

# Condominium Documents and By-Laws

## Northwestern Terra Cotta Condominium Association



**Rule Change 6.05** Records of the Association. (e) financial reporting changed September 23, 2004

This document was created from a second or third generation Xerox copy of the *Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for Northwestern Terra Cotta Condominium Association WJP0304 09/27/89 2031* via OCR scanning technology. The original document is lost. In 2002, the Board of Managers attempted to locate an original copy of the document, with no success.

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**Declaration of Condominium Ownership and of  
Easements, Restrictions, Covenants and By-Laws for  
Northwestern Terra Cotta Condominium Association**

THIS DECLARATION is made and entered into by Bank of Ravenswood, as Trustee under Trust Agreement dated September 26, 1.988 and known as Trust No. 25-9548 hereinafter referred to as the “Declarant”):

**WITNESSETH:**

**WHEREAS**, the Declarant holds legal title to the parcel of real estate situated in the City of Chicago, Cook County, Illinois (hereinafter called the “Parcel”) and legally described on Exhibit A attached hereto and by this reference made a part hereof: and

**WHEREAS**, the Declarant desires and intends by this Declaration to submit the Property, as hereinafter defined, to the provisions of the Condominium Property Act of the State of Illinois. as amended from time to time hereinafter called the “Act”): and is further desirous of establishing, for its own benefit and that of all future owners or occupants of the Property, and each part thereof, certain easements and rights in. over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the use and maintenance thereof: and

**WHEREAS**, the name of the condominium shall be “Northwestern Terra Cotta Condominium Association”: and

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

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

# Article I

## Definitions

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

- 1.01 **Declaration.** This instrument by which the Property is submitted to the provisions of the Act, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.
- 1.02 **Parcel.** The entire tract of real estate above described, submitted to the provisions of the Act.
- 1.03 **Building.** The buildings located on the Parcel, forming a part of the Property and containing the Units, as hereinafter defined, as shown by the survey depicting the respective floors of said Building.
- 1.04 **Property.** All the land, property and space comprising the Parcel, all improvements and structures erected, constructed or contained therein or thereon, including the Building, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, as hereinafter defined, submitted to the provisions of the Act.
- 1.05 **Unit.** A part of the Property within the Building, including one or more rooms and one (1) or two (2) Unit Parking Spaces, as hereinafter defined, occupying one or more floors or a part or parts thereof, designed and intended for a one-family dwelling, or such other uses permitted by this Declaration, and more specifically described hereafter in Article II.
- 1.06 **Common Elements.** All portions of the Property except the Units, more specifically described in Section 3.01 hereof.
- 1.07 **Limited Common Elements.** A portion of the Common Elements so designated in this Declaration or on the Plat, as hereinafter defined, as being reserved for the use of a certain Unit or Units to the exclusion of other Units. Any portion of the Common Elements which by the terms of this Declaration or by its nature or location is clearly intended to serve exclusively a certain Unit or Units (but less than all of the Units) or the owner or owners thereof shall be deemed a Limited Common Element.
- 1.08 **Unit Ownership.** A part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.
- 1.09 **Person.** A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

- 1.10 **Unit Owner.** The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit Ownership.
- 1.11 **Occupant.** Person or persons, other than a Unit Owner, in possession of a Unit.
- 1.12 **Unit Parking Space.** A fully enclosed garage parking space located on the Property and designated for use by the Unit Owner and Occupants of a single Unit. The term “Unit” as used herein shall be deemed to include the Unit Parking Space designated for use by the Unit Owner and Occupants of such Unit, except as otherwise provided herein. Unit C shall be the only Unit to include two (2) Unit Parking Spaces.
- 1.13 **By-Laws.** The provisions for the administration of the Property including, but not limited to, assessment, maintenance, use, occupancy, sale, leasing and alienation, all as hereinafter set forth, or as the same may be from time to time duly amended. Articles V, VI and VII hereof shall constitute the By-Laws of the Association.
- 1.14 **Association.** Northwestern Terra Cotta Condominium Association, an Illinois not-for-profit corporation.
- 1.15 **Majority of the Unit Owners.** Those Unit Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate of the entire undivided ownership interest in the Common Elements. Any specified percentage of the Unit Owners shall mean those Unit Owners who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the Common Elements.
- 1.16 **Board.** The parties determined pursuant to Article V hereof, and who are vested with the authority and responsibility of administering the Property.
- 1.17 **Common Expenses.** The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board, including, without limitation, the expenses of maintenance, repair, administration and operation of the Common Elements.
- 1.18 **Developer.** Terra Cotta Associates Limited Partnership, an Illinois limited partnership, its successors and assigns.
- 1.19 **Plat.** The plat of survey of the Parcel and all of the Units in the Property submitted to the provisions of the Act, said Plat being attached hereto as Exhibit A and made a part hereof and recorded with the recording of this Declaration.
- 1.20 **Voting Member.** One person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners, excluding those members of the Board of Directors designated by the Developer or Declarant.
- 1.21 **Declarant.** Bank of Ravenswood, as Trustee under Trust Agreement dated September 26,

1988 and known as Trust No. 25-9548, its successors and assigns.

## Article II

### Units

#### 2.01 Description and Ownership.

- (a) All Units are delineated on the Plat and listed on Exhibit B and shall have lawful access to a public way.
- (b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes set forth in the delineation thereof on Exhibit A including, without limitation, pipes, ducts, flues, chutes, conduits, wires, and other utility, heating, cooling or ventilation systems or equipment to the extent and only to the extent serving only such Unit; and (anything herein to the contrary notwithstanding) excluding all structural components of the Building, the term “structural components” including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through the Unit and forming a part of any system serving more than the Unit, or any components of communication or master antenna systems, if any, located in the Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on Exhibit A. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on Exhibit A, and every such description shall be deemed good and sufficient for all purposes.
- (c) Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit A.
- (d) To the extent such data is available to the Declarant at the time this Declaration is filed, the Plat sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (1) the Parcel and its exterior boundaries: (2) every Building and each floor thereof: and (3) each Unit in every Building and said Unit’s horizontal and vertical dimensions. However, the Declarant hereby reserves unto itself and the Developer, the right, from time to time, as further data becomes available, to amend the Plat so as to set forth the measurements, elevations, locations and other data required by the Act, with respect to the Building and the Units now or hereafter constructed on the Parcel.

In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, acting by or through its duly authorized officers, its successors, or its designee, and to the Developer, and their agents, and each of them singly, as

attorney-in-fact, to amend the Plat, as described above. without notice to any Unit Owner, Each deed, mortgage or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgment of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Plat, as described above.

- 2.02 **Certain Structures Not Constituting Part of a Unit.** Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the Building, including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through his Unit and forming a part of any system serving more than his Unit, or any components of communication systems, if any, located in his Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit.
- 2.03 **Real Estate Taxes.** It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements as provided in the Act: provided, however, until such time as separate real estate tax bills are issued with respect to each Unit, the real estate taxes imposed on the Property shall be included in the Common Expenses assessed pursuant to this Declaration.

## Article III

### Common Elements

- 3.01 **Description.** The Common Elements shall consist of all portions of the Property, except the Units, and including the Limited Common Elements, unless otherwise expressly specified herein. The Common Elements include, without limitation, any of the following items located at the Property: the land, foundations, walls, entrances and exits, hallways, mail boxes, roof, master television antenna system (whether leased or owned), if any, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), public utility lines, structural parts of the Building, streets, outside walks and driveways, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. Any references to "Common Elements" appearing on the Plat (except references to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way.
- 3.02 **Ownership of Common Elements.** Each Unit Owner shall be entitled to the percentage

of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in Exhibit B attached hereto. The percentages of ownership interests set forth in Exhibit B have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, except as specifically permitted under the Act or the Declaration, without unanimous written consent of all Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separate from the percentage of ownership in the Common Elements corresponding to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

3.03 **The Limited Common Elements.** The Limited Common Elements are such parts of the Common Elements serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, as designated as such in this Declaration, including in the Plat, or which by the nature or location thereof, or by the terms of this Declaration, are clearly intended to be reserved for or for the use of one or more Units to the exclusion of other Units. The Limited Common Elements appertaining to, or designated or reserved for or for the use of, or serving any Unit (alone or in conjunction with other Units) are hereinafter from time to time referred to as the Limited Common Elements of such Unit. Limited Common Elements shall include, but shall not be limited to, the following: (a) balconies, patios or side yard serving exclusively a single Unit; (b) the interior surface of the perimeter walls, ceilings and floors which define the boundary planes of a unit; (c) perimeter doors and windows which serve exclusively a single Unit; (d) any system or component part thereof (including, without limitation, the furnaces, boilers, fittings, housings, ducts, flues, shafts, electrical wiring, conduits and the areas or rooms containing them) which serves a Unit exclusively, to the extent that such system or component part is located outside the boundaries of a Unit; (e) interior entry ways; (f) that portion of the driveway adjacent to a Unit Parking Space which serves exclusively that Unit Parking Space; (g) that portion of the roof constituting a deck serving exclusively a single Unit; and (h) the roof on top of the Unit Parking Space owned by the Unit Owner of Unit A and the roof on top of the Unit Parking Space owned by the Unit Owner of Unit B, along with reasonable means of access to such roofs through the interior of the Unit Parking Spaces.

3.04 **Use of the Limited Common Elements.** Each Unit Owner and Occupant shall have the right to (a) exclusive use and possession of the Limited Common Elements serving exclusively the Unit of such Unit Owner or Occupant, which right shall be appurtenant to and shall run with title to such Unit, and shall not be separated from such Unit, and (b) the use and possession of the Limited Common Elements serving the unit of such Unit Owner or Occupant in common with one or more (but not all) other Units. which use and

possession shall be to the exclusion of all other persons except the Unit Owner and Occupant of any such other Unit to which such Limited Common Elements shall respectively appertain. The use of Limited Common Elements may be transferred between Unit Owners at their expense in accordance with the Act.

**Please note:** The section below (3.05) on the copy of the Declaration was “X-ed” out by hand. No notation, explanation for the “X” mark, or, initials indicating acceptance of this change were visible.

- 3.05 **Unit Parking Space Rooftop Decks.** The Unit Owner of Unit A and the Unit Owner of Unit B shall be allowed, if they so elect, to construct decks upon the roof of their Unit Parking Spaces that: 1. detailed plan and specifications for the construction of such decks have been submitted to the Board for approval and Board approval is obtained: and 2. such decks are constructed and maintained in accordance with the plans and specifications and in such a manner as to preserve the architectural and aesthetic integrity of the Building. Means of access to any roof top deck shall be made available only by construction of a ladder or stairs on the interior of the Unit Owner’s Unit Parking Space upon which the deck is to be constructed. No other Unit Owner shall be permitted to construct a deck or any other structure upon the roof of his Unit Parking Space.

## **Article IV**

### **General Provisions as to Units and Common Elements**

- 4.01 **Submission of Property to the Act.** The Property is hereby submitted to the provisions of the Condominium Property Act of the State of Illinois.
- 4.02 **No Severance of Ownership.** No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.
- 4.03 **Easements.**



(a) **Encroachments.** In the event that (i) by reason of the construction, repair, settlement or shifting of the Building, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or any other Unit; or (ii) by reason of the design or construction of any Unit, it shall be necessary or advantageous to a Unit Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to said Unit, which will not unreasonably interfere with the use or enjoyment of the Common Elements by any other Unit Owner; or (iii) by reason of the design or construction of utility and ventilation systems, any mains, pipes, ducts or conduits serving more than one Unit encroach or shall hereafter encroach upon any part of any Unit; then in any such case, valid easements for maintenance of such encroachment and for such use of the Common Elements are hereby established and shall exist for the benefit of such Unit, or the Common Elements, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any encroachment or use of the Common Elements be created in favor of any Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by any other Unit Owner or has been created by the Unit Owner or his agent through intentional, willful or negligent conduct.

(b) **Easements for Utilities and Commercial Entertainment.** Illinois Bell Telephone Company, Commonwealth Edison Company and all other suppliers of utilities serving the Property and any person providing cable television or other commercial entertainment to any Unit Owners or to the Property, are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Elements for the purpose of providing the Property with utility and commercial entertainment services, together with the reasonable right of ingress to and egress from the Property for said purpose; and the Declarant, Board or Association may hereafter grant other or additional easements for utility purposes and for other purposes including such easements as the Developer may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Elements, for the benefit of the Property, over, under, along and on any portion of said Common Elements, and each Unit Owner hereby grants the Board or Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit Owner shall be deprived of, or be subjected to material interference with, the use of his Unit or any Limited Common Element serving his Unit, other than reasonably and temporarily). Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wire, ducts, conduits, public utility Lines, commercial entertainment lines, components of the communications systems, if any, or structural components, which may run through the walls of a Unit and which constitute or will constitute Common Elements, whether or not such walls lie in whole or in part within the Unit boundaries.

The Board may hereafter grant other or additional easements for utility or commercial entertainment purposes for the benefit of the Property, over, under, along and on any portion of said Common Elements, and each Unit Owner and each mortgagee of a Unit hereby grants the Board an irrevocable power of attorney coupled with an interest to execute, acknowledge and record in the name of such Unit Owner, such instruments as may be necessary or appropriate to effectuate the foregoing.

The Declarant hereby reserves to itself and the Association, and their respective successors and assigns, the right, without notice to, or the consent of, any Unit Owner or mortgagee of a Unit: (i) to record a supplement to the Plat showing the location of any or all of such utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment "as built" and (ii) to record, from time to time, additional supplements, showing additions, modifications and deletions to any or all of such conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment. Once the location of the easement to any such utility or other entity is shown by any supplement or additional supplement to the Plat as aforesaid, the easement granted by this Section 4.03(b) to such utility or other entity shall be limited to the area or areas located within ten feet on either side of the equipment of such utility or other entity shown on such supplement or additional supplement. A power coupled with an interest is hereby granted to the Declarant and the Association, acting by and through their respective duly authorized officers, their respective successors, assigns, agents and designees, and each of them singly without the other's concurrence, as attorney-in-fact to do or cause the foregoing to be done. The acceptance of each deed, mortgage, trust deed or other instrument with respect to a Unit shall be deemed a grant of such power to each said attorney-in-fact, an acknowledgement of a consent to such power, and a reservation for each of said attorneys-in-fact of the power to record any and all such supplements.

(c) **Blanket Easement in Favor of Developer and Other Parties and Other Easements.** The right of the Unit Owners to use and possess the Common Elements as set forth in Section 4.05(a) hereof shall be subject to a blanket easement over the Common Elements in favor of the Declarant and Developer, and their respective representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Common Elements or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, roads, buildings, landscaping and any other improvements on the Parcel or any part thereof, (iii) tapping into and using sewer, water or other utility lines on or adjacent to the Parcel, and (iv) the installation and maintenance of signs advertising the loft residences constructed or to be constructed on the Parcel or any part thereof, and signs directing potential purchasers to the sales office and models, if any, erected in connection with such residences. The foregoing easements shall continue until such time as neither the Declarant nor the Developer holds legal title to, or the beneficial interest in any trust holding legal title to, any Units, at which time such easements shall cease and be of no further force and effect without the necessity of any further action. The foregoing easements shall be deemed and taken to be covenants running with the

land.

(d) **Intentionally omitted.**

(e) **Easements to Run with Land.** All easements and rights described herein are easements appurtenant running with the land, and so long as the Property is subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Unit Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to respective grantees, mortgagees and trustees of such Unit Ownerships as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

4.04 **Intentionally omitted.**

4.05 **Use of the Common Elements.**

(a) **General.** Subject to the provisions of this Declaration, each Unit Owner shall have the nonexclusive right to use the Common Elements (except the Limited Common Elements and portions of the Property subject to leases or licenses made by or assigned to the Board) in common with the other Unit Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Unit owned by such Unit Owner, and such other incidental uses as are permitted by this Declaration. Each Unit Owner shall have the right to the use and possession of the Limited Common Elements serving his Unit, in common with other Unit Owners, if any, having like right thereto pursuant to this sentence and with all other parties to whom such rights extend pursuant to Section 3.04(b) of this Declaration, and to the exclusion of all other parties. Such rights to use and possess the Common Elements, including the Limited Common elements, shall be subject to and be governed by the provisions of the Act, this Declaration, and rules and regulations of the Association.

(b) **Guest Privileges.** The aforescribed rights shall extend to the Unit Owner and the members of the immediate family and authorized occupants. tenants, guests, visitors, agents, servants, invitees, customers and licensees of the Unit Owner, subject to reasonable rules and regulations with respect thereto.

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

(d) The Association, at its expense, shall be responsible for the maintenance, repair,

and replacement of those portions, if any, of each Unit which contribute to the support of the Building excluding, however, all windows and window frames, all exterior doors and the interior surfaces of walls, ceilings and floors. In addition, the Association shall maintain, repair, and replace all pipes, wires, conduits, ducts, flues, shafts, and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system servicing more than one Unit, as specified in Section 2.02 hereof, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets, or which may be the responsibility of an individual Unit Owner under paragraph (b) below, or any other provision of this Declaration.

Maintenance, repairs, and replacements of the Common Elements shall be furnished by the Association acting by and through the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.

If the Association shall default in any of its obligations described above in this Section 4.06(a) and if such default shall continue for thirty (30) days after notice thereof in writing to the Board, then and In such event, the City of Chicago, Illinois ("City") shall have the right (but not the obligation) to enter upon the Common Elements and remedy the same or cause the same to be done. The Association shall, upon demand, reimburse the City for the reasonable cost of such work, and if payment is not made within thirty days after demand, then, with respect to each Unit Ownership, the amount due multiplied by the percentage of ownership in the Common Elements shall become a lien on the Unit Ownership. Each such lien shall be subordinate to the lien of the first mortgage on the Unit Ownership, but shall be superior to the Association's assessment lien with respect to the Unit Ownership for assessments which become due after the date on which the City's lien attaches to the Unit Ownership. At the request of the City, the Association shall levy a special assessment for the payment of any such amounts which become due to the City, and the City shall have the right to seek an injunction causing the Association to make such special assessment or, in the alternative, to record an appropriate notice of lien against all of the Unit Ownerships and to foreclose any such lien as provided for or permitted under applicable law. This Section 4.06(a) shall be deemed a covenant running with the land and shall not be amended or deleted without the prior written consent of the City.

(e) **By the Unit Owner.** Except as otherwise provided In paragraph (a) above or paragraph (c) below, each Unit Owner shall furnish and be responsible for, at his own expense:

(i) All of the maintenance, repairs and replacements within his own Unit, all doors and outside windows and frames appurtenant thereto, and all internal installations of such Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures and plumbing, and any portion of any other utility service facilities located within the Unit: provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water, gas and electricity to the Units, shall be furnished by the Board as part of the Common Expenses.

(ii) All of the decorating within his own Unit (initially and thereafter from time to time), including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the common walls and the interior surfaces of the vertical perimeter walls, floors and ceiling of his Unit, and such Unit Owner shall maintain such portions in good condition at his sole expense as may be required from time to time.

(iii) All of the maintenance, repair, and replacements of the Limited Common Elements benefiting his Unit, in whole or in part, except to the extent as otherwise directed by the Board or as is otherwise provided herein. In addition, each Unit Owner shall be individually responsible for the repair, maintenance and replacement of all door and window locks and hardware with respect to which each Unit Owner is entitled to the exclusive use. At the discretion of the Board, the Board may perform, or cause to be performed such maintenance, repairs, and replacements of the Limited Common Elements and the cost thereof shall be assessed in whole or in part to Unit Owners benefited thereby, and further, at the discretion of the Board, the Board may direct such Unit Owners, in the name and for the account of such Unit Owners, to arrange for such maintenance, repairs, and replacements, to pay the cost thereof with the funds of the Unit Owner, and to procure and deliver to the Board such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Property from all mechanics' or materialmen's lien claims that may arise therefrom.

(f) In the event that any repair or replacement to the Common Elements (including Limited Common Elements) is made necessary by reason of any act or occurrence for which insurance is maintained by the Board pursuant to Section 5.08 hereof and for which insurance proceeds are available as provided in Section 8.01 hereof, the Association, at its expense and to the extent of such proceeds, and subject to Section 4 07 hereof, shall be responsible for the repair or replacement of such Common Elements.

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

or Association or the Declarant.

4.07 **Negligence of Unit Owner.** If, due to the willful misconduct or negligent act or omission of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be Common Expenses, then such Unit Owner shall pay for Such damage and such maintenance, repairs and replacements as may be determined by the Board.

4.08 **Joint Facilities.** to the extent that equipment, facilities and fixtures within any Unit or Units shall be connected to similar equipment, facilities or fixtures affecting or serving other Units or the Common Elements, then the use thereof by the individual Unit Owner shall be in all respects reasonable as it affects the other Unit Owners. The authorized representatives of the Association or the Board, or of the manager or managing agent for the Building, shall be entitled to reasonable access to the individual Units as may be required in connection with maintenance, repairs, or replacements of or to the Common Elements or any equipment, facilities or fixtures affecting or serving other Units or the Common Elements.

4.09 **Additions. Alterations or Improvements.**

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

(b) Except as otherwise provided in Section 7.01(a) hereof, no additions, alterations or improvements shall be made by a Unit Owner to any part of the Common Elements and no additions, alterations or improvements shall be made by a Unit Owner to his Unit (where such work alters the structure of the Unit or increases the cost of insurance required to be carried by the Board hereunder) without the prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement by a Unit Owner upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Association from time to time the additional cost of maintenance and/or insurance as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made by a Unit Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

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

(2) If the Unit Owner refuses or fails to properly perform the work required

under (1), the Board may cause such work to be done and may charge the Unit Owner for the cost thereof as determined by the Board; or

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

4.10 **Street and Utilities Dedication.** At a meeting called for such purpose, two-thirds (2/3) or more of the Unit Owners may elect to dedicate a portion of the Common Elements to a public body for use as, or in connection with, a street or utility.

4.11 **Right of Entry.** City law enforcement officers, rescue squad personnel, fire fighting personnel and other emergency personnel of the City (collectively "City Personnel") are hereby granted a right of entry and access to the Common Elements while in the pursuit of their duties. Such right shall include a right of vehicular entry and access through and across all streets and driveways which are part of the Common Elements. The Declarant and its successors and assigns, the Board and the Association shall hold harmless the City and any City Personnel from any civil or criminal action for trespass arising from any proper exercise of the rights of entry and access hereby granted.

## Article V

### Administration

5.01 **Administration of Property.** The direction and administration of the Property shall be vested in the Board of Directors (herein sometimes referred to as the "Board") which shall consist of three (3) persons who shall be elected in the manner hereinafter set forth; provided, however, that, irrespective of anything else contained in this Declaration, for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Voting Members, the Declarant or Developer shall have the right to designate and select the persons who shall serve as members of the Board or to exercise the powers of the Board as provided in the Act. Except for directors so designated by the Declarant or Developer, each member of the Board shall be one of the Unit Owners and shall reside on the Property; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any designated agent of such corporation, partnership, or other legal entity, or beneficiary of such trust, shall be eligible to serve as a member of the Board, so long as any such agent (other than a person designated by the Declarant or Developer) resides on the Property. If a Unit Owner owns more than one Unit and is a corporation, partnership, trust or other legal entity, other than a natural person, then any number of agents or beneficiaries of such Unit Owner may be directors, provided that the number of such Unit Owner's agents or beneficiaries who become directors

shall not exceed the number of Units owned by such Unit Owner. If a director fails to meet such qualifications during his term, he shall thereupon cease to be a director, and his place on the Board shall be deemed vacant.

**5.02 Association.** The Association has been formed prior to the recording hereof as a not-for-profit corporation under the General-Not-for-Profit Corporation Act of the State of Illinois and for the purposes and having the powers prescribed in the Act, and having the name (or a name similar thereto) NORTHWESTERN TERRA COTTA CONDOMINIUM ASSOCIATION and shall be the governing body for all of the Unit Owners for the maintenance, repair, replacement, administration and operation of the Property. The Board shall be deemed to be the "Board of Managers" for the Unit Owners referred to in the Act. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of Unit Owners in accordance with the provisions contained herein. Each Unit Owner shall be a member of the Association so long as he shall be a Unit Owner, and such membership shall automatically terminate when he ceases to be a Unit Owner, and upon the transfer of his ownership interest the transferee thereof shall likewise succeed to such membership in the Association. The Association shall have one class of membership.

**5.03 Voting Rights.**

(a) Except as otherwise provided in Section 5.03(b) herein, there shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as a "Voting Member". Such Voting Member may be the Unit Owner or one of the group composed of all the owners of a Unit Ownership, or be some person designated by such Unit Owner or Unit Owners or his duly authorized attorney-in-fact to act as proxy on his or their behalf and who must be a Unit Owner. Such designation shall be made in writing to the Board, shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or his duly authorized attorney-in-fact, shall bear the date of its execution and shall be invalid after eleven (11) months from date of execution unless otherwise provided in the proxy. Any or all such Unit Owners may be present at any meeting of the Voting Members and (those constituting a group acting as a single Voting Member) may vote or take any other action as a Voting Member either in person or by proxy. The person(s) designated by the Declarant with respect to any Unit Ownership owned by the Declarant shall also have the right to vote at any meetings of the Board for so long as the Declarant shall retain the right to so designate a Board member. If a Unit Owner is a trust, then the voting rights of such Unit Owner may be exercised by a beneficiary of such trust, and if a Unit Owner or such a beneficiary is a corporation or partnership, then the voting rights of said Unit Owner or beneficiary may be exercised by an officer, partner or employee of such Unit Owner or beneficiary. The total number of votes of all Voting Members shall be one hundred (100), and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or their Unit Ownership as set forth in Exhibit B; provided that when thirty (30%) percent or fewer of the Units, by number,



possess over fifty (50%) percent in the aggregate of the votes in the Association, any percentage vote of Unit Owners specified herein shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

(b) In the event the ownership of a Unit is composed of more than one Person, then if only one of the multiple owners of a Unit is present at a meeting of the Association, such owner shall be entitled to cast all of the votes allocated to that Unit. In the event more than one owner of a Unit is present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the group of owners comprising the Unit Owner. Majority agreement shall be deemed to have occurred if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

#### 5.04 Meetings.

(a) **Quorum.** Meetings of the Unit Owners shall be held at the Property or at such other place in the City as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of at least sixty-six percent (66%) of the Unit Owners shall constitute a quorum unless the Unit Owners, in accordance with the Act, provide otherwise. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Unit Owners at which a quorum is present upon the affirmative vote of the Unit Owners having a majority of the total votes present at such meeting.

(b) **Initial and Annual Meeting.** The initial meeting of the Voting Members shall be held upon no less than twenty-one (21) no more than thirty (30) days written notice given by the Declarant or Developer. Said initial meeting shall be held no later than the first to happen of (i) sixty (60) days after the date the Declarant has sold and delivered its deed for at least seventy-five (75%) percent of the Units or (ii) three (3) years from the date of the recording of this Declaration. Thereafter, there shall be an annual meeting of the Voting Members on the second Tuesday of December following such initial meeting, and On the second Tuesday of December of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date as may be designated by written notice of the Board delivered to the Voting Members.

(c) **Special Meetings** Special meetings of the Voting Members may be called at any time after the initial meeting provided for in Section 5.04(b) hereof for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose provided, however, that the following matters shall require the approval of Voting Members having not less than two-thirds (2/3) of the total votes: (i) the merger or consolidation of the Association; (ii) the sale, lease, exchange or other disposition (excluding the mortgage or pledge) of all, or substantially all of the property and assets of the Association; and (iii) the purchase or sale or lease of Units or other real estate on behalf of all Unit Owners. Special

meetings may be called by written notice authorized by a majority of the Board, the President of the Board, or by sixty-six percent (66%) of the Unit Owners. and delivered not less than ten (10) days and no more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be submitted to the Unit Owners at special membership meetings shall be submitted by the Board.

(d) **Informal Meetings:** Within twelve (12) months after the issuance of the initial occupancy permit for a Unit, an informal meeting shall be called. All Unit Owners shall be invited, and thereafter, these meetings will be held not less than once a year until the initial meeting of Voting Members. Unit Owners will select potential future Board of Directors candidates who shall form an informal board and meet semi-annually with the board appointed by the Declarant or Developer.

**5.05 Notices of Meetings.** Except as otherwise provided herein, notices of meetings of the Voting Members required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains, if no address has been given to the Board, provided that any such notice shall be delivered no less than ten (10) and no more than thirty (30) days prior to the date fixed for such meeting and shall state the time, place and purpose of such meeting.

#### **5.06 Board of Directors.**

(a) The initial Board of Directors designated by the Declarant or Developer pursuant to Section 14.01 hereof shall consist of three (3) directors who shall serve without compensation. Such initial Board shall serve for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Voting Members held as provided in Section 5.04(b) hereof. Said initial Board may, on behalf of the Declarant or Developer, exercise the rights reserved in Section 14.01 hereof. At the initial meeting of Voting Members held as provided in Section 5.04(b) hereof, the Voting Members shall elect the Board. In all elections for members of the Board, each Voting Member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting three (3) Board members shall be elected. The two (2) persons receiving the highest number of votes shall be elected to a term of two (2) years, and the one (1) person the person receiving the next highest number of votes shall be elected for a term of one (1) year. The election as between candidates receiving the same number of vote shall be determined by lot. Any candidate for election to the Board, or such candidate's representative, shall have the right to be present at the counting of ballots at such election. All members of the Board shall be elected at large. Upon the expiration of the terms of office of the Board members so elected at the initial meeting and thereafter, successors shall be elected for a term of two (2) years each. The Voting Members owning at least two-thirds (2/3) of the Units may from time to time at any annual or special

meeting increase or decrease the term of office of Board members, provided that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. Members of the Board shall receive no compensation for their services. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the meeting at which the vacancy occurs, the next annual meeting or a special meeting of the Voting Members called for such purpose. Vacancies may also be filled by the Board by a two-thirds (2/3) vote of the remaining members thereof at a special meeting of the Board which vacancy shall be filled until the next annual meeting of the Voting Members or for a period terminating no later than thirty (30) days following the filing of a petition signed by Voting Members holding twenty (20%) percent of the votes of the Association requesting a meeting of the Voting Members to fill the vacancy for the balance of the term. A meeting of the Voting Members shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the Voting Member's filing of a petition signed by Voting Members holding twenty percent (20%) of the votes of the Association requesting such a meeting. Except as otherwise provided in this Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists.

Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt; provided, however, that (i) each Unit Owner shall be entitled to notice, in the same manner as provided in Section 5.05 hereof, of any meeting of the Board called for the purpose of considering the adoption of the proposed annual budget or any increase or establishment of an assessment; and (ii) the Board shall meet no less than four (4) times each year. Two-thirds (2/3) of the total number of members on the Board shall constitute a quorum. Any member of the Board may succeed himself.

(b) In the event the Board adopts a budget requiring assessment against the Unit Owners in any fiscal or calendar year exceeding 115% of the assessments for the preceding year, the Board, upon written petition by the Voting Members with twenty percent (20%) of the votes of the Association filed within fourteen (14) days of the Board action, shall call a meeting of the Voting Members within thirty (30) days of the date of filing of the petition to consider the budget. Unless a majority of the votes of the Voting Members present are cast at the meeting to reject the budget, the budget shall be deemed to be ratified, regardless of whether or not a quorum is present. In any determination of whether assessments exceed one hundred and fifteen percent (115%) of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Property, and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

(c) The Board shall elect from amongst its members a President who shall preside over both its meeting and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein and in the Act, a Secretary who shall keep the minutes of all meetings of the Board and of the

Voting Members and who shall, in general, perform all the duties incident to the office of the Secretary, and a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect from amongst the members of the Board. The term of office for each officer shall be until the next succeeding annual meeting of the Board, and until his successor shall be duly elected or appointed and qualified pursuant hereto. Vacancies in any office shall be filled by the Board by a majority vote of the remaining members thereof at a special meeting of the Board. Any director elected to fill a vacancy shall hold office for a term equal to the unexpired term of the officer he succeeds. Any officer may be removed for cause at any time by a vote of two-thirds (2/3) of the total membership of the Board at a special meeting thereof. Any officer may succeed himself.

(d) Written notice stating the place, date and hour of any meeting of the Board shall be delivered to each member of the Board not less than five (5) days prior to the date of such meeting. The purpose for which the meeting is called shall be stated in the notice.

(e) All meetings of the Board, except as otherwise provided by the Act, shall be open to attendance by any Unit Owner, and notice thereof, except as otherwise provided herein, shall be mailed or delivered to each Unit Owner not less than forty-eight (48) hours prior thereto unless a written waiver of such notice is signed by such Unit Owner before the meeting is convened. A copy of such notice of meeting required to be given herein shall be posted in a conspicuous place in the Building at least forty-eight (48) hours prior to the time fixed for such meeting. Any vote on matters which may, under the Act, be discussed in a meeting not open to attendance by any Unit Owners, shall be taken at a meeting or portions thereof open to any Unit Owners. Any Unit Owner may record the proceedings at meetings or portions thereof required to be open under the Act by tape, film, or other means provided, however, that the Board may prescribe reasonable rules and regulations governing the right to make such recordings.

(f) Within sixty (60) days following the election of a majority of members of the Board other than those members designated by the Declarant or Developer, the Developer shall deliver to the Board the following:

(1) All original documents as recorded or filed pertaining to the Property, its administration, and the Association, such as this Declaration, Articles of Incorporation for the Association, other condominium instruments, annual reports, a minute book containing the minutes of any meetings held by the Association and any rules and regulations governing the Property, contracts, leases, or other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the Developer, or an officer or agent of the Developer, as being a complete copy of the actual document recorded as filed;

(2) A detailed accounting by the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property and copies of all insurance policies and

a list of any loans or advances to the Association which are outstanding:

(3) Any Association funds on hand which shall have been at all times segregated from any other funds of the Developer;

(4) A schedule of all real or personal property, equipment and fixtures owned by the Association, including documents such as invoices or bills of sale, if available, evidencing transfer of title to such property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

(5) A list of all litigation, administrative action and arbitrations involving the Association, any notices of governmental bodies involving actions taken or which may be taken by the Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any Association requirements. copies of any documents relating to disputes involving Unit Owners and originals of all documents relating to everything listed in this subparagraph.

(g) Except for directors designated by Declarant or Developer pursuant to Section 5.01 hereof, any Board member may be removed from office, at any time after the election of directors at the initial meeting of Voting Members pursuant to Section 5.06(a) hereof, by affirmative vote of the Voting Members owning at least two-thirds (2/3) of the Units, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent meeting called for that purpose.

(h) The Association (or the Declarant or Developer, in the exercise of the powers reserved in Section 14.01 hereof), shall furnish any Unit Owner, within three (3) working days of delivery to it of a request therefore, the names, addresses, telephone numbers (if known), and the number of votes of each Unit Owner entitled to vote at the initial meeting of the Voting Members to elect members of the Board and at each subsequent meeting of the voting members to elect members of the Board.

**5.07 General Powers of the Board.** The Board shall have the following general powers:

(a) Subject to the rights reserved by the Declarant or Developer pursuant to Section 14.01 hereof, the Board may engage the services of an agent to manage the portions of the Property for which the Board is responsible pursuant to this Declaration, to the extent deemed advisable by the Board: provided, however, that any agreement for professional management, except as hereinafter provided, shall provide for termination by the Board without cause upon ninety (90) days written notice without payment of a termination fee, provide for termination with cause by the Board on thirty (30) days written notice without payment of a termination fee and shall have a term not to exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. The initial agreement for

professional management may provide for a monthly rate and such terms as are consistent with competitive rates and terms prevailing in the area in which the Property is located expiring two (2) years from the date of recording of this Declaration. subject to termination for cause by the Association upon thirty (30) days written notice. The management agreement shall require the management agent to furnish a fidelity bond in such amounts and with such provisions as contained in Section 5.08(a)(v) hereof.

(b) The Board or its agents, upon reasonable notice, may enter any Unit when necessary in connection with any maintenance or construction for which the Board is responsible or to make emergency repairs as may be necessary to prevent damage to the Common Elements or to any other Unit or Units.

(c) The Board's powers hereinafter enumerated shall be limited in that the Board shall have no authority to acquire and pay for from the maintenance fund any structural alterations, capital additions to, or capital improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration or unless required for emergency repair, protection or operation of the Common Elements), requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00) without in each case the prior written approval of Unit Owners owning at least two-thirds (2/3) of the Units.

(d) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board.

(e) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the Unit Owners or any of them.

(f) The Board shall have the power and duty to provide for the designation, hiring, and removal of employees and other personnel, including lawyers and accountants, to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, and operation of the Property, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).

(g) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Unit Owners as a group referred to in the Declaration or the Act. More specifically, the Board shall exercise for the Association all powers, duties and authority vested therein by law or the condominium instruments except for such powers, duties and authority reserved thereby to the members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following matters:

(i) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements in a neat and orderly manner and in accordance

with the ordinances of the City;

- (ii) Preparation, adoption and distribution of the annual budget for the Property;
- (iii) Levying of assessments;
- (iv) Collection of assessments from Unit Owners;
- (v) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;
- (vi) Obtaining adequate and appropriate kinds of insurance;
- (vii) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by it;
- (viii) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property, after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations; however, no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution;
- (ix) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;
- (x) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements (to the extent the Association is responsible for such maintenance, repair or replacement) therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to other Unit or Units;
- (xi) Pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium;
- (xii) Impose charges for late payments of a Unit Owner's proportionate share of the Common Expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of this Declaration and rules and regulations of the Association;
- (xiii) By a majority vote of the entire Board, assignment of the Association's

right to future income from Common Expenses or other sources, and mortgage or pledge of substantially all of the remaining assets of the Association:

- (xiv) Record the dedication of a portion of the Common Elements to a public body for use as or in connection with a street or utility where authorized by the Unit Owners under the provisions of Section 4.10 hereof; and
  - (xv) Record the granting of an easement for the laying of cable television cable where applicable pursuant to the provisions of Section 4.03(b) hereof.
- (h) Subject to the provisions of Section 4.06 and Section 6.08 hereof. the Board for the benefit of all the Unit Owners shall acquire and shall pay from the maintenance fund hereinafter provided for, the following:
- (i) Operating expenses of the Common Elements, including water, electricity and telephone and other necessary utility service for the Common Elements and (if not separately metered or charged) for the Units.
  - (ii) Services of any person or firm to act on behalf of the Unit Owners in connection with real estate taxes and special assessments on the Unit Ownerships, and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and nonadverse to each other. The cost of such services shall be Common Expenses.
  - (iii) Painting, cleaning, outside window washing, tuck-pointing, maintenance, decorating, repair, and replacement of the Common Elements (but not including the interior surfaces of the Units and of the hallway and perimeter doors appurtenant thereto, and repair of windows and frames and screens which the Unit Owners shall paint, clean, decorate, maintain, and repair) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.
  - (iv) Any other materials, supplies, utilities, furniture, equipment. labor, services, maintenance, repairs or structural alterations which the Board is required to secure or pay for, pursuant to the terms of this Declaration and By-Laws or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first-class condominium development or for the enforcement of the restrictions contained herein.
  - (v) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Elements, rather than merely against the interests therein of particular Unit Owners. Where one or more Unit Owners are



responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to said Unit Owners.

- (vi) Maintenance and repair of any Unit if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Elements or any other portion of the Building, or if a Unit Owner of any Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Unit Owner, provided that the Board shall levy a against such Unit Owner for the cost of said maintenance or repair.

(i) Prior to the election by Voting Members of the first Board, the Declarant or Developer shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions and contracts with respect to any part of the Common Elements, all upon such terms as the Declarant or Developer deems appropriate. Upon election of the first Board, and thereafter, the Board by a vote of at least two-thirds (2/3) of the persons on the Board shall have the same authority as aforesaid.

(j) The Board shall have the power to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien I or Common Expenses under the Act, or at a sale pursuant to an order of direction of a court, or other involuntary sale, upon the consent or approval of Unit Owners having not less than two-thirds (2/3) of the total votes.

(k) The Association shall have no authority to forebear the payment of assessments by any Unit Owner.

#### 5.08 **Insurance.**

- (a) The Board shall have the authority to and shall obtain insurance for the Property as follows:
  - (i) Physical damage insurance on the Property (but excluding additions alterations, improvements and betterments to the Units), subject to the following conditions:
    - (A) Such insurance shall be “bare wall” insurance with respect to the Units;
    - (B) The Property shall be insured for an amount not less than one hundred percent (100%) of its full insurable replacement cost on a blanket basis;

- (C) Replacement cost values are to be reviewed annually by an independent appraiser, and the insurance policy or policies shall be endorsed with an agreed amount clause. The cost of any and all appraisals for insurance purposes shall be Common Expenses;
  - (D) Perils to be covered by such policies shall be no less than “all risk” or “special form” on real property and “broad form” named perils on personal property, and such other perils as may be deemed appropriate by the Board.
- (ii) Comprehensive General Liability insurance covering personal injury and property damage insuring against hazards of premises operation, products and completed operations, contractual liability, personal injury liability (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall provide limits of liability as deemed desirable by the Board, but in no event for less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-Liability claims of one insured against the other.
  - (iii) Umbrella Liability insurance in excess of the required Comprehensive General Liability and Employer Liability policies in an amount deemed desirable by the Board, but in no event less than three Million Dollars (\$3,000,000.00) with respect to each occurrence.
  - (iv) Worker’s Compensation and Employer Liability (minimum amount \$100,000) as necessary to comply with applicable laws, including Voluntary Compensation to cover employees not covered under the Illinois statute for benefits.
  - (v) A fidelity bond insuring the Association, the Board and the Unit Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Unit Owners in such amounts as the Board shall deem necessary but not less than 150% of the annual operating expenses of the Association, including reserves. The premium for such fidelity bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee” or similar expression. Such bond shall provide that it may not be cancelled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to all holders of first mortgages of record.
  - (vi) Directors and Officers Liability insurance in such amounts as the Board shall determine to be reasonable.

(vii) Such other insurance, which may include, without limitation, any or all of the following, in such amounts as the Board shall deem desirable; Plate Glass insurance; Errors and Omissions coverage for the directors of the Board; and Medical Payments coverage for members of the public (not Unit Owners) injured on the Property, without regard to liability of the Board or the Association;

The premiums for the above described insurance and bond, except as otherwise provided in this Section 5.08. shall be Common Expenses. Any management company retained by the Association may hold all operating funds of associations in a single operating account but shall at all times maintain records identifying all monies of each association in such operating account. Such operating and reserve funds held by the management company for the Association shall not be subject to attachment by any creditors of the management company.

(b) All insurance provided for in this Section 5.08 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A/XII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. All such policies shall provide a minimum of sixty (60) days advance notice of cancellation in writing to the insured thereunder unless such cancellation is for non-payment of premium in which case ten (10) days advance written notice shall be sufficient.

(c) All policies of insurance of the character described in clauses (i) and (ii) of Paragraph (a) of this Section 5.08: (i) shall name as insured: the Declarant, so long as it has an insurable Interest: the Board, as trustees for the Unit Owners, in the percentages established in Exhibit B to this Declaration: and shall also name as an assured the Insurance Trustee described in subparagraph 5.08f(ii), as the respective interests of all of such assureds may appear; (ii) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners whether such other insurance covers their respective Units and/or the additions and improvements made by such Unit Owners to their respective Unit: (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor. such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act: and (iv) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to the mortgagee of each Unit. Policies of insurance of the character described in clause (i) of Paragraph (a) of this Section 5.08 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in clauses (i) and (ii) of Paragraph (a) of this Section 5.08, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

(d) All policies of insurance of the character described in clauses (ii), (iii), (iv) and (v) of Paragraph (a) of this Section 5.08 shall name as assureds, the Association, the Board, its managing agent, and the other agents and employees of such Association, Board and managing agent and the Declarant and Developer in his or its capacity as a Unit Owner and Board member and shall also provide coverage for each Unit Owner (but as to the insurance described in Section 5.08(a) (iii) hereof, only with respect to those portions of the Property not reserved for their exclusive use). In addition, all policies of insurance of the character described in clauses (i), (ii) and (iii) of Paragraph (a) of this Section 5.08 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant, Developer, the managing agent, their respective employees and agents, and the Unit Owners and Occupants.

(e) The Association, for the benefit of the Unit Owners and the mortgagee of each Unit, shall pay the premiums and obtain a binder on the policies of insurance described in Paragraph (a) of this Section 5.08 at least thirty (30) days prior to the expiration date of the respective policies, and upon written request therefor, shall notify the mortgagee of each Unit of such payment within ten (10) days after the date on which payment is made.

(f) Loss, if any, under any policies of insurance of the character described in clauses (i) and (ii) in Paragraph (a) of this Section 5.08 shall be adjusted with the Board, and the insurance proceeds on account of any such loss shall be paid and applied as follows:

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

(ii) In the case of any one loss exceeding Fifty Thousand Dollars (\$50,000.00) in the aggregate, then the insurance proceeds shall be paid to The Exchange National Bank of Chicago, which corporation is hereby designated by the Developer to act as trustee for the Board (the "Insurance Trustee") pursuant to the Act for the purpose of collecting and disbursing the insurance proceeds described in this subparagraph (ii). If such entity (or its successor appointed pursuant hereto) shall fail or cease for any reason to act as the Insurance Trustee, then the Board shall, pursuant to the Act, appoint as successor Insurance Trustee a corporation qualified to accept and execute trusts in the State of Illinois and having a capital of not less than Five Million Dollars (\$5,000,000.00). Such proceeds, less the actual cost, fees, and expenses, if any, incurred in connection

with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Property to substantially the same condition as it existed immediately prior to such damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the restoration of the Property in accordance with the provisions of the Act. The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter into an insurance trust agreement further implementing the provisions of the Act and this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee.

(g) Each Unit Owner shall be responsible for (i) physical damage insurance on the personal property in his Unit and elsewhere on the Property, and any additions, alterations and improvements to his Unit (whether installed by such Unit Owner or any prior Unit Owner or whether originally in his unit); (ii) his personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Unit Owners as above provided; and (iii) his additional living expense. All policies of casualty insurance carried by each Unit Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all of the Unit Owners as above provided. For the purposes of Sections 5.08(g) and 5.08(h) hereof, "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Unit) attached to the Unit, including without limitation carpeting, flooring, wall covering, paint and paneling.

(h) The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations and improvements to a Unit or any personal property of a Unit Owner or any other insurance for which a Unit Owner is responsible pursuant to Section 5.08(g) hereof.

(i) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, Declarant, Developer, the manager and managing agent of the Property, if any, and their respective employees and agents, for any damage to the Common Elements, the Units, or to any personal property located in the Unit or Common Elements caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance or would be covered by insurance for which such Unit Owner is responsible pursuant to Section 5.08(g) hereof.

(j) Insurance required by Section 5.08(a) hereof shall be endorsed to include substantially the following clause:

"This insurance shall not be prejudiced (i) by any act or neglect of any Unit Owner or occupant of the Building when such act or neglect is not

within the control of the named insured (or Unit Owners collectively), or (ii) by failure of the named insured (or Unit Owners collectively) to comply with any warranty or condition with regard to any portion of the Building over which the named insured (or Unit Owners collectively) has no control.”

(k) The Board shall have the right to select substantial deductibles to the insurance coverages required or permitted under this Section 5.08 if the economic savings justifies the additional risk and if permitted by law. The deductibles shall be on a per occurrence basis irrespective of the number of insureds suffering injury or damage. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Common Expenses.

**5.09 Liability of the Board of Directors.** Neither the members of the Board nor the officers of the Association shall be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Unit Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Unit Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer. It is also intended that the liability of any Unit Owner arising out of any contract made by or other acts of the Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association, shall be limited to such proportion of the total liability hereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Every agreement made by the Board on behalf of the Unit Owners shall provide that the members of the Board are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that each Unit Owner’s liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

**5.10 Resale of Units.** In the event of a resale of any Unit by a Unit Owner other than the

Developer or the Declarant, and within thirty (30) days alter the written request by such Unit Owner, the Board shall deliver a copy of each of the documents and make the disclosures described in and required by Section 22.1 of the Act. The Board shall be allowed to charge a reasonable tee, not to exceed the maximum amount prescribed by the Act, for providing such information.

## **Article VI**

### **Common Expenses-Maintenance Fund**

**6.01 Predeclaration of Estimated Budget.** On or before November 1 of each year, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for adequate reserves, including, without limitation, amounts to maintain a Capital Reserve, as hereinafter defined in Section 6.02 hereof, and amounts to make repairs to and to pay real estate taxes on the Common Elements. Within fifteen (15) days thereafter, the Board shall notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof and containing each Unit Owner's respective assessment provided, however, that such annual budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the Board. Said "estimated cash requirement" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B attached hereto. On or before January 1 of the ensuing year, and the first day of each and every month of said year, each Unit Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessments made pursuant to this paragraph. On or before April 1 of each calendar year following the initial meeting of the Voting Members, the Board shall supply to all Unit Owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Such accounting shall upon the written request of any Unit Owner be prepared by a certified public accountant, in which event such accounting shall be due as soon as reasonably possible after such request. Any net shortage or excess shall be applied as an adjustment to the installments due under the current year's estimate in the succeeding six (6) months after rendering of the accounting subject, however, to the provisions of Section 6.02 hereof. For purposes of this Declaration and the management and operation of the Property, the calendar year shall be deemed to be the fiscal year of the Association.

**6.02 Capital Reserve; Supplemental Budget.** The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Common Elements (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 Association as well as periodic projections of

the cost of anticipated major repairs or improvements to the Common Elements or the purchase of equipment to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual assessment which shall be added to the Capital Reserve and each Unit Owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual assessment paid by such Unit Owner.

Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of any contingency reserve or Capital Reserve, as applicable, which remains unallocated. the estimated Common Expenses contained in the budget prove inadequate for any reason or in the event a nonrecurring Common Expense is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or nonrecurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a special or separate assessment shall be made to each Unit Owner for his proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount. Any such special or separate assessment, if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to the greater of (i) five (5) times the Unit's most recent monthly assessment or (ii) Three Hundred Dollars (\$300.00), shall be subject to the affirmative vote of at least two-thirds (2/3) of the total ownership of the Common Elements at a meeting specifically called for approving such special or separate assessment.

**6.03 Initial Budget.** The initial Board appointed by the Developer shall determine and adopt, prior to the conveyance of the first Unit hereunder, the "estimated cash requirement" for the initial period commencing with the first day of the month in which the sale of the first Unit is closed and ending on December 31 of the calendar year in which such sale occurs, and shall continue to determine the "estimated cash requirement" for each succeeding calendar year until such time as the first Board elected hereunder takes office. Assessments shall be levied against the Unit Owners during said periods as provided in Section 6.01 of this Article.

**6.04 Failure to Prepare Annual Budget.** The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Unit Owner shall not constitute a waiver or release in any manner of such Unit Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

**6.05 Records of the Association.** The managing agent or Board shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Unit Owners or their mortgagees and their duly authorized agents or attorneys:

- (a) Copies of this Declaration and any amendments, Articles of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or



Its Board shall be available. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this subsection (a) for examination and copying. -

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

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

(d) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not-for-Profit Corporation Act, approved September 24, 1986, as amended, shall be maintained.

(e) An audited financial statement for the Association, which the Association shall obtain not less often than annually, shall be maintained. Should the Board of Managers determine that a professional audit would be cost prohibitive or impractical, the Treasurer shall prepare and distribute to the Unit Owners regular financial reports including: bank account balances, capital reserve expenditures, and, assessments due and paid. *Rule change (September 23, 2004)*

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

(g) Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

**6.06 Status of Collected Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments or user charges) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit B.

**6.07 Start-Up Costs.** At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association an amount equal to two (2) times the first full monthly assessment for such Unit. This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses for the Common Elements and held for future working capital needs. This payment shall not be refundable or be applied as a credit against the Unit Owner's monthly assessments. In addition, at the time the initial sale of each Unit is closed the purchaser of a Unit shall pay to the Association an amount equal to One Hundred Fifty Dollars (\$150.00) to be deposited into the Capital Reserve.

6.08 **User Charges** The Board, or the Declarant or Developer, acting pursuant to Section 14.01 hereof, may establish, and each Unit Owner shall pay, user charges to defray the expense of providing services, facilities, or benefits which may not be used equally or proportionately by all of the Unit Owners or which, in the judgment of the Board, should not be charged to every Unit Owner. Such expense may include such services and facilities provided to Unit Owners which the Board determines should not be allocated among all of the Unit Owners in the same manner as the Common Expenses. Such user charges may be billed separately to each Unit Owner benefited thereby, or may be added to such Unit Owner's share of the Common Expenses, as otherwise determined, and collected as a part thereof. Nothing herein shall require the establishment of user charges pursuant to this Section 6.08, and the Board or the Declarant or Developer may elect to treat all or any portion thereof as Common Expenses.

6.09 **Non-Use and Abandonment.** No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his or their Units.

## Article VII

### Covenants and Restrictions As to Use and Occupancy

7.01 The Property shall be occupied and used as follows:

(a) Each Unit (or any two or more adjoining Units used together) shall be used for housing and related common purposes for which the Property was designed and for no other purpose. That part of the Common Elements separating any two or more adjoining Units which are owned by the same Unit Owner may be altered or removed to afford ingress and egress to and from such adjoining Units; provided, however, that (i) such alteration or removal shall not impair or weaken the structural integrity of any Unit or any portion of the Common Elements; (ii) the Unit Owner shall furnish to the Board not less than ten (10) days prior to the date the Unit Owner desires to commence such work all plans detailing the work to be done; (iii) the Board consents to the performance of such work; (iv) the expense of such alterations shall be paid in full by the Unit Owner making such alterations; and (v) such Unit Owner shall pay in full the expense of restoring such Common Elements to their former condition prior to such alterations in the event such Units cease to be used together.

(b) There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements (except in areas designed for such purpose, and except in areas which are Limited Common Elements serving exclusively the Unit of the Unit Owner obstructing same) without the prior consent of the Board or except as hereinafter

expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.

(c) Nothing shall be done or kept in any Unit or in the Common Elements serving the Units which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of Insurance on the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements.

(d) No animals shall be raised, bred or kept in any Unit or the Common Elements, except for dogs and cats (but not more than 2 animals per Unit), small birds and fish of a Unit Owner, provided said animals are of a breed or variety commonly kept as household pets, are not kept or bred for any commercial purpose, are not allowed to run loose on the Property, are kept in strict accordance with such other rules and regulations relating to household pets as may be from time to time adopted or approved by the Board, and do not, in the judgment of the Board, constitute a nuisance to others. Each Unit Owner and each Occupant shall be responsible for picking up after any animal bred or kept in such Unit Owner's or Occupant's respective Unit, including, without limitation, removing any waste deposited by such animal anywhere on the Common Elements.

(e) No noxious, unlawful or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants or which shall in the judgment of the Board cause unreasonable noise or disturbance to others.

(f) Nothing shall be done in any Unit or in. on or to the Common Elements which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein. No Unit Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgement of the Board, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board or the managing agent, acting in accord with the Board's direction. No Unit Owner shall overload the floors of any Unit. Water-beds and other furnishings which may cause floor overloads shall be placed, kept or used in any Unit only in accordance with advance written Board approval.

(g) No Unit Owner shall display, hang, store or use any clothing, sheets, blankets, laundry or other articles outside his Unit, or which may be visible from the outside of his Unit (other than draperies, curtains or shades of a customary nature and appearance, subject to the rules and regulations of the Board), or paint or decorate or adorn the outside of his Unit, or install outside his Unit any canopy or awning, or outside radio or television antenna, or other equipment, fixtures or items of any kind, without the prior written permission of the Board or the managing agent, acting in accord with the Board's direction. No owner of a Unit, except as provided below, shall display, hang, store or use

any sign outside his Unit, in a hallway or elsewhere, or which may be visible from the outside of his Unit, without the prior written permission of the Board. Notwithstanding anything to the contrary contained herein, Developer reserves the right to install one television antenna on the roof of the Building. The amplifier which comprises the energy source for such antenna will be located in the Building and will be connected to an individual meter in a Unit. However, the Association is responsible for maintaining the antenna and the amplifier as well as reimbursing the Unit Owner, in whose Unit the meter is located, for the cost of all electricity used by amplifier. The Association reserves the right to enter the Unit in which the antenna is located, upon reasonable notice to the Unit Owner, for the purpose of maintaining the antenna and amplifier.

(h) Articles of personal property belonging to any Unit Owner, such as baby carriages, bicycles, wagons, toys, furniture, clothing and other articles, shall not be stored or kept in any, patio, balcony or area constituting part of the Common Elements, except in accordance with appropriate rules and regulations issued by the Board; provided, however, that a reasonable amount of wood logs may be stored on the patio or balcony of those Units equipped with a wood burning fireplace. No recreational or camping vehicles or boats shall be parked or kept on the Property except in covered garages with the garage doors closed. No commercial vehicles shall be parked on the Property overnight except in covered parking areas with the door closed. No unlicensed or inoperative vehicles shall be kept on the Property.

(i) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise shall be conducted, maintained, or permitted in any Unit.

(j) The right is reserved by the Declarant and Developer or its agents to place and maintain on the Property all models, sales offices, advertising signs and banners and lighting in connection therewith at such locations and in such forms as shall be determined by the Declarant or Developer or its agents and the Declarant or Developer or its agents and prospective purchasers and lessees of any Unit from the Declarant are hereby granted the right of ingress and egress in and through the Common Elements for such Unit sale or leasing purposes. The Declarant or Developer or agents further reserve the right to use unsold Units for temporary storage, office and related purposes. The Declarant shall have the right, as a Unit Owner, to lease one or more of such unsold Units, subject to the terms and provisions of the Declaration. This paragraph cannot be amended or deleted without the consent of Developer so long as either (i) Declarant's rights to submit Additional Parcels to the Act have not expired or (ii) Declarant or Developer holds legal title to any Unit.

(k) The Unit restrictions in paragraph (a) and (i) of this Section 7.01. shall not, however, be construed in such a manner as to prohibit a Unit Owner from: (i) maintaining his personal professional library therein; (ii) keeping his personal business or professional records or accounts therein; or (iii) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal resident use and not in violation of paragraphs (a)

and (i) of this Section 7.01.

(l) Notwithstanding anything to the contrary contained herein, a portion of each Unit, the Unit Parking Space, has been set aside and designed for the parking of one (1) or, in one case, two (2) vehicles. Such use shall not be deemed in violation of any provision of this Declaration.

(m) Trash, garbage and other waste shall be kept only in sanitary containers in the alley adjoining the Building, and such containers shall be brought to the central area designated by the scavenger service serving a Unit and shall be disposed of in a clean and sanitary manner as prescribed from time to time in rules and regulations duly adopted by the Board. After emptying, the containers shall promptly be returned to said alley.

(n) The provisions of the Act, this Declaration and rules and regulations that relate to the use of the individual Unit or the Common Elements shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease executed in connection with a Unit. The Unit Owner leasing the Unit shall deliver a copy of the signed lease to the Board within ten (10) days after the lease is executed and prior to occupancy. The Association may prohibit a tenant from occupying a Unit until the Unit Owner complies with the leasing requirements prescribed by this paragraph. The Board may proceed directly against a tenant, at law or in equity, or under the provisions of Article IX of the Code of Civil Procedure, for any breach by tenant of any covenants, rules, regulations or bylaws. The remedies set forth in Article IX of the Code of Civil Procedure shall be available to the Association and against the Unit Owner and the Unit Owner's lessee in the event of any violation of this paragraph or of any other provision of this Declaration concerning Unit leasing.

## Article VIII

### Damage, Destruction, Condemnation and Restoration of Building

8.01 **Sufficient Insurance.** In the event the improvements forming a part of the Property, or any portion thereof, including any Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus Capital Reserves, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Capital Reserve shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event within one hundred eighty (180) days after said damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in Article IX hereof or to withdraw the Property from the provisions of this Declaration, and from the provisions of the Act as therein provided, then such repair, restoration, or reconstruction shall not be undertaken. In the event

such repair, restoration, or reconstruction is not undertaken the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit B, after first paying from the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

#### 8.02 **Insufficient Insurance.**

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

(b) In the case of damage or other destruction in which fewer than one-half (1/2) of the Units are rendered uninhabitable, upon the unanimous affirmative vote of the Unit Owners voting at a meeting called for the purpose, the Building or other portion of the Property shall be reconstructed. The meeting shall be held within thirty (30) days following the final adjustment of insurance claims, if any; otherwise, such meeting shall be held within ninety (90) days of the occurrence of the damage or other destruction. At such meeting the Board or its representatives, shall present to the members present, an estimate of the cost of repair or reconstruction, and the estimated amount of necessary assessments against each Unit Owner.

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

8.03 **Eminent Domain.** In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portions so taken from the provisions of the Act may be made by the Board. Upon the withdrawal of any Unit or portion

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

**8.04 Repair, Restoration or Reconstruction of the Improvements.** As used in this Article. "repair, restoration or reconstruction" of improvements means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and Common Element having the same vertical and horizontal boundaries as before, unless, if allowed by the Act, other action is approved by holders of first mortgages on Units which have more than fifty percent (50%) of the votes in the Association.

## **Article IX**

### **Sale of the Property**

At a meeting duly called for such purpose and attended by all Unit Owners, the Unit Owners by affirmative vote of one hundred percent (100%) of the Unit Owners may elect to sell the Property as a whole. Within ten (10) days alter the date of the meeting at which such sale was approved the Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit entitled to notice under Section 14.02 of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale.

## Article X

### Remedies

10.01 **Violations.** Upon the occurrence of any one or more of the following events, the Board shall have the rights and remedies set forth in Section 10.02 of this Declaration:

(a) Failure by a Unit Owner to pay when due any sums required to be paid by such Unit Owner pursuant to Sections 4.06, 4.07 and 4.09(b). Article VI, or other provisions of this Declaration, for thirty (30) days after written notice of such non-payment shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to cure such failure if such Unit Owner has been given three or more notices pursuant to this Section 10.01(a) during the twelve-month period immediately preceding the first day of such failure.

(b) Violation or breach by a Unit Owner (or any occupant of his Unit) of any provision, covenant or restriction of the Act, Declaration, the By-laws, contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board, and continuation of such violation or breach for thirty (30) days after written notice thereof shall have been given such Unit Owner; provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to correct such violation or breach if such Unit Owner has been given three or more notices pursuant to this Section 10.01(b) during the twelve-month period immediately preceding the first day of such violation or breach.

10.02 **Remedies.** Upon the occurrence of any one or more of the events described in Section 10.01, the Board shall have the following rights and remedies:

(a) The Board shall have the right to immediate possession of the defaulting Unit Owner's Unit after service by the Board on such Unit Owner, in the manner set forth in Section 14.03 hereof, of a notice to quit and deliver up possession which right may be enforced by an action for possession under "An Act in Regard to Forcible Entry and Detainer," approved February 16, 1874, as amended.

(b) For a violation or breach described in Section 10.01(b) hereof, the Board shall have the right: (i) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove or do whatever else may be necessary to correct, at the expense of the defaulting Unit Owner, any such violation or breach or the cause of such violation or breach, and the Declarant, or Developer, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or (ii) to enjoin, abate, or remedy by a proceeding at law or in equity the continuance of any such violation or breach.

(c) Upon the occurrence of one of the events described in Section 10.01(a) hereof,



including without limitation, failure by a Unit Owner to pay his percentage share of Common Expenses or user charges, the Board shall have a lien on the interest of the defaulting Unit Owner in his Unit Ownership in the amount of any sums due from such Unit Owner; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. Except as hereinafter provided, the Lien provided for in this Section 10.02(c) shall not be affected by any transfer of title to the Unit Ownership. Where title to the Unit Ownership is transferred pursuant to a decree of foreclosure or by deed or assignment in lieu of foreclosure, such transfer of title shall to the extent permitted by law, extinguish the lien described in this Section 10.02(c) for any sums which became due prior to (i) the date of the transfer of title or (ii) the date on which the transferee comes into possession of the Unit, whichever occurs first. However, the transferee of a Unit Ownership shall be Liable for his share of any sums with respect to which a lien against his Unit Ownership has been extinguished pursuant to the preceding sentence which are reallocated among the Unit Owners pursuant to a subsequently adopted annual revised or special assessment, and non-payment thereof by such transferee shall result in a lien against the transferee's Unit Ownership as provided in this Section 10.02(c).

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

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

Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board may be exercised at any time and from time to time cumulatively or otherwise by the Board in its discretion. The failure of the Board to exercise any such rights or remedies to enforce any provisions of this Declaration, the Bylaws or rules and regulations of the Board shall in no event be deemed a waiver of the right to do so thereafter.

(f) Upon the occurrence of one of the events described in Section 10.01(a), the Board may accelerate the maturity of the remainder of Installments of Common Expenses due from such defaulting Unit Owner for the balance of the assessment year.

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

**10.03 Enforcement by Unit Owners.** Any aggrieved Unit Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board by an action at law or in equity against the defaulting Unit Owner (or occupant of his Unit) upon a violation or breach described in Section 10.01(b) hereof against any person or persons either to restrain such violation or breach or to recover damages.

## Article XI

### Miscellaneous Provisions Respecting Mortgages

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

(a) Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded first mortgage or trust deed on a Unit ("Insurer or Guarantor") and the Unit number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of any Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any First Mortgagee of a Unit who comes into possession of the said Unit pursuant to the remedies

provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Unit, whichever occurs first (except for any sums which are reallocated among the Unit Owners pursuant to the last sentence of Section 10.02(c) hereof).

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

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

(ii) to receive, without charge and within a reasonable time after such request, any annual audited financial statements which are prepared and distributed by the Association to the Unit Owners at the end of each of its respective fiscal years;

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

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

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

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

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

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

(i) by act or omission seek to abandon or terminate the condominium regime,

except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units and/or the Common Elements.

(ii) change the pro rata interest or obligations of any Unit Owner for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and (2) determining the pro rata share of ownership of each Unit Owner in the Common Elements, except as provided in Sections 8.02 and 8.03 hereof;

(iii) use hazard insurance proceeds for losses to any Property (whether to Units or to Common Elements) for other than the repair, replacement, or construction of such improvements, except as provided by the Act in case of substantial loss to the Units and/or the Common Elements.

(e) Unless the First Mortgagees of the individual Units representing at least fifty-one percent (51%) of the votes in the Association have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to do or permit to be done any of the following:

(i) Adoption of an amendment to this Declaration which (i) changes Section 10.02(c), (ii) changes Article XI or any other provision of this Declaration which specifically grants rights to First Mortgagees. (iii) materially changes insurance and fidelity bond requirements, (iv) imposes a right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his Unit Ownership or changes the provisions concerning the leasing of Units or (v) changes the provisions of the Declaration concerning Capital Reserves;

(ii) 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 Property and except for the encumbrance, sale or transfer of the percentage of ownership in the Common Elements in connection with the encumbrance, sale or transfer of a Unit Ownership);

(iii) The sale of the Property;

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

(v) The effectuation of a decision by the Association to terminate professional management and assume sell management of the condominium.

(f) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Elements if such damage or destruction or taking exceeds Ten thousand Dollars (\$10,000.00), or if damages shall occur to a Unit in

excess of One Thousand Dollars (\$1,000.00), notice of such event shall also be given.

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

(h) Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the First Mortgagee within thirty (30) days after making the request for consent.

## **Article XII**

### **Intentionally Omitted**

## **Article XIII**

### **Transfer Of A Unit**

13.01 **Unrestricted Transfers.** Subject to Section 13.02 below, a Unit Owner may, without restriction under the Declaration, sell, give, devise, lease or otherwise transfer his entire Unit. Notice of any such unrestricted transfer shall be given to the Board, in the manner provided in this Declaration for the giving of notices, within five (5) days following consummation of such transfer.

13.02 **Limits on Lease Terms.** No Unit shall be leased by a Unit Owner for hotel or transient purposes or for a term less than six (6) months and no portion of a Unit which is less than the entire Unit shall be leased. Each lease of any one or more Units shall be in writing and a copy of every such lease, as and when executed, shall be furnished to the Board. The lessee under every such lease shall be bound by and subject to all of the obligations, under the Declaration and By-Laws, of the Unit Owner making such lease and the failure of the lessee to comply therewith shall constitute a default under the lease which shall be enforceable by the Board or the Association, and the lease shall be deemed to expressly so provide. The Unit Owner making such lease shall not be relieved thereby from any of said obligations.

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

**13.04 Miscellaneous.**

(a) A transfer or lease of a Unit, or interest therein, by or to the Board or the Declarant shall not be subject to the provision of this Article XIII. This Section 13.04 (a) cannot be amended or deleted without the prior written consent of Declarant and Developer, so long as Declarant owns any Units.

(b) The Association shall hold title to or lease any Unit, pursuant to the terms hereof, in the name of the Association, or a nominee thereof delegated by the Board, for the sole benefit of all Unit Owners. The Board shall have the authority at any time to sell, lease or sublease said Unit on behalf of the Association upon such terms as the Board shall deem desirable, but in no event shall a Unit be sold for less than the amount paid by the Association to purchase said Unit unless Unit Owners owning not less than seventy-five percent (75%) of the total ownership of the Common Elements first authorize the sale for such lesser amount. All of the net proceeds from such a sale, lease or sublease shall be applied in such manner as the Board shall determine.

(c) The Board may adopt rules and regulations, from time to time, not inconsistent with the provisions of this Article XIII, for the purpose of implementing and effectuating said provisions.

(d) Within the last year there have been no tenants in the building located on the property and accordingly no notice to tenants is required pursuant to Section 30 of the Act.

## **Article XIV**

### **General Provisions**

**14.01 Certain Rights of the Declarant and Developer.** Until the time established by the Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant and/or Developer. If the initial Board shall not be elected by the Unit Owners at the time established by this Declaration, the

Declarant and/or Developer shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights, and the other rights reserved by the Declarant and/or Developer pursuant to this Declaration, the Declarant and/or Developer shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's and/or Developer's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

**14.02 Notice to Mortgagees.** Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner whose Unit Ownership is subject to such mortgage or trust deed.

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

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

**14.05 Conveyance and Leases.** Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under Articles of Agreement for Deed and each tenant under a lease for a Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time an interest or estate in the Property, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

**14.06 Intentionally Deleted.**

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

**14.08 Change, Modification or Rescission.** No provision of this Declaration affecting the rights, privileges and duties of the Declarant or Developer may be modified without its written consent. The provisions of Article XI and Sections 10.02, 14.12 and the following provisions of Section 14.07 of this Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President or a Vice-President of the Board, and by all of the Unit Owners and all mortgagees having bona fide liens of record against all of the Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded as provided in Section 14.12 or by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President or a Vice-President of the Board, and approved by the Unit Owners having, in the aggregate, at least sixty-seven (67%) percent of the total vote, at a meeting called for that purpose provided, however, that all holders of first mortgages of record have been notified by certified mail of any change, modification, or rescission, and an affidavit by the Secretary of the Board certifying to such mailing is made a part of such instrument and provided further that any provisions herein which specifically grant rights to holders of first mortgages of record may be amended only with the written consent of all such holders of first mortgages. The change, modification or rescission shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of Cook County, Illinois: provided, however, that no such change, modification or rescission shall change the boundaries of any Unit, the allocation of percentages of ownership in the Common Elements and votes in the Association, quorum and voting requirements for action by the Association, or liability for Common Expenses assessed against any Unit, except to the extent authorized by other provisions of this Declaration or by the Act. Anything in this Declaration to the contrary notwithstanding, no provision of this Declaration affecting the Common Elements, including any facilities located thereon or the maintenance thereof, may be modified without the written consent of the City.

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

**14.10 Perpetuities and Other Invalidity.** If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Ronald W. Reagan, fortieth (40th) President of the United States.

**14.11 Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class condominium development. The provisions of this Declaration are subservient to the ordinances and regulations of the City.

**14.12 Ownership by Land Trustee.** In the event title to any Unit Ownership is conveyed to a land title holding trust, under the terms of which all powers of management, operation and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the



Unit Ownership under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings Chargeable or created under this Declaration against such Unit Ownership. No claim shall be made against 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 of such Unit Ownership.

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

**14.14 Description of Condominium.** As of the date hereof, the Developer contemplates that, when completed, Northwestern Terra Cotta Condominium will consist of six (6) loft Units contained in a historic building with architecture of the traditional American style. The foregoing is intended only as a general description of Northwestern Terra Cotta Condominium as presently contemplated by the Developer and nothing herein shall be construed to limit the right of the Declarant and the Developer, which right is hereby expressly reserved and granted to the Declarant and the Developer, to modify and alter the number, configuration, style, type and size of the Building and Units to be constructed on the Parcel, including, without limitation, the right to modify and alter the size of, and the number of bedrooms to be contained in. the Unit, provided, however, that any such modification and alteration has been approved by the City.

**14.15 Intentionally Deleted.**

**14.16 Assignments by Developer.** All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable or transferable. Any successor to, or

assignee of, the rights of the Developer hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein. No party exercising rights as Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

**14.17 Trustee Exculpation** This Declaration is executed by Bank of Ravenswood (“Ravenswood”), as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Ravenswood hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under his Declaration that Ravenswood, as Trustee as aforesaid, and not personally, has joined in the execution of this Declaration for the sole purpose of subjecting the title holding interest and the trust estate under said Trust No. 25-9548 to the term of this Declaration; that any and all obligations, duties, covenants, indemnities and agreements of every nature herein set forth by Ravenswood, as Trustee as aforesaid, to be kept or performed, are intended to be kept, preformed, and discharged by the beneficiaries under said Trust No. 25-9548 or their successors, and not by Ravenswood personally; and further, that no duty shall rest upon Ravenswood either personally or as such Trustee, to sequester trust assets, rentals, avails or proceeds of any kind, or otherwise to see to the terms of this Declaration, except where said Trustee is acting pursuant to direction as provide by the terms of said Trust No.25-9548 after the Trustee has been supplied with funds required for the purpose. In event of conflict between the terms of this paragraph and of the remainder of the Declaration on any questions of apparent liability of obligation resting upon said Trustee, the exculpatory provision hereof shall be controlling

**IN WITNESS WHEREOF**, Bank of Ravenswood, as Trustee as aforesaid and not individually, has caused its Corporate Seal to be affixed hereunto and his caused its name to be signed to these presents by its Assistant Vice President and attested by its Land Trust Officer, this 22<sup>nd</sup> day of Sep, 1989.

BANK OF RAVENSWOOD,, as Trustee  
under Trust Agreement dated September  
26, 1988, and known as Trust No. 25-9548

By: DOUGLAS W, MYERS Signed  
Its: Assistant Vice President

ATTEST:

Eva Higas (sic) signed  
Its: Land Trust Officer

STATE OF ILLINOIS                    )  
  )     SS  
COUNTY OF COOK                    )

I the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that DOUGLAS W. MYERS as Assistant Vice President of Bank of Ravenswood and Eva Higas (sic) Land Trust Officer, thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Land Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth: and the said Land Trust Officer, did also then and there acknowledge that she, as custodian of the Corporate Seal of said Bank, did affix the said Corporate Seal of said Bank to said instrument as her own free and voluntary act, and as the free and voluntary act of said Bank. as Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 22<sup>nd</sup> day of Sep 1989.

Silvia Medina (signed)  
Notary Public

My Commission Expires: Blank

This Instrument Was Prepared By:

William J. Peltin, Esq.  
Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1700  
Chicago, Illinois 60601  
312-368-7276

**“OFFICIAL SEAL”**  
**SILVIA MEDIAN**  
Notary Public, State of Illinois  
My Commission Expires 5/7/’90

## **Exhibit A**

**To**

### **Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for Northwestern Terra Cotta Condominium Association Survey of Units (Attached Hereto) Legal Description**

Lots I. to 4, both inclusive, and the Northwesterly 8.0 feet of Lot 5 in Block 6 in Fullerton Second Addition to Chicago. a subdivision of that part of the South half of the Southeast Quarter of Section 30, township 40 North, Range 14, East of the Third principal Meridian, and of that part lying West of said Railroad and East of Clybourn Avenue. in Cook County, Illinois.

Tax PIN:       14-30-409-063-0000  
                  14-30-409-064-0000

Common Address:   1701-1711 West Terra Cotta Place  
                          Chicago, Illinois

**Exhibit B**

**To Declaration Of Condominium Ownership and of  
Easements, Restrictions, Covenants and By-Laws  
For Northwestern Terra Cotta Condominium Association**

**Percentage of Ownership Interest in The Common Elements**

<b><u>Unit</u></b>	<b><u>Percentage</u></b>
<b>A</b>	<b>14.8%</b>
<b>B</b>	<b>12.8%</b>
<b>C</b>	<b>16.2%</b>
<b>D</b>	<b>19.6%</b>
<b>E</b>	<b>17.2%</b>
<b>F</b>	<b><u>19.4%</u></b>
	<b>100.0%</b>