed funds out of future Annual Assessments, separate assessments or special assessments.

6.09 INITIAL CAPITAL CONTRIBUTION: Upon the closing of the sale of each Unit by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Condominium Association in an amount equal to three (3) monthly installments of the then current year's Annual Assessment for that Unit and an amount equal to the current annual fire and extended coverage insurance premium allocable to the Unit, which amounts shall be held and used by the Condominium Association for its working capital needs (and not as an advance payment of the Annual Assessment). In addition, the purchasing Owner shall pay to the Condominium Association the sum of One Hundred Dollars (\$100.00), which shall be added to the Capital Reserve.

6.10 NON-PAYMENT OF ASSESSMENTS: Any assessments or other charges or payments 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 or other charge or payment is not paid within thirty (30) days after the due date, it shall bear interest at eighteen percent (18%) per annum, and the Board (i) may bring an action against the Owner personally obligated to pay the same, together with interest, costs and reasonable attorneys' fees of any such action, which shall be added to the amount of such assessment or other charge or payment and shall be included in any judgment rendered in such action and (ii) may enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may in its discretion charge reasonable late fees for the late payment of assessments or other charges. No Owner may waive or otherwise escape liability for the assessments or other charges or payment provided for herein by nonuse, abandonment or transfer of his Unit.

6.11 CONDOMINIUM ASSOCIATION'S LIEN SUBORDINATED TO MORTGAGES: The lien on each Unit Ownership provided for in Section 6.01 for assessments or other charges or payments shall be subordinate to the lien of any First Mortgage on the Unit Ownership Recorded prior to the date that any such assessments or other charges or payments become due. Except as hereinafter provided, the lien provided for in Section 6.01 shall not be affected by any transfer of title to the Unit Ownership.

Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure of a First Mortgage, such transfer of title shall to the extent permitted by law extinguish the lien for any assessments or other charges or payments under Section 6.01 which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit, whichever occurs first. However, the transferee of a Unit Ownership shall be liable for his share of any assessments or other charges or payments with respect to which a lien against his Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Owners pursuant to a subsequently adopted annual, revised or special assessment, and nonpayment thereof shall result in a lien against the transferee's Unit Ownership as provided in Section 6.01. If for any reason the Owner of a Unit is permitted to remain in possession of his Unit during the pendency of a foreclosure action with respect to the Unit, the Owner shall be required to pay a reasonable rental for such right and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect such rental.

6.12 STATEMENT OF ACCOUNT: Upon seven (7) days' notice to the Board and the payment of a reasonable fee, if any, which may be set by the Board, any Owner shall be furnished with a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from the Owner as of the date of the statement. The statement shall be executed by a duly authorized officer or agent of the Condominium Association and shall be binding on the Condominium Association.

ARTICLE SEVEN Remedies for Breach or Violation

7.01 SELF-HELP BY BOARD: Subject to the provisions of Section 7.05, in the event of a violation by an Owner of the provisions, covenants or restrictions of the Act, this Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, the Board, upon not less than ten (10) days prior written notice, shall have the right to enter upon that part of the Condominium Property where the violation or breach exists and summarily abate, remove or do whatever else may be necessary to correct such violation or breach, provided, however, that where the violation or breach involves an improvement located within the boundaries of a Unit, judicial proceedings shall be instituted before any items of construction can be altered or demolished. Any and all expenses in connection with the exercise of the right provided by this section shall be charged to and assessed against the violating Owner.

7.02 INVOLUNTARY SALE: Subject to the provisions of Section 7.05, if any Owner (either by his own conduct or by the conduct of any Resident or occupant of a Unit) shall violate any of the covenants or restrictions or provisions of this Declaration, the By-Laws, or the rules or regulations adopted by the Board, and such violations shall not be cured within thirty (30) days after notice in writing from the Board, or shall re-occur more than once thereafter, then the Board shall have the power to issue to said defaulting Owner a 10-day notice in writing to terminate the rights of said defaulting Owner to

continue as an Owner and to continue to occupy, use or control his Unit, and thereupon an action may be filed by the Board against said defaulting Owner for a decree declaring the termination of said defaulting Owner's right to occupy, use or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Condominium Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and other terms as the court shall determine equitable. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Owner in the decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit 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 Unit so purchased subject to this Declaration.

7.03 FORCIBLE DETAINER: In the event that an Owner is delinquent in payment of his proportionate share of the Common Expenses or any other charges or payments required to be paid by the Owner hereunder, the Board shall have the right to take possession of the Owner's Unit and to maintain for the benefit of all other Owners an action for possession in the manner prescribed by "An Act in Regard to Forcible Entry and Detainer" (as may be recodified), as provided in the Act.

7.04 OTHER REMEDIES OF THE BOARD: In addition to or in conjunction with the remedies set forth above, in the event of a violation by an Owner of the Act, this Declaration, the By-Laws, or rules and regulations of the Board, the Board may levy reasonable fines or 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.

7.05 ENFORCEMENT BY THE BOARD: Prior to the imposition of any fine and concurrently with the sending of a notice described in Section 7.01 and 7.02, the Board shall notify the Owner or Resident, as the case may be, in writing of the violation of the rule or regulation and the Board's proposed remedy. Any Owner or Resident who receives such notice may, within three (3) days after receipt of such notice, demand a hearing before the Board or its authorized committee. At such hearing a member of the Board shall present to the Owner or Resident the grounds for the notice and the Owner or Resident shall have an opportunity to challenge such grounds and to present any evidence

on his behalf subject to such reasonable rules of procedure as may be established by the Board or its authorized committee, which rules shall adhere to the generally accepted standards of due process. If the Owner or Resident demands a hearing as herein provided, such hearing shall be held within four (4) days after the Board receives the demand and no action shall be taken by the Board until the hearing has been held and notice of the decision of the Board or its authorized committee and the terms thereof has been delivered to the Owner or Resident. The decision of the Board or its authorized committee shall be rendered within three (3) days after the hearing and such decision shall be final and binding on the parties.

7.06 COSTS AND EXPENSES: All expenses incurred by the Board in connection with the enforcement of the provisions of this Declaration or in connection with the exercise of its rights and remedies under this Article, including without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the contract rate of interest then permitted in Illinois until paid but not to exceed eighteen percent (18%) per annum, shall be charged to and assessed against the defaulting Owner, and the Condominium Association shall have a lien for all the same upon such Owner's Unit Ownership, as provided in Section 6.01.

7.07 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder 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 EIGHT Annexing Additional Property

8.01 IN GENERAL: Declarant reserves the right, from time to time prior to ten (10) years from the date of Recording of this Declaration, to add portions of the Development Area to the Condominium Property and submit such portions to the Act and this Declaration by Recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided. For the purposes of this Article, any portion of the Development Area which is made subject to the Act and this Declaration as part of the Condominium Property by a Supplemental Declaration shall be referred to as "Added Property", any Units in the Added Property shall be referred to as "Added Units". In making Added Property subject to the Act and this Declaration, the following shall apply:

(a) Added Property may be made subject to the Declaration at different times; there is no limitation on the order in which Added Property may be made subject to this Declaration; and no particular portion of the Development Area must be made subject to this Declaration. Without limiting the foregoing, portions of a Building may be made part of the Condominium Property on a floor by floor basis.

(b) The maximum number of Units which may be made subject to this Declaration is 100.

(c) Any Added Units which are made subject to this Declaration pursuant to this Article shall be compatible with or of substantially the same style, floor plan, size and quality as the Units planned to be made subject to this Declaration, as shown on Declarant's then current plan for the condominium.

8.02 POWER TO AMEND: In furtherance of the foregoing, Declarant reserves the right to Record a Supplemental Declaration, at any time and from time to time prior to ten (10) years from the date of Recording of the Declaration, which amends Exhibits B, C and D hereto, subject to the following limitations:

(a) Exhibit B may only be amended to add portions of the Development Area to Exhibit B;

(b) Exhibit C may only be amended so that the Plats which make up Exhibit C describe all of the Condominium Property, including the Added Property, identify every Unit, including the Added Units, as provided by the Act;

(c) Exhibit D may only be amended to reflect the addition of the Added Units, to assign to each Added Unit an Undivided Interest, and to reassign an Undivided Interest to each Unit shown on Exhibit D immediately prior to the Recording of such Supplemental Declaration. It is currently anticipated that 100 Units may be made subject to this Declaration as part of the Condominium Property. The Undivided Interest of each Unit, including each Added Unit, shall be determined based on the relative value of the Unit as required under the Act.

8.03 EFFECT OF AMENDMENT: Upon the Recording of a Supplemental Declaration by the Declarant which makes Added Property subject to this Declaration, as provided in this Article, then:

(a) The restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property (including the Added Units) and inure to the benefit of and be the personal obligation of the Owners of Added Units in the same manner, to the same extent, and with the same force and effect that this Declaration applies to the Condominium Property and Owners of Units which were initially subjected to this Declaration;

(b) Every Person who is an Owner of an Added Unit shall be a member of the Condominium Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of existing Units;

(c) Until the effective date of the next annual or revised budget, each Owner of an Added Unit shall pay a monthly assessment equal to the ratio of the Undivided Interest of the Added Unit to the Undivided Interest of an existing Unit multiplied by the monthly assessment then in effect with respect to the existing Unit; provided, that, the Owner of an Added Unit shall not be required to pay any installment of a special assessment levied to cover a deficit under a prior year's budget;

(d) The amount of the lien for assessments, charges or payments levied against an existing Unit Ownership prior to the Recording of the Supplemental Declaration shall not be affected.

8.04 PARTIAL BUILDING: If from time to time or at any time not all of a Building (“Unfinished Building”) is made part of the Condominium Property, then until the balance of the Unfinished Building is made part of the Condominium Property, the following shall apply:

(a) The portion or portions of the Unfinished Building which are not yet part of the Condominium Property will be referred to herein as the “Unadded Portions of the Building”.

(b) Declarant shall be responsible for maintaining, repairing, replacing and operating, at its own expense, the Unadded Portions of the Building including portions thereof which serve both the Condominium Property and Unadded Portions of the Building; provided, however, that the Condominium Association shall provide for the maintenance of the elevators and related equipment which serve the Unfinished Building.

(c) The Declarant, as owner of the Unadded Portions of the Building, shall have a non-exclusive easement of access over and across the Common Elements to and from the Unadded Portions of the Building.

(d) The Condominium Association and each Owner shall have a non-exclusive easement over the corridors, stairways and elevators shafts and elevators located in the Unadded Portions of the Building for access to and from the Condominium Property.

(e) Each Owner, the Declarant, and the Condominium Association shall have a non-exclusive easement in and to all structural members, footings, caissons, foundations, columns and beams which are part of the Unfinished Building for support of improvements and structures which are part of the Unfinished Building.

(f) At any time or from time to time the Condominium Property may share a common wall, floor divider or other barrier with improvements which are part of the Unadded Portions of the Building. Any such common wall, floor divider or other barrier shall constitute and be a “Party Wall” and the Condominium Association and Declarant (each “Adjacent Entities”) shall have the obligation and be subject to the provisions of this Section and, to the extent not inconsistent herewith, the general rules of law regarding party walls. Each Adjacent Entity shall have the right to use the Party Wall for support of the structure constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit and ducts originally located therein and all replacements thereof. If any Party Wall is damaged or destroyed by reason of any act or omission committed or caused, or resulting from a condition existing, caused or permitted to exist, by an Adjacent Entity whether such act, omission or condition is the result of willfulness, neglect or accident, such Adjacent Entity shall diligently proceed to rebuild or repair the Party Wall to as good a condition as in which

such Party Wall existed prior to such damage or destruction, without costs therefor to the other Adjacent Entity, as promptly as is reasonably possible. Any Party Wall damaged or destroyed by some act, event or condition, other than as above described, shall be rebuilt or repaired by both Adjacent Entities to as good a condition as in which such Party Wall existed prior to such damage or destruction at the joint and equal expense of such Adjacent Entities, and as promptly as is reasonably possible. If an Adjacent Entity proposes to modify or otherwise make additions to the structure of a Party Wall in any manner which requires the extension, alteration or modification of the Party Wall, it shall first obtain the written consent of the other Adjacent Entity; provided that the Declarant shall have the right and power to modify any Party Wall as it deems appropriate, without the approval of any Adjacent Entity.

(g) The Declarant shall maintain insurance against loss or damage by fire and other risks and hazards in an amount not less than the full insurable replacement cost of improvements in the Unadded Portions of the Building, which may be what is commonly referred to as “builder’s risk” insurance.

(h) In consideration of the Condominium Association furnishing the maintenance provided for in Section 3.01 and paying the cost of furnishing water, sewer, electricity, heating, air conditioning and other utility services to the Unfinished Building, including the Unadded Portions of the Building, the Declarant shall pay certain amounts to the Condominium Association as provided in this Subsection. For purposes hereof a “Shared Cost” shall include any of the following costs which are not separately metered or charged to the Declarant with respect to the Unadded Portions of the Building from time to time: the cost of water service, sewer service, electricity, heat, air conditioning and other utility services. The Declarant shall pay to the Condominium Association the Cost Sharing Percentage (defined below) of each Shared Cost based on the Cost Sharing Percentage in effect when each Shared Cost is incurred, regardless of when the Shared Cost is paid. For purposes hereof, the Cost Sharing Percentage shall be seventy-five percent (75%) from the initial Recording hereof until 50 Units in the Unfinished Building are part of the Condominium Property, fifty percent (50%) from such time as 50 Units in the Unfinished Building are part of the Condominium Property until 25 Units are part of the Condominium Property in the Unfinished Building, twenty-five percent (25%) from such time as 25 Units are part of the Condominium Property until all Units in the Unfinished Building are part of the Condominium Property; provided that, in any event, the Cost Sharing Percentage for an Unfinished Building shall be zero from and after such time as all of the Units in the Unfinished Building are part of the Condominium Property.

(i) With respect to an Unfinished Building, all Unadded Portions of the Building shall be made part of the Condominium Property within five (5) years after the first portion of the Unfinished Building is made part of the Condominium Property.

ARTICLE NINE
Amendments

9.01 SPECIAL AMENDMENT: Declarant reserves the right and power to Record a special amendment (“Special Amendment”) to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of Fannie Mae, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, 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, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee First Mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act, (iv) to correct errors, omissions, inconsistencies or ambiguities in this Declaration or any Exhibit thereto or any supplement or amendment thereto, (v) to amend Exhibit A to include additional real estate and to amend Sections 1.30(a) and 8.01(b) to reflect the fact that additional Units may be added to the Condominium Property, (vi) to grant easements and provide for cost sharing arrangements with respect to Common Elements which will serve another condominium located on the Development Area, (vii) to amend Sections 1.30(a) and 8.04(h) and to reflect the fact that there will be just one building in the Condominium, and (viii) to include the easement recording information in Section 1.03. 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 terminate at such time as the Declarant no longer holds or controls title to a portion of the Development Area.

9.02 AMENDMENT BY OWNERS: Subject to the provisions of Article Eight, Section 9.01 and Article Ten, and except as otherwise provided in Sections 5.06 and 5.07 and the Act, the provisions of this Declaration may be amended, modified, enlarged or otherwise changed in whole or in part by the affirmative vote of Voting Members (either in person or by proxy), or by an instrument executed by Owners, representing at least sixty-seven percent (67%) of the Undivided Interests; except that (i) the provisions relating to the rights of Declarant may be amended only upon the written consent of the Declarant, (ii) the provisions of Article Ten and the provisions of this Article may be amended only with the written consent of Eligible Mortgagees as provided in Section 10.02 and (iii) the provisions relating to the rights of the Municipality as set forth in Article Thirteen and elsewhere herein may be amended only with the written consent of the Municipality. No amendment shall become effective until Recorded.

ARTICLE TEN Rights of First Mortgagees

10.01 NOTICE TO FIRST MORTGAGEES: Each Owner shall notify the Condominium Association of the name and address of his First Mortgagee or its servicing agent, if any,

and shall promptly notify the Condominium Association of any change in such information. The Condominium Association shall maintain a record of such information with respect to all Units. Each First Mortgagee shall have the right to examine the books and records of the Condominium Association at any reasonable time and to have an audited statement of the Condominium Association's operations prepared for a fiscal year at its own expense. Upon the specific written request of a First Mortgagee to the Board, the First Mortgagee shall receive some or all of the following as designated in the request:

- (a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Condominium Association to the Owner of the Unit covered by the First Mortgagee's First Mortgage;
- (b) Any audited or unaudited financial statements of the Condominium Association which are prepared for the Condominium Association and distributed to the Owners;
- (c) Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;
- (d) Notice of any proposed action which would require the consent of a specified percentage of Eligible Mortgagees pursuant to Section 10.02;
- (e) Notice of the decision of the Owners to make any material amendment to this Declaration, the By-Laws, or the Articles of Incorporation of the Condominium Association;
- (f) Notice of substantial damage to or destruction of any Unit (in excess of \$1,000) or any part of the Common Elements (in excess of \$10,000);
- (g) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Condominium Property;
- (h) Notice of any default of the Owner of the Unit which is subject to the First Mortgagee's First Mortgage, where such default is not cured by the Owner within thirty (30) days after the giving of notice by the Condominium Association to the Owner of the existence of the default; or
- (i) The right to be treated as an "Eligible Mortgagee" for purposes of Section 10.02.
- (j) Copies of any written notice received by the Association of lapse, cancellation or material change in any insurance policy or fidelity bond carried by the Condominium Association.

The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Condominium Association. Failure of the Condominium Association to provide any of

the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Condominium Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees of the same Unit Ownership, the Condominium Association shall honor the most recent request received.

10.02 CONSENT OF ELIGIBLE MORTGAGEES:

(a) In addition to any requirements or prerequisite provided for elsewhere in this Declaration, the consent of Eligible Mortgagees holding, in the aggregate, First Mortgages on at least sixty-seven percent (67%) of the Unit Ownerships (by number) which are subject to First Mortgages held by Eligible Mortgagees will be required for the Condominium Association to do or permit to be done any of the following:

(1) Adoption of an amendment to this Declaration which changes or adds to provisions of the Declaration relating to (i) voting rights; (ii) assessments, assessment liens, or the priority of assessment liens; (iii) reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (vi) redefinition of any Unit boundaries; (vii) convertibility of Units into Common Elements or Common Elements into Units; (viii) insurance or fidelity bond requirements; (ix) leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his Unit;

(2) The abandonment or termination of the condominium;

(3) The partition or subdivision of a Unit;

(4) The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements, (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Condominium Property and except for the encumbrance, sale or transfer of an Undivided Interest in connection with the encumbrance, sale or transfer of a Unit Ownership);

(5) The sale of the Condominium Property;

(6) The removal of a portion of the Condominium Property from the provisions of the Act and this Declaration;

(7) The effectuation of a decision by the Condominium Association to terminate professional management and assume self-management of the condominium when professional management had been required hereunder or by an Eligible Mortgagee; or

(8) Restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than as specified in this Declaration or the use of hazard

insurance proceeds for losses to the Condominium Property (whether to Units or to the Common Elements) for other than the repair, replacement, or reconstruction of the damaged portion of the Condominium Property;

provided, that, such consent of Eligible Mortgagees will not be required with respect to any action under (1) through (8) above which is permitted under Article Eight hereof.

(b) Whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the Eligible Mortgagee within thirty (30) days after making the request for consent by Registered or Certified Mail, Return Receipt Requested.

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

10.04 ADMINISTRATOR APPROVALS: Anything herein to the contrary notwithstanding, whenever this Declaration or the By-Laws provide for the approval or consent of the Department of Veteran's Affairs ("VA"), such approval or consent shall not be required unless the VA (a) has issued its condominium project approval of the Condominium Property and such project approval has not terminated, (b) has issued a guarantee of the First Mortgage on at least one Unit which guarantee is then outstanding, (c) is the owner or holder of a First Mortgage on a Unit or (d) is the Owner of a Unit. Whenever required, such approval or consent shall be deemed granted unless the party seeking the consent or approval is advised to the contrary in writing within thirty (30) days of making the request for consent or approval.

ARTICLE ELEVEN Declarant's Reserved Rights

11.01 IN GENERAL: In addition to any rights or powers reserved or granted to the Declarant under the Act, this Declaration or the By-Laws, the Declarant shall have the rights and powers set forth in this Article. In the event of a conflict between the provisions of this Article and any other provisions of this Declaration or the By-Laws, the provisions of this Article shall govern. Except as otherwise provided in this Article, the rights of Declarant under this Article reserved or granted shall terminate at such time as

the Declarant is no longer vested with nor in control title to any portion of the Development Area.

11.02 PROMOTIONAL EFFORTS: The Declarant shall have the right and power, within its sole discretion, to (i) construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Condominium Property as the Declarant may, from time to time, determine to be necessary or advisable, (ii) construct and maintain model units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable and to use such model units (including model units which are sold by and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Units on the Condominium Property or at other properties in the general location of the Condominium Property which are being offered for sale by the Declarant or any of its affiliates, without the payment of any fee or charge whatsoever to the Condominium Association. Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Elements, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any Units owned by it to any person or entity which it deems appropriate in its sole discretion and it need not comply with the provisions of Sections 2.12 or 3.20.

11.03 CONSTRUCTION: Declarant, its agents and contractors shall have the right to come upon the Condominium Property to construct improvements thereon and to make alterations, repairs or improvements to the Condominium Property or the portions of the Development Area not made part of the Parcel and shall have the right to maintain a construction office and store equipment and materials used in connection with such work on the Condominium Property or the portions of the Development Area which have not yet been made part of the Parcel without payment of any fee or charge whatsoever. The rights of the Declarant reserved or granted under this Section shall terminate at one (1) year from such time as the Declarant no longer holds or controls title to a portion of the Development Area.

11.04 CONTROL OF BOARD: Until the initial meeting of the Owners (which shall occur no later than the Turnover Date) and the election of the initial Board as provided for in the By-Laws, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act, this Declaration or the By-Laws shall be held and performed by the Declarant. The Declarant may hold and perform such rights and obligations through the Board which, prior to the Turnover Date, shall consist of three (3) individuals designated by the Declarant from time to time. Prior to the Turnover Date the Declarant may appoint from among the Owners non-voting counselors to the Board who shall serve at the discretion of the Declarant.

ARTICLE TWELVE Dispute Resolution

12.01 CONSENSUS FOR ACTION BY THE CONDOMINIUM ASSOCIATION:

(a) Except as provided in this Section, the Condominium Association may not commence a legal proceeding or an action under this Article without the affirmative vote of at least seventy-five percent (75%) of the Voting Members. A Voting Member representing Units owned by Persons other than the Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds of the total number of Units represented by the Voting Member. This Section shall not apply, however, to (i) actions brought by the Condominium Association to enforce the provisions of the Act, this Declaration (including, without limitation, the foreclosure of liens), the By-Laws and reasonable rules and regulations adopted by the Board; (ii) the imposition and collection of Annual Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Condominium Association in proceedings instituted against it.

(b) Prior to the Condominium Association or any member commencing any proceeding to which Declarant is a Party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the members, or the particular member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

12.02 ALTERNATIVE METHOD FOR RESOLVING DISPUTES: Declarant, its officers, directors employees and agents; the Condominium Association, its officers, directors and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a “Bound Party”) agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those Claims, grievances or disputes described in Section 12.03 (collectively, “Claims”) to the procedures set forth in Section 12.04.

12.03 CLAIMS: Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the provisions of the Act, this Declaration, the By-Laws and reasonable rules and regulations adopted by the Board or the rights, obligations and duties of any Bound Party under the provisions of the Act, this Declaration, the By-Laws and reasonable rules and regulations adopted by the Board, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 12.04 and, if applicable, the dispute resolution provisions of the purchase agreement for the purchase of a Unit (“Purchase Agreement”). In the event of an inconsistency or contradiction between the provisions relating to dispute resolution as set forth in this Declaration and those which are set forth in the Purchase Agreement, the provisions of the Purchase Agreement shall prevail.

Notwithstanding the foregoing, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.04:

(a) any suit by the Condominium Association against any Bound Party to enforce the provisions of Article Six;

(b) any suit by the Condominium Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Condominium Association's ability to act under and enforce the provisions of Article Three;

(c) any suit between or among Owners, which does not include Declarant or the Condominium Association as a Party, if such suit asserts a Claim which would constitute a cause of action independent of the provisions of the Act, this Declaration, the By-Laws and reasonable rules and regulations adopted by the Board; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.04.

12.04 MANDATORY PROCEDURES:

(a) Notice. As a condition precedent to seeking any action or remedy, a Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the defect or default, if any, in detail and the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (Le., the specific authority out of which the Claim arises);

(iii) the proposed remedy;

(iv) any evidence that depicts the nature and cause of the Claim and the nature and extent of repairs necessary to remedy the Claim, including expert reports, photographs and videotapes; and

(v) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

Notices given to Respondent pursuant to this Section shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the last known address of the Respondent as it appears on the records of the Condominium Association on the date of mailing.

(b) Claims Involving Declarant. With respect to any Claim to which the Declarant is the Respondent:

(i) Right to Inspect. Claimant agrees to permit Declarant and its agents to perform inspections and tests and to make all repairs and replacements deemed necessary by Declarant to respond to the Claim. Declarant shall have the Cure Period (defined below) to inspect and correct any alleged default. Declarant shall be given a reasonable opportunity to perform all inspections and tests and make all repairs and/or replacements deemed to be necessary by Declarant.

(ii) Right to Cure. Declarant shall have the right to repair, replace or pay the Claimant the reasonable cost of repairing or replacing any defective item. Unless otherwise provided by law or agreed by the Parties, Declarant or Condominium Association, as the case may be, shall have not less than 35 days nor more than 90 days from receipt of the Notice (the "Cure Period") to cure as provided herein or to otherwise respond to the Claimant in the event that the Declarant determines that no default has occurred and/or default exists. A Claimant shall have no right to bring any action against the Declarant until expiration of the Cure Period. The Cure Period shall be extended by any period of time that Claimant refuses to allow Declarant to perform inspections and/or perform tests as provided in subsection 12.04(b)(i). Declarant shall have the right, but not the obligation, to take action during the Cure Period and/or respond to any notice received from Claimant.

(iii) Time. The time periods provided for the inspection and cure by Declarant shall be extended by any period of time that Claimant refuses to allow Declarant to make inspections, tests, repairs and/or replacements. Any inspection, test, repair or replacement performed on a business day between 9 a.m. and 5 p.m. shall be deemed to be reasonable hereunder.

(iv) Dispute Resolution. Any dispute (whether contract, warranty, tort, statutory or otherwise), including, but not limited to (a) any and all controversies, disputes or claims arising under, or related to, the Purchase Agreement, the Unit, or any dealings between the Declarant and Owner (with the exception of "consumer products" as defined by the Magnuson-Moss Warranty-Federal Trade Commission Act, 15 U.S.C. Section 2301 et seq., and the regulations promulgated thereunder), (b) any controversy, dispute or claim arising by virtue of any representations, promises or warranties alleged to have been made by Declarant or Declarant's representative, and (c) any personal injury or property damage alleged to have been sustained by Purchaser on the Property (hereinafter individually and collectively referred to as "disputes" or "Claims"), shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided in Paragraphs 12.04(c) and 12.04(d) below and as provided by the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) or applicable state law relating to arbitration and not by or in a court of law.

(v) Small Claims Court. Notwithstanding the requirement of arbitration, Claimant shall have the option, after mediation to seek relief in a small claims court for disputes or Claims within the scope of the court's jurisdiction in lieu of proceeding with arbitration.

(vi) Mediation Fees. Declarant shall pay for one (1) day of mediation (mediator fees plus any administrative fees relating to the mediation). Any mediator and associated administrative fees incurred thereafter shall be shared equally by the Parties.

(vii) Arbitration Fees. The fees for any claim in an amount of \$10,000 or less shall be apportioned as provided in applicable AAA rules. Unless provided otherwise by applicable AAA rules, for claims that exceed \$10,000, the filing Party shall pay up to the first \$750 of any initial filing fee to initiate arbitration. Under the following conditions, Declarant agrees to pay up to the next \$2,000 of any initial filing fee: (1) Claimant has participated in mediation prior to initiating the arbitration; (2) the parties have mutually agreed to waive mediation; or (3) Declarant files for arbitration under Paragraph (d)(i) below. The portion of any filing fee not covered above, and any case service fee, management fee or fees of arbitrator(s), shall be shared equally by the Parties.

(viii) Declarant and Claimant agree that notwithstanding anything to the contrary, the rights and obligations set forth in this Article Twelve shall survive (1) the closing of the sale of the Unit; (2) the termination of the Purchase Agreement by either party; or (3) the default of the Purchase Agreement by either party. The waiver or invalidity of any portion of this paragraph shall not affect the validity or enforceability of the remaining portions of this paragraph. Declarant and Claimant further agree (1) that any dispute involving Declarant's affiliates, directors, officers, employees and agents shall also be subject to mediation and arbitration as set forth herein, and shall not be pursued in court of law; (2) that Declarant may, at its sole election, include its sub-contractors and suppliers, as well as any warranty company and insurer as parties in the mediation and arbitration; (3) that the mediation and arbitration will be limited to the parties specified herein.

(c) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 90 days after the date of the Notice and the Cure Period has expired (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), either Party shall have 30 days from the date of Termination of Negotiations to submit the Claim to mediation. The mediation shall be filed with and administered by the American Arbitration Association ("AAA") in accordance with the AAA's Supplementary Mediation Procedures for Residential Construction Disputes in effect on the date of the Notice. If there are no Supplementary Mediation Procedures for Residential Construction Disputes currently in effect, then the AAA's Construction Industry Mediation Rules in effect on the date of the Notice shall be utilized. Unless mutually waived in writing by the Parties, submission to mediation is a condition precedent to either Party taking further action with regard to the Claim.

(iii) If a Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, then the Claimant shall be deemed to have waived the Claim, and the Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that the mediation was terminated.

(d) Binding Arbitration.

(i) Upon Termination of Mediation, either Party shall thereafter be entitled to initiate binding arbitration of the Claim under the auspices of AAA in accordance with the AAA’s Supplementary Arbitration Procedures for Residential Construction Disputes in effect on the date of the Notice. If there are no Supplementary Arbitration Procedures for Residential Construction Disputes in effect, then the AAA’s Construction Industry Arbitration Rules in effect on the date of such Notice shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless the Parties agree otherwise, Claims in excess of \$10,000 but less than \$500,000 shall utilize the Regular Track Procedures of the Construction Industry Arbitration Rules, as modified by the Supplementary Arbitration Procedures for Residential Construction. If the Claim amount exceeds \$250,000 or includes a demand for punitive damages, the Claim shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(ii) At the request of any Party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the Parties.

(e) Costs and Expenses. Except as otherwise provided under subparagraph 12.04(b) above, each Party shall bear its own costs and expenses, including attorney’s fees, for any mediation and arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys fees and expenses incurred in defending such contest. In addition, if a Party fails to abide by the terms of a mediation settlement or arbitration award, the other Party shall be awarded reasonable attorneys fees and expenses incurred in enforcing such settlement or award.

12.05 AMENDMENT OF ARTICLE: Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

ARTICLE THIRTEEN
Rights of the Municipality

13.01 IN GENERAL: In addition to any rights, powers, or easements granted to the Municipality elsewhere in this Declaration, the Municipality shall have the rights, powers, and easements set forth in this Article.

13.02 ENFORCEMENT: The Municipality is hereby granted the right, but not the obligation, to enforce covenants and obligations of the Association or the Owners. If the Association or one or more Owners fail to comply with any such covenants and obligations, the Municipality shall have the right (but shall not be obligated) to give notice to the Association or the offending Owner or Owners of its, his or their failure to perform its, his or their obligations. If such notice is given and the Association or the offending Owner or Owners do not perform to the satisfaction of the Municipality within thirty (30) days after the giving of such notice, then the Municipality may (but shall not be obligated to) enter upon the Condominium Property and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Municipality. The Association or the offending Owner or Owners shall, upon demand, reimburse the Municipality for the reasonable cost of such work and if payment is not made within thirty (30) days after demand, then the amount due, plus reasonable costs of collection, including reasonable attorneys' fees, shall become a lien on the property of the offending Owner or Owners or, in the case of the Association, the property of the Association; provided, however, that such lien shall be subordinate to the lien of any First Mortgage on a Unit Ownership Recorded prior to the date on which any such cost becomes a lien against the Unit Ownership as provided above.

13.03 MAINTENANCE: The Association shall maintain the Common Elements in compliance with all applicable laws and ordinances of the Municipality and all governmental bodies having jurisdiction over the Property, as such laws and ordinances may be amended and enforced from time to time. The Association shall maintain the Common Elements, Association Maintained Sidewalk and Access Drive in compliance with this Declaration.

ARTICLE FOURTEEN
Miscellaneous

14.01 SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions and reservations, by legislation, judgment or court order shall not affect any liens, charges, rights, benefits and privileges and other provisions of this Declaration, which shall remain in full force and effect.

14.02 NOTICES: Except as otherwise provided in Article Twelve, any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if (i) mailed, postage prepaid, to his or its last known address as it appears on the records of the Condominium Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or e-mail address as either appear on the records of the Condominium Association at the time of such transmittal, or (iii) when personally delivered to his or its Unit. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

14.03 CAPTIONS/CONFLICTS: The Article and Section headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between the statements made in the recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions contained in the body of this Declaration shall govern.

14.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the living lawful descendants of George Bush, the former President of the United States at the time of Recording of this Declaration.

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

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

14.07 WAIVER OR 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 be able to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

Dated: November 9, 2004

DECLARANT:
CONCORD HOMES, INC., a Delaware corporation