

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP
AND BY-LAWS
EASEMENTS, RESTRICTIONS AND COVENANTS
FOR
WHISPERING POINT CENTER CONDOMINIUM**

TABLE OF CONTENTS
FOR
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		<u>Page</u>
ARTICLE I	<u>Definitions</u>	2-4
ARTICLE II	<u>Units</u>	
	1. Description and Ownership.....	4
	2. Certain Structures Not Constituting Part of a Unit	4
ARTICLE III	<u>Common Elements</u>	
	1. Description	5
	2. Ownership of Common Elements	5
ARTICLE IV	<u>General Provision as to Units and Common Elements</u>	
	1. Submission of Property to “Condominium Property Act”	5
	2. No Severance of Ownership.....	5
	3. Easements	
	(a) Encroachments.....	5-6
	(b) Utility Easements.....	6
	4. Easements to Run with Land.....	6
ARTICLE V	<u>Common Expenses, Mortgages and Real Estate Taxes</u>	
	1. Common Expenses.....	6
	2. Separate Mortgages	6
	3. Separate Real Estate Taxes	6
ARTICLE VI	<u>Insurance</u>	
	1. Fire and Hazard Insurance	7
	2. Appraisal	8
	3. Public Liability and Property Damage Insurance	8
	4. Workmen’s Compensation and Other Insurance	8
	5. Waiver	8
	6. Notice	8-11
ARTICLE VII	<u>Administration and Operation</u>	
	1. Administration	11
	2. Duties and Powers of the Association.....	11
	3. Indemnity	11
	4. Board’s Determination Binding	12

	<u>Page</u>
	5. Administration of Property Prior to Election of Initial Board of Managers.....
ARTICLE VIII	<u>Maintenance, Alterations, Decorating</u> 12-13
	1. Maintenance Repairs and Replacements..... 13
	2. Alterations, Additions or Improvements..... 13
	3. Decorating.....
ARTICLE IX	<u>Sale Leasing or other Alienation</u>
	1. Sale or Lease 13-14
	2. Gift 14
	3. Devise..... 14-15
	4. Involuntary Sale 14-15
	5. Consent of Voting Members 15
	6. Release or Waiver of Option..... 15-16
	7. Proof of Termination of Option 16
	8. Financing of Purchase Under Option..... 16
	9. Title to Acquired Interest 16
	10. Exception to Board’s Right of First Refusal..... 16
	11. Miscellaneous..... 17
ARTICLE X	<u>Damage or Destruction and Restoration of Building</u>
	1. Sufficient Insurance 17
	2. Insufficient Insurance..... 17
	3. Cessation of Common Expenses 18
ARTICLE XI	<u>Eminent Doman</u>
	1. Reallocation of Common Elements and Condemnation Award 18-19
	2. Cessation of Common Expenses.....
ARTICLE XII	<u>Sale of the Property</u> 19
ARTICLE XIII	By-Laws 19
ARTICLE XIV	<u>Board of Managers</u> 19-21
	1. Board of Managers (Board of Directors) 21-23
	2. General Powers of the Board 21-23
ARTICLE XV	<u>Members (Unit Owners)</u> 23-24
	1. Voting Rights 24-25
	2. Meetings..... 24-25
	3. Notice of Meetings..... 25
	4. Miscellaneous..... 25
ARTICLE XVI	<u>Assessments – Maintenance Fund</u>
	1. Estimated Annual Budget and Assessments 25-26
	2. Reserves and Adjustments 26
	3. Initial Estimate of Annual Budget..... 26
	4. Failure to Prepare Estimates..... 26
	5. Books and Records..... 26
	6. Use of Funds 26-27
	7. Insurance 27

	<u>Page</u>
	27-28
	28
ARTICLE XVII	<u>Covenants and Restrictions as to Use and Occupancy</u>
	28
	28
	28
	28-29
	29
	29
	29
	29
	29
	29
	29
	29
ARTICLE XVIII	<u>Remedies for Breach of Covenants, Restrictions and Regulations</u>
	29-30
	30
ARTICLE XIX	<u>Annexing Additional Property</u>
	30-32
ARTICLE XX	<u>General Provisions</u>
	32
	32
	33
	33
	33
	33
	33-34
	34
	34
	34
	34
	35
	36-36

THIS DOCUMENT HAS BEEN
PREPARED BY, AND AFTER
RECORDATION SHOULD BE
RETURNED TO:

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**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP
AND BY-LAWS
EASEMENTS, RESTRICTIONS AND COVENANTS
FOR
WHISPERING POINT CENTER CONDOMINIUM**

THIS AMENDED AND RESTATED DECLARATION is made and entered into this
27th day of February 2025.

WITNESSETH THAT:

WHEREAS, the following described real estate located in the City of McHenry, County of McHenry, and State of Illinois was submitted to the Act (as defined herein) by McHenry STATE BANK, a State Banking Association as Trustee under Trust Agreement dated November 30, 1976 and known as Trust No. 1112 pursuant to the Declaration of Condominium Ownership and By-Laws, Easements, Restrictions and Covenants for Whispering Point Center Condominium which was recorded as Document Number 764226 (the "Original Declaration") in the Office of Recorder of Deeds of McHenry County, Illinois (hereafter referred to as "Recorder of Deeds") against the property legally described as follows:

Whispering Point Center, being a Subdivision in Section 34, Township 45 North, Range 8 East of the Third Principal Meridian, as recorded November 29, 1978, as Document 754102, in the City of McHenry County of Mc Henry and State of Illinois.

WHEREAS, provisions of the Illinois Condominium Property Act (the "Act") establish certain requirements which the Whispering Point Center Condominium Association (hereafter referred to as "Association") is required by law to follow, and with which the present Declaration is either incomplete or in conflict; and

WHEREAS, because of this incompleteness or conflict between the language of the Declaration and the Act, there is the likelihood that confusion, illegal action, or litigation could result imposing needless financial expense on the Association and individual unit owners and

possibly also calling into question the validity of actions of the Board of Managers/Directors of the Association (hereafter referred to as “Board”); and

WHEREAS, Section 27(b)(1) of the Act provides a procedure for amending the Declaration to correct omissions, errors and inconsistencies in the Declaration and any amendments thereto; and

WHEREAS, the Board recognizes the burden and practical difficulty on the Board and the unit owners and others in reviewing, consulting and referring to the Declaration and any amendments thereto; and

WHEREAS, the Board desires to prepare, and has caused to be prepared this “Amended and Restated Declaration” which provides the Board, unit owners and others with a convenient document which restates the Declaration and reflects amendments thereto for ease of reference; and

WHEREAS, this Amended and Restated Declaration was approved by at least two-thirds (2/3) of the members of the Board at a duly called meeting; and

WHEREAS, the requisite number of unit owners failed to submit a written petition to the Board within thirty days of the Board’s action, as provided by Section 27(b)(3) of the Act; and

WHEREAS, the Amended and Restated Declaration truly and accurately reflects the Declaration as amended through the date on which the Amended and Restated Declaration is recorded; and

WHEREAS, the Board desires to record the Amended and Restated Declaration in order to memorialize its action.

NOW, THEREFORE, the Board of Directors hereby amends and restates the Declaration as follows:

ARTICLE I

DEFINITIONS

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

(a) “Act” means the Condominium Property Act,” as amended from time to time, of the State of Illinois.

(b) “Amended and Restated Declaration” means the instrument by which the Property is submitted to the provisions of the Act, as hereinafter provided, and such Declaration as from time to time amended.

(c) “Parcel” means the parcel or tract of real estate land, described in the Declaration, submitted to the provision of the Act.

(d) “Property” means all the land, property and space comprising the Parcel, all

improvements and structures erected, constructed or contained therein or thereon, including the Building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of this Act.

(e) "Unit" means a part of the Property designed and intended for any type of independent use.

(f) "Common Elements" means all portions of the Property except the Units, including Limited Common Elements unless otherwise specified.

(g) "Person" means a natural individual corporation, partnership, trustee or other legal entity capable of holding title to real property.

(h) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.

(i) "Majority" or "majority of the Unit Owners" means the owners of more than one-half (1/2) in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in the interest of such undivided ownership.

(j) "Plat" means a Plat of Plats of survey of the Parcel and of all Units in the Property submitted to the provisions of this Act, which may consist of a three-dimensional horizontal and vertical delineation of all such Units.

(k) "Condominium Instruments" means all documents and authorized amendments thereto recorded pursuant to the provisions of the Act, including the Declaration, By-laws and Plat.

(l) "Common Expenses" means the proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board of Managers of the Unit Owners' Association.

(m) "Reserves" means those sums paid by Unit Owners which are separately maintained by the Board of Managers for purposes specified by the Board of Managers or the Condominium Instruments.

(n) "Unit Owners' Association" or "Association" means the Association of all the Unit Owners, acting pursuant to By-Laws through its duly elected Board of Managers.

(o) "Purchaser" means any person or persons other than the Developer who purchase a Unit in a Bonafide transaction for value.

(p) "Developer" means Residential Development Group, Inc.," a Delaware corporation qualified to do business in Illinois, its successors and assigns.

(q) "Limited Common Elements" means a portion of the Common Elements so designated in the Declaration as being reserved for the use of a certain Unit or Units to the exclusion of other Units.

(r) "Building" means all structures, attached or unattached containing one or more Units.

(s) "Parking Area" means the area provided for parking automobiles as shown or referred to on the Plat.

(t) "Parking Space" means a portion of the Parking Area intended for the parking of a single automobile.

(u) "Occupant" means a person, or persons, other than a Unit Owner, in possession of one or more Units.

(v) "Voting Member" means the person entitled to exercise all voting power in respect to each Unit Ownership.

- (w) “Electronic Transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient and that may be directly reproduced in paper form by the recipient through an automated process.
- (x) “Acceptable Technological Means” includes, without limitation, Electronic Transmission over the internet or other network, whether by direct connection, intranet telecopier, or electronic mail.

ARTICLE II

UNITS

1. Description. All Units located on the Property are delineated on the Survey, referred hereto as Exhibit “A” and made a part of the Declaration and are legally described as follows:

Units 4302-A, 4302-B, 4302-C, 4302-D, 4302-F, 4302-G, 4302-H and 4302-J as delineated on the Plat of Survey of the following described Parcel of real estate:

That part of Lot 1, in Whispering Point Center, being a Subdivision in Section 34, Township 45 North, Range 8, East of the Third Principal Meridian, as recorded November 29, A.D. 1978, as Document 754102, described as follows: Commencing at the most Easterly Corner of said Lot 1; thence S46° 15' W. along the South Easterly line of said Lot 1, a distance of 280.0

feet; thence N 43° 45' W., 260.0 feet; thence N 46° 15', 280.0 feet to a point in the North Easterly line of said Lot 1; thence S 43° 45' E., 260.0 feet to the place of beginning, in the City of McHenry, McHenry County, Illinois.

which survey is recorded in the Office of the Recorder of Deed of McHenry County Illinois as Document No. 754102.

It is understood that each Unit consists of the space enclosed or bounded by the horizontal and vertical planes set forth and identified as a Unit in the delineation thereof in Exhibit “A,” each Unit being deemed to include the basement and ground levels as delineated on Exhibit “A.” The legal description of each Unit shall consist of the identifying number or symbol of such Unit followed by the legal description of the Property, as shown on Exhibit “A.” Except as provided by the Act, no Unit Owner shall, by deed, Plat or otherwise, subdivide or in any other manner cause the Unit to be separated into any tracts or parcels different from the whole Unit as shown on Exhibit “A”; provided, however, that under no circumstances shall the ownership of the basement level of a Unit be separated from that of the ground level.

2. Certain Structures Not Constituting Part of a Unit. No structural components of the Building, and no pipes, wires, conduits, public utility lines, ducts, flues and shafts situated within a Unit and forming part of any system serving one or more other Units, nor the Common Elements shall be deemed part of said Unit.

ARTICLE III

COMMON ELEMENTS

1. Description. Except as otherwise in this Declaration provided, 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 and driveways, landscaping, entrances and exits, main entrance gate signs, building directory signs, roof, structural parts of the Building, component parts of walls, floors and ceilings and pipes, ducts, flues, shafts and public utility lines serving the Common Elements or more than one Unit.

2. Ownership of Common Elements. Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all the other Unit Owners of the Property, and, except as otherwise limited in the Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as an office or business, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his Unit. Such right shall extend to each Unit Owner, and the agents, servants, tenants, employees and invitees of each Unit Owner. Each Unit Owner's interest shall be expressed by a percentage amount and, once determined, shall remain constant, and may not be changed without unanimous approval of all Unit Owners, unless hereafter changed by recorded Amendment to this Declaration consented to in writing by all Unit Owners. The Trustee has so determined each Unit's corresponding percentage of Ownership in the Common Elements as set forth in Exhibit "B" attached hereto; and each Unit Owner accepts such determination.

3. Limited Common Elements. Except as otherwise in this Declaration provided, the Limited Common Elements shall consist of all portions of the Common Elements set aside and allocated for the restricted use of particular Units. Without limiting the generality of the foregoing, the Limited Common Elements, all of which are indicated as such on the Plat, include the crawl spaces beneath certain of the Units.

4. Assignment of Limited Common Elements. Crawl spaces shall be assigned to the Unit Owners whose Units are located above the same.

5. Transfer of Limited Common Elements. The use of Limited Common Elements may not be transferred between Unit Owners.

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON ELEMENTS

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

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

3. Easements. (a) Encroachments. If any portion of the Common Elements encroaches

upon any Unit, or if any Unit encroaches upon any portion of the Common Elements or any other Unit as a result of the construction, repair, reconstruction, settlement or shifting of any building, a valid mutual easement shall exist in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of the encroachment. A valid easement shall not exist in favor of any Unit Owner who creates an encroachment by his intentional, willful or negligent conduct or that of his agent.

(b) Utility Easements. The Illinois Bell Telephone Company, Commonwealth Company and all other public utilities serving the Property are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment related to their service to the Property, into and through the Common Elements, and the Units, where reasonably necessary for the purpose of providing utility services to the Property.

4. Easements and Rights to Run with Land. All easements and rights described herein are easements and rights running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Trustee, its successors and assigns, and any Unit Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Unit Ownership as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

ARTICLE V

COMMON EXPENSES, MORTGAGES AND REAL ESTATE TAXES

1. Common Expenses. Each Unit Owner shall pay his proportionate share of the common expenses of administration, maintenance and repair of the Common Elements and of any other expenses incurred in conformance with the Declaration and By-Laws or otherwise lawfully agreed upon. Such proportionate share of the common expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements. Payment thereof shall be in such amounts and at such times as determined in the manner provided in the By-Laws. If any Unit Owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner in the Property as provided in the Act.

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

3. Separate Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the

Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.

ARTICLE VI

INSURANCE

1. Fire and Hazard Insurance. The Board of Managers shall acquire as a common expense, a policy or policies of insurance insuring the Common Elements and the Units against loss or damage from fire, lightning and other hazards contained in the customary fire and 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 to require a provision in such policy that the proceeds thereof shall be payable to the members of the Board, as trustees for each of the Unit Owners in the percentages established in Exhibit "B."

All said policies of insurance shall: (1) contain standard mortgage clause endorsements in favor of the mortgagee or mortgagees of each Unit, if any, as their respective interest may appear; (2) provide that the insurance, as to the interest of the Board, shall not be invalidated by any act or neglect of any Unit Owner; (3) provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act; (4) contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days' prior written notice to the mortgagee of each Unit; (5) 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 Trustee, the Developer, the managing agent, if any their respective employees and agents and the Unit Owners and occupants; and (6) contain a "Replacement Cost Endorsement." The proceeds of such insurance shall be applied by the Board or by the corporate trustee or agent on behalf of the Board for the reconstruction of the Building, or shall be otherwise disposed of, in accordance with the provisions of this Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of the Act with respect to the application of insurance proceeds to reconstruction of the Building. The Board may engage the services of, and such insurance may be payable to, a bank or trust company authorized to execute and accept trusts in Illinois to act as Insurance Trustee, or as Agent or Depositary as an alternative to acting as 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 this Declaration. The fees of such bank or trust company shall be common expenses.

In the event of any loss in excess of \$50,000.00 in the aggregate at the Board's discretion or request of any Unit Owner, the Board shall solicit bids from reputable contractors.

Payment by an insurance company to the Board or to such corporate trustee or agent of the proceeds of any policy, and the receipt of release from the Board or such corporate trustee or agent of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust or agency agreement under which proceeds may be held pursuant hereto, or to take notice of any

standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

Each Unit Owner shall inform the Board in writing of additions, alterations or improvements made by said Unit Owner to his Unit and the value thereof which value shall be included in the full replacement insurable cost for insurance purposes. If a Unit Owner fails to inform the Board as provided above and a penalty is assessed in the adjustment of loss settlement, the Unit Owner shall be responsible for such penalty.

2. Appraisal. The full, insurable replacement cost of the Property, including the Units and Common Elements, shall be determined from time to time (but not less frequently than once in any twelve-month period) by the Board. The Board shall have the authority to obtain an appraisal by a reputable appraisal company as selected by the Board. The cost of such appraisal shall be a common expense.

3. Public Liability and Property Damage Insurance. The Board of Managers shall acquire, as a common expense, the authority and duty to obtain, comprehensive public liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements in amounts deemed sufficient in the judgment of the Board of Managers, insuring the Developer and Unit Owners, individually and severally, the Board of Managers, the Unit Owners' Association, the Management Agent, and their respective employees, agents and all persons acting as agents. 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.

4. Workmen's Compensation and other Insurance. The Board of Managers shall acquire, as a common expense, 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 obtain, including, but not limited to, insurance for the Association, its officers and manager against liability from good faith actions allegedly beyond the scope of their authority.

5. Waiver. Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the Declarant, the manager and managing agent of the Building, 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. Notice. The Board of Managers shall notify insured persons concerning the cancellation of insurance obtained pursuant to the terms of this Article.

7. Notwithstanding anything herein concerning insurance:

(i) Property Insurance. No policy of insurance shall be issued or delivered to the Association, and no policy of insurance issued to the Association shall be renewed, unless the insurance coverage under the policy includes property insurance (i) on the Common Elements and the Units, including the Limited Common Elements and except as otherwise determined by the Board, the bare walls, floors, and ceilings of the Unit, (ii) providing coverage for special form causes of loss, and (iii) providing coverage, at the time the insurance is purchased and at each renewal date, in a total amount of not less than the full insurable replacement cost of the insured

property, less deductibles, but including coverage sufficient to rebuild the insured property in compliance with building code requirements subsequent to an insured loss, including: Coverage B, demolition costs; and Coverage C, increased cost of construction coverage. The combined total of Coverage B and Coverage C shall be no less than 10% of each insured building value, or \$500,000, whichever is less. The insurance maintained under this subsection must include the Units, the Limited Common Elements except as otherwise determined by the Board, and the Common Elements. The insurance need not cover improvements and betterments to the Units installed by Unit Owners, but if improvements and betterments are covered, any increased cost may be assessed by the Association against the Units affected. Common Elements include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual Units initially installed by the developer. Common Elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the Unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by Unit Owners, or any other additions, alterations, or upgrades installed or purchased by any Unit Owner.

(ii) General Liability Insurance. No policy of insurance shall be issued or delivered to the Association, and no policy of insurance issued to the Association shall be renewed, unless the insurance coverage under the policy includes commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees and agents and all persons acting as agents. The Unit Owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance must cover claims of one or more insured parties against other insured parties.

(iii) Property and general liability insurance policies required to be carried by the Association must include each of the following provisions:

(a) Each Unit Owner and secured party is an insured person under the policy with respect to liability arising out of the Unit Owner's interest in the Common Elements or membership in the Association.

(b) The insurer waives its right to subrogation under the policy against any Unit Owner of the condominium or members of the Unit Owner's household and against the Association and members of the Board.

(c) The Unit Owner waives his or her right to subrogation under the Association policy against the Association and the Board.

(iv) Adjustment of Losses; Distribution of Proceeds. Any loss covered by the property policy required to be maintained by the Association must be adjusted by and with the Association. The insurance proceeds for that loss must be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association must hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged Common

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

(v) Primary Insurance. If at the time of a loss under the Association's policy there is other insurance in the name of a Unit Owner covering the same property covered by the policy, the Association's policy is primary insurance.

(vi) Deductibles. The Board of the Association may, in the case of a claim for damage to a Unit or the Common Elements, (i) pay the deductible amount as a common expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Owners who caused the damage or from whose Units the damage or cause of loss originated, or (iii) require the Unit Owners of the Units affected to pay the deductible amount.

(vii) Directors and Officers Coverage. The Board must obtain directors and officer's liability coverage at a level deemed reasonable by the Board, if not otherwise established by this Declaration or By-Laws. Directors and officer's liability coverage must extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or this Declaration and By-Laws of the Association. The coverage required by this subparagraph (vii) shall include, but not be limited to, coverage of: defense of non-monetary actions; defense of breach of contract; and defense of decisions related to the placement or adequacy of insurance. The coverage required by this subparagraph (vii) shall include as an insured: past, present, and future Board members while acting in their capacity as Members of the board; the managing agent; and employees of the Board and the managing agent.

(viii) Mandatory Unit Owner Coverage. The Board may, if permitted under the Declaration and By-Laws or by rule, require condominium Unit Owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another Unit caused by the negligence of the Owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the unit. The personal liability of a Unit Owner or Association member must include the deductible of the Owner whose Unit was damaged, any damage not covered by insurance required by this subparagraph, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings. If the Unit Owner does not purchase or produce evidence of insurance requested by the Board, the directors may purchase the insurance coverage and charge the premium cost back to the unit owner. In no event is the Board liable to any person either with regard to its decision not to purchase the insurance, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.

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

8. Fidelity Bond;

(a) The Association [with 6 or more dwelling units] must obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the Association, for the maximum amount of coverage available to protect funds in the custody or control of the Association, plus the Association reserve fund.

(b) All management companies that are responsible for the funds held or administered by the Association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The Association has standing to make a loss claim against the bond of the managing agent as a party covered under the bond.

(c) For purposes of paragraphs (a) and (b), the fidelity bond must be in the full amount of association funds and reserves in the custody of the Association or the management company.

ARTICLE VII

ADMINISTRATION AND OPERATION

1. Administration. The administration of the Property shall be vested in the Board of Managers consisting of the number of persons, and who shall be elected in the manner, provided in the By-Laws contained herein, as Articles XIV, XV, XVI, XVII and XVIII. The developer shall cause to be incorporated under the laws of the State of Illinois, a not-for-profit corporation (hereinafter referred to as “the Association”) under the name of WHISPERING POINT CENTER CONDOMINIUM ASSOCIATION, or a similar name, which corporation shall be the governing body for all the Unit Owners for the maintenance, repair, replacement, administration and operation of the Common Elements and for such other purposes as are hereinafter provided. The Board of Directors of the Association shall be deemed to be the Board of Managers referred to herein and in the Act.

2. Duties and Powers of the Association. The Unit Owners’ Association is responsible for the overall administration of the Property through its duly elected Board of Managers. The duties and powers of the Association and its Board shall be those set forth in its Articles of Incorporation, the By-Laws and this Declaration; provided, however, that, (i) the terms and provisions of the Act shall control in the event of any inconsistency between the Act, on the one hand, and this Declaration, the Articles of Incorporation and the By-Laws, on the other hand, (ii) the terms and provisions of this Declaration shall control in the event of an inconsistency between this Declaration, on the one hand, and the Articles of Incorporation and the By-Laws, on the other hand.

3. Indemnity. The members of the Board and the officers thereof or of the Association shall not be liable to the Unit Owners for any mistake of judgment, or any acts or omissions made in good faith as such members of officers on behalf of the Unit Owners or the Association unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any Unit Owner arising out of any contract made by such members or officers or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Each agreement made by such members or officers or by the managing agent on behalf of the Unit Owners or the Association shall be executed by such members or officers or the managing agent, as the case may be, as agents for the Unit Owners or for the Association.

4. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners.

5. Administration of Property Prior to Election of Initial Board of Managers. Until the election of the initial Board of Managers, the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board of Managers by the Act and in the Declaration and By-Laws shall be held and performed by the Developer. The election of the initial Board of Managers shall be held not later than sixty (60) days after the conveyance by the Developer of three-fourths (3/4) of the Units or five (5) years after the recording of the Declaration, whichever is earlier. If the initial Board of Managers is not elected by the Unit Owners at the time so established, the Developer shall continue in office for a period of thirty (30) days whereupon written notice of this resignation shall be sent to all of the Unit Owners entitled to vote at such election.

Within sixty (60) days following the election of a majority of the Board of Managers other than the Developer, the Developer shall deliver to the Board of Managers:

(a) All original documents pertaining to the Property and its administration such as the Declaration, By-Laws, Articles of Incorporation, Condominium Instruments, minutes and code of regulations;

(b) A detailed accounting by the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property;

(c) Association funds, which shall have been at all times segregated from any other moneys of the Developer;

(d) A schedule of all personal property, equipment and fixtures belonging to the Association, including documents transferring the Property; and

(e) Any contract lease, or other agreement made prior to the election of a majority of the Board of Managers other than the Developer by or on behalf of Unit Owners.

ARTICLE VIII

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. Subject to the rules and regulations of the Board, maintenance, repairs and replacements of the Common Elements shall be furnished by the Board as part of the common expenses, including, but not limited to, the maintenance and repair of the sanitary sewer, storm sewer and municipal water facilities servicing the Units.

The Board may cause to be discharged any mechanics' lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property or Common Elements, rather than against a particular Unit and its corresponding percentage of ownership in the Common Elements. When less than all the 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 be mailing the same by certified or registered mail addressed to the owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time 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, due to the act or neglect of a Unit Owner, or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the common expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance.

The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this Article VIII, Section 1. All expenses which, pursuant to this Section 1, are chargeable to any Unit Owner, may be specifically assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board.

2. Alterations, 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 without the prior written approval of the Board, but in any event 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.

3. Decorating. Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the 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 the 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 IX

SALE, LEASING OR OTHER ALIENATION

1. Sale or Lease. Any Unit Owner, other than the Trustee, who wishes to sell or lease his Unit Ownership (or any lessee of any Unit wishing to assign or sublease such Unit) shall give to the Board not less than thirty (30) days prior written notice of this intent to sell or lease, and subsequently, the terms of any contract to sell or lease, entered into subject to the Board's option as set forth hereinafter together with a copy of such contract, the name, address and financial and character references of the proposed purchaser or lessee as the Board may reasonably require. The

members of the Board acting on behalf of the other Unit Owners shall at all times have the first right and option to purchase or lease such Unit Ownership upon the same terms, which shall be exercisable for a period of thirty (30) days, the Unit Owner (or lessee) may, at the expiration of said thirty (30) day period and at any time within ninety (90) days after the expiration of said period, proceed to consummate the sale (or sublease or assignment of) such Unit Ownership to the proposed purchaser or lessee named in such notice upon the terms specified therein. If the Unit Owner (or lessee) fails to close said proposed sale or lease transaction within said ninety (90) days, the Unit Ownership shall again become subject to the Board's right of first refusal as herein provided. The provisions of the Condominium Property Act, the Declaration, By-Laws and rules and regulations that relate to the use of the individual Unit or the Common Elements shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease. With regard to any lease, the Unit Owner leasing the Unit shall deliver a copy of the signed lease to the Board or if the lease is oral, a memorandum of the lease, not later than the date of occupancy or ten (10) days after the lease is signed, whichever occurs first. In addition to any other remedies, by filing an action jointly against the tenant and the Unit Owner, the Association may seek to enjoin a tenant from occupying a Unit or seek to evict a tenant under the provisions of Article IX of the Code of Civil Procedure for failure of the lessor-owner to comply with the leasing requirements prescribed by the Act or by the Declaration, By-Laws, and rules and regulations. The Board of Managers may proceed directly against a tenant, at law or in equity, or under the provisions of Article IX of the Code of Civil Procedure, for any other breach by a tenant of any covenants, rules, regulations or By-Laws.

2. Gift. Any Unit Owner, other than the Trustee, who wishes to make a gift of his Unit Ownership or any interest therein to any person other than a permitted party under Section 10 of this Article IX shall give to the Board not less than ninety (90) days written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name, address and financial and character references of the intended donee and such other information concerning the intended donees as the Board may reasonably require. If the gift to such a party is not consented to by the Board, and the Unit Owner insists on making said gift, the members of the Board acting on behalf of the other Unit Owners, shall at all times have the first right and option to purchase such Unit Ownership or interest therein for cash at fair market value determined by arbitration as hereinafter provided, which option shall be exercisable until the date of expiration as provided herein. In the event that the Board exercises said option and the parties cannot arrive at an Agreed price, then within fifteen (15) days after receipt of a written notice by the Board, the Board and the Unit Owner desiring to make such gift shall each select a qualified real estate appraiser. The two appraisers so selected shall, within ten (10) days after their selection, appoint another qualified real estate appraiser to act as the arbitrator. Within fifteen (15) days after the appointment of said arbitrator, the arbitrator shall determine the fair market value of the of the Unit Ownership or interest therein which the Unit Owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the Unit Owner and the Board, and said determination shall be conclusive upon the parties. If either party shall fail to select an appraiser, then the appraiser designated by the other party shall make the appraisal. The Board's option to purchase the Unit Ownership or interest therein shall expire forty-five (45) days after the date of receipt by it of written notice of such determination of fair market value. The cost of appraisal shall be divided equally between such Unit Owner and the Board and the Board's share shall be a common expense.

3. Devise. In the event any Unit Owner dies leaving a will devising his Unit Ownership,

or any interest therein, to any person or persons not heirs-at-law of the deceased Unit Owner under the Rules of Descent of the State of Illinois, and said will is admitted to probate, the members of the Board acting on behalf of the other Unit Owners, shall have a like option (to be exercised in the manner hereinafter set forth) to purchase said Unit Ownership or interest therein, either from the devisee or devisees thereof named in said will, or if a power of sale is conferred by said will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration as herein provided. In the event of a dispute as to purchase price, within sixty (60) days after the appointment of a personal representative for the estate of a deceased Unit Owner, the Board shall appoint a qualified real estate appraiser, and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative, as the case may be.. Within fifteen (15) days thereafter, said devisee or devisees or personal representative, as the case may be, shall appoint a qualified real estate appraiser. Within ten (10) days after the appointment of the two (2) said appraisers, the two so appointed shall appoint another qualified real estate appraiser to act as the arbitrator. Within fifteen (15) days thereafter the arbitrator shall determine the fair market value of the Unit Ownership or interest therein devised by the deceased Unit Owner, and shall thereupon give written notice of such determination to the Board and said devisee, devisees or personal representative, as the case may be, and said determination shall be conclusive upon the parties. If either party shall fail to select an appraiser, then the appraiser designated by the other party, shall make the appraisal. The Board's right to purchase the Unit Ownership, or interest therein, at the price determined by the arbitrator shall expire sixty (60) days after the date of receipt by it of such notice if the personal representative of the deceased Unit Owner is empowered to sell, and shall expire either (8) months after the appointment of a personal representative who is not so empowered to sell. The Board shall be deemed to have exercised its option if it tenders the required sum of money to said devisee or devisees or to said personal representative, as the case may be, within the said option periods. The cost of appraisal shall be equally divided between such Unit Owner and the Board and the Board's share shall be a common expense.

4. Involuntary Sale. (a) In the event any Unit Ownership or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale) the person acquiring title through such sale shall, before taking possession of the Unit Ownership so sold, give thirty (30) days written notice to the Board of his intention so to do, whereupon the Board acting on behalf of the other Unit Owners shall have an irrevocable option to purchase such Unit Ownership or interest therein at the same price for which it was sold at the said sale. If said option is not exercised by the Board within said thirty (30) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

(b) In the event any Unit Owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or trust deed against his Unit Ownership, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien therefor against such Unit Ownership, which lien shall have the same force and effect and may be enforced in the same manner as provided in Article XVI hereof.

5. Consent of Voting Members. The Board shall not exercise any option hereinabove set

forth to purchase any Unit Ownership or interest therein without the prior consent of Voting Members having three-fourths (3/4) of the total votes. The Board or its duly authorized representative, acting on behalf of the other Unit Owners may bid to purchase at any sale of a Unit Ownership or interest therein of any Unit Owner living or deceased, which said sale is held pursuant to an order or direction of a court, upon the prior consent of Voting Members having three-fourths (3/4) of the total votes, which said consent shall set forth a maximum price which the Board or its duly authorized representative is authorized to bid and pay for said Unit Ownership or interest therein.

6. Release or Waiver of Option. Upon the consent of at least three (3/4) of the Board members, any of the options contained in this Article IX may be released or waived and the Unit Ownership or interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given of devised free and clear of the provisions of this Article.

7. Proof of Termination of Option. A certificate executed and acknowledged by the acting Secretary of the Board stating that the provisions of this Article IX as hereinabove set forth have been met by a Unit Owner, or duly waived by the Board, and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the Unit Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Unit Owner who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived, upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

8. Financing of Purchase Under Option. (a) Acquisitions of Unit Ownership or any interest therein under the provisions of this Article may be made from the maintenance fund or any other financing arrangement as the Board deems desirable. If said fund is insufficient, the Board shall levy an assessment against each Unit Owner as provided for and subject to Article XVI hereof.

(b) If the members of the Board, in their discretion, borrow money to finance the acquisition of any Unit Ownership or interest therein authorized by this Article, no financing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit Ownership or interest therein to be acquired.

9. Title to Acquired Interest. Unit Ownership or interests therein acquired to the terms of this Article shall be held of record in the name of the Board and their successors in office, or such nominee as they shall designate, for the benefit of all the Unit Owners. Said Unit Ownerships or interests therein shall be sold or leased by the members of the Board in such manner as the Board shall determine without complying with the foregoing provisions relating to the Board's right of first refusal. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and credited to each Unit Owner in the same proportion in which the Board could levy a special assessment under the terms of Section 8(a) of this Article IX.

10. Exceptions to Board's Right of First Refusal. The Board's right of first refusal as provided in Sections 1, 2 and 3 of this Article IX shall not apply to any sale, lease, gift, devise or transfer by the Trustee, and/or the Developer, or by any corporation, trust or other entity when the original Unit Owner or persons having at least majority control of said Unit Owner are in control of the transferee, or resulting from statutory merger, or consolidation, or between co-owners of the same Unit, or any one or more of them, or to any trustee of a trust, the sole beneficiary or beneficiaries of which are the Unit Owner, the spouse or lawful child of the Unit Owner, or any one or more of them, or from any trustee of a trust to any one or more of the beneficiaries thereof.

11. Miscellaneous. If a proposed sale, lease, devise or gift of any Unit Ownership is made by any Unit Owner, after compliance with the foregoing provisions, the purchaser, lessee, devisee, or donee thereunder shall be bound by and be subject to all of the obligations of such Unit Owner with respect to such Unit Ownership as provided in this Declaration, and in the case of a lease, said lease expressly so provide. The Unit Owner making any such lease shall not be relieved thereby from any of his obligations hereunder. Upon the expiration or termination of such lease, or in the event of any attempted subleasing thereunder, the provisions hereof with respect to the Board's right of first option shall apply to such Unit Ownership. If any sale, lease, devise or gift of a Unit Ownership is made or attempted by any Unit Owner without complying with the foregoing provisions, such sale, lease, devise or gift shall be subject to each and all of the rights and actions available to the Board hereunder or at law or in equity in connection therewith. The foregoing provisions with respect to the Board's right of first option as to any proposed sale, lease, devise or gift shall be and remain in full force and effect until the Property as a whole shall be sold or removed from the provisions of the Act, as provided in the Act, unless sooner rescinded or amended by the Unit Owners in the manner herein provided for amendments of this Declaration. The Board may adopt rules and regulations from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and effectuating the same.

ARTICLE X

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 Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, 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 the payment therefor; provided, however, that in the event within one hundred and eighty (180) days after said damage or destruction, the Unit Owners shall elect either to sell the Property as hereinafter provided in Article XII 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 the insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit "B," after first paying out of the share of each Unit Owner the amount of any unpaid liens on his Unit, in the order of the priority of such liens.

2. Insufficient Insurance. (a) If the insurance proceeds are insufficient to reconstruct the Building and the Unit Owners and all other parties in interest do not voluntarily make provision for

reconstruction of the Building within one hundred and eighty (180) days from the date of damage or destruction, the Board of Managers may record a notice setting forth such facts and upon the recording of such notice:

- (i) The Property shall be deemed to be owned in common by the Unit Owners;
- (ii) the undivided interest in the Property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by such owner

in the Common Elements;

(iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Unit Owner in the Property as provided herein; and

(iv) The Property shall be subject to an action, for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Unit Owners in a percentage equal to the percentage of undivided interest owned by each owner in the Property, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Unit Owner.

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

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

3. Cessation of Common Expenses. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

ARTICLE XI

EMINENT DOMAIN

1. Reallocation of Common Elements and Condemnation Award. Upon the withdrawal of any Unit or portion thereof due to eminent domain, the percentage of interest in the Common Elements appurtenant to such Unit or portion thereof shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution in market value of the Unit, as determined by the Board of Managers. The

allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage interest. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements shall be allocated on the basis of each Unit Owner's percentage interest therein.

2. Cessation of Common Expenses. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof by the Unit Owner shall cease.

ARTICLE XII

SALE OF THE PROPERTY

The Unit Owners, through the affirmative vote of Voting Members having at least three-fourths (3/4) 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 value was approved, the Board shall give written notice of such action to the holder of any duly recorded mortgage or trust deed against any Unit Ownership entitled to notice under Section 1 of Article XIX of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner or form may be necessary to effect such sale, provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the fair market value of his interest, as determined by arbitration as hereinafter provided, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. In the absence of agreement on the fair market value of such interest, such Unit Owner and the Board shall each select an appraiser, and two so selected shall select a third, and the fair market value, as determined by said third appraiser, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The cost of the appraisal shall be divided equally between such Unit Owner and the Board, and the Board's share shall be a common expense.

ARTICLE XIII

BY-LAWS

The provisions of Articles XIV, XV, XVI, XVII and XVIII shall constitute the By-Laws of the Association and the By-Laws prescribed by the Act.

ARTICLE XIV

BOARD OF MANAGERS

1. Board of Managers (Board of Directors). a) The direction and administration of the Property shall be vested in a Board of Managers, consisting of five (5) persons who shall be appointed or elected in the manner herein provided. Each member of the Board shall be one of the Unit Owners, provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director or other designated agent of such corporation, partner 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.

(b) At the initial meeting the voting Members shall elect the five (5) Board Members. In all elections for members of the Board, each Voting Member shall be entitled to cumulate his votes in the manner provided by law and the candidates receiving the highest number of votes with respect to the number of officers to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. Five (5) Board members shall be elected at the first annual meeting. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the two (2) persons receiving the next highest number of votes shall be elected to the board for a term of one (1) year. In the event of a tie vote, the members of the Board shall determine which members shall have the two (2) year terms and which members shall have the one (1) year terms. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting, and thereafter, successors shall be elected for a term of two (2) years each. The Voting Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may increase or decrease the term of office of Board members at any annual or special meeting, provided that (1) such number shall not be less than three (3), (2) the terms of at least one-third (1/3) of the persons on the Board shall expire annually, and (3) no Board member shall be elected to a terms in excess of two (2) years. Any Board member may be reelected at the expiration of his term. Members of the Board shall receive no compensation for their services, unless expressly authorized by the Board with the approval of Voting Members having two-thirds (2/3) of the total votes. Vacancies in the Board, including vacancies due to any increase in the number of persons the Board, shall be filled by the Voting Members present at the next annual meeting or at a special meeting of the Voting Members called for such purposed. Except as otherwise provided in this Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present at its meeting when a quorum exists. A majority of the total number of the members of the Board shall constitute a quorum. Meetings of the Board may be called, held and conducted in accordance with such resolutions as Board may adopt.

Board shall elect from among its members: (1) a President who shall preside over both its meetings and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall execute amendments to the Condominium Instruments; (2) a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members, who shall mail and receive all notices, and who shall, in general, perform all the duties

incident to the office of Secretary; (3) a Treasurer to keep the financial records and books of account; and (4) such additional officers as the Board shall sett fit to elect.

(d) Any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent annual meeting or special meeting called for that purpose.

(e) The Board shall meet at least four (4) times annually, on the first Monday of February, May, August and November and at such other times as the Board deems necessary. Meeting of the Board shall be open to any Unit 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 of Managers finds that such an action is probable or imminent, (ii) to discuss the appointment, employment, engagement or dismissal of an employee, independent contractor, agent or other provider of goods and services, (iii) to interview a potential employee, independent contractor, agent or other provider of goods and services, (iv) to discuss violations of rules and regulations of the Association, or (v) or discuss a Unit Owner's unpaid share of Common Expenses, or (vi) consult with the association's legal counsel; that any vote on these matters shall be taken at a meeting or any portion thereof open to any Unit Owner; that board members may participate in and act in at any meeting of the Board in person, by telephonic means, or by use of any acceptable technological means whereby all persons participating in the meeting can communicate with each other; that participation constitutes attendance and presence in person at the meeting; that any Unit Owner may record the proceedings at meetings required to be open by this Act by tape, film or other means; that notice of any such meeting shall be mailed at least forty-eight (48) hours prior thereto, or such longer notice as the Act may require, unless a written waiver of such notice is signed by the person or persons entitled to such notice, to (i) each owner who has provided the association with written authorization to conduct business by acceptable technological means, and (ii) to the extent that the condominium instruments of the association require to each other unit owner, if the owner does not provide written authorization to conduct business using acceptable technological means, the association shall, at its expense, conduct business with that person without the use of acceptable technological means.

2. General Powers of the Board. The powers and duties of the Board of Managers shall include, but shall not be limited to, the following matters:

- (a) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements;
- (b) Preparation, adoption and distribution of the annual budget for the Property;
- (c) Levying of assessments;
- (d) Collection of assessments from Unit Owners;
- (e) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;
- (f) Obtaining adequate and appropriate kinds of insurance;
- (g) Owning, conveying, encumbering, leasing and otherwise dealing with Units conveyed to or purchased by it;
- (h) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property;
- (i) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;
- (j) To have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to other Unit or Units;
- (k) To pay for water, waste removal, other operating expenses, electricity, telephone and other necessary utility service for the Common Elements;
- (l) To pay for landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the windows and glass doors appurtenant to the Unit, if any, and the interior surfaces of the Units and

of the hallway doors appurtenant thereto, which the Unit Owners shall paint, clean, decorate, maintain and repair, except if necessitated by repairs to the Common Elements) and such furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Elements;

(m) To pay for 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 this Declaration or By-Laws of

which in its opinion shall be necessary or proper for the maintenance and operation of the Property, as a first class condominium office building or for the enforcement of these restrictions;

(n) To pay any amount necessary to discharge any mechanic's lien or other encumbrance against the entire Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Elements, rather than merely against the interests therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specially assessed to said Unit Owners;

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

(p) The Board or its agent upon reasonable notice may enter any Unit when necessary in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and any damage caused thereby shall be repaired by the Board as a common expense;

(q) The Board's powers hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Common Elements (other than for purposes of replacing or restoring portions of the Common Elements, subject to all the provisions of this Declaration) requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of Voting Members having two-thirds (2/3) of the total votes;

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

(s) The Board may adopt such reasonable rules and regulations, not inconsistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Unit Owners and Occupants of the Property. Written notice of such rules and regulations shall be given to all Unit Owners and Occupants and the entire Property shall at all times be maintained subject to such rules and regulations;

(t) The Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board;

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

(v) Upon authorization by the affirmative vote of not less than a majority of the Voting Members at a meeting duly called for such purposes, the Board, acting on behalf of all Unit Owners, shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge and collect all expenses incurred in connection therewith as common expenses.

(w) To adopt and amend rules and regulations: (1) authorizing electronic delivery of notices and other communications required or contemplated by this Act to each unit owner who provides the association with written authorization for electronic delivery and an electronic address to which such communications are to be electronically transmitted; and (2) authorizing each unit owner to designate an electronic address or a U.S. Postal Service address, or both, as the unit owner's address on any list of members or unit owner which an association is required to provide upon request pursuant to any provision of the Act or any condominium instrument.

ARTICLE XV

MEMBERS

(UNIT OWNERS)

1. Voting Rights. There shall be one (1) person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such Voting Members shall be the Unit Owner, or one of the group composed of all the Unit Owners of a Unit Ownership, or may be some person designated by such Unit Owners to act as proxy on his or their behalf and who need not be a Unit Owner. Such designations shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or Unit Owners. Any or all Unit Owners of a Unit Ownership, and their designee, if any, may be present at any meeting of the Voting Members, but only the Voting Member of the Unit Ownership may vote or take any other action as a Voting Member either in person or by proxy. The total number of votes of all Voting Members shall be 100, and each Unit Owner or group of Unit Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Elements applicable to his or their Unit Ownership as set forth in Exhibit "B." The Trustee shall designate the Voting Member with respect to any Unit Ownership owned by the Trustee. The Association shall have one (1) class of membership only and that nothing contained in these Condominium Instruments shall permit or allow different classes of membership among the Unit Owners. To the extent the condominium instruments or rules adopted thereunder expressly so provide, a vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either be set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the Unit Owner or the Unit Owner's proxy.

The Association may, upon the adoption of a rule at least 120 days before an election, prohibit the use of proxies at board elections and provide that Unit Owners may vote only (a) by submitting an Association-issued ballot in person at the election meeting; or (b) by submitting an Association-

issued ballot to the Association (or its designated agent) by mail, Acceptable Technological Means, or other means of delivery specified in the By-Laws or rules. The ballots shall be mailed or otherwise distributed to Unit Owners not less than ten (10) days, and not more than thirty (30) days prior to the election meeting, and the Board shall give written notice to the Unit Owners not less than twenty-one (21) days prior to the deadline for inclusion of a candidate's name in the ballots and said date shall be no more than seven (7) days prior to the mailing or other distribution of the ballots to the Unit Owners. Every such ballot must include the names of all candidates who have given the Board, or its authorized agent, timely written notice of their candidacy and must give the Unit Owners casting the ballot the opportunity to cast votes for candidates whose names do not appear on the ballot. Any ballot received by the Association or its designated agent after the close of voting shall not be counted. Any Unit Owner who submits a ballot by mail or other means of delivery as specified in the By-Laws or rules may request and cast a ballot in person at the election meeting in which case any previously cast ballot submitted by that Unit Owner will be null and void.

2. Meetings. (a) Meetings of the Voting Members shall be held at the Property, or at any such other place in McHenry County, Illinois, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the Voting Members of at least a majority of the Voting Members and Voting Members having at least a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes represented at such meeting. Votes cast by ballot, Electronic Transmission, or Acceptable Technological Means are also valid for purpose of establishing a quorum.

(b) The initial meeting of the Voting Members shall be held upon written notice, not less than or more than thirty (30) days notice given by the Trustee or Developer. Such written notice may be given at any time after at least seventy-five (75%) of the Units are occupied but must be given not later than the earlier of thirty (30) days after all of the Units are occupied or twenty-four (24) months from the date of recording this Declaration. Thereafter, there shall be an annual meeting of the Voting Members on the first Wednesday of November following such initial meeting and on the first Wednesday of each succeeding November 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 by written notice of the Board delivered to the Voting Members not less than ten (10) days or more than thirty (30) days prior to the date fixed for said meeting. At each annual meeting, the members shall elect the candidates necessary for a full Board. The Association may, upon adoption of appropriate rules by the Board, conduct elections by secret ballot whereby the voting ballot is marked only with the percentage interest for the Unit and the vote itself, provide that the Board further adopts rules to verify the status of the Unit Owner issuing a proxy or casting a ballot. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election.

(c) Special meeting of the Voting Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by the President of the Board, a majority of the Board, or by the Voting Members having twenty percent (20%) of the total votes and delivered not less than

ten (10) days or more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered. Matters to be submitted at special meetings of the Voting Members should first be submitted to the Board of Managers, at least ten (10) days prior to the special meeting, who shall then submit the matters to the Voting Members.

3. Notices of Meetings. Notices of meetings required to be given herein may be delivered either personally or by mail to the person entitled to vote thereat, addressed to each such person at the address given to him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting right appertains, if no address has been given to the Board. Any notices to be sent or received or signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of the Act may be accomplished using acceptable technological means.

4. Miscellaneous. (a) No merger or consolidation of the Association; lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the Property and assets of the Association; and the purchase or sale of land or of Units on behalf of all Unit Owners shall be effectuated unless there is an affirmative vote of two-thirds (2/3) of the votes of Unit Owners, except as otherwise provided for in the Declaration.

(b) When thirty percent (30%) or fewer of the Units, by number, possess over fifty percent (50%) in the aggregate of the votes in the Association, any percentage vote of members specified in the Condominium Instruments, or the Act, shall require instead the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

ARTICLE XVI

ASSESSMENTS - MAINTENANCE FUND

1. Estimated Annual Budget and Assessments. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of all common expenses which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements. The annual budget shall set forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The budget shall also set forth each Unit Owner's proposed common expense assessment. Each Unit Owner shall receive, at least thirty (30) days prior to the adoption thereof by the Board of Managers, a copy of the proposed annual budget; the annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Elements, if any. The "estimated annual budget" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements as set forth in Exhibit "B" attached hereto. Each Unit Owner shall receive notice in the same manner as is provided in this Declaration for membership meetings, or any meeting of the Board of Managers, concerning the adoption of the proposed annual budget or any increase, or establishment of an assessment. Said meetings of the Board of Managers shall be open to any Unit Owner, and that notice of such meeting shall be mailed 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 is signed by the person or persons entitled to such notice before the meeting is convened. On or before January 1 of the ensuing year, and the first

of each and every month of said year, said Unit Owner jointly and severally shall be personally liable for and obligated to pay the Board or as it may direct one-twelfth (1/12) of the assessment against his Unit Ownership made pursuant to this Section. On or before April 1 of each calendar year following the year in which the initial meeting is held, the Board shall supply to all Unit Owners an itemized accounting of the common expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget or assessments, and showing the net excess or deficit of income over expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Unit Owner's percentage of ownership in the Common Elements to the next monthly installments due from Unit Owners under the current year estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership in the Common Elements to the installments due in the succeeding six (6) months after rendering of the accounting. Any Common Expense not set forth in the budget or any increase in assessment over the amount adopted in the budget shall be separately assessed against all Unit Owners. Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board of Managers without being subject to Unit Owner approval. As used herein, "emergency" means an immediate danger to the structural integrity of the Common Elements or to the life, health, safety or property of the Unit Owners. Assessments for additions and alterations to the Common Elements or to Association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds of the total votes of all Unit Owners. The Board of Managers may adopt separate assessments payable over more than one fiscal year.

2. Reserves and Adjustments. The Board shall establish and maintain a reasonable reserve for contingencies and replacements. Any extraordinary or non-recurring common expense, any common expense not set forth in the budget as adopted, and any increase in assessments over the amount adapted shall be separately assessed against all Unit Owners. All Unit Owners shall be personally liable for and obligated to pay their respective adjusted monthly amount.

3. Initial Estimate of Annual Budget. When the first Board elected or appointed hereunder takes office it shall determine the "estimated annual budget" as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the Unit Owners during said period as provided in Section 1 of this Article.

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

5. Books and Records. The Board shall keep full and correct books of account 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. Such records and the vouchers authorizing the payments shall be available for

inspection by any Unit Owner or any representative of a Unit Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Unit Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

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

7. Insurance. Any insurance premiums assessed on a basis reflecting increased charges for coverage on certain Units shall be assessed to such Unit. The Association shall maintain at all the times a reserve equal to not less than the insurance premium for the previous year's coverage.

8. Assessments. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all Unit 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' expenses fixed by the Court. To the extent permitted by any decision or any 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 Unit 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 after written notice to said encumbrancer of unpaid common expenses only to the lien of all common expenses on the encumbered Unit Ownership which become due and payable subsequent to the date the encumbrancer either takes possession of the Unit, accepts a conveyance of any interest in the Unit Ownership or has a receiver appointed in a suit to foreclose its lien. 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 Unit Owner shall fail to pay the 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 Unit Owner's share of such expenses (whether due by acceleration or otherwise), together with interest thereon, at the maximum rate permitted by law, and all fees and costs (including reasonable attorney's fees) incurred in the collection thereof; (2) the right, by giving such defaulting Unit Owner five (5) days' written notice of the election of the Board so to do, to accelerate the maturity of the unpaid installments of such expenses accruing with respect to the balance of the assessment year; and (3) the right to take possession of such defaulting Unit Owner's interest in the Property, to maintain for

the benefit of all the other Unit Owners an action for possession in the manner prescribed in "an Act in regard to Forcible Entry and Detainer" approved February 16, 1874, as amended, and to

execute leases of such defaulting Unit Owner's interest in the Property and apply the rents derived therefrom against such expenses.

9. Nonuse. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or abandonment of his Unit.

10. Unoccupied Units. Notwithstanding anything herein to the contrary, the Trustee shall be assessed, according to the aggregate percentage of ownership in the Common Elements, for all Units it owns that are not occupied, only for that portion of the "estimated annual budget" that relates to the estimated costs and expenses that will be required irrespective of the number of Units occupied, excluding from such estimate, by way of illustration and not limitation, the cost of water and garbage collection, and also excluding any reserves for contingencies and replacements. The Trustee's ultimate liability for maintenance expenses actually incurred and paid under paragraph 1 of this Article XVI, and for extra-ordinary expenditures under paragraph 2 of this Article XVI, shall be similarly computed.

ARTICLE XVII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

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

1. General Use. No part of the Property shall be used for other than professional or service offices and related common purposes for which the Property was designed. Each Unit or any two or more adjoining Units used together shall be used only for the uses permitted by this Declaration and for no other purpose. That part of the Common Elements separating any two or more adjoining Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Units in such manner and upon such conditions as shall be determined by the Board in writing.

2. Obstruction of Common Elements and Unit Maintenance. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without prior consent of the Board except as herein expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit.

3. Prohibited Use and Activities. Nothing shall be done or kept in any Unit, or in the Common Elements, which will increase the rate of insurance on the Building or contents thereof, applicable for professional or service office use, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit, or in the Common Elements, which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements. No Unit Owner shall overload the electric wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board. There shall not be maintained or operated in any Unit a pathology facility without the prior written consent of the Board.

4. Unit Owner Insurance. Each Unit Owner shall be responsible for his own insurance on

his personal property in his own Unit, his personal property stored elsewhere on the Property and his personal liability to the extent not covered by the liability insurance for all the Unit Owners obtained by the Board as herein before provided.

5. Exterior Attachments. Unit Owners shall not cause or permit anything to be placed on the outside walls of the Building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board.

6. Window Treatment. The use and the covering of the interior surfaces of the glass windows and/or doors appurtenant to the Units of the Building, whether by draperies, shades or other items visible from the exterior of the Building shall be subject to the rules and regulations of the Board.

7. Floor Coverings. In order to enhance the soundproofing of a the Building the floor covering for all occupied Units shall meet a certain minimum standard as may be specific by rules and regulations of the Board.

8. Pets, etc. No animals, reptiles, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements.

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

10. Unsightliness. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

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

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

13. Waste Disposal. All Unit Owners, or other occupants of a Unit, engaged in an activity involved with or related to the medical profession shall take such precautionary measures with regard to the disposal of waste materials as shall be prescribed by the Board from time to time.

ARTICLE XVIII

REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

1. Abatement and Injunction. The violation of any restriction, or condition or regulation adopted by the Board, or the breach of any covenant or provisions herein contained, shall give the Board the right, in addition to the rights set forth in the next succeeding section: (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 Unit Owner, any structure, thing or condition that may exist thereon

contrary to the intent and the provisions of hereof, and the Trustee, the Developer, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or, (b) to enjoin, abate or remedy by appropriate legal proceeding, 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 expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of seven percent (7%) per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all his personal property in his Unit or located elsewhere on the Property. 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 Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration, or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall reoccur more than once after such notice, then the Board shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the rights of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the members of the Board against the defaulting Unit Owner for a decree of mandatory injunction against Unit Owner or Occupant or, in the alternative, for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of the said violation, and ordering that the right, title and interest of the Unit 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 Unit Owner from reacquiring his 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, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit Ownership and, to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and 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 Declaration.

ARTICLE XIX

ANNEXING ADDITIONAL PROPERTY

The Trustee and Developer reserve the right from time to time, within ten (10) years of the date of the recording of this Declaration, to annex and add to the Parcel and Property and thereby add to the condominium created by this Declaration, all or any portion of the following described real property:

Whispering Point Center, being a Subdivision in Section 34, Township 45 North, Range 8 East of the Third Principal Meridian, as recorded November 29, 1978, as

Document 754102, in the City of McHenry, County of McHenry and State of Illinois, EXCEPT that part thereof described as follows: Commencing at the most Easterly Corner of said Lot 1; thence S 46° 15' W. along the South Easterly line of said Lot 1, a distance of 280.0 feet; thence N 43° 45' W., 260.0 feet; thence N 46° 15' E., 280.0 feet to a point in the North Easterly line of said Lot 1; thence S 43° 45' E., 260.0 feet to the place of beginning, in the City of McHenry, McHenry County, Illinois.

which real property is hereinafter referred to as the "Development Area." No rights of any character whatever within the Development Area attach to any Unit Owner except as to that portion described in any recorded Amended Declaration annexing and adding such portion to this Declaration as part of the condominium created by this Declaration.

In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Trustee, the Developer, Richard L. Heimberg and Richard B. Collins and each of them singly, and their successors and assigns, as attorneys-in-fact, to shift the percentages of ownership in the Common Elements appurtenant to each Unit to the percentages set forth in each such Amended Declaration recorded pursuant to this Article XIX. Each deed, mortgage or other instrument with respect to a Unit and the acceptance thereof shall be deemed a grant and acknowledgement of and consent to such power to each of said attorneys-in-fact and shall be deemed to reserve to each of them the power to shift and reallocate from time to time the percentages of ownership in the Common Elements appurtenant to each Unit to the percentages set forth in each such recorded Amended Declaration.

Each Unit Owner by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each such Amended Declaration that is recorded, as follows:

(a) The portion of the Development Area described in each such Amended Declaration shall be governed in all respects by the provisions of this Declaration.

(b) The percentage of ownership in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded Amended Declaration and upon the recording of each such Amended Declaration, the amount by which such percentage appurtenant to a Unit is reduced, as set forth in each such recorded Amended Declaration, shall thereby be and be deemed to be released and divested from such Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in each such recorded Amended Declaration.

(c) Each deed, mortgage or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the percentage of ownership in the Common Elements appurtenant to each Unit shall, upon the recording of each Amended Declaration, be divested pro tanto to the reduced percentage set forth in such Amended Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Units in accordance with the terms and percentages of each such recorded Amended Declaration.

(d) A right of revocation is hereby reserved by the grantor in each such deed, mortgage or other instrument of a Unit to so amend and reallocate the percentages of ownership in the Common Elements appurtenant to each Unit.

(e) The percentage of ownership in the Common Elements appurtenant to each Unit shall include and be deemed to include any additional Common Elements annexed hereto by a recorded Amended Declaration and each deed, mortgage or other instrument affecting a Unit shall be deemed to include such additional Common Elements and the ownership of any such Unit and lien

of any such mortgage shall automatically include and attach to such additional Common Elements as such Amended Declarations are recorded.

(f) Each Owner shall have a perpetual easement, appurtenant to his Unit, for the use of any additional Common Elements annexed thereto by and described in any recorded Amended Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners of specific Units as may be provided in any such Amended Declaration.

(g) The recording of each such Amended Declaration shall not alter the amount of the lien for expenses assessed to a Unit prior to such recording.

(h) Each Unit Owner by acceptance of the deed conveying his Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Amended Declaration is and shall be deemed to be in accordance with the Act and for purposes of this Declaration and the Act, any changes in the respective percentages of ownership in the Common Elements as set forth in each such Amended Declaration shall be deemed to be made by agreement of all Unit Owners.

(i) The Trustee and Developer reserve the right to amend this Declaration in such manner, and each Unit Owner agrees to execute and deliver such documents necessary or desirable to cause the provision of this Article XIX to comply with the Act as it may be amended from time to time.

(j) The foregoing provisions of this Declaration and in deeds and mortgages of the Units and Common Elements contain and will contain clauses designed to accomplish a shifting of the Common Elements. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Elements can be accomplished.

ARTICLE XX

GENERAL PROVISIONS

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

2. Notices to Board, Association and Unit Owners. Notices provided for in this Declaration and in the Act shall be in writing, and shall be addressed to the Board or Association, or any Unit Owner, as the case may be at 800 McHenry Avenue Crystal Lake, Illinois, 60014 (indicating thereon the number of the respective Unit if addressed to a Unit Owner), or at such other address as herein provided. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Unit Owners. Any Unit Owner may also designate a different address for notices to him by giving written notice of his change of address to the Board of Association. Notices addressed as above will be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof, or if addressed to a Unit Owner, when deposited in in his mailbox in the Building or at the door of his Unit in the Building. Any notices to be sent or received or signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of the Act may be accomplished using acceptable technological means.

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

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

5. 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.

6. Amendment. Except, as is otherwise provided in the Act, this Declaration and Bylaws, the provisions of the Condominium Instruments may be amended, changed or modified by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by all of the members of the Board, at least three-fourths (3/4) of the Unit Owners and the approval of any mortgagees required under the provisions of the Condominium Instruments, and containing an affidavit by an officer of the Board certifying that a copy of the amendment, change or modification has been mailed by certified mail to all mortgagees having bonafide liens of record against any Unit, not less than ten (10) days prior to the date of such affidavit. Any amendment, change or modification shall conform to the provisions of the Condominium Property Act and shall be effective upon recordation thereof. No change, modification or amendment which affects the rights, privileges or obligations of the Trustee or the Developer shall be effective without the prior written consent of the Trustee or the Developer. Except to the extent authorized by provisions of the capital Act, no amendment to the Condominium Instruments shall change the boundaries of any Unit or the undivided interest in the Common Elements, the number of votes in the Unit Owners Association, or the liability for common expenses up appertaining to a Unit. If any provision of this Declaration requires approval of any mortgagee or lienholder of record and the mortgagee or lienholder of record received a request to approve or consent to the amendment to the Declaration, the mortgagee or lienholder of record is deemed to have approved or consented to the request unless the mortgagee or lienholder of record delivers a negative response to the Association within sixty (60) days after the mailing of the request. A request to approve or consent to an amendment to the Declaration that is required to be sent to a mortgagee or lienholder of record shall be sent by certified mail.

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

8. Perpetuities and Restraints. 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 provision, (b) the rules restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last to die of the now living lawful descendants of James E. Carter, Jr., President of the United States, and Charles Percy, Senator of the State of Illinois.

9. Liens. In the event any lien exists against two (2) or more Units and the indebtedness accrued by such lien is due and payable, the Unit Owner of any such Unit so affected may remove such Unit and the undivided interest in the Common Elements appertaining thereto from such lien by payment of the proportional amount of such indebtedness attributable to such Unit. In the event such lien exists against the Units or against the Property, the amount of such proportional payment shall be computed on the basis of the percentage net forth in the Declaration. Upon payment as herein provided, it is the duty of the encumbrancer to execute and deliver to the Unit Owner a release of such Unit and the undivided interest in the Common Elements appertaining thereto from such lien.

The owner of such Unit shall not be liable for any claims, damages or judgments entered as a result of any action in inaction of the Board of Managers of the Association other than for mechanics' liens as hereinafter set forth. Each Unit Owner's liability for any judgment entered against the Board of Managers or the Association, if any, shall be limited to his proportionate share of the indebtedness as set forth herein, whether collection is sought through assessment or otherwise. A Unit Owner shall be liable for any claims, damage or judgment entered as a result of the use or operation of his Unit, or caused by his own conduct. Before conveying a Unit, a Developer shall record or furnish purchaser releases of all liens affecting that Unit and its Common Element interest which the purchaser does not expressly agree to take subject to or assume, the Developer shall provide a surety bond or substitute collateral for or insurance against such liens. After conveyance of such Unit, no mechanics lien shall be created against such Unit or its Common Element interest by reason of any subsequent contract by the developer to improve or make additions to the Property.

If, as a result of work expressly authorized by the Board of Managers, a mechanics' lien claim is placed against the Property or any portion of the Property, each Unit Owner shall be deemed to have expressly authorized it and consented thereto, and shall be liable for the payment of his Units' proportionate share of any due and payable indebtedness.

10. Release of Claims. Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, Occupant the Association, its officers, member of the Board, the Trustee, the Developer, the managing agent, 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 damages is covered by fire or other form of casualty insurance.

11. 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 building.

12. Headings. The headings and captions contained herein are inserted for convenient reference only and shall not be deemed to construe or limit the Sections and Articles to which they apply.

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

EXHIBIT A
LEGAL DESCRIPTION

Units 4302-A, 4302-B, 4302-C, 4302-D, 4302-F, 4302-G, 4302-H and 4302-J as delineated on the Plat of Survey of the following described Parcel of real estate, which survey is recorded in the Office of the Recorder of Deed of McHenry County Illinois as Document No. 754102:

That part of Lot 1, in Whispering Point Center, being a Subdivision in Section 34, Township 45 North, Range 8, East of the Third Principal Meridian, as recorded November 29, A.D. 1978, as Document 754102, described as follows: Commencing at the most Easterly Corner of said Lot 1; thence S46° 15' W. along the South Easterly line of said Lot 1, a distance of 280.0 feet; thence N 43° 45' W., 260.0 feet; thence N 46° 15', 280.0 feet to a point in the North Easterly line of said Lot 1; thence S 43° 45' E., 260.0 feet to the place of beginning, in the City of McHenry, McHenry County, Illinois.

WHISPERING POINT CENTER CONDOMINIUM
EXHIBIT "B"

<u>UNIT</u>	<u>% OF OWNERSHIP IN THE COMMON ELEMENT</u>
4302-A	12.2818
4302-B	9.2113
4302-C	12.2818
4302-D	10.8870
4302-F	9.2113
4302-G	24.6337
4302-H	12.2818
4302-J	9.2113

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

I Shawn Strach, being the President, or other Officer authorized by the Board, of Whispering Point Center Condominium Association, an Illinois not-for-profit corporation and condominium association established by the aforesaid Declaration of Condominium, and by my signature below do hereby execute the foregoing Amended and Restated Declaration pursuant to Section 17 of the Illinois Condominium Property Act.

Executed this 27 day of February 2025.

By: _____

Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

We, the undersigned, constitute at least two-thirds (2/3) of the members of the Board of Directors of Whispering Point Center Condominium Association, a condominium association established by the aforesaid Declaration of Condominium. By our signatures below, we hereby approve of and consent to this Amended and Restated Declaration pursuant to Section 27(b) of the Illinois Condominium Property Act. In witness, whereof we have cast our votes and signed this document in favor of this Amended and Restated Declaration at a duly called meeting of the Board of Directors of the Association held on February 27, 2025.

Printed name: Shawn Strach, President

Printed name: Gregory Klemstrin

Printed name: Tom Hurckes

Printed name: Todd Lowenheim

Printed name: James Gruebnau

BOARD OF DIRECTORS
OF WHISPERING POINT
CENTER CONDOMINIUM
ASSOCIATION

ATTEST:

Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

AFFIDAVIT OF SECRETARY

I, _____, being first duly sworn on oath, depose and state that I am the Secretary of the Board of Directors of the Whispering Point Center Condominium Association, an Illinois condominium association and not-for-profit corporation, and as such Secretary and keeper of the books and records of said condominium, I further state that the foregoing Amended and Restated Declaration was approved by at least two-thirds (2/3) of the members of the Board of Directors of said condominium, at a meeting of the Board of Directors duly noticed and convened and held for that purpose on _____ 20__ at which a quorum was present throughout, and such approval has not been altered, modified, or rescinded in any manner but remains in full force and effect. I further state the unit owners did not file a petition with the Board of Directors, pursuant to the requirements of Section 27(b)(3) of the Illinois Condominium Property Act, objecting to the adoption of this Amended and Restated Declaration.

By: _____
Secretary

SUBSCRIBED AND SWORN to
before me this ____ day
of _____, 20__

Notary Public

(Seal)

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

I Shawn Strach, being the President, or other Officer authorized by the Board, of Whispering Point Center Condominium Association, an Illinois not-for-profit corporation and condominium association established by the aforesaid Declaration of Condominium, and by my signature below do hereby execute the foregoing Amended and Restated Declaration pursuant to Section 17 of the Illinois Condominium Property Act.

Executed this 27 day of February 2025.

By: 

Its: President