

34

DECLARATION OF HORIZONTAL PROPERTY REGIME

AND OF

EASEMENTS, RESTRICTIONS, COVENANTS

AND BY-LAWS

FOR

THE MASSACHUSETTS HOMEOWNER'S ASSOCIATION, INC.

A Not-For-Profit Corporation



CHICAGO TITLE

10/25/93 09:50AM JOAN K. ROMERIL HANCOH CTY RECORDER C39 74.00 PAGES: 34

Inst # 1999-0158491

TABLE OF CONTENTS

ARTICLE I - DEFINITIONS 2

1.01 Declaration 2

1.02 Parcel 2

1.03 Building 2

1.04 Property 2

1.05 Unit 2

1.06 Common Areas 2

1.07 Unit Ownership 2

1.08 Person 2

1.09 Unit Owner 2

1.10 Occupant 2

1.11 By-Laws 3

1.12 Association 3

1.13 Majority of the Unit Owners 3

1.14 Board 3

1.15 Common Expenses 3

1.16 Reserves 3

1.17 Plans 3

ARTICLE II - UNITS 3

2.01 Description 3

2.02 Certain structures Not Constituting Part of a Unit 4

2.03 Real Estate Taxes 4

ARTICLE III - COMMON AREAS 4

3.01 Description 4

3.02 Ownership and Common Areas 4

ARTICLE IV - GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS 5

4.01 Submission of Property to the Act 5

4.02 No Severance of Ownership 5

4.03 Storage 6

4.04 Use of Common Areas 6

4.05 Maintenance, Repairs and Replacements 6

4.06 Additions, Alterations or Improvements 8

4.07 Negligence of Unit Owner 9

4.08 Joint Facilities 9

4.09 Cable Television Lines 9

ARTICLE V - ADMINISTRATION 9

5.01 Administration of the Property 9

5.02 Association 10

5.03 Voting Rights 10

5.04 Meetings 10

5.05 Notices of Meetings 11

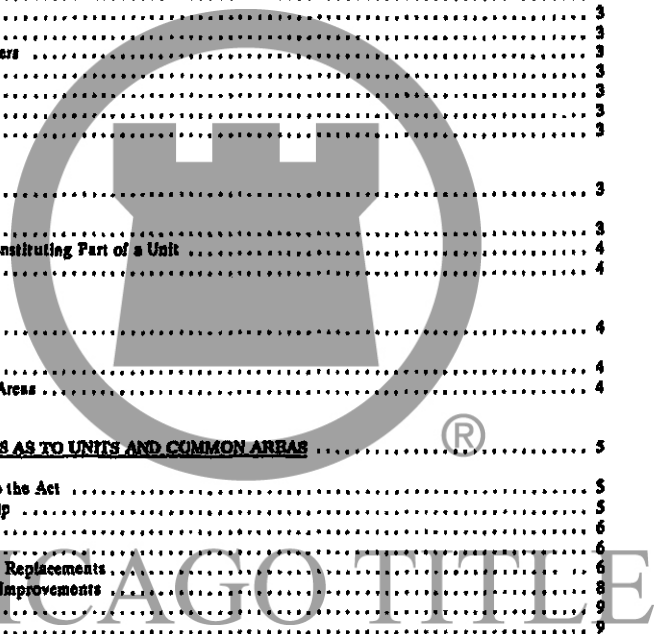
5.06 Board of Directors 11

5.07 General Powers and Duties of the Board 13

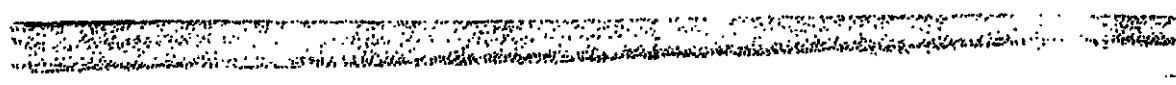
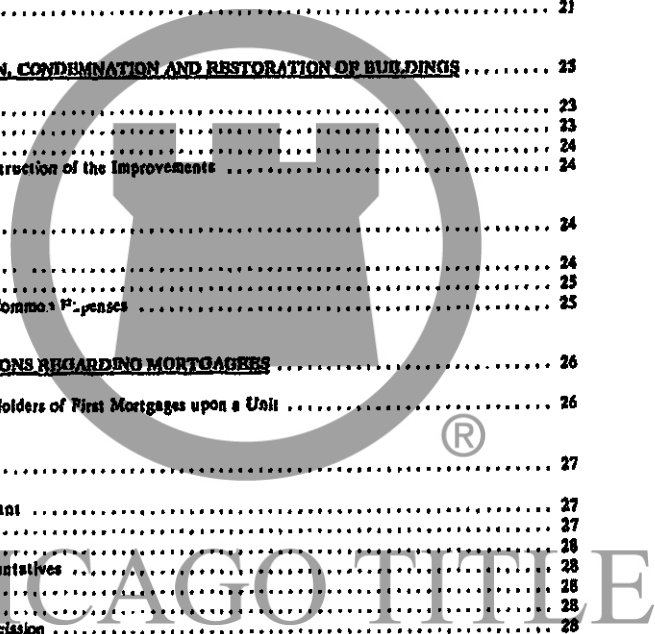
5.08 Insurance 15

5.09 Cancellation of Insurance 18

5.10 Liability of the Board of Directors 18



ARTICLE VI - COMMON EXPENSES/MAINTENANCE FUND	18
6.01 Preparation of Estimated Budget	18
6.02 Reserve for Contingencies and Replacements - Supplemental Budget	19
6.03 Initial Budget	19
6.04 Failure to Prepare Annual Budget	19
6.05 Books and Records	19
6.06 Status of Uncollected Funds	20
6.07 Initial Deposit for Contingencies and Replacements	20
6.08 Non-Use and Abandonment	20
6.09 Emergency Maintenance	20
ARTICLE VII - COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY	20
7.01 Use and Occupancy	20
7.02 Other Provisions	21
ARTICLE VIII - DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDINGS	23
8.01 Partial Destruction	23
8.02 Complete Destruction	23
8.03 Eminent Domain	24
8.04 Repair, Restoration or Reconstruction of the Improvements	24
ARTICLE IX - REMEDIES	24
9.01 Abatement and Injunctive	24
9.02 Involuntary Sale	25
9.03 Remedies for Failure to Pay Common Expenses	25
ARTICLE X - MISCELLANEOUS PROVISIONS REGARDING MORTGAGEES	26
10.01 Protection of the Rights of Holders of First Mortgages upon a Unit	26
ARTICLE XI - GENERAL PROVISIONS	27
11.01 Certain Rights of the Declarant	27
11.02 Notice to Mortgagees	27
11.03 Manner of Giving Notices	28
11.04 Notices to Estates or Representatives	28
11.05 Conveyance and Leases	28
11.06 No Waivers	28
11.07 Change, Modification or Rescission	28
11.08 Partial Invalidity	29
11.09 Liberal Construction	29
11.10 Floor Plans	29
11.11 Special Amendment	29



**DECLARATION OF HORIZONTAL PROPERTY RIGHTS
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS
AND BY-LAWS
FOR
THE MASSACHUSETTS HOMEOWNER'S ASSOCIATION, INC.
A Not-For-Profit Corporation**

RECORDED
JAN 21 1988
0075 030339

This Declaration is made and entered into by the Massachusetts Apartment Company, an Indiana Limited Partnership and Lifetime Properties, Inc., an Indiana Corporation, its substitute General Partner (hereinafter collectively referred to as the "Declarant"):

WITNESSETH:

WHEREAS, the Declarant holds legal title to the following described real estate situated in Marion County, Indiana (hereinafter called the "Parcel"):

Part of Squares 19 of the Donation Lands in the City of Indianapolis, Marion County, Indiana, more particularly described as follows, to-wit:

Beginning at a point on Massachusetts Avenue, 188 feet Northeast of the intersection of the North property line of Vermont Street with the Southeast property line of Massachusetts Avenue; running thence Northeast along the line of Massachusetts Avenue, 70.3 feet to a point, thence in a southeasterly direction at right angles to Massachusetts Avenue 69.92 feet to a point; thence South 37.7 feet to a point; thence in a Westerly direction 21.5 feet to a point; thence in a Southerly direction 82 feet to a point in the North property line of Vermont Street, said point being 131.5 feet West of the West line of New Jersey Street; thence West upon and along the North line of Vermont Street 38 feet to a point; thence in a Northerly direction 80 feet to a point, then Northwest 75.17 feet to the place of beginning.

EXCEPTING THEREFROM the following:

Part of Square 19 of the Donation Lands in the City of Indianapolis, Marion County, Indiana, more particularly described as follows, to-wit:

Commeacing at a point on Massachusetts Avenue, 188 feet Northeast of the intersection of the North property line of Vermont Street with the Southeast property line of Massachusetts Avenue; running thence Northeast along the line of Massachusetts Avenue, 70.3 feet to a point, thence in Southeasterly direction at right angles to Massachusetts Avenue 69.18 feet to the point of beginning for this tract; thence continuing Southeasterly along a line at a right angle with Massachusetts Avenue, a distance of 20.74 feet; thence South 37.7 feet to a point; thence in a Westerly direction 21.5 feet to a point; thence in a Southerly direction 82 feet to a point in the North property line of Vermont Street, said point being 131.5 feet West of the West line of New Jersey Street; thence West upon and along the North line of Vermont Street 38 feet to a point; thence in a Northerly direction 80 feet to a point, thence Northwest 6.22 feet to a point; thence Northeast a distance of 70.14 feet to the point of beginning.

More commonly known as: 421-427 Massachusetts Avenue
Indianapolis, Indiana 46204

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

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

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

ARTICLE I

DEFINITIONS

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

- 1.01 Declaration. This instrument by which the Property is submitted to the provisions of the Act, including such amendments, if any, to this instrument as may from time to time be adopted pursuant to the terms hereof.
- 1.02 Parcel. The entire tract of real estate above described, which is hereby submitted to the provisions of the Act.
- 1.03 Building. The structure located on the parcel, forming a part of the Property and containing the Units, as shown by the Plans, as hereinafter defined.
- 1.04 Property. All the land, property and space comprising the Parcel, all improvements and structures erected, constructed or contained therein or thereon, including the Building, and all easements, rights and appurtenances belonging thereto, and all furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, submitted to the provisions of the Act.
- 1.05 Unit. A part of the Property within the Building including one or more rooms, occupying a part of a floor, designed and intended for any type of independent use, and more specifically described hereinafter in Article II.
- 1.06 Common Areas. All portions of the Property, except the Units, more specifically described in Section 3.01 herein.
- 1.07 Unit Ownership. A part of the Property consisting of one Unit, and the undivided interest in the Common Areas appurtenant thereto.
- 1.08 Person. A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- 1.09 Unit Owner. Person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit. For the purposes of Article VIII hereof, the word "Unit Owner" shall include any beneficiary of a trust, shareholder of a corporation or partner of a partnership holding legal title to a Unit.
- 1.10 Occupant. Person or persons, other than a Unit Owner, in possession of a Unit.

1.11 By-Laws. The provisions for the administration of the Property, including, but not limited to, assessments, maintenance, use, occupancy, sale, leasing, all as hereinafter set forth, or as the same may be from time to time duly amended, the same to have full force and effect whether applied to or by the Declarant, the Developer, the Board, or the Association, as hereinafter defined. Articles V, VI and VII and Section 11.07 shall constitute the By-Laws of the Association.

1.12 Association. The Massachusetts Homeowners Association, Inc., an Indiana not-for-profit corporation.

1.13 Majority of the Unit Owners. Those Unit Owners, without regard to their number, who own more than fifty (50%) percent of the aggregate of the entire undivided ownership interest in the Common Areas. Any specified percentage of the Unit Owners shall mean those Unit Owners who, in the aggregate, own such specified percentage of the entire undivided ownership interest in the Common Areas.

1.14 Board. The parties determined pursuant to Article V hereof, and who are vested with the authority and responsibility of administering the Property.

1.15 Common Expenses. The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board, including but without limitation, the expenses of maintenance, repair, administration and operation of the Common Areas.

1.16 Reserves. The funds collected by the Association for repairs, capital improvements, and other unusual expenses, or expenses which were not covered by the Association budget or to cover cash flow shortages.

1.17 Plans. The Plans setting forth the layout and the location, the identification numbers and the dimensions of the Units and the Property, including the Common Areas, as have been filed in the office of the Recorder of Marion County in Horizontal Plan File 93-0158496 as of October 25, 1993, as Instrument No. 93-0158496^R, which are incorporated herein by reference.

ARTICLE II

UNITS

2.01 Description and Ownership

(a) The Building consists of a single structure, three (3) stories in height plus a lower level, including a total of twelve (12) Units. The four units on the second floor and the four units on the third floor are intended and restricted to residential usage. The four units on the first floor each include a full lower level and are dedicated to commercial usage. Article VII of this Declaration establishes the rules and restrictions under which all units, residential and commercial shall be used and maintained. All Units are delineated on the Plans and are listed on Exhibit A, and all shall have lawful access to a public way.

(b) Each Unit consists of the space enclosed and bounded by the horizontal and vertical planes as set forth on the Plans. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as

shown on the Plans. Every deed, lease, mortgage or other instrument may legally describe a Unit by identifying number or symbol as shown on Exhibit A, and such description shall be deemed good and sufficient for all purposes.

(c) Except as provided by the Act, no Unit Owner shall, by deed, plat, court decree or otherwise, subdivide or in any other manner cause his Unit to be separated in any tracts or parcels different from the whole Unit as shown on the Plans.

2.02 Certain Structures Not Constituting Part of a Unit. Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the Building, or pipes, wires, conduits, ducts, flues, shafts or public utility or communication lines running through any Unit and forming part of any system serving more than one Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit.

2.03 Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for each Unit and its corresponding percentage of ownership in the Common Areas as provided in the Act. However, until such time as separate real estate bills are issued with respect to each Unit, the real estate taxes imposed on the Property shall be included in the Common Expenses assessed pursuant to this Declaration.

ARTICLE III

COMMON AREAS

3.01 Description. Except as otherwise provided in this Declaration, the Common Areas shall consist of all portions of the Property except the Units. Without limiting the generality of the foregoing, the Common Areas shall include the Parcel, the portions of the Building occupied by the stairways, entrances and exits, mailbox, fire protection systems, sidewalks and balconies, landscaping, refuse collection system, the pipes, ducts, flues, conduits, wires, and other utility installations to the outside, such component parts of walls, floors and ceilings not located within the Units, and structural parts of the Buildings, including structural columns located within the Units.

3.02 Ownership of Common Areas. Each Unit Owner shall own an undivided interest in the Common Areas as a tenant in common with all other Unit Owners of the Property. The extent of such ownership shall be expressed by a percentage amount, and, once determined, shall remain constant, and may not be changed without unanimous approval of all Unit Owners. The Declarant has determined each Unit's corresponding percentage of ownership in the Common Areas to be as follows:

Unit 1	12.5%
Unit 2	12.5%
Unit 3	12.5%
Unit 4	12.5%
Unit 5	6.25%
Unit 6	6.25%
Unit 7	6.25%
Unit 8	6.25%
Unit 9	6.25%
Unit 10	6.25%
Unit 11	6.25%
Unit 12	6.25%
TOTAL	100%

ARTICLE IV

GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS

4.01 Submission of Property to the Act. The Property is hereby submitted to the provisions of the Horizontal Property Act of the State of Indiana.

4.02 No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and his corresponding percentage of Ownership in the Common Areas, 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.

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

(b) Easements for Utilities and Additional Purposes. All suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, replace or repair conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Common Areas for the purpose of providing the Property with utility services, together with a reasonable right of ingress to the Property for said purposes, provided, however, that the location of any such easements shall be subject to the approval of the Board. The Declarant, Board, or Association may hereafter grant other or additional easements for utility purposes and for other purposes including such easements as the Declarant may from time to time request including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Common Areas for the benefit of the Property, over, under, along, and on any portion of said Common Areas, and each Unit Owner hereby grants the Declarant, Board, or Association an

irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing. Easements are also hereby declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, flues, shafts, conduits, public utility and communication lines, or structural components, which may run through the walls of a Unit, whether or not such walls lie in whole or in part within the Unit Boundaries.

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

4.03 Storage. Each Unit Owner shall be responsible for his personal property located in any storage area of the Common Area. Any such storage shall be allocated to the respective Unit Owners in such manner and subject to such rules, regulations, and fees as the Board may prescribe.

4.04 Use of Common Areas.

(a) Subject to the provisions of this Declaration and rules established by the Board, each Unit Owner shall have the nonexclusive right to use the Common Areas in common with all other Unit Owners as may be required for the purposes of ingress to, egress from, use, access, occupancy and enjoyment of the respective Units owned by such Unit Owners, and such other incidental uses permitted by this Declaration. Such rights to use and possess the Common Areas shall be subject to and be governed by the provisions of the Act, this Declaration, By-Laws, and rules and regulations of the Association.

(b) Guest Privileges. The sforescribed rights shall extend to the Unit Owner and the members of the immediate family (for the residential Units) and authorized guests and other authorized occupants and visitors of the Unit Owner, subject to reasonable rules and regulations with respect thereto. The use of the Common Areas and the rights of the Unit Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration and the By-Laws and rules and regulations of the Board as may be imposed from time to time.

4.05 Maintenance, Repairs and Replacements.

(a) By the Board. The Association at its expense shall be responsible for the maintenance, repair and replacement of those portions, if any, of each Unit which contribute to the support of the Building, excluding, however, interior walls, ceilings and floor surfaces. In addition, except as provided in Section 4.08 herein, the Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services

which may be located within the Unit boundaries as specified in Section 2.02 hereof, exclusive of any portions of the foregoing which may be located at or beyond the outlets, or which may be the responsibility of an individual Unit Owner under subparagraph (b) below or any other provision of this Declaration. Maintenance, repairs and replacements of the Common Areas (except as otherwise specifically provided herein) shall be furnished by the Board as part of the Common Expenses, subject to the By-Laws or rules and regulations of the Association.

(b) By the Unit Owner. Except as otherwise provided in paragraph (a) above, each Unit Owner shall furnish and be responsible for, at his own expense:

(i) all of the maintenance, repairs and replacements within his own Unit and of the doors and outside windows appurtenant thereto, and all internal installations of such Unit, such as refrigerators, ranges, and other kitchen appliances (for the residential units), cabinetry and built-ins of any kind, lighting fixtures and other electrical fixtures, plumbing and any portion of any other utility service facilities located within the Unit boundaries, including telephone wiring, as specified in Section 2.01 and 2.02. However, such maintenance, repairs and replacements as may be required for the bringing of water, gas and electricity to the Unit shall be furnished by the Association as part of the Common Expenses. The Board or Association may provide, by its rules and regulations as may be imposed from time to time, for ordinary maintenance and minor repairs and replacements to be furnished to Units and appliances therein by Building Personnel as a Common Expense.

(ii) all of the heating and cooling equipment, lines and related accessories for their individual unit, whether located within or outside of the unit;

(iii) all of the decorating within an individual Unit (initially and thereafter from time to time), including painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, lamps, and other furnishings and interior decorating. Each Unit Owner shall be entitled to the exclusive use of the interior surfaces of the Unit's perimeter walls, floors and ceiling and shall maintain such portions in good condition at their sole expense, as may be required from time to time. The maintenance and use of the interior of each Unit shall be subject to the rules and regulations of the Board or Association as may be imposed from time to time. Each Unit Owner of a second or third floor unit who shall elect to install in any portion of their Unit (other than in bathrooms) hard surface floor covering (i.e., wood, parquet, tile, slate, ceramic, etc.) shall be first required to install a sound absorbent undercushion of such kind and quality as to prevent the transmission of noise to the Unit below, and shall obtain approval of the Board prior to making such installation. If prior approval is not obtained, the Board may, in addition to exercising all of the other remedies provided for in the Declaration for breach of any of the provisions hereof, require the Unit Owner to cover all non-conforming work with carpeting or may require removal of such non-conforming work, at the expense of the offending Unit Owner. The interior surface of windows forming part of the perimeter walls of a Unit shall be cleaned or washed at the expense of each respective Unit Owner. The use of and covering of the interior surface of such windows, whether by draperies,

shades, window covering or other items visible from the exterior of the Building, shall be subject to the rules and regulations of the Board as may be imposed from time to time.

(c) Responsibility for Repair. In the event that any repair or replacement to the Common Area is made necessary by reason of any act or occurrence for which insurance is maintained by the Board pursuant to Section 5.08 hereof and for which insurance proceeds are available as provided in Section 8.01 hereof, the Association, to the extent that insurance proceeds are available, shall be responsible for the repair or replacement of such Common Area.

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

4.06 Additions, Alterations or Improvements.

(a) The Board may authorize and charge as a Common Expense additions, alterations, or improvements to the Common Areas. The cost of any such work to the Common Areas may be paid out of a special assessment or out of its reserves.

(b) No additions, alterations or improvements shall be made by any Unit Owner to any part of the Common Areas, and no additions, alterations, or improvements which could affect the safety or structural integrity of the Building, reduce the value thereof or impair any easement granted to a Unit Owner may be made by any Unit Owner without the written consent of all Unit Owners. Such consent, if granted, may be conditioned upon the Unit Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration, or improvement, subject to such standards as the Board may from time to time set or (ii) to pay the Association from time to time the additional cost of maintenance as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made by a Unit Owner without the prior written consent of all of the Unit Owners, the Board may, in its discretion, bring any of the following actions:

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

(2) If the Unit Owner refuses or fails to properly perform the work required under (1), the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or

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

4.07 Negligence of Unit Owner. If, due to the negligent act or omission of a Unit Owner, or a family member, household pet, guest, or other Occupant or visitor of such Unit Owner, damage shall be caused to the Common Areas or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for all such damage and maintenance, repairs or replacements, as may be determined by the Board.

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

4.09 Cable Television Lines. Each Unit has been equipped with at least one outlet activated for connection to the cable television utility system serving the Building, which outlet and lines are integral parts of the Common Areas. Additional outlets for connection to the cable television antenna system are obtainable only from the utility and may be installed only by an authorized cable television company, with the prior approval of the Board or the Association and the payment of any required additional fees. Unit Owners are prohibited from making any modifications to or tampering with said outlets and from making any unauthorized connection to the cable television antenna system, and the Board or Association may charge any Unit Owner with the cost of locating and removing any unauthorized connection thereto and of repairing any modification thereto.

ARTICLE V

ADMINISTRATION

5.01 Administration of the Property. The direction and administration of the Property shall be vested in the Board of Directors (herein sometimes referred to as the "Board" or the "Board of Managers"), which may consist of as few as three (3) or as many as twelve (12) persons, as determined from time to time by the Unit Owners, who shall be elected in the manner hereinafter set forth; provided however, that irrespective of anything else contained in this Declaration, for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of voting members, the Declarant shall have the right to designate three (3) persons who shall serve as members of the Board and exercise the powers of the Board as provided in the Act. Except for Directors so designated by the Declarant, each member of the Board shall be one of the Unit Owners and, if representing a residential unit, shall reside on the property; provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity

other than a natural person or persons, then any designated agent of such entity shall be eligible to serve as a member of the Board so long as any such person (other than a person designated by the Declarant) actually resides on the Property.

5.02 Association. The Association has been formed, prior to the recording hereof, as a not-for-profit corporation under the Indiana Not-For-Profit Corporation Act, having the name The Massachusetts Homeowner's Association, Inc., which shall be the governing body for all Unit Owners for the maintenance, repairs, replacement, administration and operation of the Property. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of the Association in accordance with the provisions contained herein. Each Unit Owner shall be a member of the Association so long as they shall be a Unit Owner, and such membership shall automatically terminate when they cease to be a Unit Owner and upon the transfer of their ownership interest. The new Unit Owner acquiring such ownership interest shall likewise succeed to such membership in the Association, but shall not automatically succeed to any position on the Board held by the transferor at the time of conveyance. The Association may issue certificates as may be designated by the Board. Such certificate shall not be transferable. The Association shall have no seal.

5.03 Voting Rights. There shall be one person with respect to each Unit Ownership who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as a "voting member." Such voting member may be the Unit Owner or one of a group composed of all the owners of a Unit Ownership, or be some person designated by one or more Unit Owners to act as proxy on their behalf, and who must be a Unit Owner. Such designation shall be made in writing and filed with the Secretary of the meeting before the commencement of any such meeting at which it may be voted. This designation shall be revocable at any time by actual notice to the Board. The total number of votes of all the members shall be sixteen (16). Each residential Unit Owner or group of owners of a Unit shall be entitled to one (1) vote, and each commercial Unit Owner or group of owners of a Commercial Unit shall be entitled to two (2) votes. The person designated by the Declarant shall be the voting member with respect to any Unit Ownership owned by the Declarant.

5.04 Meetings.

(a) **Quorum.** Meetings of the voting members shall be held at the Property or at such other place in Marion County, Indiana, as may be designated in any notice of a meeting. The presence in person or by proxy at any meeting of the voting members having fifty one (51%) percent 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 a majority vote of the voting members present at such meeting. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Unit Owners, or, in the absence of such rules, Roberts Rules of Order shall be used.

(b) **Initial and Annual Meetings.** The initial meeting of the voting members shall be held upon not less than ten (10) days notice given by the Declarant. Said initial meeting shall be held no later than the first to happen of: (1)

sixty (60) days after the date the Declarant has sold and delivered its deed for at least seven (7) of the Units, or (ii) two (2) years after the date of the recording of its Declaration. Thereafter, there shall be an annual meeting of the voting members on the second Wednesday of October following such initial meeting, and on the second Wednesday of October of each succeeding year thereafter at 7:30 p.m. or at such other reasonable time or date as may be designated by written notice of the Board delivered to the voting members.

(c) Special Meetings. Special meetings of the voting members may be called at any time after the initial meeting provided for in Section 5.04(b) hereof for the purpose of considering matters which, by the terms of this Declaration, require the approval of the voting members, or for any other reasonable purpose, provided, however, that the following matters shall require the approval of voting members having not less than two thirds (2/3) of the total votes: (i) the merger or consolidation of the Association; (ii) the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, of the property and assets of the Association; (iii) the purchase, sale or lease of Units or other real estate on behalf of all Unit Owners. Special meetings may be called by written notice authorized by the majority of the Board, the President of the Board, or by at least thirty (30%) percent of the voting members. Matters to be considered at special meetings of the voting members shall first be submitted to the Board, at least ten (10) days prior to the special meeting, who shall then submit the matters to the voting members.

5.05 Notices of Meetings. Except as otherwise provided herein, notices of annual or special meetings of the voting members shall be delivered either personally or by mail to the voting members, addressed to each such person at the address given by such Unit Owner to the Board for such purposes, or to the Unit or the Unit Owner with respect to which such voting right pertains, if no address has been given to the Board. Any such notice shall be delivered no less than ten (10) days and no more than thirty (30) days prior to the date fixed for such meeting and shall state the date, time, place and purpose of such meeting.

5.06 Board of Directors.

(a) The interim Board of Directors shall serve without compensation. Such interim Board shall serve for a period commencing on the date that the Declaration is executed and ending upon the qualification of the Directors elected at the initial meeting of voting members. At the initial meeting of voting members held as provided in Section 5.04(b) hereof, the voting members shall elect the Board. In all elections for members of the Board, each voting member shall be entitled to vote on a cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled, shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting five (5) Board members shall be elected. The two (2) 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 three (3) persons receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by

run off vote. 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.

(b) Voting members having a majority of the total votes may from time to time increase or decrease such number of persons on the Board or may decrease the term of office of Board Members at any annual or special meeting, provided that (i) such members shall not be less than three (3), (ii) the terms of at least one-third (1/3) of the persons on the Board shall expire annually, and (iii) no Board member shall be elected for a term of more than two (2) years, although Board Members may succeed themselves. Members of the Board shall receive no compensation for their services.

(c) Vacancies in the Board, except vacancies due to the increase in the number of persons on the Board, shall be filled by majority vote of the Board (except that a vacant position of the Board last filled by a person appointed by the Declarant shall be filled by another person appointed by the Declarant). Any Director elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the Director he or she succeeds.

(d) Except as otherwise provided in this Declaration, the Property shall be managed by the Board, and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum.

(e) The Board shall elect from its members for the term of one (1) year: (i) a President who shall preside over both its meetings and those of its voting members, who shall be the chief executive officer of the Board and the Association and who shall be designated to mail and receive all notices and execute all amendments hereto as provided herein and in the Act; (ii) a Secretary who shall keep the minutes of all meetings of the Board and of the voting members and who shall, in general, perform all the duties incident to the office of the Secretary; (iii) a Treasurer to keep the financial records and books of account; and (iv) such additional officers as the Board shall see fit to elect. Vacancies in any office shall be filled, for the unexpired term, by the Board by majority vote of the remaining members. Any officer may be removed for cause at any time by the vote of two-thirds (2/3) of the total membership of the Board at a special meeting expressly called for such purpose.

(f) Except for directors designated by Declarant pursuant to Section 5.01 herein, 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 such purpose. A successor to fill the unexpired term of a Board Member removed may be elected by the voting members at such meeting or any subsequent meeting called for that purpose.

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

(h) All meetings of the Board shall be open to attendance by any Unit Owner and notices of such meetings shall be mailed or delivered to each Unit not later than forty-eight (48) hours prior to such meeting.

(i) Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if prior to such action, notice required in Section 5.06(h) is given and a written consent to such action is signed by all members of the Board and filed with the minutes of the Board.

(j) Within sixty (60) days following the election of a majority of members of the Board other than those members designated by the Declarant, the Declarant shall deliver to the Board the following: (i) all original documents pertaining to the Property and its administration including this Declaration, the Articles of Incorporation for the Association, a minute book containing the minutes of any meetings held by the Association and any rules and regulations governing the Property; (ii) a detailed accounting by the Declarant, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property; (iii) any Association funds on hand which shall at all times be segregated from any other funds of the Declarant; (iv) a schedule of all personal property, equipment and fixtures owned by the Association, including documents, such as invoices and bills of sale, if available, evidencing transfer of title to such property.

5.07 General Powers and Duties of the Board. The powers and duties of the Board include, but are not limited to, the following:

(a) The Board shall provide for the operation, maintenance, repair, replacement, and improvement of the Common Areas.

(b) The Board shall prepare, adopt and distribute an annual budget for the Association and provide the manner of assessing and collecting from the Unit Owners their respective shares of the estimated expenses.

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

(d) The Board shall have the power to own, convey, encumber, lease or otherwise deal with Units conveyed to or acquired by the Association.

(e) The Board by a vote of at least sixty percent (60%) may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, 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 rules and regulations adopted by the Board shall be mailed or delivered to all voting members within five (5) days of their adoption. If, within thirty (30) days from the date of such notice, voting members holding at least one-fourth (1/4) of the total number of Units shall file with the Board a written objection to any rule or regulation which affects any portion of the Property, then

such rules and regulations shall be deemed rescinded until approved by the voting members holding at least sixty percent (60%) of the total number of Units.

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

(g) Subject to the rights reserved by the Declarant pursuant to Section 11.01 thereof, the Board may engage the services of an agent to manage portions of the Property for which the Board is responsible pursuant to this Declaration to the extent deemed advisable by the Board, provided however, that any agreement for professional management or any agreement for services to be provided for by the Declarant shall provide for termination by either party without cause or payment of any termination fee, upon ninety (90) days or less written notice, and shall be for a term not to exceed two (2) years.

(h) The Board's powers herein enumerated shall be limited in that the Board shall have no authority to hire and pay for, out of the maintenance fund, any structural alterations, additions, or improvements to the Common Areas (other than for the purpose of replacing or restoring portions of the Common Areas subject to all of the provisions of this Declaration or unless required for emergency repair, protection or operation of the Common Areas) requiring expenditures in excess of Ten Thousand Dollars (\$10,000.00) without in each case obtaining the prior consent and approval of Unit Owners owning at least sixty percent (60%) of the ownership interest in the Common Areas.

(i) 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 the 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. The managing agent of the Property may be authorized to execute those documents required to enable it to perform its duties under the management agreement.

(j) Prior to the election of the first Board, the Declarant shall, subject to the terms of this Declaration, have the authority to lease or to grant licenses, concessions, and contracts with respect to any part of the Common Areas, upon such terms as the Declarant deems appropriate. Upon election of the first Board, and thereafter, the Board by a vote of at least sixty percent (60%) of the persons on the Board shall have the same authority as the aforesaid.

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

(l) The Board shall have the power to bid for and purchase any Unit Ownership at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for Common Expenses under the Act, or at a sale pursuant to an order or direction of the court, or other involuntary sale, upon consent or approval of the Unit Owners owning not less than sixty percent (60%) of the undivided ownership of the Common Areas.

(m) The Board shall have the power to exercise all powers and duties of the Board of Directors or Unit Owners as a group referred to in the Declaration or the Act.

(n) Subject to the provisions of Section 4.06 and Section 4.07 hereof, the Board for the benefit of all the Unit Owners shall acquire and shall pay out of the maintenance fund herein provided for, the following:

(i) Operating expenses of the Common Areas, including water, electricity, telephone and other necessary utility services for the Common Areas, and (if not separately meter charged) for the Units.

(ii) Services of any person or firm to act on behalf of Unit Owners in connection with real estate taxes and special assessments on Unit Ownerships, and in connection with any other matter where the respective interests of the Unit Owners are deemed by the Board to be similar and nonadverse to each other. The cost of such services shall be Common Expenses.

(iii) Painting, cleaning, outside window washing, maintenance, decorating, repair and replacement of the Common Areas (but not including the interior surfaces of the Unit and of the hallway doors appurtenant thereto and the outside windows and frames which the Unit Owners shall paint, clean, decorate, maintain and repair) and such furnishings and equipment for the Common Areas as the Board shall determine are necessary and proper.

(iv) Any other materials, supplies, utilities, furniture, equipment, labor, services, maintenance, repairs or structural alterations which the Board is required to secure or pay for, pursuant to the terms of this Declaration and By-Laws or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first class condominium building or for the enforcement of these restrictions.

(v) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Areas, rather than merely against the interest 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 cost incurred by the Board by reason of said lien or liens shall be specifically assessed to said Unit Owners.

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

5.08 Insurance.

(a) The Board shall have the authority to and shall obtain insurance for the Property as follows:

(i) Insurance on the Property, including the Units and the Common Areas, against loss or damage by fire, against loss or damage by risk now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements, in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof. The "full replacement cost" of the Property, including the Units and the Common Areas, shall be determined from time to time by the Board, which determination may be based on appropriate insurance appraisals. The cost of any and all such appraisals shall be Common Expenses;

(ii) Insurance upon the Property (exclusive of the parcel and excavations, foundations and footings) against all loss or damage from the heating apparatus, pressure vessels and pressure pipes installed in, on or about said Property, without a co-insurance clause if available, in such amount as the Board shall deem desirable;

(iii) Comprehensive Public Liability and Property Damage Insurance against claims for personal injury or death or property damage suffered by the public or a Unit Owner occurring in, on or about the Common Areas or upon, in, or about the streets or passageways or other areas adjoining the Property, such public liability and property damage insurance to afford protection in such limits as the Board shall deem desirable (but in no event less than One Million Dollars (\$1,000,000.00) with respect to liability for personal injury or property damage arising out of a single accident);

(iv) Such Worker's Compensation Insurance as may be necessary to comply with applicable laws;

(v) Employer's Disability Insurance in such amount as the Board shall deem desirable;

(vi) A fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling funds of the Association and the Board in such amount as the Board shall deem desirable;

(vii) Such other insurance in such reasonable amounts as the Board shall deem desirable.

The premiums for the above-described insurance, except as otherwise provided in this Section 5.08, shall be Common Expenses.

(b) All insurance provided in this Section 5.08 shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Indiana.

(c) All policies of insurance of the character described in clauses (i) and (ii) of Paragraph (a) of this Section 5.08:

(i) shall name as insured, the Declarant, so long as it has an insurable interest, and the Board as trustees for the Unit Owners as the respective interests of all of such insureds may appear;

(ii) shall be without contribution as respects other such policies of insurance carried individually by the Unit Owners whether such insurance covers their respective Units and/or the additions or improvements made by such Owners to their respective Units;

(iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable in the event the Unit Owners elect to sell the Property or remove the Property from the provisions of the Act; and

(iv) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to the mortgagee of each Unit.

Policies of insurance of the character described in clause (i) of Paragraph (a) of this Section 5.08 may contain an endorsement extending coverage so as to include the payment of Common Expenses with respect to damaged units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in clauses (i) and (ii) of Paragraph (a) of this Section 5.08, any losses under such policy shall be payable, and all insurance proceeds covered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

(d) All policies of insurance of the character described in (iii), (iv), (v), (vi), and (vii) of Paragraph (a) of this Section 5.08 shall name each Unit Owner and their spouses individually and severally, and the Association, Board and its managing agents, and the other agents and employees of such Association, Board and managing agent of the Declarant so long as they have an insurable interest. In addition, all policies of insurance of the character described in clause (ii) of Paragraph (a) of this Section 5.08 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Declarant, the managing agent, respective employees and agents and the Unit Owners and the Occupants and shall cover claims of one or more insured parties against other insured parties.

(e) The Association, for the benefit of the Unit Owners and the mortgagees of each Unit, shall pay the premium on the policies of insurance described in Paragraph (a) of this Section 5.08 at least thirty (30) days prior to the expiration date of the respective policies.

(f) The loss, if any, under any policies of insurance of the character described in clause (f) in Paragraph (a) of this Section 5.08 shall be payable, and the insurance proceeds paid on account of any such loss, shall be paid to the Board, as trustee for each of the Unit Owners in their respective percentages of ownership as established in this Declaration, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to payment of the cost of restoring the Property to substantially the same condition in which it existed immediately prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before, free from vendor's, mechanic's, materialmen's and other similar liens.

(g) Each Unit Owner shall be responsible for maintaining insurance on the contents of their own Unit, including all interior portions of such unit, furnishings and personal property therein, their personal property stored elsewhere on the Property, and their personal liability to the extent not covered by the policies of liability insurance paid by the Board for the benefit of all of the Unit Owners as above provided. All policies of casualty insurance carried by each of the Unit Owners shall be without contribution as respects the policies of casualty insurance obtained by the Board for the benefit of all Unit Owners as above provided.

(h) Each Unit Owner shall be required to report all additions or alterations to their Unit promptly in writing to the Board, and to reimburse the Board for any additional insurance premiums attributable thereto, and shall be responsible for any deficiency in any insurance claim recovery resulting from their failure to so notify the Board. The Board shall not be responsible for obtaining insurance on such additions, alterations, or improvements unless and until such Unit Owner shall make such report and shall have requested in writing that the Board obtain such insurance, and shall make arrangements satisfactory to the Board for such additional premiums. Upon the failure of such Unit Owner to so notify the Board, the Board shall not be obligated to apply insurance proceeds to restore the affected unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. "Additions" or "alterations" shall mean property attached to the Unit and not readily removable without damage to the Unit, including but not limited to carpeting, special flooring (such as marble or parquet), special wall covering and paneling. The insurance coverage described in this Paragraph (h) of Section 5.08 shall not be deemed to include personal property owned by the Unit Owners and not attached to the Unit.

(i) Each Unit Owner (and the Association) hereby waive and release any and all claims which they may have against any other Unit Owner, the Association, its officers, members of the Board, the Declarant, and the manager and managing agent of the Property, if any, and their respective employees and agents for damages to the Common Areas, the Units or to any personal property located in the Unit or Common Areas caused by fire or any other casualty to the extent that such damage is covered by fire or other form of casualty insurance.

(D) Any insurance premiums assessed on a basis requesting increased charges for coverage on certain Units may be assessed to such Unit.

5.09 Cancellation of Insurance. The Board shall be responsible, in the event any insurance required under Section 5.08(a)(i), (ii), or (iii) is cancelled and not replaced through another insurance company, for serving notice of such cancellation upon any person insured thereunder. In addition, written notice of the procurement of any insurance obtained by the Association and subsequent changes in coverage shall be furnished to any such person or entity insured thereunder.

5.10 Liability of the Board of Directors. Neither the members of the Board nor the Officers of the Association shall be liable to the Unit Owners for any mistake of judgment or any other acts or omissions of any nature whatsoever as such Board Members and Officers, except for any acts or omissions found by the Court to constitute gross negligence or fraud. The Unit Owners shall indemnify members of the Board, and Officers and employees of the Association in the manner and to the extent provided in the Articles of Incorporation of the Association. It is also intended that the liability of any Unit Owner arising out of any contract made by acts of the Board or officers of the Association, or out of the aforesaid indemnity in favor of the members of the Board and officers of the Association shall be limited to such proportions of the total liability hereunder as their percentage of interest in the Common Areas bears to the total percentage of interest of all the Unit Owners in the Common Areas. Every agreement made by the Board or the managing agent on behalf of the Unit Owners shall provide that the members of the Board, or the managing agent as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder except as Unit Owners. Each Unit Owner's liability shall be limited to such proportion of the total liability as their percentage interest in the Common Areas.

ARTICLE VI

COMMON EXPENSES/MAINTENANCE FUND

6.01 Preparation of Estimated Budget. Each year on or before October 15th, the Board shall estimate the full amount necessary to pay utilities, taxes, maintenance, wages, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies and replacements, and shall on or before November 1st, notify each Unit Owner in writing the amount of such estimate, with reasonable itemization, containing each Unit Owner's respective assessment; provided, however, that the annual budget shall be furnished to each Unit Owner at least thirty (30) days prior to its adoption by the Board. Subject to the provisions of Section 4.06(b)(iii), said "estimated cash requirement" shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Areas. On or before January 1st of the ensuing year, and the first of each and every month of said year, each Unit Owner jointly and severally, shall be personally liable for and obligated to pay the Board or to such person or entity as the Board may direct, one-twelfth (1/12) of the assessments determined pursuant to this paragraph. The Association may, by an affirmative vote of at least sixty percent (60%) of its Unit Owners, establish payments of association fees to be quarterly or semi-annually.

On or before March 15th of each calendar year following the initial meeting, the Board shall supply to each Unit Owner an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any net short or excess shall be applied as an adjustment to the installments due for the current year's estimate in the succeeding six (6) months after rendering the accounting, subject, however, to the provisions of Section 6.02 hereof.

6.03 Reserve for Contingencies and Replacements--Supplemental Budget. The Board shall establish and maintain a reasonable reserve for contingencies and replacements, which reserve shall be segregated and allocated for specific purposes. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such portions of the contingency and replacement reserve which remain unallocated. If the "estimated cash requirement" proves inadequate for any reason or in the event a non-recurring "Common Expense" is anticipated for any year, then the Board may prepare and approve a supplemental budget covering the estimated deficiency or non-recurring expense for the remainder of such year, copies of which supplemental budget shall be furnished to each Unit Owner, and thereupon a separate assessment shall be made to each Unit Owner for its proportionate share of such supplemental budget. All Unit Owners shall be personally liable for and committed to pay their respective adjusted monthly amount. Any such separate assessment, if it involves a proposed expenditure resulting in a total payment assessed to each Unit equal to the greater of (i) four times the Unit's most recent monthly adjustment, or (ii) Three Hundred Dollars (\$300.00), shall be subject to the affirmative vote of at least two-thirds (2/3) of the total ownership at a meeting specifically called for approving such separate assessment.

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

6.04 Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted budget 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 Owners shall continue to pay the monthly maintenance charge at the then existing monthly rate until the adoption of the new annual budget and notice thereof shall have been mailed or delivered.

6.05 Books and Records. The Board shall keep full and correct records of account in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the

Common Areas and any other expenses incurred. Such records and the vouchers authorizing the payment shall be available for inspection to any Unit Owner or any holder of a first mortgage lien on a Unit Ownership, 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 their account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

6.06 Status of Uncollected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such adjustments as may be required to reflect delinquent or prepaid assessments of user charges) shall be deemed to be held for the benefit, use and account of all the Unit Owners.

6.07 Initial Deposit for Contingencies and Replacements. At the time the initial sale of each Unit is closed, the purchaser of the Unit shall pay to the Association an amount equal to two (2) times the first full monthly assessment for such Unit. This sum shall be used to initially fund the reserve for contingency and replacements described in Section 6.02 hereof. This payment shall not be refundable or applied as a credit against the Unit Owner's monthly assessments.

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

6.09 Emergency Maintenance. Notwithstanding any other provision herein, the Board shall take all such actions as are necessary and appropriate to correct any maintenance problem which could lead to damage to any Unit or to the Common Areas including, but not limited to, roof repair, replacement of broken windows, plumbing or electrical problems, and deterioration of foundation, walls or floors. Any such maintenance repair shall not require the vote of the Unit Owners, and, in the event of total destruction of some but not all of the Units, steps shall be taken to secure the remaining Units from any further or additional damage. The cost of any such maintenance repair shall be paid first out of the Reserve for Contingencies and Replacements, and if such Reserves are not sufficient, out of the Annual Budget. In the event that there are insufficient funds in either or both of said accounts, each Unit Owner shall be assessed their proportionate share of the deficiency.

CHICAGO TITLE

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

7.01 Use and Occupancy. The Property shall be occupied and used as follows:

(a) **Residential Units.** Each Unit on the second and third floors of the building shall be used for housing and other purposes consistent therewith and for no other purpose. No residential unit may be maintained or used in a manner which interferes with the use, benefit and enjoyment of the other residential and commercial Unit Owners. The use of residential units will be restricted so as not to create noise, odor, vibration, heating and cooling, and appearance disturbances to other Unit Owners.

(b) **Commercial Units.** Each Unit on the first floor and the lower level shall be used for retail, commercial, and related purposes consistent with sharing the Property with residential owners and occupants. These Units

may not be used in any manner which disturbs the use and quiet enjoyment of the occupants of the residential units.

Restrictions upon the commercial units include, but are not limited to:

(1) **Noise.** No activity may be conducted or permitted in or around the commercial units which could interfere with the rest, study, reading, or peace of the residential occupants or of the other commercial occupants, including but not limited to loud music, manufacturing, hammering;

(2) **Odor.** No activity may be conducted on or permitted in or around the commercial units which creates an odor which permeates the Unit into other Units or to the street or common areas, including, but not limited to, cooking and baking, hair permanent or other hair treatments, and odors caused in any manufacturing or chemical process;

(3) **Vibration.** No activity may be conducted on or permitted in or around the commercial units which creates vibrations which may be felt in the residential units or the adjoining commercial units.

(4) **Heating and Cooling.** No activity may be conducted on or permitted in or around the commercial units which interferes with the normal function and efficiency of the heating and cooling of the residential units or of the adjoining commercial units.

(5) **Appearance.** Each commercial unit shall maintain a clean and attractive appearance from the street, compatible with the other commercial units in the Building.

(6) **Specific additional restrictions.** In addition to the qualifications and restrictions above, no Unit may be used as a hospital, veterinary facility, commercial laundromat, dry cleaner, strip bar, adult book store, massage parlor, dating or escort service, nor may any Unit be used for the sale or serving of alcoholic beverages.

(c) **Complaints; Resolution of Disputes.** In the event that any Unit Owner has a complaint about the use of any other Unit, they may submit their complaint to the Board for resolution. The Board shall provide the Owner of the Unit which is the subject of the complaint with a copy of this complaint and give the Owner an opportunity to respond. If the dispute can not be resolved through informal mediation, it shall be submitted to the Board for binding arbitration. The Board shall have all the rights and remedies of Section 9.01 and Section 9.02 hereof to carry out its arbitration decision.

7.04. Other Provisions.

(a) That part of the Common Areas separating any two or more of the Units which are owned by the same Unit Owner may be altered or removed to afford ingress or egress to and from such adjoining Units provided, however, that: (i) such alteration or removal shall not impair or weaken the structural integrity of any Unit or any portion of the Common Area; (ii) the Unit Owner shall have furnished to the Board not less than thirty (30) days prior to the date Unit Owner desired to commence such work, plans detailing the work to be done; (iii) the Board consents to the performance of such work; (iv) the expense of such alterations shall be paid in full by the Unit Owner making such

alterations; (v) such Unit Owners shall pay in full the expense of restoring such Common Areas to their former condition prior to such alterations in the event the Units cease to be used together; and (vi) the adjoining Unit shall continue to carry the rights and responsibilities of the two units, prior to the change.

(b) There shall be no obstruction of the Common Areas nor shall anything be stored in the Common Areas without the prior consent of the Board or except as hereinafter expressly provided. Each Unit Owner shall be obligated to maintain and keep in good order and repair their own Unit.

(c) Nothing shall be done or kept in any Unit or in the Common Areas which will increase the rate of insurance on the Building or contents thereof without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in their Unit or in the Common Areas which would be in violation of any law.

(d) Without the prior consent of the Board, Unit Owners shall not cause or permit anything to be placed on the windows or outside walls of the Building and no sign, awning, canopy, shutters, radio or television antenna shall be affixed to or placed on the exterior walls or roof or any part thereof; and Unit Owners shall not cause or permit the enclosure (either partially or entirely) of any exterior portions of the Building.

(e) In order to enhance the sound conditioning of the Building, the floor covering for all occupied Units shall meet such minimum standards as may be specified by the rules and regulations of this Board.

(f) No animals of any kind shall be raised, bred, or kept in any Unit or in any Common Areas, except that dogs and cats or other usual household pets may be kept in the Units subject to rules and regulations adopted by the Board, providing that they are not kept, bred or maintained for any commercial purpose; and provided further that any pet causing or creating a nuisance or unreasonable disturbance, shall be permanently removed from the Property upon ten (10) days written notice from the Board. The Board may restrict pets from access to any portion of the Common Areas, and may designate other portions of the Common Areas to accommodate the reasonable requirements of the Unit Owners who keep pets. Without limiting the generality of the foregoing, no pet or live animal shall be permitted in any commercial Unit serving food and no violation of any state or county Board of Health regulation, rule or ordinance shall be permitted.

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

(h) Nothing shall be done in a Unit or in, on, or to the Common Areas which will impair the structural integrity of the Building or which will structurally change the Building except as is otherwise provided herein. No Unit Owner shall overload the electrical wiring in the Building or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others. No Unit Owner shall overload the floors of any Unit.

(i) No clothes, sheets, blankets, laundry or other articles shall be hung out or exposed in any part of the Common Areas or the exterior of the Building. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly material which are not in receptacles provided for such material.

(j) Industry, business, trade, occupation or profession (commercial, religious, educational or otherwise) whether or not designated for profit, shall be conducted, maintained or permitted in any Unit on the second or third floors of the property without the prior written consent of the Board of Directors of the Association and no activity shall violate any zoning or other law or regulation of any government agency.

(k) No "For Sale" or "For Rent" signs, shall be maintained or permitted on any part of the Property. Also, no advertising or other displays shall be permitted in the windows of the second and third floors of the Property. Advertising and displays shall be permitted on the first floor of the Property, suitable for the type of commercial venture permitted therein, subject to reasonable rules and regulations set by the Board.

Notwithstanding the foregoing, the right is reserved by the Declarant or its agents to place and maintain on the Property all models, sales offices, advertising signs and banners and writing in connection therewith at such locations and in such form as shall be determined by the Declarant or its agents; and prospective purchasers and lessees of any Unit from the Declarant are hereby granted the right of ingress and egress through the Common Areas for sale or leasing purposes. The Declarant or agents further reserves the right to use unsold units for rental, temporary storage, office and related purposes.

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

ARTICLE VIII

DAMAGE, DESTRUCTION, CONDEMNATION AND RESTORATION OF BUILDINGS

8.01 Partial Destruction. In the event of partial destruction of the improvements forming a part of the Property, or any portions thereof, including any Units, from any cause, the Association shall cause the Property to be promptly repaired and restored, and the proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of such reconstruction, or in the event there are no proceeds, or in the event the Property is not withdrawn from the provisions of this Declaration and from the provisions of the Act, then the costs of such reconstruction shall be borne by each Unit Owner in an amount equal to that Unit Owner's percentage of ownership interest in the Common Areas. Such amount shall be assessed as a Common Expense.

8.02 Complete Destruction. Within sixty (60) days after the date of any damage or destruction to any improvements forming a part of the Property, or any portions thereof, including any Units, from any cause, a special

meeting of the Unit Owners called for that purpose shall be held to determine, by a vote of no less than two-thirds (2/3) of all of the Unit Owners, whether a complete destruction has occurred pursuant to the terms of Section 19(b) of the Act. If the Unit Owners determine that a complete destruction has not occurred, then the provisions of Section 8.01 hereof shall apply. If the Unit Owners determine that a complete destruction has occurred, then, by a vote of no less than two-thirds (2/3) of all of the Unit Owners, which vote shall occur at the same meeting, the Unit Owners shall determine whether to rebuild the Property. In the event such approval to rebuild is not obtained, then the provisions of Section 21 of the Act shall apply.

8.03 Eminent Domain. If any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal from the provisions of the Act of such portion so taken may be made by the Board. Upon the withdrawal of any Unit due to eminent domain, the percentage of interest in the Common Areas appurtenant to such Unit shall be reallocated among the remaining Units on the basis of the percentage of interest of each remaining Unit. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Areas shall be allocated on the basis of each Unit Owner's percentage interest therein. Upon the withdrawal of any Unit the responsibility for the payment of assessments on such Unit by the Unit Owner shall cease.

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

ARTICLE IX

REMEDIES

9.01 Abatement and Enforcement. The violation of any restriction, condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, upon not less than ten (10) days notice, in addition to the rights set forth elsewhere herein:

(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 Unit Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Declarant 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 proceedings, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such acts or proceedings, including court costs and attorney fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest rate then allowed by law until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of their 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 their additions and improvements thereto and upon all of their personal property in their Unit or located elsewhere on the Property. Any and all of such remedies may be exercised at any time and from time to time cumulatively or otherwise by the Board. No action by the Board shall be construed to be a waiver of any right or remedy hereunder.

9.02 Involuntary Sale. If any Unit Owner (either by their own conduct or that of any other occupant of their Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, if such violations shall continue for thirty (30) days after notice in writing from the Board, or shall recur 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 terminating the right of said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control their 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 the Unit Owner or Occupant or, in the alternative, a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by such Unit Owner on account of the breach of covenant 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 or prior lienholder) and 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 their interest in the Property at such judicial sale. The proceeds of any such judicial sale shall be paid to discharge court costs, court reporter charges, reasonable attorney fees and all other expenses of the proceedings 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 sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit Ownership and to immediate possession of the Unit 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.

9.03 Remedies for Failure to Pay Common Expenses. Each Unit Owner shall pay their proportionate share of the Common Expenses. Such proportionate share shall be in the same ratio as their percentage of ownership in the Common Areas. In the event of the failure of a Unit Owner to pay such Common Expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner as provided by the Act; provided, however, that such lien shall be subordinate to the lien of a prior recorded first mortgage on the interest of such Unit Owner. If any Unit Owner fails to pay any installment of such expense within thirty (30) days after notice of default, the Board may accelerate the maturity of the remainder of the installments of such Common Expenses due from such Unit Owner for the balance of the assessment year, and may enforce collection thereof. A "late charge" in the amount of Thirty Dollars (\$30.00) per month shall be charged to and assessed against such defaulting Unit Owner until paid, which late charge assessments shall be subject to review and revision by the Board from time to time. In addition to the foregoing, the Board or the Declarant, in the exercise of

these powers, rights, duties and functions of the Board as provided in Section 11.01 hereof, or its agents, shall have such rights and remedies to enforce 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 their proportionate share of the Common Expenses or of any other expenses required to be paid hereunder when due, such rights and remedies shall include the right to take possession of such Unit Owner's interest in the Property and to maintain for the benefit of all the other Unit Owners an action for possession in the manner prescribed by applicable law.

ARTICLE V.

MISCELLANEOUS PROVISIONS REGARDING MORTGAGES

10.01 Protection of the Rights of Holders of First Mortgages upon a Unit. The following provisions are intended for the benefit of each holder of a first mortgage upon a Unit, and to the extent if at all, that any other provisions of this Declaration conflict with the foregoing provisions, the following provisions shall control:

(a) Upon request in writing by the mortgagee, the Association shall furnish the holder of a first mortgage upon a Unit written notice of any default by the Owner of such Unit in the performance of such Unit Owner's obligation under this Declaration which is not cured within thirty (30) days. Any first mortgagee of a Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Unit which accrue prior to the time such holder comes into possession of the Unit (except for claims for a pro-rata share of such assessments and charges resulting from a pro-rata reallocation of such assessments or charges to all Units including the mortgaged Unit).

(b) Upon request in writing, each first mortgagee of a Unit shall have the right: [®]

- (i) to examine the books and records of the Association during normal business hours;
- (ii) to receive an annual financial statement from the Association within ninety (90) days following the end of each of its respective fiscal years;
- (iii) to receive notice of any and all meetings of the Association, and to designate a representative to attend all such meetings; and
- (iv) to receive notice of any decision by Unit Owners to make material amendment to this Declaration, the By-Laws contained herein, or the Articles of Incorporation of the Association.

(c) No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Property or Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the first mortgagees of Units, pursuant to their mortgages, in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or taking of a Unit and/or the common elements, or any portion thereof or interest therein. In such event, the holder of any mortgage on a Unit shall be entitled to timely written notice of such loss.

(d) There shall be included in each annual assessment levied by the Association (but not as a special assessment) amounts sufficient to establish an adequate reserve fund for the replacement of the Common Areas.

(e) unless at least eighty five (85%) percent of the first mortgagees of each of the individual Units and eighty five (85%) percent of the Unit Owners of such individual Units have given their prior approval, the Association shall not be entitled to:

(i) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the Act in case of substantial loss to the Units and/or Common Areas;

(ii) change the pro-rata interest or obligations of any Unit Owner (1) for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; and (2) for determining the pro-rata share of ownership of each of the Units Owners in the Common Areas;

(iii) partition or subdivide any Unit;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this clause; and

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

(f) Upon specific written request to the Association, each first mortgagee of a Unit shall be furnished notice in writing by the Association of any damage to, destruction or taking of the Common Areas if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00) in value; or if damage shall occur to a Unit in excess of Five Thousand Dollars (\$5,000.00) in value, notice of such event shall also be given.

(g) If any portion of the Property is made the subject matter of any condemnation or eminent domain proceeding or is otherwise to be acquired by a condemning authority, then each affected first mortgagee will be entitled to timely written notice thereof, and no provision of any document will entitle the owner of a Unit or other party to priority over such mortgagees with respect to distribution of the proceeds of any award or settlement.

ARTICLE XI

GENERAL PROVISIONS

11.01 Certain Rights of the Declarant. Until the time established by this Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Interim Board as heretofore provided. If the initial Board shall not be elected by the Unit Owners at the time established by the Declaration, the Interim Board shall continue in office for a period of thirty (30) days after written notice is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights, and the other rights reserved by the Declarant pursuant to this Declaration, the Declarant (or their designees on the Board) shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

11.02 Notice to Mortgagees. Upon written request to the Board, the holder of any duly recorded mortgage 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.

11.03 Manner of Giving Notices. Notices provided for in this Declaration and Act shall be in writing and shall be addressed to the Board or Association, or any Unit Owner, as the case may be, at the Unit address of any member of the Board or any Unit Owner, or at such other address as herein provided. Any Unit Owner may designate a different address for notices by giving written notice to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States Certified mail or when delivered in person with written acknowledgment of the receipt thereof or, if addressed to a Unit Owner, when deposited in the mailbox in the building or at the door of the Unit in the building.

11.04 Notices to Heirs or Representatives. Notices required to be given to any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Unit Owner is administered. If no estate has been opened with notice to the Board, notices may continue to be sent to the address of the deceased Unit Owner.

11.05 Conveyance and Lease. Each grantee of the Declarant and each subsequent grantee, by the acceptance of a deed of conveyance, and each purchaser under a purchase contract therefor and each tenant of a Unit, accepts such property interest subject to all restrictions, conditions, covenants, reservations, and charges, and the jurisdiction, rights and powers created or reserved by this Declaration and all rights, benefits and privileges of every character herein granted, created, reserved or declared. All impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having any interest or estate in the Property, and shall inure to the benefit of said 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.

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

11.07 Change, Modification or Rescission. No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without its written consent. The provisions of Section 9.03, Article X and the following provisions of Section 11.07 of this Declaration may only be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, and by all of the Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing for such change, modification, or rescission, signed and acknowledged by the Board and approved by Unit Owners having at least seventy-five (75%) percent of the total vote at a meeting called for that purpose provided, however, that all holders of the first mortgage of record have been notified by certified mail of any change, modification, or rescission, and an affidavit by the Secretary of the Association certifying to such mailing is made a part of such instrument; and provided further that any provisions herein which specifically grant rights to holders of first mortgages of record may be amended only with the written consent of all such

holders of first mortgages. The change, modification or rescission shall be effective upon recordation of such instrument in the office of the Recorder of Marion County, Indiana.

11.08 Partial Invalidity. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful and void for violation of:

- (a) the rule against perpetuity or some analogous statutory provision;
- (b) the rule restricting restraints on alienation; or
- (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living, lawful decedents of Ray Siaby, an agent of the Developer.

11.09 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class condominium development.

11.10 Floor Plans. The plans setting forth the layout, location, identification numbers and dimensions of the Units and the Property are incorporated in this Declaration by reference, and have been filed in the Office of the Recorder of Marion County, Indiana, in Horizontal Property Plan File 1993 as of October 25 1993, as Instrument Number 0158490.

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

IN WITNESS WHEREOF, The Massachusetts Apartment Company, an Indiana Limited Partnership, and The Massachusetts Homeowner's Association, Inc., an Indiana Corporation, have caused this Declaration to be executed the day and year first above written.

THE MASSACHUSETTS APARTMENT COMPANY

By: Lifetime Properties Inc., G.P.
General Partner
Lifetime Properties Inc. 104
Ray Slaby, President
THE MASSACHUSETTS HOMEOWNERS ASSOCIATION, INC.

By: Raymond A. Slaby
President
Raymond A. Slaby

At TEST:

Michelle M. Coomer
Secretary Michelle M. Coomer

STATE OF INDIANA)
COUNTY OF MARION) SS:

BEFORE ME, William T. Rosenbaum, a Notary Public in and for said County and State, on this 20th day of October, 1993, personally appeared the within named Raymond A. Slaby and Michelle M. Coomer and acknowledged the execution of the foregoing Declaration of Horizontal Property Regime of the Massachusetts Homeowners Association, Inc.

GIVEN under my hand and Notarial Seal this 20th day of October, 1993.

CHICAGO TITLE

William T. Rosenbaum
Signature
William T. Rosenbaum
Printed or Typed

County of Residence: marion
My Commission Expires: 3/1/97

This instrument prepared by William T. Rosenbaum, Attorney at Law
1901 Broad Ripple Avenue, Indianapolis, IN 46220

EXHIBIT A

Unit Number
Per Plans

Address

1	421 Massachusetts Avenue
2	423 Massachusetts Avenue
3	425 Massachusetts Avenue
4	427 Massachusetts Avenue
5	421 1/2 Massachusetts Avenue, Apt. B
6	421 1/2 Massachusetts Avenue, Apt. A
7	425 1/2 Massachusetts Avenue, Apt. B
8	425 1/2 Massachusetts Avenue, Apt. A
9	421 1/2 Massachusetts Avenue, Apt. D
10	421 1/2 Massachusetts Avenue, Apt. C
11	425 1/2 Massachusetts Avenue, Apt. D
12	425 1/2 Massachusetts Avenue, Apt. C

®

CHICAGO TITLE

212735

3
10.00

**AMENDMENT TO THE DECLARATION OF HORIZONTAL
PROPERTY REGIME AND OF EASEMENTS,
RESTRICTIONS, COVENANTS AND BY-LAWS FOR THE
MASSACHUSETTS HOMEOWNER'S ASSOCIATION, INC.**

A Non-Profit Corporation

FILED
MAR 10 1994
MARION COUNTY CLERK
INDIANAPOLIS, INDIANA

This Declaration is made and entered into by The
Massachusetts Apartment Company, an Indiana Limited Partnership
and Lifetime Properties, Inc., an Indiana Corporation, its
substitute General Partner (hereinafter collectively referred to
as the "Declarant"):

WHEREAS, the Declarant holds title to the following
described real estate situated in Marion County, Indiana:

Part of Square 19 of the Donation Lands in the City of
Indianapolis, Marion County, Indiana, more particularly
described as follows, to-wit:

Beginning at a point on Massachusetts Avenue, 188 feet
Northeast of the intersection of the North property
line of Vermont Street with the Southeast property line
of Massachusetts Avenue; running thence Northeast along
the line of Massachusetts Avenue, 70.5 feet to a point,
thence in a southeasterly direction at right angles to
Massachusetts Avenue 89.92 feet to a point; thence
South 37.7 feet to a point; thence in a Westerly
direction 21.5 feet to a point; thence in a Southerly
direction 82 feet to a point in the North property line
of Vermont Street, said point being 131.5 feet West of
the West line of New Jersey Street; thence West upon
and along the North line of Vermont Street 38 feet to a
point; thence in a Northerly direction 80 feet to a
point, then Northwest 75.17 feet to the place of
beginning.

EXCEPTING THEREFROM the following:

Part of Square 19 of the Donation Lands in the City of
Indianapolis, Marion County, Indiana, more particularly
described as follows, to-wit:

Inst # 1994-0034419
03/03/94 10:40AM JOAN N. ROHRER MARION CITY RECORDER SJJ 11.00 PAGE: 3

POA number missing @ time
of recording. J mck

Commencing at a point on Massachusetts Avenue, 188 feet Northeast of the intersection of the North property line of Vermont Street with the Southeast property line of Massachusetts Avenue; running thence Northeast along the line of Massachusetts Avenue, 70.5 feet to a point, thence in Southeasterly direction at right angles to Massachusetts Avenue 69.18 feet to the point of beginning for this tract; thence continuing Southeasterly along a line at a right angle with Massachusetts Avenue, a distance of 20.74 feet; thence South 37.7 feet to a point; thence in a Westerly direction 21.5 feet to a point; thence in a Southerly direction 82 feet to a point in the North property line of Vermont Street, said point being 131.5 feet West of the West line of New Jersey Street; thence West upon and along the North line of Vermont Street 38 feet to a point; thence in a Northerly direction 80 feet to a point, thence Northwest 6.22 feet to a point; thence Northeast a distance of 70.14 feet to the point of beginning.

More commonly known as: 421-427 Massachusetts Avenue
Indianapolis, Indiana 46204

WHEREAS, the Declarant filed the Declaration of Horizontal Property Regime and of Easements, Restrictions, Covenants and By-Laws for the Massachusetts Homeowner's Association, Inc. on October 25, 1993 with the Recorder of Marion County, Indiana, as Instrument No. 1993-0158491 along with the Plans for said Horizontal Property Regime which was recorded as Instrument No. 1993-0158490, and;

WHEREAS, the Plans for this Horizontal Property Regime inadvertently failed to include an Architect's Certification of the Plans.

NOW, THEREFORE, the Declarant, as legal title holder of the parcel, and for the purposes set forth above, now amends and supplements the original Declaration of Horizontal Property Regime and accompanying Plans as follows:

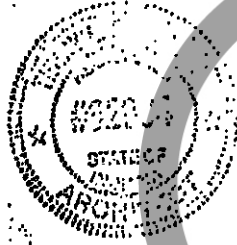
1. Attached hereto and incorporated herein is the Certification by Terry L. Bradbury, an Indiana licensed architect, certifying the validity and accuracy of the Plans for the Massachusetts Horizontal Property Regime.

IN WITNESS WHEREOF, the Massachusetts Apartment Company, an Indiana Limited Partnership has caused this Amendment to the Declaration of Horizontal Property Regime to be executed this _____ day of February, 1994.

EXHIBIT "A"

ARCHITECTS CERTIFICATION

COMES NOW Terry L. Bradbury, who certifies that he is an Indiana licensed ~~surveyor~~ ^{Architect} and that the plans for The Massachusetts Homeowner's Association, Inc. Horizontal Property Regime recorded on October 25, 1993 with the Recorder of Marion County, Indiana as Instrument No. 1993-0158490 are true and accurate.



Terry L. Bradbury
TERRY L. BRADBURY
License No. 32994

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

SUBSCRIBED AND SWORN TO before me, a Notary Public, in and for said County and State, this 28th day of February, 1994.

CHICAGO FILE Michele M. Coomler
Notary Public

Michele M. Coomler
Printed Name

My commission expires: 11/23/96
My county of residence: Marion

MICHELEM COOMLER
NOTARY PUBLIC STATE OF INDIANA
MARION COUNTY
MY COMMISSION EXP NOV 23, 1996

PREPARED BY : TERRY L. BRADBURY