

DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS AND BYLAWS  
FOR  
FOUNTAIN COURT CONDOMINIUM ASSOCIATION

THE CITY OF EVANSTON HAS RECEIVED ALL THE CONDOMINIUM INSTRUMENTS  
AND OTHER REQUIRED DOCUMENTS FOR FILING AS OF THIS DATE. SUCH  
RECEIPT DOES NOT CONSTITUTE APPROVAL BY THE CITY OF THE CONTENT,  
NOR VERIFICATION OF THE FACTS AND STATEMENTS CONTAINED THEREIN.

EXHIBIT "B"

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DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS, COVENANTS AND BYLAWS  
FOR

FOUNTAIN COURT CONDOMINIUM ASSOCIATION

THIS DECLARATION made and entered this \_\_\_\_ day of \_\_\_\_\_, 1992 by LASALLE NATIONAL BANK, as Trustee under Trust Agreement dated December 31, 1985, and known as Trust Number 110703 (hereinafter called "Declarant").

WITNESSETH THAT:

WHEREAS, Declarant is the legal titleholder of the real estate described in Exhibit "A" hereto (the "Development Area"); and

WHEREAS, a portion of the above described Development Area is now improved with one building enjoying historical landmark status with forty-four (44) residential apartment units and is now commonly known as Fountain Courts Condominium Association in Evanston, Illinois; and

WHEREAS, it is the desire and intention of Declarant to enable the "Property" (as hereinafter defined) to be owned by Declarant and by each successor in interest of the Declarant under that certain type or method of ownership commonly known as "CONDOMINIUM" and to submit the Property to the provisions of the Condominium Property Act of the State of Illinois, as amended from time to time while at the same time maintaining the exterior of the building exactly as is in order to preserve its historical landmark status; and

WHEREAS, Declarant, has elected to establish, for the benefit of Declarant and for the mutual benefit of all present and future owners or occupants of the Property, or any part thereof, which shall be known as "Fountain Courts Condominium Association," certain easements and rights, in, under, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant has further elected to declare that the several owners, mortgagees, occupants and other persons acquiring any interest in the Property shall at all times enjoy the benefits of and 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 co-operative aspect of ownership and to facilitate the proper

administration of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

NOW, THEREFORE, Declarant, as the legal titleholder of the Parcel hereinbefore described and for the purposes above set forth, THE DECLARATION AS FOLLOWS:

ARTICLE I  
DEFINITIONS

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

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

Association: The Fountain Court Condominium Association, an Illinois Not-For-Profit corporation.

Board: The Board of Managers or the Board of Directors, as the case may be, of The Fountain Court Condominium Association.

Building: A structure containing Units located on the Parcel, as more specifically described in Article II hereof.

By-Laws: The provisions for the administration of the Property attached as Exhibit D hereto, or as the same may be from time to time duly amended.

Common Elements: All portions of the Property except the Units, but including Limited Common Elements.

Common Expenses: The expenses of administration (including management and professional services), maintenance, operation, repair, replacement, and landscaping of the Common Elements; the cost of additions, alterations, or improvements to the Common Elements; the cost of insurance required or permitted to be obtained by the Board; utility expenses for the Common Elements; any expenses designated as Common Expenses by the Act, this Declaration, or the By-Laws; if not separately metered or charged to the Owners, the cost of waste removal, water, sewer, or other necessary utility services to the Condominium Property; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

Declaration: This instrument (and all exhibits attached thereto) by which the Property is submitted to the provisions of the Condominium Property Act of the state of Illinois, and such Declaration as from time to time amended. The Bylaws are embodied in and are a part of the Declaration.

Declarant: LaSalle National Bank, as Trustee under Trust Agreement dated December 31, 1985, and known as Trust Number 110703.

Developer: Hinman Associates, Inc., an Illinois corporation.

First Mortgagee: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Unit Ownership.

Limited Common Elements: A portion of the Common Elements so designated in the Declaration or the Plats as being reserved for the use of a certain Unit or Units to the exclusion of other Units.

Majority: With respect to Unit Owners means the Owners of more than 50% in the aggregate in interest of the undivided Ownership of the Common Elements and any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided Ownership; with respect to the members of the Board of Managers, more than 50% of the total number of persons then serving on the Board pursuant to the By-Laws and any specified percentage of the members of the Board of Managers means that percentage of the total number of persons then serving on the Board pursuant to the By-Laws.

Occupant: Any Person, other than an Owner, in possession of a Unit.

Owner: The Person or Persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit Ownership.

Parcel: The lot or lots, tract or tracts of land described in Exhibit A attached hereto, which are being submitted to the provisions of the Condominium Property Act.

Person: An individual, corporation, partnership, trustee or other legal entity capable of holding legal title to real property.

Plat: The plat of survey attached as Exhibit B hereto, and such other plats as may be made a part hereof, which sets forth the measurements, elevations, and locations of the Property, and the location of the planes which constitute the perimeter boundaries of each Unit, a distinguishing number or other symbol to identify each Unit, and such other data as may be required by the Act.

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, licenses, permits, rights and appurtenances belonging thereto, and all fixtures, equipment and personal property intended for the mutual use, benefit or enjoyment of the Owners.

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

Unit Ownership: A part of the Property consisting of the Unit and its Undivided Interest in the Common Elements.

Turnover Date: The date on which any one of the following shall first occur:

(a) Thirty (30) days after Trustee has conveyed seventy-five percent (60%) Units to purchasers for value;

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

(c) The date designated in a written notice from the Developer to all of the Owners as being the Turnover Date.

ARTICLE II  
UNITS

1. Description and Ownership: All Units located in a Building located on the Parcel are delineated on the Plats of Survey in Exhibit "B" attached hereto and made a part of this Declaration.

It is understood that each Unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth in the delineation thereof on Exhibit "B". The legal description of each Unit shall consist of the identifying number or symbol of each Unit as shown on Exhibit "B". Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on Exhibit "B", and every such description shall be deemed good and sufficient for all purposes. An Owner may, at his own expense, subdivide his Unit or combine his contiguous Units in accordance with the requirements of this Declaration, the Act, and any other applicable law, statute, ordinance, rule and regulation. All Owners are required to obtain insurance to cover his/her personal possessions, his/her personal liability and his/her responsible under this Declaration.

2. Certain Structures Not Constituting Part of a Unit. No Owner shall own any pipes, wires, conduits, chutes, flues, ducts, bearing walls, bearing columns, public utility lines or other structural components or apparatus running through a Unit and serving more than that Unit, except as a tenant in common with all other Owners.

ARTICLE III  
COMMON ELEMENTS

1. Description. The Common Elements shall consist of all portions of the Property except the Units. Without limiting the generality of the foregoing, the Common Elements shall include the land, outside walks, landscaping, entrances and exits, including lobbies and common stairways used by several Units, exterior windows, stairwells, roof, structural parts of the Building, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, and such component parts of walls, floors and ceilings as are not located within the Units.

2. Ownership of Common Elements. Each Owner shall own an undivided interest in the Common Elements as a tenant in common with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of each Unit for residential purposes, and such other purposes permitted by this Declaration, which right shall be appurtenant to and run with each Unit. The extent or amount of such ownership shall be expressed by a percentage amount and, once determined, shall remain constant, and may not be changed without unanimous approval of all Owners

except as otherwise provided by this Declaration or the Act. Declarant has so determined each Unit's corresponding percentage of ownership in the Common Elements as set forth in Exhibit "C" attached hereto.

3. Limited Common Elements. Except as otherwise provided herein, the Limited Common Elements shall consist of all portions of the Common Elements set aside and allocated for the restricted use of a particular Unit or Units.

#### ARTICLE IV

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

1. Submission of Property to the Condominium Property Act. The Property is hereby submitted to the provisions of the Act.

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

3. Easements.

(a) Encroachments. In the event that, by reason of the construction, repair, reconstruction, settlement or shifting of any Building, any portion of the Common Elements encroaches or shall hereafter encroach upon any portion of any Unit, or any portion of any Unit encroaches or shall hereafter encroach upon any portion of the Common Elements or any other Unit, or, if by reason of the design or construction of any Unit, it shall be necessary for an Owner to use or occupy any portion of the Common Elements for any reasonable use appurtenant to that Unit, which use or occupancy will not unreasonably interfere with the use or enjoyment of the Common Elements by other Owners, or, if 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 portion of any Unit, then in all such cases aforesaid, valid mutual easements for the maintenance of such encroachment and for such use and occupancy of the Common Elements are hereby established and shall exist for the Owners of such Units or the Common Elements, as the case may be, so long as all or any part of the Unit 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 Owner if such

encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by the other Owners or if such encroachment or use occurred or is occasioned due to the intentional, willful or negligent conduct of any Owner or Occupant or the agent of either.

(b) Utility and Cable Television Easements.

(i) The Illinois Bell Telephone Company, Commonwealth Edison Company, Northern Illinois Gas Company, Evanston Public Works Department, the City of Evanston, Illinois, and all other suppliers of utilities serving or proposing to serve the Property or any portion thereof are hereby granted the right to install, lay, construct, operate, maintain, renew, alter, remove and replace conduits, cables, mains, pipes, wires, transformers, switching apparatus and other equipment, and water, sewer and other utilities, into, over, under, on and through the Common Elements for the purpose of providing utility services to the Property or any portion thereof. The Board may hereafter grant additional utility easements for the benefit of the Property over, under, along and on any portion of the Common Elements, and each Owner hereby grants to the Board an irrevocable power of attorney coupled with an interest to execute, acknowledge, register and record for and in the name of all the Owners, such instruments as may be necessary or appropriate to effectuate the foregoing. Easements are also hereby declared and granted to the Developer or its assignee to install, lay, construct, operate, maintain, renew, repair and replace any conduits, cables, pipes, wires or other equipment or components of a community antenna television service system into, over, under, on and through the Common Elements for the purpose of providing such television service to the Property or to other property.

(ii) Upon the majority vote of more than fifty percent (50%) of the total votes of the Board of Managers at a meeting duly called for such purpose, the Board may grant an easement for the laying of cable television cable.

(c) Easements To Run With The Land. All easements and rights described herein are easements appurtenant, running with the land and, so long as the Property is subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding on Declarant, the Developer,

their respective successors and assigns, and any Owner, Occupant, purchaser, mortgagee and other Person having an interest in the Property, or any portion thereof. Reference in any deed 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 the respective grantees, mortgagees and trustees thereof as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

4. Separate Real Estate Taxes. Real estate taxes, special assessments, and any other special taxes or charges of the State of Illinois or any duly authorized subdivision or agency thereof, are to be separately taxed to each Owner for his Unit Ownership, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Owner, then, where the bill affects the Property as a whole or portions of the Common Elements or the Units, then each Owner shall pay his proportionate share thereof in accordance with his Undivided Interest.

Upon the affirmative vote of not less than a majority of the Voting Members, the Board, on behalf of all Owners, shall have the authority to seek relief for the Owners from any such taxes, special assessments or charges, and any expenses incurred in connection therewith shall be Common Expenses.

ARTICLE V  
MAINTENANCE, ALTERATIONS, DECORATING

1. Maintenance, Repairs and Replacements. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common elements shall be furnished by the Board as part of the common expenses, subject to the rules and regulations of the Board.

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

Whenever the Board shall determine, in its discretion, that any maintenance or repair of any Unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may be

served by delivering a copy thereof to any Occupant of such Unit or by mailing the same by regular and certified or registered mail addressed to the owner at the Unit. Notice is deemed served when mailed and need not be actually received. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time as stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair to be performed at the expense of such Unit Owner. If any Unit Owner shall fail or refuse to make any such payment when due, the amount thereof shall constitute a lien and be defined as an assessment or lawfully agreed upon charge against said Owner's Unit as provided in the Act.

If, due to the act or neglect of a Unit Owner, or a member of his family or household pet or of a guest or authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to any Unit or Units or maintenance, repairs or replacement shall be required which would otherwise be a common expense, then such Unit Owner shall pay for such damage, and such maintenance, repairs and replacements, as may be determined by the Board.

The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this Article V, Section 1. All expenses which, pursuant to this Section 1, are chargeable to any Unit Owner, and may be specially assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board. If any Unit Owner shall fail or refuse to make any such payment when due, the amount thereof shall constitute a lien and be deemed an assessment or lawfully agreed upon charge against said Owner's Unit as provided in the Act.

2. Limited Common Elements. Any charge or expense in connection with expenditures for the Limited Common Elements shall be assessed only against that Unit to which such Limited Common Elements are assigned.

3. Alteration, Additions or Improvements. No alterations of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. Any Unit Owner may make alterations, additions and improvements within his Unit with written approval of the Board and, such Unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Property as a result of such alterations, additions or improvements. 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.

4. Decorating. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit, including painting, wall papering, washing, cleaning,

paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The use of and the covering of the interior surface windows, whether by draperies, shades or other items, visible on the exterior of the Building, shall be subject to the rules and regulations of the Board. Decorating of the Common elements (other than interior surfaces within the Units as above provided), and any redecorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the common expenses.

## ARTICLE VI

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Elements shall be occupied and used as follows:

1. Use. No part of the Property shall be used for other than housing, parking and related common purposes for which the Property was designed. Each Unit shall be used as a residence for a single family and for no other purposes.

2. Restrictions. There shall be no obstruction of the Common Elements nor shall anything be stored in, on, under or above the Common Elements (except in areas designed for such purpose) without the prior written consent of the Board, or except as hereinafter expressly provided. Owners shall be obligated to maintain and keep in good order and repair their respective Units.

3. Prohibited Use. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance without the prior written consent of the Board. Owners shall not permit anything to be done or kept in their respective Units or in the Common Elements which will result in the cancellation of insurance or which would be in violation of any law. No waste shall be committed in the Common Elements.

4. Owner's Insurance. Owners shall be individually responsible for insuring their personal property in their respective Units, their personal property stored elsewhere on the Property and their personal liability.

5. Exterior Surfaces. Owners shall not cause or permit anything to be placed on outside walls, doors and windows of a building, and no sign, awning, canopy, shutter, air conditioning unit, radio or television antenna shall be affixed to or placed in, through or upon the exterior walls, doors, windows or roof or any part thereof, without the prior consent of the Board.

6. Pets. No animals of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that cats or other usual household pets other than dogs may be kept in Units, subject to rules and regulations adopted by the Board; provided that they are not kept, bred or maintained for any commercial purposes; and provided further that any such pet kept in violation of rules and regulations adopted by the Board or causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon ten (10) days' written notice from the Board.

7. Nuisances. No noxious or offensive activity shall be conducted in any Unit or in the Common Elements, nor shall anything be done thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or Occupants.

8. Structural Integrity. Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of a Building or which would structurally change a Building, except as is otherwise provided herein.

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

10. Personal Effects. There shall be no unattended leaving or storage of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Elements, except as may be permitted under rules and regulations adopted by the Board.

11. Commercial Activity. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted in any Unit or the Common Elements except as provided for herein.

12. "For Sale" and "For Rent" Signs. No "For Sale" or "For Rent" signs, advertising or other displays in excess of five square feet shall be maintained or permitted on any part of the Property. Notwithstanding the foregoing, the right is reserved by the Developer or its agents to place and maintain on the Common Elements or any Unit it owns, as long as Developer is engaged in sales or leasing activities in connection with the property, sales models, a sales or leasing office, advertising signs or banners and lighting in connection therewith, at such locations and in such forms as the Developer shall determine.

13. Board Consent. Nothing shall be altered or constructed in or removed from the Common Elements, except upon written consent of the Board.

14. Developer Rights. Notwithstanding any provision hereof to the contrary, at all times and from time to time prior to the sale of the last Unit in the Property, the Developer, the Declarant, beneficiaries of Declarant, their agents, successors and assigns, hereby reserve the right: (a) to lease or sell such Units as the Developer shall determine; (b) to erect and maintain on the Property all advertising signs, banners, lighting and other sales devices for the purpose of aiding the sale or leasing of the Units in the Property; (c) to maintain sales and business offices on the Property to facilitate the sale or leasing of Units therein; and (d) to utilize the Common Elements for ingress, egress and parking in connection with the sale and leasing of Units in the Property.

15. Exceptions. The Unit restrictions in Paragraphs 1 and 11 of this Article shall not, however, be construed in such a manner as to prohibit an Owner from: (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal business or professional business calls or correspondence therefrom, or inviting personal business or professional clients therein, so long as the Unit is not advertised to the general public in any manner as a business establishment. Such uses are expressly declared customarily incident to the principal use for residential purpose and not in violation of Paragraphs 1 or 11 of this Article.

16. Leases. Any lease or rental agreement relating to a Unit must be in writing and shall be subject to all the terms, conditions and requirements of the Declaration, By-Laws and rules and regulations of the Association. No Unit may be leased or rented for a period less than six (6) months. The Owner shall provide a copy of the lease or rental agreement to the Board no later than the date of occupancy or ten (10) days after the lease is signed, whichever occurs first. The Association is hereby expressly deemed to be a third party beneficiary of any such lease; and any violation of the Declaration, By-Laws or rules and regulations shall be deemed a default under such lease entitling the Association to exercise any and all remedies under the lease or available at law or equity, regardless of the Owner's action or inaction in response to such default.

17. Historical Landmark. The Fountain Court Condominium Association building has been designated as an historical landmark. No owner may make alterations or changes to the exterior of the building which would affect the historical status of the building without one hundred percent approval of the Unit Owners, approval from all mortgagees and approval from any necessary governmental

entity whose approval is necessary to effect the alteration or change.

ARTICLE VII  
DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. Sufficient Insurance. In the event the improvements forming a part of the Property, or any portion thereof, including any Unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment thereof; provided, however, that in the event within thirty (30) days after the damage or destruction, the Owners elect either to sell the Property as hereinafter provided in Article VIII 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 Owners according to each Owner's percentage of ownership in the Common Elements as set forth in Exhibit "C", after first paying out of the share of each Owner the amount of any unpaid liens on that Owner's Unit, in the order of the priority of such liens. This Paragraph shall not apply to the application of any proceeds of any policy or policies insuring against the loss of or damage to the contents of a Unit, which policy or policies were maintained by the Owners of the Unit.

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

3. Repair, Restoration or Reconstruction. Repair, restoration or reconstruction of the improvements, as used in this Article, means restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before. Except to the extent otherwise provided by the Act, Section 7(b) of the By-Laws and Paragraphs 1 and 2 of this Article VII, the Association shall not use hazard

insurance proceeds for other than repair, replacement or reconstruction purposes, unless Owners (other than the Declarant and Developer) having two-thirds (2/3) or more of the total votes in the Association give their prior written consent thereto.

ARTICLE VIII  
SALE OF THE PROPERTY

The Owners, by affirmative vote of the Owners having three-fourths (3/4) or more of the total votes, at a meeting duly called for such purpose, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which such sale is approved, the Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit Ownership entitled to Notice under Article XIV hereof. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale; provided, however, that any Owner who did not vote in favor of such action and who files written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale is approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the fair market value of such Owner's interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such Owner. In the absence of agreement on an appraiser, such Owner and the Board may each select an appraiser, and the two (2) so selected shall select a third. The Owner shall bear the cost of his appointed appraiser and one-half (1/2) of the cost of the third appraiser; the cost of the Board-appointed appraiser and one-half (1/2) of the cost of the third appraiser shall be a common expense. The fair market value shall be determined by a majority of the three appraisers so selected. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal.

ARTICLE IX  
ASSESSMENTS - MAINTENANCE FUND

1. Annual Budget.

(a) Preparation and Passage. Each year on or before November 1, the Board shall estimate in the form of a detailed budget the total amount necessary to pay the cost of wages, materials, insurance, services, supplies and fees which will be required during the ensuing calendar/fiscal year for the acquisition of all such goods and services, together with a reasonable amount determined by the Board for a reserve for contingencies and replacements (the "estimated cash requirement"). The proposed budget shall set forth each Owner's common expense

assessment. The estimated cash requirement shall be assessed to Owners according to each Owner's percentage of ownership in the Common Elements as set forth in Exhibit "C" attached hereto. Each Owner shall receive, at least thirty (30) days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for capital expenditures or repairs or payment of real estate taxes. Each Owner shall receive notice, in the same manner as is provided in the Act for membership meetings, of any meeting of the Board concerning the adoption of the proposed annual budget or of any subsequent increase or decrease therein, or establishment of an assessment. In the event any budget that is adopted differs from the proposed budget, then immediately after adoption, the Board shall distribute to each Owner a detailed annual budget as adopted by the Board, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income.

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

(c) Payment. On or before January 1st of the ensuing year, and on the 1st of each and every month of said year, each Owner, jointly and severally, if there be more than one (1) Owner for any Unit, shall be personally liable for and obligated to pay to the Board as it may direct, one-twelfth (1/12) of his (or their) total assessment made pursuant to this Paragraph 1.

(d) Accounting. On or before sixty (60) days after the end of the fiscal year the Board shall supply to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for capital expenditures or repairs or payment of real estate taxes, with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves. Such accounting may be prepared by a certified public accountant. Any amount

accumulated in excess of the amount required for expenditures shall be transferred to the capital reserve account.

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

## 2. Reserves.

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

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

3. Initial Budget. When the first elected Board hereunder takes office, it shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days after such election and ending at the end of the then existing fiscal year in which such election occurs. Assessments shall be levied against the Owners during the period provided in this Article.

4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimated budget on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay his share of the common expenses, as herein provided, whenever the same shall be determined. In the absence of any annual budget, each Owner shall continue to pay the monthly common expense assessment at the rate established for the immediately preceding period until the new annual budget is adopted and the new monthly common expense assessment thereunder is effective. Upon the adoption of the budget, each Owner will be personally liable for the monthly common expense assessment payments thereunder.

5. Books and Records.

(a) Maintenance. The Board or its managing agent shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by the Owners or their mortgagees and their duly authorized agents or attorneys.

(i) Copies of the recorded Declaration, By-Laws, other condominium instruments and any rules and regulations adopted by the Association or the Board. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this subparagraph (i) for examination and copying.

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

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

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

(v) Such other records of the Association as are available for inspection by members of a Not-For-Profit corporation pursuant to Section 107.75 of the General Not-For-Profit Corporation Act of 1986, as from time to time amended.

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

6. Status of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Owners in the percentages set forth in Exhibit "C"; provided, however, that sums deposited by any Owner as a capital contribution to the Association, or denominated as such by the Board, and reserves established pursuant to this Article, shall be deemed contributions to the capital of the Association and shall be held and administered as such unless and until the Board shall otherwise determine.

7. Non-payment.

(a) Late Charges, Collection and Foreclosure of Lien. If an Owner shall fail to pay his monthly common expense assessment or any other charges when due, he shall be charged a late charge as determined by the Board for each thirty (30) day period (or portion thereof) during which said amounts remain unpaid. If an Owner is in default in the monthly payment of the aforesaid common expense assessment or any other charges for thirty (30) days, the Board may bring suit for and on behalf of the Association and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, and other fees and expenses together with legal interest and reasonable attorneys' fees to be fixed by the court.

(b) Lien. To the extent permitted by any decision, statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the Unit Ownership of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Such lien shall take effect and be in force when and as provided in the Act; provided, however, that encumbrances owned or held by any bank, insurance company, savings and loan association or other lender shall be

subject as to priority to the lien for unpaid common expense assessments which become due and payable on or subsequent to the date on which the encumbrancer either takes possession of the Unit, accepts a conveyance of any interest in the Unit Ownership or causes a receiver to be appointed in a suit to foreclose its lien; and provided further that any First Mortgagee who obtains title to a Unit Ownership pursuant to the conditions provided in the mortgage or foreclosure of the mortgage, will not be liable for such Unit's unpaid assessments and charges which accrue prior to the acquisition of title to such Unit Ownership as long as the Association is included as a party in any foreclosure action. Any second mortgage shall at all times be subordinate in lien rights to the Association's lien for assessments, whether or not the Association has recorded a document evidencing such lien.

(c) Cumulative Rights. In addition to the foregoing, the Board or its agents shall have such other rights and remedies to enforce such collection as shall otherwise be provided or permitted by law from time to time. Without limiting the generality of the foregoing, if any Owner shall fail to pay his proportionate share of the common expenses or of any other expenses required to be paid hereunder when due, such rights and remedies shall include (1) the right to enforce the collection of such defaulting Owner's share of such expenses together with interest thereon at the maximum rate permitted by law, late charges, and all fees and costs (including reasonable attorneys' fees whether or not awarded by a court) incurred in the collection thereof; and (2) the right to take possession of such defaulting Owner's interest in the Property, to maintain for the benefit of all the other Owners an action for possession in the manner prescribed by Article IX of the Illinois Code of Civil Procedure (S.H.A. Ch. 110, par. 9-101 et seq.), as may from time to time be amended, and to execute leases of such defaulting Owner's interest in the Property and apply the rents derived therefrom against such expenses and other monetary obligations of the defaulting Owner.

(d) Forbearance of Assessments. The Association shall have no authority to forbear the payment of assessments by any Owner.

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

9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Unit by a bona fide lender. Each holder of a first mortgage on a Unit who obtains title or comes into possession of that Unit pursuant to the

remedies provided in the mortgage, foreclosure, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid assessments or charges which become payable prior to the first to occur of acquisition of title, possession or the filing of a suit to foreclose the mortgage.

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

## ARTICLE X REMEDIES

1. Abatement and Enjoinment. The violation of any rule or regulation adopted by the Board, or the breach of any restriction, covenant or provision herein contained, shall give the Board the right, in addition to the rights set forth in the next succeeding Paragraph: (a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Developer, the Declarant, its beneficiaries, successors or assigns, the Board and its agents, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise together with interest thereon at the highest legal rate per annum until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of such defaulting Owner's share of the common expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Owner and upon all of such defaulting Owner's personal property in the Unit or located elsewhere on the Property. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

2. Involuntary Sale. If any Owner (either by such Owner's own conduct or by the conduct of any Occupant of such Owner's Unit) shall violate any of the restrictions, covenants or provisions of this Declaration or the rules and regulations adopted by the Board, and such violation shall continue for ten (10) days after notice in writing from the Board, or shall re-occur at any time after such notice, then the Board shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the

rights of said defaulting Owner to continue as an Owner and to continue to occupy, use or control the defaulting Owner's Unit, and, thereupon, an action in equity may be filed by the members of the Board against the Owner or Occupant for a decree of mandatory injunction against the Owner or Occupant or, in the alternative, a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by such Owner on account of the breach of covenant, and ordering that the right, title and interest of the Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring such Owner's interest in the Property at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, whether or not awarded by a Court, and all such items shall be taxed against the defaulting Owner in such decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments and charges hereunder or any liens, shall be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit and to immediate possession of the Unit sold and may apply to the Court for a writ of assistance for the purpose of acquiring such possession. It shall be a condition of any such sale, and the decree shall provide, that the purchaser shall take the interest in the Property sold subject to this Restated and Amended Declaration.

#### ARTICLE XI RIGHTS OF FIRST MORTGAGEES

1. First Mortgagees Approval. The prior written approval of two-thirds (1/3) of all First Mortgagees will be required for any of the following:

(a) Amendments. An amendment to the Declaration which changes: (i) voting rights; (ii) assessments, assessment liens, or subordination of assessment liens; (iii) reserves for maintenance, repair and replacement of the Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use; (vi) the boundaries of any Unit; (vii) the convertability of Units into Common Elements or vice versa; (viii) the expansion or contraction of the Parcel, or the addition, annexation or withdrawal of property to or from the Property; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit; (xii) a decision by the Association to establish self-management when a professional manager has been required previously by a First Mortgagee; (xiii) the restoration or repair of a building (after a hazard damage or partial condemnation) in a manner other than that

specified in the Declaration; (xiv) any action to termination the condominium status of the Parcel after substantial destruction or condemnation occurs; (xv) any provision that expressly benefits mortgage holders, insurers or guarantors; (xvi) the pro rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; and (xviii) the pro rata interest or obligation of any individual Unit for the purpose of determining the pro rata share of ownership of each Unit in the Common Elements; or

(b) Abandonment or Termination of Condominium. The abandonment or termination of the condominium status of the Property, the removal of any part of the Property from the provisions of the Act and this Declaration, or the sale of the Property; except that the consent of First Mortgages shall not be required for the abandonment or termination of the condominium status of the Property made pursuant to the Act in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; or

(c) Partition or Subdivision. The partition or subdivision of any Unit; or

(d) Common Elements. The abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements, except that granting of easements for public utilities or for other public and private purposes consistent with the intended use of the Common Elements by the Association shall not require such approval; or

(e) Insurance Proceeds. The use of hazard insurance proceeds for losses to any portion of the Property, whether Units or Common Elements, for other than the repair, replacement or reconstruction of the Property; or

(f) Litigation. The institution of any lawsuit against the developer or declarant or its officers or employees.

2. First Mortgage Rights. Upon specific written request to the Board, a First Mortgagee or its servicer, or the insurer or any guarantor of a mortgagee shall receive the following as designated in the request:

(a) Budgets and Assessments. Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Unit covered by the First Mortgagee's mortgage;

(b) Financial Statements. Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Owners;

(c) Notices. Copies of notices of meetings of the Owners and the right to be represented at any such meetings by a designated representative;

(d) Amendments. Written notice of the decision of the Owners to make any material amendment to this Restated and Amended Declaration and By-Laws;

(e) Damages. Written notice of substantial damage to or destruction of any Unit (in excess of \$1,000.00) covered by the First Mortgagee's mortgage, or any part of the Common Elements (in excess of \$10,000.00);

(f) Condemnation. Written notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Property;

(g) Default. Written notice of any default of the Owner of the Unit which is subject to the First Mortgagee's mortgage, where such default is not cured by Owner within thirty (30) days after the giving of Notice by the Association to the Owner of the existence of the default;

(h) Books and Records. The right to examine the books and records of the Association at any reasonable time and, if and to the extent that no audited financial statement is available, the First Mortgagee or its servicer shall have the right to have an audited statement prepared at its own expense;

(i) Management. The Association's termination of professional management and assumption of self-management of the Property;

(j) Delinquency. Written notice of any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;

(k) Insurance. Written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(l) Action. Written notice of any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

The request of a First Mortgagee or its servicer, or the insurer or any guarantor of a mortgage shall state both the name and address of the First Mortgagee or its servicer, insurer or guarantor (as the case may be), shall specify which of the above information it desires to receive, shall indicate the address to which any notices or documents shall be sent by the Association and shall identify the Unit number of address of the Unit on which it

has the mortgage. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee, servicer, insurer or guarantor hereunder and in the event of multiple requests from purported First Mortgagees, servicers, insurers or guarantors of the same Unit, the Association shall honor the most recent request received.

## ARTICLE XII DEVELOPER'S RESERVED RIGHTS

1. In General. In addition to any rights or powers reserved or granted to the Developer under the Act, this Declaration or the By-Laws, the Developer shall have the rights and powers set forth in this Article. In the event of a conflict between the provisions of this Article and any other provisions of this Declaration or the By-Laws, the provisions of this Article shall govern. Except as otherwise provided in this Article, Developer's rights under this Article shall terminate at such time as the Trustee or the Developer is no longer vested with or controls title to a portion of the Unit.
2. Promotion Efforts. Developer shall have the right, in its discretion, to maintain on the Parcel model Units, sales and leasing offices, displays, signs and other forms of advertising and, to the extent not prohibited by law, to come upon any portion of the Property for the purpose of showing the Property to prospective purchasers or lessees of Units, all without the payment of any fee or charge whatsoever. The Developer shall have a non-exclusive access easement over and across the roads and walkways located on the Property for ingress and egress to and from those portions of the Additional Property which have not been made subject to the Act and this Declaration in order to exercise the rights reserved under this Section. The Developer or Trustee shall have the right and power to sell or lease a Unit to whomever it chooses on whatever terms it, in its sole discretion, shall deem appropriate.
3. Control of Board. Until the initial meeting of the Owners (which shall occur no later than thirty (30) days after the Turnover Date) and the election of the initial Board as provided for in the By-Laws, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act, this Declaration or the By-Laws shall be held and performed by the Developer. The Developer may hold and perform such rights and obligations through the Board which, prior to the initial meeting, shall consist of three individuals designated by the Developer from time to time. If the initial Board of Directors is not elected by the Owners at the time so established, the Developer or Directors designated by the Developer shall continue in office for a period

of thirty (30) days whereupon written notice of resignation shall be sent to all Unit Owners entitled to vote at such election. Prior to the Turnover Date, Developer may appoint from among the Owners three (3) non-voting counselors to Board, who shall serve at the pleasure of Developer.

4. Dedication Rights Reserved. Developer and Trustee hereby reserve the right at their sole discretion to dedicate or otherwise convey portions of the Property (but not those portions on which a Building is situated) to any public agency or governmental authority or quasi-public utility for purposes of streets, roads, roadways and utilities, and right-of-way and easements therefor. Such right to make such dedications or conveyances shall not require the consent, approval or signatures of either the Board or any Unit Owner, and such dedication or conveyance shall be considered fully accomplished and conclusively binding upon each of said Unit Owners and upon the Association when set forth in writing or in a Plat of Dedication executed by the Trustee or by the Developer which has been recorded in the office of the Recorder of Deeds of Cook County, Illinois, provided, however, that nothing in this paragraph shall be construed to in any manner require or obligate Developer or Trustee to make any such conveyance or dedication.

In furtherance of the foregoing, an irrevocable power coupled with an interest is hereby granted to the Trustee and the Developer, and each of them singly, as agent and attorney-in-fact to make such dedications or conveyances. Each deed, mortgage, trust deed or other instrument with respect to a Unit and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power to each of said attorney-in-fact and shall be deemed to reserve to each of them the foregoing powers and rights.

#### ARTICLE XIII GENERAL PROVISIONS

1. Provisions of the Declarant and Developer. Until such time as the initial Board provided for in this Declaration is formed, the Declarant and the Developer shall perform the powers, rights, duties and functions of the Board.

2. Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration and the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding in law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in

connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at nine percent (9%) per annum, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his assessment and constitute a lien on his Lot and enforceable as provided in Article IX. If any Owner, or his guests, violates any provision of this Declaration, the Articles of Incorporation, the By-Laws or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Unit and be enforceable as provided in Article IX.

3. Insurance Proceeds. In the event of (a) any distribution of any insurance proceeds hereunder as a result of substantial damage to, or destruction of, any part of the Property or (b) any distribution of the proceeds of any judgment or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Property, any such distribution shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the First Mortgage of a Unit with respect to any such distribution to or with respect to such Unit; provided that nothing in this Paragraph shall be construed to deny to the Association the right to apply any such proceeds to repair or replace damaged portions of the Property or to restore what remains of the Property after condemnation or taking by eminent domain of a part of the Property.

4. Special Amendment. Declarant and Developer reserve 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 (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgaged 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, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Units, (c) to bring this Restated and Amended Declaration into compliance with the Act, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, an irrevocable power coupled with an interest is hereby reserved and granted to the Declarant and Developer, severally, to vote in favor of, make, consent to, execute and record a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other

instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, execute and record Special Amendments. The right of the Declarant and Developer to act pursuant to rights reserved or granted under this Paragraph shall terminate five (5) years from such time as the Declarant and Developer no longer holds or controls title to a Unit.

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

6. Damages. Each Owner shall be responsible for any damages to the Common Elements or to any Unit or Units and also for the maintenance, repairs or replacements caused by or resulting from his negligent act or omission, or the negligent act or omission of a member of his family, his household pet, his guests, visitors or his invitees or of an Occupant of his Unit, household pets, guests, visitors or invitees of an Occupant of his Unit.

7. 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 Owner, as the case may be, at the address of the Unit, or at such other address as herein provided. The President of the Association is hereby designated as the person to mail and receive all notices as provided for in the Act and in this Restated and Amended Declaration; provided, however, that the Board may designate a different address for notices to the Board or the Association by giving written notice of such change of address to all Owners. Any Owner may also designate a different address for notices by giving written notice of such change of address to the Board. Notices to Unit Owners shall be deemed delivered when mailed by United States mail, or when delivered in person, or, if addressed to an Owner, when deposited at the door of the Owner's Unit. Notices to the Board or to the Association shall be deemed delivered when mailed by United States registered mail to the Board or Association.

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

9. Conveyance. 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 Condominium Deed,

and each tenant under a lease for a Unit, accepts the same subject to all restrictions, conditions, covenants, easements, 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 all Owners and any Person having at any time any interest or estate in the Property, and shall inure to the benefit of such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or lease.

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

11. Amendment. Except as provided in Section 27(b) of the Act or in Article XI of this Declaration, the provisions of Article II, Paragraphs 1 and 2 of Article III, Paragraph 7 of Article IX and this Paragraph 11 of Article XIV may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, and signed and acknowledged by the President and Secretary of the Board, all of the Owners and all First Mortgagees. Other provisions of this Declaration excepting those affected by Article XIV, Section 4, may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President and Secretary of the Board, and certifying that the Owners having at least two-thirds (2/3) of the total votes have approved such amendment at a meeting of the Association duly called for such purpose, and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all First Mortgagees, no less than ten (10) days prior to the date of such affidavit. Until such date as Declarant has conveyed title to all the Units, no provision of this Declaration may be changed, modified or rescinded and no provision may be added without the prior written consent of Declarant and Developer. Any change, modification or rescission shall be effective upon recording of such instrument in the Office of the Recorder of Deeds, Cook County, Illinois.

12. 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.

13. 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 with respect to real property or interests therein, then such options, privileges, covenants and rights shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Governor of the State of Illinois and of the incumbent President of the United States of America.

14. - 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 complex.

15. Land Trust. In the event title to any Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation and control of the Unit remain vested in the trust beneficiary or beneficiaries, then the 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 claims 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 such Unit Ownership.

16. Lease. The provisions of the Act, the Declaration, By-Laws, other condominium instruments and rules and regulations that relate to the use of the Units or the Common Elements shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease of any Unit.

17. Trustee Exculpation. If this Declaration is executed by Declarant as Trustee and not individually, in the exercise of any power and authority conferred upon and vested in it as such Trustee, then Declarant will warrant that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by every Person hereafter claiming any interest under this Declaration that Declarant, if it acts 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 described herein to the terms of this Declaration; that no personal liability or

personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Declarant or any of the beneficiaries under such Trust Agreement on account of this Declaration or on account of any representation, obligation, duty, covenant or agreement of Declarant in this instrument contained either express or implied, all such personal liability, if any, being expressly waived and released; and further, that no duty shall rest upon Declarant, either personally or as such Trustee, to sequester trust assets, rentals, avails or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation, express or implied, arising under the terms of this Declaration, except where Declarant is acting pursuant to direction as provided by the terms of such Trust Agreement and after the Declarant has first been supplied with funds required for this purpose. In the event of conflict between the terms of this Paragraph and of the remainder of this Declaration, or in the event of any apparent liability or obligation resting upon Declarant, the exculpatory provision hereof shall be controlling.

IN WITNESS WHEREOF, LaSalle National Bank, as Trustee under Trust Agreement dated December 31, 1985 and known as Trust No. 110703 has caused its name to be signed this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1992.  
[SEAL]

LASALLE NATIONAL BANK, as Trustee  
aforesaid not individually

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

EXHIBIT D

BY-LAWS

FOR

FOUNTAIN COURT CONDOMINIUM ASSOCIATION

Unless otherwise defined in these By-Laws, all defined terms shall have the meaning ascribed to them in the Declaration of Condominium Ownership for Fountain Court Condominium Association.

SECTION ONE

ADMINISTRATION OF THE PROPERTY

The direction and administration of the Property shall be vested in a Board of Managers (the "Board") of the Association (hereinafter described); provided, however, that for a period commencing on the date of recording of the Declaration and ending with the date of the initial meeting of the Owners, the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act and the Declaration shall be held and performed by the Declarant and the Developer, and, except as otherwise provided in the Act, the acts and agreements made by the Declarant and the Developer with respect to the Property shall be binding upon the Board. Each member of the Board shall be an Owner or contract purchaser as defined in Section 6(c) of these By-Laws; provided, that if an Owner or contract purchaser is a corporation, partnership, trust or other legal entity other than a natural individual, then any one officer, director or other designated agent of such corporation, partner or other designated agent of such partnership, beneficiary or other designated agent of such trust or manager of such other legal entity shall be eligible to serve as a member of the Board.

SECTION TWO

ASSOCIATION

Fountain Court Condominium Association (herein called the "Association"), acting through the Board, shall be the governing body for all the Owners for the maintenance, repair, replacement, administration and operation of the Property. The Association shall represent the Owners in any proceedings, negotiations, settlements or agreements relating to the handling of any losses or proceeds from condemnation, destruction or liquidation of all or any part of the Property or from the termination of the condominium status of the Property; and said representation by the Association shall be as attorney-in-fact (with an interest) of the respective Owners who hereby irrevocably so appoint the Association. The

Association shall not engage in or be deemed to be engaged in any business of any kind. Every Owner shall be a member therein, which membership shall automatically terminate upon the sale, transfer or other disposition of such Owner's unit Ownership, at which time the new Owner shall automatically become a member therein. The Association shall have one (1) class of membership. Declarant, prior to the election of the first Board, and the Board at any time thereafter, may cause the Association to be incorporated as a Not-For-Profit corporation under the General Not-For-Profit Corporation Act of the State of Illinois; and in such event, the Board of Directors of the Association shall be deemed to be the Board of Managers referred to herein and in the Act.

### SECTION THREE

#### VOTING RIGHTS

A. Votes. The total number of votes of all Owners shall be one hundred (100), and each Owner shall be entitled to the number of votes equal to the percentage of ownership in the Common Elements applicable to the Unit Ownership represented by such Owner, as set forth in Exhibit "C" of the Declaration. For purposes of voting and sitting on the Board, the Developer or its designee shall be the Owner with respect to any Unit Ownership owned by Declarant. An Owner may vote by proxy executed in writing by him or by his duly authorized attorney-in-fact. The proxy shall be invalid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy, and the proxy must bear the date of execution. Any proxy distributed for Board elections must give the owner the opportunity to designate any persons the proxy holder and give the owner the opportunity to express a preference for any known candidates for the Board or to write in a name.

B. Multiple Owners. If there are multiple Owners with respect to a Unit Ownership and if only one of such multiple Owners is present at a meeting of the Association, he/she shall be entitled to cast the vote allocated to that Unit Ownership; however, if more than one of the multiple Owners are present, the vote allocated to the Unit Ownership may be cast only in accordance with the agreement of a majority of the multiple Owners present. For purposes of this paragraph, there is majority agreement if any one of the multiple Owners casts the vote allocated to that Unit Ownership without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit Ownership. Only one of the multiple Owners may serve on the Board at any given time.

## SECTION FOUR

MEETINGS

A. General Provisions. Meetings of the Association shall be held at the Property or at such other place in the State of Illinois as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the Owners having twenty percent (20%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Owners at which a quorum is present upon the affirmative vote of the Owners having a majority of the total votes present at such meeting. Matters subject to affirmative vote of Owners having two-thirds (2/3) or more of the total votes at a meeting duly called for that purpose, shall include, but not be limited to: (1) merger or consolidation of the Association; (2) sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the property and assets of the Association; and (3) the purchase or sale of land or of Units on behalf of all Owners.

B. Initial and Annual Meeting. The initial meeting of the Association shall be held upon not less than ten (10) nor more than thirty (30) days' prior written notice given by Declarant or Developer to the Owners. Such initial meeting shall be held not later than sixty (60) days after the conveyance by Declarant and/or Developer of seventy-five percent (75%) of the Units or three (3) years after the recording of the Declaration, whichever is earlier. The formation or incorporation of the Association by Declarant or Developer shall not require Declarant or Developer to call the initial meeting of the Association any earlier than provided in the preceding sentence. Thereafter, there shall be an annual meeting of the Association on the 30th day of June of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated in a written notice from the Board. One of the purposes of the annual meeting shall be to elect members of the Board of Managers.

C. Special Meetings. Special meetings of the Association may be called at any time upon written notice for the purpose of considering matters which, by the terms of the Declaration or under the Act, require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings may be called by the President of the Association, twenty-five percent (25%) of the members of the Board or by the Owners having twenty percent (20%) or more of the total votes.

## SECTION FIVE

### NOTICES OF MEETINGS

Notices of annual and special meetings shall be given pursuant to the provisions of Paragraph 7 of Article XIV of the Declaration. Written notice of any membership meeting shall be mailed or delivered to Owners no less than ten (10) and no more than thirty (30) days prior to the meeting and said notice shall state the time, place and purpose of such meeting.

## SECTION SIX

### BOARD OF MANAGERS (BOARD OF DIRECTORS)

#### A. Election.

1. At the initial meeting and at each annual meeting thereafter, the Owners shall elect a Board of Managers, all of whom shall be elected at large. If there are multiple owners of a single unit only one of the multiple owners shall be eligible to serve as a member of the Board of any one time.

2. The Board shall consist of three (3) members. At the initial election of the Board, the two candidates receiving the highest number of votes shall be elected for a term of two (2) years and the candidate receiving the next highest number of votes shall be elected for a term of one (1) year. Upon expiration of the terms of office of the members so elected, and thereafter, successors shall be elected for a term of two (2) years each.

3. Each member of the Board shall hold office until a successor shall have been duly elected and qualified; provided that Board members may succeed themselves. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board and approved by the Owners having two-thirds (2/3) or more of the total votes.

4. The Board may disseminate to Unit Owners biographical and background information about candidates for election to the board if: (1) no preference is expressed in favor of any candidate; and (2) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.

B. Counting of Election Ballots. A 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.

C. Contract Purchasers. The purchaser of a Unit from a seller other than the Declarant or the Developer pursuant to an installment contract for purchase shall during such times as he or she resides in the Unit be counted toward a quorum for purposes of

election of members of the Board at any meeting of the Owners called for purposes of electing members of the Board, and shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents. For purposes of this subparagraph, "installment contract" shall have the same meaning as set forth in Section 1(e) of "An Act relating to installment contracts to sell dwelling structures" approved August 11, 1967, as from time to time amended.

D. Vacancies. Vacancies on the Board due to resignation, removal or death, shall be filled by the remaining member of the Board by two-thirds (2/3) vote until the next annual meeting of the Association or for a period terminating no later than thirty (30) days following the filing of a petition signed by Owners holding twenty percent (20%) of the votes in the Association requesting a meeting of the Association to fill the vacancy on the Board no later than thirty (30) days following the filing of a petition signed by the Owners holding twenty percent (20%) of the votes in the Association requesting such a meeting.

E. Management of Property. Except as otherwise provided in this Restated and Amended 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. A majority of the Board shall constitute a quorum.

F. Meetings. Meetings of the Board may be called, held and conducted in accordance with such rules and regulations as the Board may adopt. Meetings of the Board shall be open to any Owner, except for the portion of any meeting held (i) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent, (ii) to consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the Association or an Owner's unpaid share of common expenses; however, any vote on these matters shall be taken at a meeting or portion thereof open to any Owner. Any Owner may record the proceedings of meetings, or portions thereof, required to be open by the Act by tape, film or other means, subject to such reasonable rules and regulations as the Board may prescribe. Notice of such meetings shall be mailed or delivered to Board members at least forty-eight (48) hours prior thereto unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. In addition, such copies of notices of meetings of the Board shall be posted in entranceways or other conspicuous places on the Property at least forty-eight (48) hours prior to the meeting of the Board. The Board may designate one or more locations in the proximity of

the Units where the notices of meetings shall be posted. The Board shall meet at least four (4) times annually. A majority of the total members on the Board shall constitute a quorum.

G. Officers. The Board shall elect the following officers from among the members of the Board: a President who shall preside over both its meetings and those of the Association, and who shall be the chief executive officer of the Board and the Association; a Secretary who shall keep the minutes of all meetings of the Board and of the Association and who shall, in general, perform all the duties incident to the office of Secretary; a Treasurer who shall keep the financial records and books of account; and such additional officers as the Board shall see fit to elect. Such officers shall serve at the will of the Board, which shall fill any vacancies. Officers shall be elected at the first meeting of the Board immediately following the initial meeting and each annual meeting thereafter of the Association.

H. Removal. Any Board member may be removed from office by affirmative vote of the Owners having two-thirds (2/3) or more of the total votes, at any annual or special meeting of the Association called for that purpose. A successor to fill the unexpired term of a Board member so removed may be elected by the Owners at the same meeting or any subsequent meeting called for that purpose. This right of removal shall not apply to any Board member selected by Declarant or Developer.

## SECTION SEVEN

### GENERAL POWERS AND DUTIES OF THE BOARD

The Board, for the benefit of all the Owners, shall acquire the following goods and services and do any of the following things, and shall pay for such goods, services and things as a common expense as follows:

A. Utilities. Sewer, water, scavenger service and other necessary utility service for the Common Elements and (if not separately metered or charged) for the Units.

B. Insurance. Insurance on the Property insuring the Common Elements and the Units against loss or damage by fire, lightning and those risks now or hereafter contained in the extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement value of the Common Elements and the Units written in the name of, and the proceeds thereof shall be payable to, the members of the Board as trustees for each of the Owners in the percentages established in "Exhibit C." Prior to obtaining any such policy of insurance, or any renewal thereof, the Board, at its option, may obtain an appraisal from a qualified appraiser for the purpose of determining the full insurable replacement value of the Common Elements and the Units for the amount of insurance to be effected pursuant hereto. The Board

shall acquire all insurance necessary to meet the insurance requirements of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") and the Act, and whichever has the greater requirements shall control for purposes of this paragraph. Each Owner shall be required to report all additions, alterations or improvements to such Owner's Unit promptly in writing to the Board, without prior request from the Board or the managing agent, and to reimburse the Board for any additional insurance premiums attributable thereto. The Board shall not be responsible for obtaining insurance on such additions, alterations or improvements unless and until such Owner shall make such report and request the Board in writing to obtain such insurance, and shall make arrangements satisfactory to the Board to reimburse the Board for any such additional premiums; and upon the failure of such Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any such policy of insurance (1) shall contain a standard mortgage clause endorsement in favor of each mortgagee of a Unit as its interest may appear, (2) shall provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Owner, (3) 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 Owners elect to sell the Property or remove the Property from the provisions of the Act, (4) shall contain an endorsement to the effect that such policy shall not be terminated for non-payment of premium without at least 10 days' prior written notice to each mortgagee of a Unit, (5) shall contain a clause or endorsement whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant and its beneficiaries, the Developer, the managing agent, if any, their respective employees and agents, the Owners and Occupants, (6) shall contain a "Replacement Cost Endorsement," and (7) shall not provide for a deductible amount greater than the lesser of \$10,000.00 or one percent (1%) of the policy face amount. Notwithstanding the issuance of a standard mortgage clause endorsement, any losses under any such policy of insurance shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed in accordance with the provisions of the Declaration, these By-Laws and the Act; provided, however, that if the Board fails to perform all of the conditions precedent required by any such policy of insurance, and fails to collect the amount of the loss within the time required by law, and any mortgagee of a Unit is required to avail itself of its rights under the standard mortgage clause endorsement to collect the proceeds of any such policy of insurance, any amounts so collected through the efforts of the mortgagee shall be applied as directed by the mortgagee. The Board may engage the services of any corporation qualified to accept and execute trusts in Illinois to act as Insurance Trustee (and as successor Insurance Trustee) and to receive and disburse the insurance proceeds resulting from any loss upon such terms as the Board shall determine consistent with

the provisions of the Restated and Amended Declaration, and these By-Laws. In the event the lowest of three (3) bids from reputable contractors for making all repairs required by any loss shall exceed \$60,000.00, the Board, upon written demand of any mortgagee of a Unit, shall engage the services of an Insurance Trustee as aforesaid.

C. Liability and Property Damage Insurance. Comprehensive public liability and property damage insurance in a minimum coverage of \$1,000,000 for bodily injury and property damage arising from a single occurrence, insuring the members of the Board, the Association, and managing agent, if any, and their respective agents and employees. The Declarant (including its beneficiaries) and the Developer shall be included as additional insureds in their capacities as Owner and/or Board member. The Owners and Occupants shall be included as additional insureds but only with respect to that portion of the Property not reserved for their exclusive use. The insurance shall cover claims of one or more insured parties against other insured parties. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above named insured persons.

D. Other Insurance. Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Board in its judgment shall elect to effect.

E. Taxes. 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 Association. Upon authorization by a two-thirds (2/3) vote of the members of the Board or by the affirmative vote of the Owners having more than one-half (1/2) of the total votes, at a meeting duly called for such purpose, the Board, acting on behalf of all Owners, shall have the power to seek relief from or in connection with the assessment or levy of real property taxes, special assignments and any other special taxes or charges of the State of Illinois or of any other political subdivision thereof, or other lawful taxing or assessing body. In addition, the Board may act on behalf of all Owners in connection with any other matter where the respective interests of the Owners are deemed by the Board to be similar and non-adverse to each other.

F. Supplies and Services. Landscaping, snow removal, cleaning, maintenance, decorating, repair and replacement of the Common Elements and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper. The Board shall have the exclusive right to designate, employ and remove personnel necessary for the maintenance, repair and replacement of the Common Elements.

G. Maintenance. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations or assessments which the Board is required to secure or pay for pursuant to the terms of the Declaration and these By-Laws or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the property as a first class condominium complex or for the enforcement of the Declaration, By-Laws, rules and regulations and the Act.

H. Mechanic's Liens. 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 valid lien against the Property or against the Common Elements, rather than merely against the interest therein of a particular Owner. Where one or more Owners (or the Occupants of his or their Units) are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs (including attorney's fees) incurred by the Board by reason of such lien shall be specially assessed to such Owners, regardless of whether such lien is later determined to be false, fraudulent or bona fide.

I. Maintenance and Repair of Units. Maintenance and repair of any Unit if, in the opinion of the Board, such maintenance or repair is necessary to protect the Common Elements or any other portion of the Property, and the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of such maintenance or repair has been mailed or delivered by the Board to such Owner; provided that the entire cost of such maintenance or repair shall be deemed a part of such Owner's share of the common expenses.

J. Right of Entry. Upon reasonable notice, the Board or its agents may enter any Unit when necessary in connection with any construction, maintenance, pest and vermin control, testing or inspection for which the Board is responsible under the Act, the Declaration, these By-Laws or otherwise. The Board or its agents may likewise enter any balcony or patio for construction, maintenance, pest and vermin control, testing or inspection. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board out of the maintenance fund as a common expense; provided that, if any Owner fails or refuses to permit such access to his Unit after reasonable notice and the Board or its agents are required to make a forced entry into said Unit, the Owner shall be solely responsible for any damage caused by such forced entry. In the event of an emergency, no notice is required from the Board to obtain entry.

K. Improvements. The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital additions to or capital improvements, including structural and non-structural additions and improvements, of the Common

Elements requiring an expenditure in excess of \$20,000.00 without in each case the prior approval of the Owners having two-thirds (2/3) or more of the total votes. This limitation shall not be construed as a limit on expenditures necessary for the Board to comply with its statutory duty of providing maintenance and upkeep of the Property as required by Section 18.4 of the Act as from time to time amended.

L. Rules and Regulations. To adopt such reasonable rules and regulations and amendments thereto as it may deem advisable for the maintenance, operation, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and Occupants of the Property, after a meeting of the Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations and which conforms to the procedural requirements for the calling of a regular or special meeting of the Association under the Act. No quorum is required at this meeting of Owners. No rule or regulation shall 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. Written notice of the adoption of such rules and regulations shall be given to all Owners and Occupants. The Developer or Declarant shall have the right to adopt and promulgate the initial rules and regulations for the Association which may be amended by any subsequent Board as provided herein.

M. Management. To retain a professional manager for the Property, if and to the extent deemed advisable by the Board. The beneficiaries of the Declarant or the Developer may engage a management agent under a contract that can be terminated without cause after the election of the initial Board upon sixty (60) days written notice.

N. Leases, Licenses and Concessions. To lease or to grant licenses or concessions with respect to any part of the Common Elements, subject to the discretion of the Board and the terms of the Restated and Amended Declaration and these By-Laws.

O. Assignment of Income. To assign the Association's right to future income, including the right to receive common expense assessments.

P. Cable Television. To record the granting of an easement for the laying of cable television cable where authorized by the Board pursuant to the Declaration and these By-Laws.

Q. Violation. To impose charges for late payments of an Owner's proportionate share of the common expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levy reasonable fines for violation of the Declaration, By-Laws, and rules and regulations of the Association.

R. Business. The Board shall not conduct any business for profit on behalf of the Owners unless provided for or required by the Act or the Declaration or By-Laws or approved by a majority of the Owners.

S. Powers and Duties. Nothing hereinabove contained shall be construed to limit the powers and duties of the Board as set forth in the Act, and the powers and duties set forth in the Declaration and these By-Laws shall be construed as a clarification and, where permissible, an expansion of such statutory powers and duties.

T. Fiduciary Duty. In the performance of their duties, the officers and members of the Board are required to exercise, whether appointed by either the Declarant or the Developer, or elected by the Owners, the care required of a fiduciary of the Owners.

U. Handicapped Unit Owner. To reasonably accommodate the needs of a handicapped Unit Owner as required by the Illinois Human Rights Act (S.H.A. Ch. 68, par. 1-101, et seq.), as may from time to time be amended, in the exercise of its powers with respect to the use of Common Elements or approval of modifications in an individual Unit.

## SECTION EIGHT

### LIABILITY OF THE BOARD OF MANAGERS

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

B. Liability to Third Parties. The Owners (and, to the extent permitted by law, the Association) shall indemnify and hold harmless the Declarant (and its beneficiaries), the Developer, each of the members of the Board and each of the officers against all contractual and other liabilities to others arising out of contracts made by or other acts of the Declarant (and its beneficiaries), the Developer, the Board and officers on behalf of the Owners or the Association, or arising out of their de facto or de jure status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Restated and Amended Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other in which the Declarant

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

## SECTION NINE

### SIGNATURES

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.

## SECTION TEN

### PROFESSIONAL MANAGEMENT

Any agreement for professional management of the Property or any other contract providing for services of the Developer, may not exceed a term of two (2) years from the date of the filing of the Restated and Amended Declaration. Any such agreement must provide for termination by either party without cause and without payment of a termination fee upon sixty (60) days' or less written notice.

## SECTION ELEVEN

### RESALE

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

1. A copy of the Declaration, By-Laws, other condominium instruments and any rules and regulations.
2. A statement of the monthly common expense assessment for the selling Owner's Unit.
3. A statement of any liens, including a statement of the account of the Unit setting forth the amounts of unpaid assessments and other charges currently due and owing from the selling Unit Owner.
4. A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years.
5. A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board.
6. A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available including but not limited to the most recent regularly prepared balance sheet and income and expense statement, if any, and the current operating budget of the Association.
7. A statement of the status of any pending suits or judgments in which the Association is a party.
8. A statement setting forth what insurance coverage is provided for all Owners by the Association.

9. A statement that any improvements or alterations made to the Unit, or the Limited Common Elements assigned thereto, by the prior Owner are in good faith believed to be in compliance with the condominium instruments.

10. A statement of whether the Board of Managers has received written notice from any Federal, State or local government of any violations of any applicable codes with respect to the Units or the Common Elements.

B. Written Request. The President of the Association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within ten (10) days of the request.

C. Fee. A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or the Board to the Unit seller for providing such information.

D. Within fifteen (15) days of the recording of a mortgage or trust deed against a unit ownership given by the owners of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can receive notices from the Association.

## SECTION TWELVE

### AMENDMENT

The provisions of these By-Laws may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the President and Secretary of the Board, and certifying that the Owners having at least a majority of the total votes have approved such amendment at a meeting of the Association duly called for such purpose, and containing an affidavit by an officer of the Board certifying that a copy of the change, modification or rescission has been mailed by certified mail to all first mortgagees, no less than ten (10) days prior to the date of such affidavit. Notwithstanding the foregoing, an amendment to these By-Laws which falls within the parameters of Article XI, of the Restated and Amended Declaration shall not be effective without the prior written approval of two-thirds (2/3) of all First Mortgagees. Until such date as Declarant has conveyed title to all the Units, no provision of these By-Laws may be changed, modified or rescinded and no provision may be added without the prior written consent of Declarant and Developer. Any change, modification or rescission shall be effective upon recording such instrument in the office of the Recorder of Deeds, Cook County, Illinois.

EXHIBIT A

TO

DECLARATION OF CONDOMINIUM OWNERSHIP

AND OF

EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS

FOR

FOUNTAIN COURT CONDOMINIUM ASSOCIATION.

(LEGAL DESCRIPTION)

EXHIBIT B

PLAT OF SURVEY

SHOWING THE PARCEL

AND DELINEATION OF UNITS

(See Plat recorded as Document No. \_\_\_\_\_ and placed in  
Jacket File No. \_\_\_\_\_)

EXHIBIT C

TO

DECLARATION OF CONDOMINIUM OWNERSHIP

AND OF

EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS

FOR

FOUNTAIN COURT CONDOMINIUM ASSOCIATION

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<u>Unit</u>	<u>Percentage Interest In Common Elements</u>
830-1	3.453%
830-2	3.453%
830-3	3.453%
832-1	3.453%
832-2	3.453%
832-3	3.453%
834-1	2.169%
834-2	2.169%
834-3	2.169%
937-1	1.478%
937-2	1.478%
937-3	1.478%
838-1	2.104%
838-2	2.104%
838-3	2.104%
840-1	2.038%
840-2	2.038%
840-3	2.038%
842-1	1.478%
842-2	1.478%
842-3	1.478%

844-1	
844-2	1.478%
844-3	1.478%
	1.478%
846-1	
846-2	2.038%
846-3	2.038%
	2.038%
848-1	
848-2	2.104%
848-3	2.104%
	2.104%
850-1	
850-2	1.478%
850-3	1.478%
	1.478%
852-1	
852-2	2.169%
852-3	2.169%
	2.169%
854-1	
854-2	3.453%
854-3	3.453%
	3.453%
856-1	
856-2	3.453%
856-3	3.453%
	3.453%
Garden	
Garden	1.481%
	<u>1.481%</u>
	100.0000%