

Tab 2-Declaration

The declaration establishes and describes the condominium, the units, and the common areas. This section of the disclosure materials contains the following documents:

- A. Declaration of Park Shore Condominium, dated June 9, 2004, recorded on June 17, 2004 as Document Number: 8806226 together with all exhibits and attachments.
- B. Declaration of Easements and Covenant to Share Costs for Park Shore, dated June 9, 2004, recorded on June 17, 2004 as Document Number: 8806228, together with all exhibits and attachments.
- C. First Amendment to Declaration of Easements and Covenant to Share Costs for Park Shore, dated March 3, 2005, recorded on March 8, 2005 as Document Number: 8971472, together with all exhibits and attachments.
- D. First Amendment to Declaration of Park Shore Condominium, dated August 11, 2004, recorded on August 13, 2004 as Document Number: 08842740, together with all exhibits and attachments.
- E. Affidavit of Correction recorded on April 5, 2005 as Document Number: 08986180
- F. Affidavit of Correction recorded on April 5, 2005 as Document Number: 08986181.
- G. Affidavit of Correction recorded on May 4, 2005 as Document Number: 09005284
- H. Affidavit of Correction recorded on May 4, 2005 as Document Number: 09005285.
- I. Second Amendment to Declaration of Park Shore Condominium, dated November 9, 2004, recorded on November 15, 2004 as Document Number: 08901536, together with all exhibits and attachments.
- J. Affidavit of Correction recorded on April 5, 2005 as Document Number: 08986182.
- K. Affidavit of Correction recorded on May 4, 2005 as Document Number: 09005286.
- L. Third Amendment to Declaration of Park Shore Condominium, dated May 3, 2005, recorded on May 4, 2005 as Document Number: 09005287, together with all exhibits and attachments.
- M. Fourth Amendment to Declaration of Park Shore Condominium, dated December 5, 2005, recorded December 7, 2005 as Document Number: 09144198, together with all exhibits and attachments.
- N. Fifth Amendment to Declaration of Park Shore Condominium, dated March 1, 2006, recorded March 2, 2006 as Document Number: 09192179, together with all exhibits and attachments.
- O. Sixth Amendment to Declaration of Park Shore Condominium, dated September 8, 2006, recorded September 8, 2006 as Document Number: 09298665, together with all exhibits and attachments.

Document No:

Document Title:
Wisconsin
Condominium Declaration

DOC #
8806226

REGISTER'S OFFICE 1 SS
Milwaukee County, WI

RECORDED AT 2:38 PM

06-17-2004

Drafted by/ return to:

Jo Anne P. Stubblefield
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

JOHN LA FAVE
REGISTER OF DEEDS

AMOUNT 197.00

Part of Tax Parcel No. 543-9019
Parcel ID No. (PIN)

DECLARATION OF

PARK SHORE CONDOMINIUM

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DECLARATION OF PARK SHORE CONDOMINIUM

INTRODUCTION

PARK SHORE CONDOMINIUM is located in the City of St. Francis, Milwaukee County, Wisconsin, overlooking the shores of Lake Michigan. Kimball Hill Homes Wisconsin, Inc. and Park Shore, L.L.C., as the initial owners and developers of the property comprising the condominium, have established this Declaration to provide for the development and expansion of the condominium and the long-term operation, management, maintenance, and preservation of the condominium as a residential community.

The condominium consists of the residences intended for individual ownership and use, referred to in this Declaration as "Units," and those portions of the condominium that are not part of any Unit, referred to in this Declaration as "Common Elements." A person who purchases or otherwise acquires record title to a Unit in the condominium also acquires an undivided ownership interest, along with the owners of all other Units in the condominium, in the Common Elements of the condominium. This Declaration establishes each owner's rights and obligations with respect to the Owner's Unit and the Common Elements, and regulates the use of Units and the Common Elements for the benefit of all concerned.

Park Shore Condominium Association, Inc. ("Association") has been organized as a nonstock corporation under Wisconsin law to administer the condominium pursuant to this Declaration and the Wisconsin Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes, as it may be amended ("Act"). Each owner, upon acquiring title to a Unit in the condominium, automatically becomes a member of the Association and remains a member as long as he or she continues to hold title to a Unit. The rights and obligations of membership in the Association are described in this Declaration, in the Association's Articles of Incorporation filed with the Secretary of State for the State of Wisconsin ("Articles"), in the By-Laws of the Association attached to this Declaration as Exhibit "F" ("By-Laws"), and in the Act.

DECLARATION OF INTENT

KIMBALL HILL HOMES WISCONSIN, INC., a Wisconsin corporation, and PARK SHORE, L.L.C., a Wisconsin limited liability company, on behalf of themselves, their successors and assigns ("Declarant"), jointly declare their intent, as the owners of the real property described on Exhibit "A" to this Declaration initially or by amendment (the "Condominium"), to submit such property to the terms of this Declaration and the condominium form of ownership. Such property shall be owned, held, used, conveyed, and encumbered subject to the terms of this Declaration and the Act, as they each may be amended.

The Declarant intends to develop the Condominium in phases and reserves the right, without obligation, to expand the Condominium as described in Section 14 by amending this Declaration to include on Exhibit "A" any portion of the property described on Exhibit "B," with the written consent of the owner of such property.

1. **NAME AND LOCATION.**

The name of the Condominium is Park Shore Condominium. The Condominium is located at 3862 South Lake Drive, St. Francis, Wisconsin 53235.

2. **GOVERNING DOCUMENTS; INTERPRETATION.**

2.1. Governing Documents.

The governing documents for the Condominium consist of this Declaration, including the attached exhibits, the Articles of Incorporation and By-Laws, such rules as the Association may adopt pursuant to this Declaration and the By-Laws, and the Plat and Plans referenced in Section 3 below, all as they may be amended from time to time ("**Governing Documents**"). In addition, the



Each purchaser of a Unit in the Condominium is responsible for obtaining a copy of the Declaration, Articles of Incorporation and By-Laws, and Association rules and reading them prior to making the decision to purchase a Unit. The Declarant will make copies of these documents available to initial purchasers of Units. Thereafter, copies should be requested from the Association or obtained from the public records.

Condominium is governed by the terms of the Act. The Governing Documents include various "keynotes" and diagrams to help illustrate and draw attention to the concepts explained in the text. In the event of a conflict between the text and these keynotes, the text controls.

2.2. Definitions.

Generally, terms used in the Governing Documents are intended to have their normal, generally accepted meanings or the meanings given in the Act or in the Wisconsin Nonstock Corporation Law, Chapter 181 of the Wisconsin Statutes. Unless the context requires a different meaning, capitalized terms used in this Declaration, the By-Laws, and the Articles of Incorporation have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found immediately following the Table of Contents.

2.3. Interpretation of Certain References.

(a) **Association or Declarant.** References in the Governing Documents to the Association, the Declarant, or any entity comprising the Declarant, include their respective successors and assigns. References to the Declarant shall include either or both of the entities comprising the Declarant.

(b) **Owner.** References in the Governing Documents to an "**Owner**" refers to the holder of a fee simple or undivided fee simple interest in the title to a Unit as shown on the

records of the Register of Deeds for Milwaukee County, Wisconsin, except that the holder of a mortgage or similar security instrument (a "**Mortgagee**") is not considered an "Owner." If title to a Unit is held in the names of two or more persons, the term "Owner" refers to all co-owners collectively, and they all share the rights of an Owner and are jointly and severally responsible for the obligations of an Owner under the Governing Documents and the Act.

(c) **Person.** References in the Governing Documents to a "person" or "persons" refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

3. **DESCRIPTION OF UNITS.**

3.1. Location and Boundaries of Units.

A plat of survey ("**Plat**") and floor plans ("**Plans**") depicting the location of each Unit within the Condominium and the boundaries of each Unit are recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin as described on Exhibit "C" of this Declaration, as it may be amended. The Plat and Plans are incorporated into this Declaration by this reference.

The Condominium may contain three types of Units:

(a) "**Dwelling Units**," which are designed and intended for residential occupancy, including single-level Dwelling Units, in which all space contained within the Unit is located on a single level with another Unit located above or below it, and multi-level Dwelling Units, in which the space contained within the Unit is located on two or more levels, as is the case with townhome-style Units;

(b) "**Parking Units**," which are designed and intended for parking of motor vehicles; and

(c) "**Storage Units**," which are designed and intended for storage of personal property belonging to an Owner or occupant of a Unit.

Each Unit consists of the space lying within the horizontal and vertical boundaries depicted on the Plat and Plans, along with the fixtures and improvements that lie entirely within such boundaries and serve only that Unit. Such boundaries are described in more detail as follows:

Upper Boundary. The upper boundary of each Unit is the horizontal plane formed by the upper, unexposed surface of the plaster, wallboard or other material comprising the non-structural portion of the ceiling on the top level of the Unit as depicted on the Plans. If the ceiling in the Unit as depicted on the Plans is of varying heights, the upper boundary shall vary accordingly. In the case of a Parking Unit or Storage Unit having no non-structural ceiling, the upper boundary shall be the plane formed by the lower surface of the concrete slab or other

structural material separating the level on which the Parking Unit or Storage Unit is located from the level above it.

Lower Boundary. The lower boundary of each Unit is the horizontal plane formed by the upper surface of the concrete slab or floor joists forming the floor of the lowest level of the Unit as depicted on the Plans. If the floor of the lowest level as depicted on the Plans is of varying heights, the lower boundary shall vary accordingly.

Perimeter Boundary. The perimeter boundaries of each Unit are the planes formed by the outer, unexposed surface of the plaster, wallboard or other material comprising the interior surface of the perimeter walls enclosing the Unit, except that in the case of a Parking Unit the perimeter boundary shall be the vertical plane establishing the boundary of the Unit as shown on the Plans and, in the case of a Storage Unit, the perimeter boundary shall be the plane formed by the interior surface of the concrete or other material forming the wall of the Storage Unit as shown on the Plans. Structural portions of the perimeter walls, and exterior doors and windows located within the perimeter walls of a Unit, are not part of the Unit, but rather are Limited Common Elements, as described in Section 4 of this Declaration.



Understanding the boundaries of the Unit is important to an understanding of responsibilities for maintenance and insurance under Sections 11 and 12 of the Declaration and recognition of the limits of an Owner's right to use and make changes to the Condominium under Sections 8 and 13 of the Declaration. If you do not understand where the Unit boundaries are, it may be helpful to obtain and review a copy of the floor plans for the building in which your Unit is located.

Except where provisions of this Declaration state otherwise, all air space, walls partitioning such air space, floors separating levels of the Unit, and other fixtures and improvements within the boundaries described above are a part of the Unit, as are any wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, carpet, or other flooring material, constituting any part of the finished surfaces of the walls, ceiling, or floors of the Unit.

Each Unit also includes all portions of the plumbing, heating, electrical, natural gas, air conditioning, cable, telecommunications and other systems (including furnaces, compressors, components, pipes, wires, conduits, ducts, utility meters, and the like) serving only that Unit, even if located partially outside the boundaries of the Unit.

In interpreting deeds, Plats, and Plans, the existing physical boundaries of a Unit as originally constructed, or as reconstructed substantially in accordance with the original Plats and Plans, shall be conclusively presumed to be its boundaries rather than the metes and bounds or other property description expressed in any deed, plot plan or floor plans, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variances between the actual boundaries and the boundaries shown on the Plat and Plans or described in a deed.

3.2. Relocation of Unit Boundaries; Separation of Units.

Subject to the requirements of this Section, the boundaries between adjoining Units may be relocated as provided in Section 703.13(6) of the Act, and any Unit may be separated into two or more Units as provided in Section 703.13(7) of the Act. Any such relocation or separation requested by persons other than the Declarant shall be subject to the prior approval of the Association's board of directors ("Board"), which shall be evidenced by the Association's execution of the amendments to the Governing Documents effecting the relocation or separation. The Board may require the person or persons requesting a relocation or separation to pay in advance all costs that the Association expects to incur in preparing and recording the necessary amendments.

3.3. Combining of Units.

If two or more adjoining Units are owned by the same person, the Owner may remove all or any part of any common wall or create doorways or other openings in any common wall, even though all or a portion of the wall may be a Common Element, so long as:

- (a) no portion of any bearing wall or bearing column is materially weakened or removed; and
- (b) any chutes, flues, ducts, conduits, wires, or other apparatus contained in the partition and serving any other part of the Condominium are relocated by the Owner in a manner acceptable to the Board; and
- (c) no portion of any Common Elements other than the partition are damaged, destroyed, or endangered.

Alterations permitted by this section do not constitute a relocation of Unit boundaries within the meaning of Section 3.2. Any Units so combined shall continue to be treated as separate Units for purposes of voting and liability for assessments under this Declaration.

4. **DESCRIPTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.**

The Common Elements are all those portions of the Condominium that lie outside the boundaries of the Units. Generally, the Common Elements are



Any relocation of Unit boundaries or subdivision or combination of Units is subject to the prior approval of the Association's Board of Directors and compliance with the requirements of Section 13 of the Declaration.



The Common Elements of the Condominium include such areas as the entry features and landscaping, the privacy wall along South Lake Drive, the private roadways, sidewalks, street lights, and surface parking areas, the water main and sanitary sewer line serving the Condominium, the community center, tot lot, and picnic area on the Condominium property, as well as those portions of the buildings comprising the Condominium that are not contained within the boundaries of any Unit.

intended for the benefit and use of the occupants of all Units; however, some portions of the Common Elements are designated as "**Limited Common Elements**," which means they are assigned for the exclusive use of the occupants of less than all of the Units. The Limited Common Elements and the Unit(s) to which they are assigned are as follows:

- (a) the Common Elements serving only the Units within a particular building are Limited Common Elements of all Units within such building, unless otherwise assigned as Limited Common Elements to less than all Units in the building;
- (b) any mailbox which the Board assigns for use by the occupants of a particular Unit is a Limited Common Element of the Unit to which it is assigned;
- (c) the storage locker, box, or space, if any, identified as a Limited Common Element on the Plans and bearing a number corresponding to a Dwelling Unit number is a Limited Common Element of the Dwelling Units to which such number corresponds;
- (d) any doorstep, stoop, steps, stairway or stairwell providing access to one or more Units is assigned as a Limited Common Element of the Unit or Units to which it provides access;
- (e) any balcony serving a Unit is assigned as a Limited Common Element of the Unit(s) having direct access to such deck, patio, porch or balcony; and
- (f) that portion of the Common Elements on which is located any part of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element of the Unit or Units so served.

The motor vehicle parking spaces, if any, comprising a portion of the Common Elements within any building are assigned as Limited Common Elements for the use of all of the Units within such building on a first-come, first-served basis, subject to the right of the Board to designate parking spaces for guest parking and parking by disabled residents and otherwise to regulate use of such parking spaces.

Subject to the rights of any existing Mortgagee, upon written application to and approval of the Board, an Owner may grant to any other Owner by deed the right to use any Limited Common Element assigned to the granting Owner's Unit. Upon recording of such deed, the granting Owner shall have no further right to use such Limited Common Element.

5. PERCENTAGE INTEREST OF EACH UNIT IN COMMON ELEMENTS.

The ownership of each Unit includes an undivided ownership interest in the Common Elements of the Condominium as described on Exhibit "D" of this Declaration, as that exhibit may be amended. Such undivided ownership interest automatically passes with the title to a Unit, whether or not described in the deed, and cannot be separated from the Unit to which it is assigned.

Upon expansion of the Condominium and creation of additional Units pursuant to Section

14, the Declarant shall amend this Declaration to reallocate the undivided interest in the Common Elements. Such reallocation shall be based on the square footage of each Unit relative to the total square footage of all Units comprising the Condominium immediately after recording of the amendment.



Ownership of the Common Elements of a Condominium is shared among all of the Unit Owners. The percentage ownership interest allocated to each Unit determines an Owner's liability for certain common expenses and voting rights in the Association. This percentage interest is subject to change as the Condominium is expanded until all of the Units proposed for the Condominium have been built and made a part of the Condominium.

Except as described above, the allocation of the undivided interest in the

Common Elements may be changed only by an amendment to the Declaration executed and recorded with the written consent of all Owners and their Mortgagees.

6. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

Each person who holds record title to a Unit is automatically a member of the Association and remains a member as long as such person holds title to the Unit. Upon sale or other transfer of title to the Unit, the membership automatically passes to the new Owner. Except as this Declaration or the By-Laws may otherwise provide, each Owner is entitled to a vote weighted in accordance with the percentage of undivided interest in the Common Elements attributable to the Owner's Unit as described in Section 5, which vote may be exercised on all matters upon which members of the Association are entitled to vote under to the Act and the Governing Documents.

7. LIABILITY FOR COMMON EXPENSES; ASSESSMENTS.

7.1. Allocation of Liability for Common Expenses.

(a) The "Common Expenses" of the Association include:

(i) the costs of maintaining, repairing, and replacing, those portions of the Condominium and other improvements described in Section 11 that are the Association's maintenance responsibility under the Act or the Governing Documents;

(ii) the costs of alterations and improvements to the Common Elements;

(iii) the premiums for insurance obtained by the Association pursuant to Section 12;

(iv) the cost of providing utilities and similar services to the Common Elements and to the Units, to the extent not separately metered or charged to the Units;

(v) the cost of trash removal and other services provided to the Condominium;

(vi) administrative expenses, including management and professional fees and costs incurred in enforcing the Governing Documents;

(vii) the costs assessed by Park Shore Waterfront Association, Inc. against the Condominium pursuant to the Easement and Covenant referenced in Section 10 of this Declaration; and

(viii) other costs that the Association incurs in exercising its powers and performing its responsibilities under the Act and the Governing Documents.

(b) Except as otherwise specifically provided in this Declaration or the By-Laws, each Unit is responsible for a share of the Common Expenses and is entitled to a share of any common surplus of the Association. Such shares shall be equal to the Unit's percentage of undivided interest in the Common Elements as described in Section 5, except that:

(i) any Common Expenses associated with the maintenance, repair, replacement, or operation of a Limited Common Element, including insurance (to the extent allocable to Limited Common Elements) and contributions to a reserve fund for such purposes (collectively, "**Limited Common Expenses**"), shall be assessed only against the Unit or Units to which that Limited Common Element is assigned at the time the assessment is levied, in the same proportion as each such Unit's percentage undivided interest in the Common Elements bears to the total undivided percentage interests of all Units to which such Limited Common Element is assigned, or in equal shares, as the Board may determine appropriate;

(ii) the costs incurred or anticipated to be incurred by the Association in providing special or additional services to any Unit or the Owners or occupants thereof upon request of the Owner or occupants shall be assessed against the benefited Unit, or if attributable to more than one but less than all Units, then allocated among the benefited Units equally; and

(iii) any Common Expenses benefiting fewer than all of the Units, or significantly disproportionately benefiting all Units, other than Common Expenses for periodic maintenance, repair and replacement of any portion of the Common Elements, the Units, or other property for which the Association is specifically responsible under this Declaration, may be assessed equitably among all of the Units which are benefited according to the benefit received, as the Board may reasonably determine;



The Common Expenses of the Association include, among other things:

- the cost of maintenance, repair, replacement and improvement of the Common Elements, including snow removal;
- the cost of maintaining shoreline improvements adjacent to the Condominium;
- insurance premiums;
- the cost of utilities to serve the Common Elements;
- the cost of trash removal and other services provided to the Condominium;
- administrative expenses, including management and professional fees; and
- a share of the costs associated with waterfront improvements and the sewer lift station serving the Condominium.

(iv) any Common Expenses occasioned by a violation of the Governing Documents by, or the negligence or misconduct of, the Owner or occupant of any Unit, or their guests, may be assessed against the Unit of such Owner or occupant;

(v) the initial purchaser of each Unit from the Declarant shall, upon closing of such purchase, pay a one-time contribution to the working capital of the Association in an amount equal to one-sixth of the annual General Assessment levied against the Unit for that year as determined pursuant to Section 7.2 and the By-Laws, plus \$500 to be used as an insurance fund pursuant to Section 9.

For purposes of this Section, an Owner's non-use of the Common Elements, any common facility, or any item which is budgeted as a Common Expense, shall not constitute a benefit to fewer than all Units, unless the Board determines that such non-use results in an identifiable, calculable reduction in cost to the Association.

The Board's failure or election not to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

No reallocation of liability for Common Expenses pursuant to this Declaration shall affect any Common Expense assessments or installment thereof due and payable prior to such reallocation.

7.2. Assessment Authority.

The Association is authorized to levy assessments, as provided in this Declaration, the By-Laws, and the Act, for the purpose of defraying the Common Expenses. There are five types of assessments:

(a) **"General Assessments"** levied pursuant to the Association's annual operating budget, as determined pursuant to the By-Laws;

(b) **"Limited Common Expense Assessments"** for Limited Common Expenses as provided for in Section 7.1(b)(i);

(c) **"Special Assessments"** for general Common Expenses or Limited Common Expenses that are unbudgeted or exceed those budgeted, as authorized pursuant to the By-Laws;

(d) **"Specific Assessments"** as the Board may authorize to fund those expenses described in Section 7.1(b)(ii), (iii), and (iv), and as otherwise specifically authorized under the Governing Documents; and

(e) a one-time "**Working Capital Assessment**" levied upon the initial transfer of title to each Unit, as provided in Section 7.1(b)(v), which shall be in addition to, not in lieu of, the other assessments levied against the Unit and shall not be considered an advance payment of any such assessments. This amount shall be collected at closing on each Unit and disbursed to the Association for deposit to a segregated fund for use in covering unforeseen expenditures or to purchase additional equipment or services. The working capital funds shall not be used to defray any of the Declarant's development expenses, construction costs, or other financial obligations to the Association while the Declarant is in control of the Association pursuant to Section 15(b).

7.3. Personal Obligation and Lien for Assessments.

All assessments, together with late charges and interest authorized pursuant to the By-Laws, and actual costs of collection (including but not limited to reasonable attorney's fees actually incurred, whether or not suit is filed), are the personal obligation of the Person who was the Owner of such Unit at the time the assessment became due. Such amounts shall also be a charge and continuing lien on the Unit against which each assessment is levied from the date the assessment becomes due until paid, if a statement of lien is filed in the land records within two years after such due date. The Association's lien shall have priority over all other liens except (a) liens of general and special taxes; (b) all sums unpaid on a first mortgage recorded prior to the making of the assessment; (c) mechanics liens filed prior to the making of the assessment; (d) such other liens as are superior to the Association's lien under the terms of the Act. Upon conveyance of a Unit, the grantor and grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of such conveyance.



Assessments are amounts that the Association is entitled to collect from the Owner of each Unit pursuant to this Declaration. If the assessment is not paid in full when due, the Association has a right to file a lien against the Owner's Unit. The Association may foreclose its lien, in the same manner as a mortgage may be foreclosed, and may sell the Unit to pay the Owner's obligations to the Association.

The Declarant shall be responsible for all Common Expenses incurred prior to the conveyance of the first Unit. Thereafter, the Owner of each Unit, including the Declarant for the period of its ownership of any Unit, shall be liable for assessments for its share of Common Expenses, which assessments shall be paid in such manner and on such dates as the Board may fix by resolution. Unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month.

No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, the Association's failure to perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

8. USE OF UNITS AND COMMON ELEMENTS.

8.1. General.

Each Owner is entitled to exclusive possession of his or her Unit and any Limited Common Elements assigned exclusively to such Unit. Each Owner has a right to use all other portions of the Common Elements in common with others for the purposes for which they are designed and intended, subject to this Declaration and reasonable Board regulation. No such use shall enter or encroach upon the lawful rights of the other Owners.



Indemnification is a legal concept in which one person assumes responsibility for and pays any amounts that another becomes obligated to pay as a result of the occurrence of a particular event. For example, if the Association is sued as a result of any damage or injury arising out of use of the community center for a private party, the Owner sponsoring the private party would have to pay the costs of defending such lawsuit and would have to pay any judgment entered against the Association, except in limited circumstances.

An Owner who leases his or her Unit transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements of the Condominium, including the use of any and all recreational facilities, except that the Owner shall have a right of access to the Unit as necessary to exercise the Owner's rights and perform the Owner's responsibilities under the lease.

8.2. Use of Shared Limited Common Elements.

Lobbies and hallways designated as Limited Common Elements shall not be used for any purpose other than access to and from a Unit and such other activities as the Board may specifically authorize. Except with the prior written approval of the Board, no Owner, occupant or guest of a Unit shall:

- (a) decorate, add, remove or rearrange furnishings, or store any item of personal property in an elevator lobby or hallway;
- (b) use parking spaces designated as Limited Common Elements for any purpose other than parking of motor vehicles; or
- (c) use storage spaces, if any, designated as Limited Common Elements for any purpose other than storage of personal property.

8.3. Reservation of Use of Common Elements.

With the Board's prior written approval and subject to any conditions the Board may impose, an Owner or occupant of a Unit may reserve portions of the Common Elements such as the community center building for private use for a specified period of time. Each Owner or occupant shall assume, on behalf of himself and any guests, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result

of such use and shall indemnify and defend the Association for any claims arising out of any such damage, injury, or use, except to the extent that the damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

8.4. Regulation of Use of Units.

(a) ***Residential and Related Uses.*** Units may be used only for residential purposes (including parking and storage of personal property), except as the Declarant may otherwise permit with respect to its construction, marketing and sales activities, and as otherwise authorized in this Section. A business activity may be conducted within or from a Dwelling Unit only if conducted by a person or persons residing in the Dwelling Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with all applicable legal requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Condominium;

(iv) does not increase the insurance premiums paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage at reasonable cost; and

(v) is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"**Business,**" as that term is used in this Declaration, is intended to have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) such activity requires a license.

Leasing a Dwelling Unit for residential purposes shall not be considered a "business" within the meaning of this subsection but shall be subject to the restrictions set forth in Section 9 and to such rules as the Association may adopt pursuant to Section 8.4(d). For purposes of this provision, the term "Leasing" shall be defined as described in Section 9.1.

The use of a Dwelling Unit by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subsection.

(b) **Single Family Occupancy.** Occupancy of each Dwelling Unit shall be limited to a single family or, in the alternative, that number of unrelated persons equal to the number of bedrooms in the Dwelling Unit (as depicted on the Plans referenced in Section 3.1 plus one additional person. For purposes of this subsection (b), "occupancy" means staying overnight in a Dwelling Unit for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year. "Single family" means any number of persons, all of whom are interrelated by blood, adoption, or marriage, and no more than one additional person who is not so related. The phrase "by blood" shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, nephews, parents, aunts, uncles, and first cousins, and no other degree of kinship. "Marriage" shall include common law marriage as recognized under Wisconsin law, and "by marriage" shall include in-laws and step-relatives.

(c) **Timesharing.** No Unit shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of a Unit rotates among members of the program on a fixed or floating time schedule over a period of years.



Part of living in a condominium is a recognition that each resident must give up some of the rights he or she might otherwise enjoy in order to make the condominium a pleasant and desirable place for all owners and residents to enjoy. This Declaration and the Rules attached as Exhibit "E" establish the initial rules that will help to achieve that goal. This Section authorizes the Board to adopt additional rules to expand upon those set out in this Declaration and Exhibit "E," and to address other situations that might create conflicts or objectionable conditions within the Condominium.

(d) **Rulemaking Authority and Procedures.** The initial Rules regulating use, conduct, and activities within the Condominium are attached as Exhibit "E" and incorporated by this reference. However, in order for the Association to be able to respond to issues and concerns that may affect the Condominium and its residents in the future, the Board, by majority vote, or the membership, upon affirmative vote or written consent of persons entitled to cast a majority of the votes in the Association, is authorized to

adopt new Rules and to modify or rescind existing Rules, subject to certain limitations for the protection of the Owners and occupants of Units as set forth in Section 8.4(e). The Board shall send notice to all Owners of any proposed Rule change at least five business days prior to the proposed change being put to a vote. Members shall have a reasonable opportunity to share their support or concerns before the proposed action is put to a vote. A Rule change adopted under this Section shall take effect 30 days after the date of written notice to the Owners that the change has been adopted.

The procedures set forth in this Section do not apply to administrative and operating policies that the Board may adopt relating solely to the Common Elements, such as hours of operation of a recreational facility, speed limits on private roads, safety regulations, or the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules. The Board may adopt such administrative and operating policies without prior notice and may make them effective immediately upon notification of the Owners.

No action taken under this Section shall have the effect of modifying or repealing any provision of this Declaration other than the Rules. In the event of a conflict between this Declaration and the Rules, the Declaration (exclusive of the Rules) shall control.

(e) ***Protection of Owners and Others.*** Except as this Declaration or the initial Rules set forth in Exhibit "E" may otherwise provide (either initially or by amendment), all Rules shall be subject to the following:

(i) ***Similar Treatment.*** Similarly situated Units shall be treated similarly.

(ii) ***Displays.*** No Rule shall abridge an Owner's right to display political, religious, or holiday symbols and decorations within his or her Unit. However, the Association may adopt time, place, and manner restrictions with respect to such items visible from outside of the Unit, including reasonable limitations on size, number, and color.

(iii) ***Household Composition.*** No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Elements.

(iv) ***Activities Within Unit.*** No Rule shall interfere with otherwise lawful activities carried on within a Unit, except activities otherwise inconsistent with Section 8.4(a) or not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(v) ***Abriding Existing Rights.*** No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

(vi) ***Rights to Develop.*** No Rule may interfere with the Declarant's ability to develop, market, and sell Units in the Condominium.

(vii) ***Interference with Easements.*** No Rule may unreasonably interfere with the exercise of any easement.

(f) ***Owners Acknowledgment and Notice to Purchasers.*** By accepting a deed to a Unit, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of

the current Rules and administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

9. LEASING AND TRANSFER OF UNITS.

9.1. Leasing.

(a) "Leasing," for purposes of this Declaration, means regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, rent or other fees, or any service, gratuity, or emolument.

(b) Units may be leased only in their entirety; no fraction or portion consisting of less than the entire Unit may be leased. Limited Common Elements may not be leased separate from the Unit to which they are assigned. There shall be no subleasing of Units or assignment of leases without the Board's prior written approval. All leases must be for an initial term of not less than six months; however, the Board shall have the power to allow leases for an initial term of less than six months, on such terms and conditions as the Board may establish, upon a showing by the Owner that such a lease is required to avoid undue hardship to the Owner.

(c) All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a lease form that it deems acceptable. Within five days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Association's rules and regulations.

(d) Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly stated in the lease:

(i) Compliance With Governing Documents. The lessee shall comply with all provisions of the Governing Documents and shall control the conduct of all other occupants and guests of the leased Unit in order to ensure their compliance. In the event that the lessee, or a person living with the lessee, violates the Governing Documents, notice of the violation shall be given to the Owner and the lessee, and if a fine is imposed, such fine shall be assessed against the lessee in accordance with Section 7.2 of the By-Laws. Any violation of the Governing Documents by the lessee, any occupant of the leased Unit, or their guests, shall constitute a default under the terms of the lease and shall authorize the Owner to terminate the lease without liability and to evict the lessee in accordance with Wisconsin law. The Owner delegates and assigns to the Association, acting through the Board, the power and authority to enforce this provision against the lessee, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms of this provision. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be levied against the Unit as a Specific Assessment pursuant to Section 7.1(b)(iv).

(ii) Liability for Assessments. If the Owner of a leased Unit fails to pay any assessment or other charge for a period of more than 30 days after it is due and payable, then the delinquent Owner shall be deemed to have assigned to the Association any rents to be paid by the lessee during the period of delinquency, and, upon request by the Board, the lessee shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, the lessee need not make such payments to the Association in excess of, or prior to the due dates for, rental payments unpaid at the time of the Board's request. All such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make rental payments to the lessor. If the lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

9.2. Transfer of Title to Units.

Upon the initial transfer of title to each Unit by the Declarant, the purchaser shall pay a one-time contribution to the working capital of the Association as described in Section 7.1(b)(v) and a contribution in the amount of \$500 to an insurance fund, to be applied by the Association to payment of insurance premiums. Both payments shall constitute an assessment against the Unit.

After the initial sale of a Unit, any Owner intending to sell or otherwise transfer title to the Unit shall give the Board written notice of such intention within seven days after entering into any agreement to sell or transfer the Unit. The Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Section shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven days after taking title to a Unit, the new Owner shall give the Board written notice of his or her ownership of the Unit. Upon failure of an Owner to give the required notice within the seven-day time period, the Board may levy fines against the Unit and its Owner, and assess the Owner for all costs incurred by the Association in determining the Owner's identity.

9.3. Parking Units and Storage Units; Association's Right to Purchase.

In order to assure that Parking Units and Storage Units are owned, held and used for the primary benefit of the Owners and occupants of Dwelling Units in mid-rise buildings that do not have a garage as part of the Dwelling Unit ("**Mid-rise Units**"), the following shall apply:

(a) No Parking Unit or Storage Unit shall be leased, sold or otherwise transferred to or acquired by any Person other than the Owner of a Dwelling Unit or the Association.

(b) The Association shall maintain waiting lists for Owners of Mid-Rise Units waiting to acquire Parking Units and Owners of Mid-Rise Units waiting to acquire Storage Units, placing names on each list in the following order of priority: first, Owners of Units in the mid-rise building in which the Parking Unit or Storage Unit is located and then Owners of Units in other mid-rise buildings within the Condominium. Within a category of priority, names shall be listed in the order in which the Association receives written notice of the Owner's desire to acquire a Parking Unit or Storage Unit. No Parking Unit or Storage Unit shall be leased, sold or otherwise transferred to or acquired by any person other than a successor Owner of the transferring Owner's Dwelling Unit unless and until the procedures described in this subsection (b) have been followed. The Owner who desires to lease, transfer or sell a Parking Unit or Storage Unit (the "**Transferring Owner**") shall first notify all of the Owners, if any, on such waiting list in writing, enclosing an unsigned form of agreement setting forth the terms upon which the Transferring Owner proposes to lease, sell or otherwise transfer the Parking Unit or Storage Unit and giving them at least 5 business days ("**Offer Period**") in which to sign and return two originals of such agreement as a written offer to the Transferring Owner to acquire the Unit on such terms, subject to the priority rights of other Owners on the waiting list. If any of such other Owners submits an offer on the Transferring Owner's terms by signing and returning both original agreements, then within 72 hours after expiration of Offer Period, the Transferring Owner shall accept the offer from the responding Owner with the highest priority on the waiting list by executing and returning one original of the fully executed agreement signed by such Owner. In the event that such responding Owner fails to consummate such agreement for any reason, the Transferring Owner shall contact the responding Owner having the next highest priority on the waiting list to confirm that such Owner's offer is still open and if so, shall accept such offer by executing and returning a one fully executed original of the agreement signed by that Owner, and so on until the Parking Unit or Storage Unit has been sold and conveyed to one of them or until all Owners on the waiting list have had the opportunity to acquire the Parking Unit or Storage Unit. If there are no Owners of Mid-Rise Units on a waiting list to acquire a Parking Unit or Storage Unit, or the Transferring Owner has fully complied with this subsection (b) and no other Owner has leased or acquired the Unit, then the Owner of the Parking Unit or Storage Unit may lease, sell or otherwise transfer the Parking Unit or Storage Unit to the Owner of any Dwelling Unit in the Condominium on terms no less favorable than those on which the Transferring Owner proposed to sell to Owners on the waiting list, subject to the conditions set forth in this Section 9.3.

(c) No Person other than the Declarant or the Association shall own more than two Parking Units or more than two Storage Units for each Mid-rise Unit owned by such Person, or more than one Parking Unit or one Storage Unit for each other type of Dwelling Unit owned by such Person.

This Section 9.3 shall not apply to restrict the right of any Mortgagee to take title to a Parking Unit or Storage Unit pursuant to the remedies provided in its Mortgage, subject to the Association's right to purchase the Parking Unit or Storage Unit as provided in this Section.

(d) In the event of the sale of a Dwelling Unit in which the purchaser does not acquire the seller's Parking Unit(s) or Storage Unit(s), or in the event that a lender takes title to a Parking

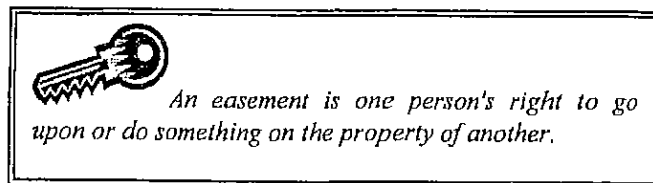
Unit or Storage Unit following foreclosure and does not take title to or own a Dwelling Unit, or under any other circumstances in which the owner of a Parking Unit or Storage Unit does not own a Dwelling Unit, the Association shall have a right (but not an obligation) to purchase the Parking Unit or Storage Unit for a purchase price equal to the fair market value of the Parking Unit or Storage Unit, determined as provided in this Section. Upon the occurrence of any event resulting in a Parking Unit or Storage Unit being owned by someone who does not own a Dwelling Unit, the Owner or Mortgagee shall notify the Association in writing. The Association shall have 30 days after receipt of such notice in which to give notice to the Owner of the Unit of its intent to purchase the Unit, subject to an acceptable determination of the fair market value ("**Notice of Intent**"). If the parties cannot agree upon the fair market value or agree upon an independent licensed real estate appraiser to make a determination of fair market value within 10 days after the date of the Association's Notice of Intent, the fair market value of the Parking Unit or Storage Unit shall be determined as follows:

The Association shall retain, as a Common Expense, an independent licensed real estate appraiser who shall make a determination of the fair market value and provide a copy of its appraisal to the Association within 21 days after the date of the Notice of Intent. If the Association accepts such determination, it shall notify the Owner of the Parking Unit or Storage Unit and attach a copy of the appraisal. If the Owner disagrees with and declines to accept such appraiser's determination of the fair market value, the Owner shall, within 7 days after receipt thereof, select and retain, at such Owner's own expense, an independent licensed real estate appraiser who, together with the appraiser selected by the Association, shall agree upon and appoint a third independent licensed real estate appraiser to make the determination of fair market value. The final determination of fair market value by such third appraiser shall be made within 45 days after the date of the Notice of Intent.

Upon determination of the fair market value, the Association or its designee shall have 10 days to pay the purchase price for the Parking Unit or Storage Unit to the Owner. Upon receipt of the purchase price, the Owner shall deliver a deed to the Parking Unit or Storage Unit free and clear of all liens and encumbrances except those in existence on the date of the original conveyance of the Parking Unit or Storage Unit by the Declarant. Upon failure of the Association or its designee to pay the purchase price within such 10-day period, its right to purchase the Parking Unit or Storage Unit from such Owner shall be waived as to such Owner and such Owner may thereafter retain title to the Parking Unit or Storage Unit, or transfer title to a third party subject to the restriction in Section 9.2. However, the Association's right to purchase the Unit shall be reinstated upon a transfer of title to a new Owner and the occurrence of events which would again give rise to its right to repurchase as set forth in this Section.

10. EASEMENTS.

10.1. Easement in Common Elements.



Each Owner and occupant of a Unit shall have a right and easement of use and enjoyment in and to the Common Elements (including a perpetual, unrestricted right of access to and from

his or her Unit over those portions of the Common Elements intended for such purpose), subject to the Governing Documents and the rights of the Association to regulate the Common Elements as provided in this Declaration and the Act. Such easement shall be a part of and shall pass with the title to each Unit, subject to the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided in this Declaration.

Any Owner may extend his or her right of use and enjoyment of the Common Elements to the members of his or her family, lessees, and guests, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

10.2. Easement of Support.

Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

10.3. Easement for Encroachments.

To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, whether by reason of any deviation from the Plats or Plans in the construction, repair, renovation, restoration, or repair of any improvement or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist, except that no easement shall exist if such encroachment results from willful and intentional misconduct by an Owner or its agent or employee.

10.4. Easement for Development.

In addition to such easements as are reserved to the Declarant under Section 15 of this Declaration, the Declarant reserves for itself, its successors, assigns and designees, a transferable easement on and over the Common Elements for the purpose of making improvements to the Condominium or any property described on Exhibit "B" which may become part of the Condominium, whether or not it has been submitted to the terms of this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection with the development of the Condominium and with the improvement, marketing and sale of the Units and the property described on Exhibit "B."

10.5. Easement for Municipality.

The Declarant grants to the City of St. Francis a right and easement of access over the Condominium for the purposes reasonably related to the proper exercise of its rights and powers, including, without limitation, reading of utility meters and enforcement of its ordinances and regulations, including such fire and safety regulations and parking regulations as may be in effect from time to time and apply to the Condominium.

10.6. Easement and Covenant to Share Costs.

The property comprising the Condominium is subject to that Declaration of Easements and Covenant to Share Costs for Park Shore ("**Easement and Covenant**"), a copy of which is attached to this Declaration as Exhibit "G". Such Easement and Covenant grants easements for the benefit of the Condominium and other parcels over certain property and facilities in the vicinity of the Condominium which are maintained by Park Shore Waterfront Association, Inc., including drainage and detention facilities, a park, and a sewer lift station. The Easement and Covenant provides for the allocation of a portion of the costs which the Waterfront Association incurs in connection with the shared facilities and services between the Owners of Units in the Condominium and the owners of the other benefited parcels. That portion allocated to the property comprising the Condominium is a Common Expense to be paid by the Association on behalf of the Owners, and shall be included in the Association's budget and allocated among the Units according to the allocation of liability for Common Expenses described in Section 7.

10.7. Easement for Access to and Use of Clubhouse.

The Declarant reserves for itself, its successors, and assigns, a perpetual, nonexclusive right and easement for access to and use of the clubhouse or community center building located within the Condominium by the residents of dwellings constructed within any portion of the Expansion Property described on Exhibit "B" which is not made subject to this Declaration. No person other than Declarant and its designees may exercise this easement unless and until Declarant grants and assigns such easement to a specific portion of the Expansion Property in a recorded document which establishes the obligation of the owners of the benefited property to share in the costs of operating, insuring, maintaining, repairing, and replacing the clubhouse or community center building on such basis as the Declarant determines reasonable. The exercise of this easement shall be subject to such reasonable rules as the Association may adopt, which rules shall apply to persons exercising such easement on the same basis as they apply to residents of the Condominium.

11. MAINTENANCE RESPONSIBILITY.

11.1. Association.

Except as this Declaration may otherwise specifically provide, the Association shall maintain and keep in good repair the Common Elements, including the Limited Common Elements. The costs of providing such maintenance and repair, including decorating and replacements as needed, shall be a Common Expense, except that:

(a) all costs associated with the maintenance, repair, replacement, and operation of Limited Common Elements, including costs of insurance to the extent separably allocable to the Limited Common Elements, shall be assessed as a Limited Common Expense against only those Units to which the Limited Common Element is assigned; and

(b) any costs incurred by the Association in performing its responsibilities under this Section necessitated by the negligence or willful misconduct of an Owner or occupant of a Unit or their family, guests, tenants, or invitees, may be assessed as a Specific Assessment against the Unit of such Owner or occupant, as provided in Section 7.2; and



Although the Association is responsible for maintaining many portions of the Condominium, it has the right to assess the costs of certain maintenance against specific Units under circumstances described in this Section.

(c) the Board may, with respect to any category of Limited Common Elements or any particular type of maintenance, repair, or replacement, require the Owners of the Units to which the Limited Common Elements are assigned to provide such maintenance, repair, or replacement at the Owner's expense.

The Association shall not be liable to any Owner or occupant of a Unit, or to their guests or family members, for any damage or injury caused in whole or in part by the Association's failure to maintain, repair or replace any item on the Common Elements unless the Association had prior notice or reason to know of the need for such maintenance or repair.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as the Board may approve. The Association shall have the right, but not the obligation, to maintain and repair as a Common Expense any or all property owned by the Association but not submitted to this Declaration.

If the Board determines that the need for maintenance or repair which is the Association's responsibility is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Unit as a Specific Assessment.

The Association shall also be responsible for maintenance, repair and replacement, as a Common Expense, of the shoreline improvements situated on property of Milwaukee County located east of the Condominium and described in that Shoreline Improvements and Maintenance Agreement dated December 31, 2001 between the City of St. Francis, Wisconsin and Park Shore, L.L.C., as that agreement may be amended ("Shoreline Agreement"), including the revetment at the edge of Lake Michigan, the drainage and erosion control system on the face of the bluff, landscaping, and bluff stabilization ("Shoreline Improvements"). The Association shall solicit input at least annually from the City of St. Francis and Milwaukee County regarding upcoming and future maintenance and repair needs relating to the Shoreline Improvements and shall include in its annual budget a contribution to a reserve fund to provide for the estimated long-term costs of repairs and replacements. The Association shall fulfill the obligations of the "homeowners association" as described in the Shoreline Agreement.

11.2. Unit Owner.

Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and any Limited Common Elements assigned exclusively to his or her Unit to the extent not maintained by the Association pursuant to Section 11.1. Regardless of any maintenance which the Association provides, each Owner shall be responsible for keeping the Limited Common Elements assigned to such Owner's Unit in a neat, clean and orderly condition and shall not allow any unsanitary or dangerous condition to exist in or on such Limited Common Elements. The responsibility of the Owner shall include, but not be limited to, the maintenance, repair and replacement of all finishes, fixtures and equipment installed in such Owner's Unit; the wood, drywall, plaster, or other building material comprising the unfinished surfaces of the walls and ceilings of the Unit; and all utility and sprinkler lines, pipes, wires, vents, ducts, flues, conduits or systems which serve only that Unit, to the extent that they lie within the perimeter boundaries of the Unit.

11.3. Failure to Maintain.

If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (a) an emergency exists or (b) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

11.4. Measures Related to Insurance Coverage.

(a) The Board, upon resolution, may require all or any Owner(s) to do any act or perform any work involving portions of the Condominium which are the Owner's maintenance responsibility that will, in the Board's judgment, decrease the risk of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage, or otherwise assist the Board in procuring or maintaining such insurance coverage. By way of example, the Board may require Owners to take preventive measures to prevent freezing of water pipes, or to install or replace batteries in smoke detectors; or to take such other measures

as the Board may reasonably require so long as the cost of such work to any Owner does not exceed one-sixth of the annual General Assessment for the year in which the work is required.

(b) If an Owner does not comply with any reasonable requirement of the Board pursuant to subsection (a) above, the Association, upon 15 days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work and charge all costs incurred to the Unit and the Owner thereof as a Specific Assessment pursuant to Section 7.2(c). The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to subsection (a) of this Section, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

11.5. Maintenance Standards and Interpretation.

The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Section. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

12. **INSURANCE AND CASUALTY LOSSES.**

12.1. Insurance Responsibility.

(a) **Owner Responsibility.** Every Owner shall obtain and maintain at all times insurance covering the contents of his or her Unit to the extent not insured by policies maintained by the Association, and shall furnish a copy of such insurance policy or policies to the Association. In the event that any Owner fails to obtain insurance as required by this subsection, the Association may purchase such insurance on behalf of the Owner and assess the premium cost to the Owner, to be collected in the manner provided for collection of assessments under Section 7.1(b)(iv).

(b) **Association Responsibility.** The Association shall obtain and maintain at all times insurance coverage of the following types and amounts:

(i) a blanket hazard insurance policy or policies on all insurable improvements within the Condominium affording coverage against fire and all other hazards normally insured against under an "all risk" endorsement, or if "all risk" coverage is not reasonably available, then at a minimum, a policy providing coverage for those losses typically



The Association is responsible for maintaining insurance on the structures comprising the Condominium, but Owners are responsible for insuring the contents of their Units and may be responsible for paying the deductible under the Association's insurance policy in certain instances, as described in Section 12.2. Therefore, Owners should provide a copy of this Section to their insurance agents when requesting insurance coverage to be sure that they have adequate coverage.

covered under a policy with "broad form" coverage. The policy shall provide coverage in an amount equal to the full replacement value of the property insured, before application of any deductible. Policies may contain a deductible of up to \$10,000 or 1% of the face amount of the policy, whichever is less, and the amount of any deductible shall not be considered in determining whether the insurance satisfies the requirements of this Section;

(ii) a liability insurance policy or policies providing coverage for bodily injury, death, and property damage, in such amounts as the Board considers prudent, but with at least \$1,000,000.00 in coverage for bodily injury and property damage for any single occurrence. Such insurance shall cover the Association, its Board of Directors and officers, all agents and employees of the Association, the Owners, the Mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear, for all occurrences commonly insured against arising out of or in connection with the operation, maintenance, and use of the Common Elements and other portions of the Condominium which the Association is obligated to maintain. The policies shall not provide coverage for individual Owners or occupants of Units for liability arising within their Units;

(iii) a blanket policy of flood insurance, if any portion of the Condominium is designated on a Flood Insurance Rate Map as being in a Special Flood Hazard Area, providing building coverage in an amount equal to at least 100% of the insurable value of the buildings comprising the Condominium, contents coverage in an amount equal to at least 100% of the insurable value of the Association's personal property, and coverage for each Unit equal to the lesser of \$250,000 or its replacement cost, or the maximum coverages available under the National Flood Insurance Program, whichever is less. Such policy may contain a deductible of up to \$5,000 or 1% of the face amount of the policy, whichever is less, and the amount of such deductible shall not be considered in determining whether the policy meets the requirements of this Section;

(iv) worker's compensation insurance, if and to the extent necessary to meet the requirements of law;

(v) officers' and directors' liability insurance in such amounts as the Board may determine, if available at reasonable cost;

(vi) blanket fidelity insurance or fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds shall be in such amount as the Board deems appropriate in the exercise of its business judgment, but if reasonably available, shall be at least equal to three month's assessments plus an amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond. Such fidelity coverage may be reduced based on the implementation of financial controls that take one or more of the following forms:

(A) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate

access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association;

(B) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or

(C) two members of the Board must sign any checks written on the reserve account; and

(vii) such other insurance as the Board may determine necessary or appropriate.

At least every two years the Board of Directors shall conduct an insurance review to determine if the policies then in force are adequate to meet the needs of the Association and to satisfy the requirements of the Act and this Section. The Board may rely upon a review and verification of the adequacy of insurance coverage by the Association's insurance agent.

All Association insurance policies shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees, if any. All policies shall be written with a company licensed to do business in the State of Wisconsin. The insurance company shall provide insurance certificates to each Owner and each Mortgagee upon request. In addition, the Board shall use reasonable efforts to obtain policies that provide:

(i) an inflation guard endorsement;

(ii) a building ordinance or law endorsement;

(iii) if any buildings contain a steam boiler as part of a central heating or cooling system, a steam boiler and machinery coverage endorsement or comparable coverage under a separate policy;

(iv) a special condominium endorsement by which the insurer agrees to recognize any insurance trust agreement, agrees to waive the right of subrogation against the Association's directors, officers, and managing agent, and the individual Owners and occupants of Units, and agrees that the Association's policy will be primary, even if an Owner has other insurance covering the same loss;

(v) a standard mortgage clause, naming as mortgagee either the Federal National Mortgage Association ("Fannie Mae") or the servicers for the mortgages or loans it holds on Units;

(vi) a requirement that the insurer notify the Association and each Mortgagee named in the standard mortgage clause in writing at least 10 days prior to cancellation or substantial modification of the insurance coverage; and

(vii) a provision or endorsement precluding the insurer's denial of a claim because of the negligent acts of the Association, the Board, or any Owner, or any of their agents, employees, or household members.

Premiums for insurance maintained by the Association shall be a Common Expense to be allocated among all Units as described in Section 7.2.

12.2. Casualty Losses.

(a) ***Insurance Deductibles.*** In the event of an insured loss:

(i) any required deductible shall be a Common Expense, except that if the Board determines, after notice to the Owner or occupant of a Unit and an opportunity to be heard, that the loss is a result of the negligence or willful misconduct of the Owner or occupant of the Unit, then the Board may assess all or a portion of the deductible against such Unit and its Owner as the Board determines reasonable under the circumstances;

(ii) if the deductible equals or exceeds the amount of the insured loss, then the deductible (if a claim is filed) or the cost of repair or replacement (if no claim is filed) shall be considered a maintenance expense to be paid by the person or persons who would be responsible for maintenance or repair in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the Board may apportion the deductible equitably among the Owners suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the deductible exceeds 2% of the replacement value of the Unit, the Owner's responsibility shall be limited to an amount that does not exceed 2% of the replacement value of the Unit and the balance shall be a Common Expense.

If any Owner fails to pay the amounts required under this subsection, then the Association may pay them and assess the cost to the Owner pursuant to Section 7.2(d).

(b) ***Obligation to Repair and Reconstruct.*** In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged structure(s), unless a decision not to proceed with the reconstruction and repair of the structure is approved by at least two-thirds of the Owners, including the Owner of any damaged Unit which is not to be restored. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in this Declaration shall be construed to afford priority to any Owner with respect to the distribution of insurance proceeds for any such Unit.

(c) ***Cost Estimates.*** Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by

changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(d) **Source and Allocation of Proceeds.** If the Board determines that the proceeds of insurance are not sufficient to cover the estimated costs of reconstruction and repair, or if the insurance proceeds are otherwise inadequate to pay the actual costs of repair and reconstruction, the Board may levy an assessment to cover the additional costs. Any such assessment shall be levied against all Owners, if the damaged property is maintained as a general Common Expense, or against the Owners of the benefited Unit(s), if the damaged property is maintained as a Limited Common Expense. Such an assessment shall not be subject to the limitation on special assessments set forth in Section 6.8(b) of the By-Laws. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as the Board may direct.

(e) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where the Board approves improvements not in accordance with the original plans and specifications. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

(f) **Encroachments.** Encroachments upon or in favor of Units as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(g) **Construction Fund.** The net proceeds of insurance and such additional funds as the Association collects from assessments against Owners on account of a casualty shall constitute a construction fund that the Association shall disburse in payment of the cost of reconstruction and repair in the manner set forth in this Section. The Association shall disburse such funds in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as the Board may designate.

(h) **Mortgagee Protection.** Nothing in this Section gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

13. ARCHITECTURAL CONTROLS.

13.1 Architectural Standards.

Except as permitted in this Declaration or the Act, no Owner, occupant, or any other Person except the Association may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration (including painting and landscaping), or addition to the Common Elements or Limited Common Elements, nor erect, install, place or post any object, sign, flag, light, sculpture, artificial or real vegetation, storm door or window, door knob or knocker, or other thing on the exterior of the building or on any portion of the Condominium visible from outside of a Unit, without first obtaining the written approval of the Board or its designee in accordance with the procedures set forth below. The Board may allow such encroachments on the Common Elements and Limited Common Elements as it deems appropriate pursuant to this Section 13.



No person should undertake to make any alteration to any structure or place any object on the Common Elements visible from outside the Unit without first obtaining Board approval as required by this Section.

13.2. Alterations Within Units.

Subject to the requirements of this Section 13, Owners may make any improvements, renovations, or alterations within their Units that do not conflict with the requirements of this Declaration or any agreement entered into with Declarant, nor impair the structural integrity of the building or any portion thereof, nor otherwise materially lessen the support of any portion of the Condominium. The Owner shall first notify the Board or its designee and provide evidence reasonably acceptable to the Board or its designee that the proposed improvements, renovations, or alterations will not so impair the structural integrity of any structure or lessen the support of any portion of the Condominium. No Person other than the Association may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without first obtaining the written approval of the Board or its designee.

13.3. Application Procedures.

Applications for approval of any such architectural modification shall be in writing and shall include detailed plans and specifications for the proposed modification, addition, or alteration and such other information as the Board or its designee may reasonably require. The Board or its designee may publish written standards for permitted alterations or additions and any request in substantial compliance therewith shall be approved. Otherwise, the Board or its designee shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or its designee may consider, but shall not be limited to consideration of, uniformity of appearance, the quality of the proposed work, the materials to be used, and harmony with the design of other portions of the Condominium. After

final plans and specifications have been approved, no changes may be made in the approved plans or specifications without the consent of the Board or its designee.

13.4. Condition of Approval.

As a condition of approval for a requested modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration. In the discretion of the Board or its designee, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

13.5. Limitation of Liability.

In reviewing and approving applications hereunder, neither the Board of Directors nor its designee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, its designee, or any member of any of the foregoing, shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications.

13.6. No Waiver of Future Approvals.

Each Owner acknowledges that the members of the Board and any committee that it may designate to exercise its authority under this Section will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board of Directors or its designee of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board or its designee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

13.7. Enforcement.

Any construction, alteration, or other work done in violation of this Section shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to institute judicial proceedings and thereafter to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Unit whose Owner or occupant is responsible for the violation and may be collected as a Specific Assessment pursuant to this Declaration.

The Board may exclude from the Condominium any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Section and the architectural standards, subject to the notice and hearing procedures contained in the By-Laws of the Association. Neither the Association nor its officers or directors shall be held liable to any Person for exercising the rights granted by this Section 13.7.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Section and decisions made hereunder.

If any Owner or occupant makes any exterior change to, or installs or constructs anything (including landscaping) on, the Common Elements in violation of this Section, he or she does so at his or her sole risk and expense. The Board may remove the change, alteration or construction or require that it remain on the Common Elements without reimbursement to the Owner or occupant for any expense he or she may have incurred in making the change, alteration or construction.

14. EXPANSION OF THE CONDOMINIUM.

The Declarant expressly reserves the right and option, without obligation, to expand the Condominium in phases, to include up to a maximum of 1500 Dwelling Units and a maximum of 3,000 Parking Units and 3,000 Storage Units. The Declarant may expand the Condominium at any time within 10 years after the date of recording this Declaration by amending this Declaration to submit to its terms any portion of the real property described on Exhibit "B". Any such amendment may be recorded without the consent or approval of the Association or any Owner (other than the owner of the property submitted, if not the Declarant). The amendment shall reallocate the percentage of undivided interest in the Common Elements among the existing Units and the Units created within the additional property according to the formula described in Paragraph 5, shall specify the votes of each Owner in the Association following such expansion, and shall be accompanied by an addendum to the Plat depicting the property being added to the Condominium and setting forth the information required by the Act. Any property added to the Condominium may contain Units, Common Elements, Limited Common Elements, or any combination thereof, and may assign use of any Limited Common Elements not assigned under Section 4.

The percentage of undivided interest in the Common Elements, the relative voting strength in the Association, and the liability for Common Expenses and rights to common surpluses of the Association allocated to each Unit on the date the Declaration is recorded will decrease if additional Units are added to the Condominium.

The approximate location of all existing and proposed buildings and improvements are depicted on the Plat, but are subject to modification by the Declarant as to Unit and building types. The Declarant may make nonmaterial changes in the legal description of any phase and may combine two or more phases and add them to the Condominium at the same time.

15. DECLARANT RIGHTS.

Notwithstanding anything to the contrary in the Governing Documents, Declarant shall have the following rights, in addition to those specifically described in Sections 10 and 14 and elsewhere in the Governing Documents:

15.1. Development and Sale Rights.

Declarant hereby reserves for itself, its affiliates, and their duly authorized agents, representatives, and employees, an easement over, under, across, and through the Condominium for the purpose of construction and improvement of Units, Common Elements, Limited Common Elements, and common facilities, provision of warranty services to Owners, maintenance of sales or leasing offices, management offices, signs, and models on the Condominium, and carrying on sales and marketing activities in connection with the Condominium for so long as Declarant owns any Unit in the Condominium, unless sooner relinquished in writing signed by Declarant. Declarant and its affiliates or designees may maintain one or more offices and models on the Common Elements, including in any clubhouse, at no charge to Declarant, or in Units which Declarant owns, but any such use of the Common Elements shall be only in connection with the management, marketing, sale, or rental of Units in the Condominium. There shall be no limit on the number, size, location, or relocation of such offices and models. This subsection shall not be amended, nor shall the rights of Declarant or its affiliates hereunder be further restricted, without the prior written consent of Declarant.

15.2. Right to Appoint Association's Directors and Officers.

Subject to the right of the members to elect a specified number of directors as provided in the By-Laws, the Declarant shall have the right to appoint and remove the members of the Board of Directors and officers of the Association until the first to occur of the following:

(a) 30 days after the conveyance to Owners other than the Declarant of Units to which 75% of the undivided interest in the Common Elements would be allocated, assuming that the Condominium has been expanded to include the maximum number of Units permitted pursuant to Section 14;

(b) 10 years after the date of recording of the Declaration; or

(c) the surrender by Declarant of such right by amendment to this Declaration executed and recorded by Declarant.

Such period is referred to in the Governing Documents as the "**Declarant Control Period.**"



Initially, the Association will be controlled by the Declarant through its power to appoint a majority of the members of its Board of Directors. However, at predefined milestones described in the By-Laws, the Owners will have an opportunity to elect representatives to serve on the Board, providing for a gradual transition from Declarant control to Owner control of the Association as the Condominium is developed and the Units are sold.

15.3. Sales and Leases.

Notwithstanding anything to the contrary contained herein, Declarant and its affiliates shall have the right to sell or lease Units and to erect and maintain signs to facilitate such sales or leases as they, in their sole discretion, deem appropriate, and shall not be required to comply with the provisions of this Declaration or any Association rules and regulations regarding signs, sales, and leases.

15.4. Unsold Units.

Declarant shall enjoy the rights and fulfill the duties of an Owner with respect to any unsold Units that it owns.

15.5. Easement to Inspect and Right to Correct.

The Declarant reserves for itself and others it may designate, the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Condominium, including Units, and a perpetual nonexclusive easement of access throughout the Condominium to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Unit shall be only after reasonable notice to the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this Section shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

15.6. Right to Notice of Design or Construction Claims.

Neither the Association, any Owner, or any other person shall initiate the dispute resolution procedures under Section 20 of this Declaration, nor retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Condominium in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction, including any claim for breach of contract or warranty or violation of statutory or common law requirements, unless the Declarant has been first notified in writing, by certified mail, and given a reasonable opportunity to meet with the Association and the Owner of any affected Unit to discuss the concerns, conduct its own inspection, and take action to remedy the problem in accordance with this Section. Any notice to the Declarant under this Section shall include a description of the nature and location of the alleged defect in design or construction ("Defect"), a description of any damage suffered as the result of the Defect, the date on which the Defect was discovered, and dates and times during ordinary business hours that the Declarant may meet with the Owner of the affected Unit or a representative of the Association to conduct an inspection.

Nothing in this Section 15.5 obligates the Declarant to inspect, repair, replace, or cure any Defect. However, if Declarant elects to repair any Defect, it will so notify the Association (if the Defect involves Common Elements) or the Owner of the affected Unit (if the Defect is in a Unit)

within 30 days after conducting such inspection and the Association or Owner shall permit the Declarant, its contractors, subcontractors, and agents access as needed during ordinary business hours to make such repairs which, once begun, shall be completed within a reasonable time, subject to the nature of the repair and unforeseen circumstances and events. All applicable statutes of limitations shall be tolled during the period of inspection and cure under this Section, not to exceed the earlier of (i) 120 days after the date the Declarant receives written notice of the Defect in accordance with this Section; or (ii) Declarant's delivery to the Claimant of written notice that the Declarant does not intend to take any further action to remedy the Defect.

Any dispute as to the adequacy of the proposed repairs to resolve the problem or as to whether repairs that the Declarant, its contractors, or subcontractors have performed have remedied the Defect, the Declarant may appoint a third-party inspector who is knowledgeable and experienced in residential home construction to inspect the Defect and make a determination as to whether any proposed solution is adequate or as to whether the Defect has been remedied. The Association, the Declarant, and the Owner of any affected Unit agree to accept and abide by the decision of the inspector.

If the Association or any Owner fails to comply with this Section, the Declarant shall not be liable for any general, special, or consequential damages, costs, or diminution in value that might have been avoided had the Declarant been given the notice and opportunity to repair described in this Section.

15.7 Right to Transfer or Assign the Declarant's Rights.

The Declarant may transfer any or all of the Declarant's special rights and obligations set forth in this Declaration or the By-Laws in whole or in part, temporarily or permanently, to other persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No transfer or assignment of the Declarant's status as the Declarant shall be effective unless it is set forth in a recorded instrument which the Declarant has signed. The Declarant may permit other persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless desired to evidence the Declarant's consent to such exercise.

16. ASSOCIATION RIGHTS AND POWERS.

The Association may exercise any right or privilege given to it expressly by this Declaration, the other Governing Documents, and Wisconsin law, and every other right or privilege reasonably to be implied from the existence of any such express right or privilege, or reasonably necessary to effectuate any such right or privilege. In addition, the Association, acting through the Board or such employees or agents as the Board may authorize, shall have the right and authority:

(a) to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or occupant of the Unit;

(b) to enforce the Governing Documents and Association rules by the imposition of reasonable monetary fines and suspension of use and voting privileges, and by any other legal means, subject to the limitations set forth in the Act and the notice and hearing procedures set forth in the By-Laws, as applicable. Any fines imposed shall be considered a Specific Assessment against the Unit, shall be secured by a lien in favor of the Association, and may be collected in the manner provided for collection of other assessments under this Declaration and the Act;

(c) to grant permits, licenses, utility easements, and other easements over the Common Elements and to enter into use agreements authorizing persons who do not reside in the Condominium to use portions of the Common Elements, including any clubhouse, on such terms and conditions as the Board may determine, and, acting as attorney-in-fact for the Owners, to modify the terms of any such easements or agreements affecting the Condominium;

(d) to control, manage, operate, maintain, improve and replace all portions of the Condominium for which the Association is assigned maintenance responsibility under this Declaration;

(e) to deal with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration;

(f) to represent the Owners in dealings with governmental entities on matters related to the Condominium;

(g) to assign the Association's right to future income, including the right to receive assessments, to secure money borrowed to fund Common Expenses;

(h) to enter into and agree to modifications of contracts, agreements for maintenance of the Condominium, covenants to share costs, or other similar agreements, on behalf of itself and the Owners, with owners of other properties, other owners associations or similar entities, including, without limitation, agreements or covenants which provide that the Association shall contribute toward the cost of maintaining property and facilities which are not part of the Condominium but which benefit the Association and the Owners, such as property and facilities subject to easements which benefit the Condominium and Owners;

(i) to close or cease operation of any portion of the Common Elements (excluding the Limited Common Elements), temporarily or permanently, and to discontinue or suspend non-

essential services that the Association provides to the Units; however, the Board shall give the Owners at least 30 days' prior notice of any permanent closure, cessation of operation, or discontinuation of service. Subject to compliance with applicable laws and ordinances, the Owners may require that the Association re-open or resume operation of Common Elements, or resume discontinued services, upon the vote or written consent, or any combination thereof, of Owners entitled to cast at least 51% of the total votes in the Association;

(j) to employ or retain a concierge for the benefit of the Owners and occupants of Units, in which case the Board shall determine, in its sole discretion, the hours of availability and scope of services to be provided by the concierge and any fees to be charged for such services, which fees shall be assessed as a Specific Assessment against the Unit of the requesting Owner or occupant. The Board may adopt rules and policies relating to use of the concierge services as the Board deems appropriate;

(k) to arrange for or provide services to Owners and their Units, directly or through contracts with the Declarant or other third parties, including bulk service agreements by which a particular service is provided to all Units as a Common Expense, or service contracts offering services at the option of each Owner with the charges for such service being a Specific Assessment against the Owner's Unit, or both. By way of example, such services might include such things as cable television, community technology, utilities, fire protection, security monitoring, pest control, and concierge services. Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense. In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services; and

(k) to implement various systems and measures and take actions designed to enhance safety and security within the Condominium. However, each Owner and occupant of a Unit is put on notice that any such systems and measures may be temporarily interrupted, inoperable, or shut down for maintenance or repairs, and that even when operating, neither Declarant nor the Association can assure that such systems and measures may not be circumvented or that they will provide the level of protection which they are designed to provide. **Each Owner and occupant, for himself or herself and his or her family, guests, and invitees, acknowledges and agrees that the neither the Declarant nor the Association are insurers or guarantors of security and neither shall have any duty to protect persons or personal property on the Condominium from loss, damage, or injury arising from the unlawful or negligent acts of third persons. It shall be the sole responsibility of each Owner and occupant of a Unit and each other person entering the Condominium to protect his or her own person and property. Neither the Association, its Board of Directors, managing agent, employees, nor**

Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

17. MORTGAGEE RIGHTS.

17.1. Limitations on Certain Actions.

(a) Unless at least two-thirds (2/3) of the first Mortgagees or Owners consent in writing, the Association shall not:

(i) by act or omission seek to abandon or terminate the Condominium;

(ii) change the pro rata interest or obligations of any individual Unit for the purpose of (A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (B) determining the pro rata share of ownership of each Unit in the Common Elements, except as otherwise specifically authorized by this Declaration or the Act;

(iii) partition or subdivide any Unit, except in accordance with Section 3;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the assignment of Limited Common Elements and the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or

(v) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

(b) The provisions of Section 9 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

(i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or

(ii) take a deed or assignment in lieu of foreclosure; or

(iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

(c) In addition to the approval of Owners required under Section 21, the approval of holders of Eligible Mortgages on at least 51% of the Units that are subject to an Eligible Mortgage shall be required to materially amend or add any provision to the Declaration, By-Laws, or Articles of Incorporation governing any of the following, except where such amendment is otherwise specifically authorized by this Declaration or the Act:

- (i) voting rights;
- (ii) increases in assessments or limitations on such increases, assessment liens, or the priority of such liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of the Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (vi) redefinition of Unit boundaries;
- (vii) convertibility of Units into Common Elements or vice versa;
- (viii) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property from the Condominium;
- (ix) hazard insurance or fidelity bond requirements;
- (ix) imposition of any new restriction on leasing of Units;
- (x) imposition of any new restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Unit;
- (xi) establishment of self-management by the Association if professional management has previously been required by an Eligible Holder; or
- (xii) restoration or repair of the Condominium after damage or partial condemnation; or
- (xiii) any provisions that are for the express benefit of Mortgage holders, guarantors, or insurers.

(d) To the extent not inconsistent with Wisconsin law, any election to terminate the legal status of the Condominium:

(i) after substantial destruction or condemnation occurs shall require the approval of holders of Eligible Mortgages on Units allocated at least 51% of the votes of Units subject to Eligible Mortgages; and

(ii) otherwise shall require the approval of the holders of Eligible Mortgages on Units allocated at least 67% of the votes of Units subject to Eligible Mortgages.

(e) Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

(f) Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

The provisions of this Section 17.1 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required by the Act or the Governing Documents for any of the actions contained in this Section.

17.2. Effect of Foreclosure.

Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit that became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

17.3. Eligible Mortgagees; Right to Notice.

The holder of any Mortgage who provides written notice to the Association identifying itself by name and address, identifying the Unit number or address on which it holds a Mortgage, and requesting notice of certain actions as described in this Section, shall be considered an "**Eligible Mortgagee**" and its Mortgage shall be considered an "**Eligible Mortgage**" for purposes of the Governing Documents. An Eligible Mortgagee will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Condominium or the Unit subject to its Eligible Mortgage;

(b) any delinquency in the payment of assessments or charges owed by the Owner of the Unit subject to its Eligible Mortgage that remains unsatisfied for a period of 60 days, and any default in the performance by such Owner of any other obligation under the Governing Documents which is not cured within 60 days;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees under the terms of the Governing Documents.

Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

18. EMINENT DOMAIN.

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall govern; however, any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the Board's option, either be allocated to the Owners pursuant to Section 703.19 of the Wisconsin Statutes, as they may be amended, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each Eligible Mortgagee shall be entitled to written notice of any such condemnation proceedings, and nothing in the Governing Documents shall be construed to give priority to any Owner in the distribution of proceeds to such Unit.

19. COMPLIANCE AND ENFORCEMENT.

19.1. Compliance.

Every Owner and occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. Each Owner shall comply, and shall be responsible for ensuring that any tenant and other occupants of such Owner's Unit, their



Every Owner and occupant of a Unit in the Condominium is responsible for familiarizing themselves with the Governing Documents and complying with them. If an Owner fails to comply, the Declaration authorizes the Association to take steps to obtain compliance and impose sanctions to discourage further violations.

family, and guests, comply with all provisions of the Governing Documents. Every Owner, occupant, and visitor to a Unit shall be subject to sanctions for violations as described in this Section 19. Each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by such Owner and by the occupants of or visitors to such Owner's Unit, and for any damage to the Condominium that any of them cause.

19.2. Remedies for Non-Compliance.

The Association, the Declarant, and every Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the dispute resolution procedures set forth in Section 20, as applicable. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

(a) *Sanctions Requiring Prior Notice and Hearing.* After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the violator shall be personally liable for the fine; however, if the fine is not paid by the violator within 30 days after receipt of notice, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment and the Association has filed a lien against the Owner's Unit);

(iii) suspend any person's right to use any Common Element recreational facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); however, nothing herein shall authorize the Board to limit access to or from a Unit;

(iv) suspend services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(vi) without liability to any person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Governing Documents from continuing or performing any further activities in the Community;

(vii) bar any pet from use of or travel upon the Common Elements, if the pet owner fails to comply with Association rules regulating pets, or if the Board determines in its sole discretion that the pet is a danger to occupants of other Units, creates a nuisance or an unreasonable disturbance, or is otherwise kept in violation of the Rules. The Board may charge pet owners a user fee for use of the Common Elements, which may be a general fee for all similarly situated persons or a specific fee imposed for failure of an Owner or occupant to abide by the Rules applicable to pets;

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Governing Documents; and

(viii) record a notice of violation with respect to any Unit as to which a violation exists.

If, after notice and an opportunity for a hearing, the violation continues or recurs within 12 months after the date of such notice, the Board may impose any of the above sanctions without further notice or opportunity for another hearing.

(b) **Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules), without liability for trespass or otherwise to any person;



In extreme cases of noncompliance, the Association is empowered to take extreme action, including action to take possession of a Unit and force the sale of the Unit. Although this is not a remedy the Association would pursue lightly, it is available if needed to avoid continuing or severe noncompliance that interferes with the use and enjoyment of the Condominium by others.

(ii) exercise self-help or take action to abate a violation on the Common Elements under any circumstances;

(iii) require an Owner, at the Owner's expense, to perform maintenance or to cure any violation of the Governing Documents relating to such Owner's Unit;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass;

(v) bring suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) **Involuntary Sale.** If an Owner or any occupant of his or her Unit violates the Governing Documents and fails to cure the violation within 30 days after the Board has given written notice of the violation, if curable, or repeats the violation more than once in any 12-month period thereafter, the Board may, after notice and a hearing pursuant to the By-Laws, file an action against the Owner for a decree terminating the Owner's right to use the Unit and ordering that the Unit be sold (subject to the lien of any existing Mortgage) at a judicial sale upon such terms and conditions as the court deems equitable. The proceeds of any such sale shall first be applied to costs incurred by the Association in effecting such sale, then to any unpaid assessments or other charges against the Unit, and then the balance, if any, shall be paid to the former Owner.

(d) **Loss of Possession.** If an Owner is delinquent in paying any assessment or other charges due to the Association under this Declaration, the Association may institute an action for possession of the Unit on behalf of all other Owners in the manner prescribed by Wisconsin law.

19.3. Board Decision to Pursue Enforcement Action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

19.4. Attorneys Fees and Costs.

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action.

19.5. No Waiver.

The failure of the Board to enforce any provision of the Act or of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

19.6. Enforcement of Ordinances.

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the City of St. Francis and Milwaukee County may enforce their respective ordinances within the Condominium.

20. DISPUTE RESOLUTION.

20.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) **Bound Parties.** The Declarant, the Association and its officers, directors, and committee members, all Owners and other persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees that all "Claims" as described in subsection (b) shall be subject to the alternative dispute resolution procedures set forth in this Section 20.

(b) **Claims.** As used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Condominium, other than matters of aesthetic judgment under Section 13, which shall not be subject to review.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 20.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;



The nature of Condominium living is such that all Owners and residents need to work together to avoid conflicts and, when they arise, to resolve them with a minimum of cost and emotional stress for all concerned. This section outlines procedures for resolving disputes without litigation in an effort to maintain the Condominium as a pleasant place for all.

(iii) any suit that does not include the Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has

not agreed to submit to the procedures set forth in Section 20.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 20.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article; and

(vi) any suit by the Association to enforce the Governing Documents where the Association has given the violator notice and either a hearing or an opportunity to cure the violation, or both, prior to the Association filing suit.

20.2. Dispute Resolution Procedures.

Unless the Bound Party asserting a Claim ("**Claimant**") and the Bound Party against whom the Claim is asserted ("**Respondent**") have previously agreed in writing to other dispute resolution procedures including mediation and arbitration of disputes between them, in which case the procedures in such agreement shall control, the following shall apply:

(a) **Notice.** The Claimant shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

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

(iii) the Claimant's proposed resolution or remedy; and

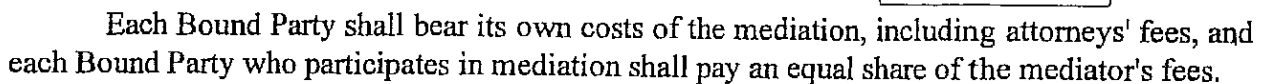
(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with a person or entity mutually agreed upon by the parties or, if no agreement can be reached, designated by the Association (if the Association is not a party to the Claim).

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be

If the parties engage in mediation but do not settle the Claim within 30 days after submission of the matter to mediation or such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in Section 20.2(e).



(e) ***Mandatory and Binding Arbitration.*** Notwithstanding any other provision of this Declaration, any Claim by the Association or any Owner or group of Owners arising out of alleged defects in the Units or Common Elements or any property subject to easements in favor of the Owners, that is not resolved by mediation shall be submitted to final and binding

arbitration in accordance with this subsection (e). The Claimant shall have 30 days following termination of mediation pursuant to subsection (c) to submit the Claim to Construction Arbitration Services, Inc. for arbitration in accordance with its then applicable rules (or such other rules as the parties may agree upon) or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; however, nothing in this section shall release or discharge the Respondent from any liability to persons not a party to the foregoing proceedings.

An arbitration proceeding under this subsection (e) shall be conducted by one arbitrator at a location in Milwaukee County, Wisconsin designated by the arbitrator. The decision or award of the arbitrator shall be in writing and shall include the reasons for the arbitrator's decision. Subject to applicable law, the arbitrator's decision shall be final and binding on the parties, and judgment on the arbitral award may be entered in any court having jurisdiction.

EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY RIGHT TO HAVE A CLAIM RESOLVED BY JUDICIAL PROCEEDINGS, INCLUDING ANY RIGHT TO TRIAL BY JURY. This subsection (e) is an agreement of the Bound Parties to arbitrate the Claims described in this subsection and may be specifically enforced by any Bound Party. The Bound Parties acknowledge that any Claim subject to this subsection (e) involves a transaction in interstate commerce and shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1, *et seq.*, to the exclusion of any inconsistent state law, regulation or judicial decision.

If any party commences litigation in violation of this Section, then upon the other party's written objection, the party commencing litigation shall immediately stipulate to the dismissal of that litigation without prejudice. If the party commencing the litigation fails to make that stipulation within five days after the filing of such written objection, that party shall reimburse the other parties for their costs and expenses, including reasonable attorneys' fees, incurred in seeking a dismissal or stay of that litigation if such dismissal or stay is obtained.

20.3. Initiation of Litigation by Association.

In addition to compliance with the alternative dispute resolution procedures set forth in Section 20.2, as applicable, as to any matter not otherwise subject to Section 20.2(e), the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period;
- (b) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services, other than the Declarant, arising out of a contract entered into by the Association for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 20.3 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

21. AMENDMENTS.

Except as otherwise specifically provided in this Declaration or the Act, this Declaration may be amended only with the written consent of Owners holding at least 67% of the total eligible votes in the Association. So long as the Act so provides, an Owner's written consent is not effective unless approved by the Mortgagee holding or servicer of any first priority mortgage or equivalent security interest in the Unit. Otherwise, the approval of Eligible Mortgagees shall be obtained to the extent required under Section 17. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the office of the Register of Deeds for Milwaukee County, Wisconsin. The document presented for recording shall recite that the required consents and approvals were obtained.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

22. REGISTERED AGENT FOR SERVICE OF PROCESS.

The Association's initial registered agent to receive service of process on behalf of the Association is C T Corporation and such registered agent's address is 8025 Excelsior Drive, Suite 200, Madison, Wisconsin 53717. The Association may designate a successor to such registered agent or change the address of the registered office, without the necessity of amending this Declaration, by filing with the Department of Financial Institutions of the State of Wisconsin any of the documents permitted by Section 181.0502 of the Wisconsin Statutes, as it may be amended, to effect such change.

23. GENERAL PROVISIONS.

(a) No Discrimination. Neither the Association nor the Board shall take any action that would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(b) Severability Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision to

any person or under any circumstances is held by judgment or court order to be invalid, such invalidity shall not affect any other provision or the application of such provision which can be given effect without the invalid provision or application. To this end, the words and provisions of this Declaration are declared to be severable and any court having jurisdiction may strike such portions as are declared invalid and edit the remainder as necessary to carry out the Declarant's original intent to the maximum extent possible.

[continued on next page]

IN WITNESS OF THE FOREGOING, the Declarant has executed this Declaration this 9th day of June, 2004.

DECLARANT: KIMBALL HILL HOMES WISCONSIN, INC., a Wisconsin corporation

By: [Signature]
Name: John Taylor
Its: Vice President

Attest: [Signature]
Name: Eileen Connelly
Its: Asst. Secretary

PARK SHORE, L.L.C., a Wisconsin limited liability company

BY: Kimball Hill ^{Homes} Wisconsin, Inc., its manager

By: [Signature]
Name: John Taylor
Its: Vice President

Attest: [Signature]
Name: Eileen Connelly
Its: Asst. Secretary

STATE OF ILLINOIS)
COUNTY OF ^{Kane (ggt)} COOK) SS

I, Lori J. Feltes, a Notary Public in and for ^{Kane (ggt)} Cook County, Illinois, do hereby certify that John Taylor, Vice President of KIMBALL HILL HOMES WISCONSIN, INC., and Eileen Connelly, Asst. Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Asst. Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9, 2004.

[Signature]
Notary Public



STATE OF ILLINOIS)
COUNTY OF ^{Kane (97)} COOK) SS

I, Lori J. Feltes, a Notary Public in and for ^{Kane (97)} Cook County, Illinois, do hereby certify that John Taylor, Vice President of Kimball Hill Homes Wisconsin, Inc., an ^{Wisconsin} Illinois corporation, and Ellen Connolly, Asst. Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Asst. Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, as manager of PARK SHORE, L.L.C., an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 9, 2004.

Lori J. Feltes
Notary Public



JOINDER AND CONSENT OF MORTGAGEE

The undersigned, being the holder of that certain mortgage encumbering a portion of the Condominium dated July 7, 2000, from Park Shore, L.L.C., a Wisconsin limited liability company, to RFC Construction Funding Corp., a Delaware corporation, recorded on July 13, 2000 in the office of the Register of Deeds for Milwaukee County, Wisconsin as Document No. 7935171, modified by Modification of Mortgage recorded on August 20, 2001 as Document No. 8119975 (the "Mortgage") and that security interest of RFC Construction Funding Corp., as secured party, disclosed by that Financing Statement filed July 13, 2000 as No. 3815751 executed by Park Shore, L.L.C., a Wisconsin limited liability company, as debtor ("Financing Statement"), does hereby join in the execution of this Declaration to evidence its consent to this Declaration and to subordinate its interest under the Mortgage and Financing Statement to the Declaration.

IN WITNESS WHEREOF, the undersigned hereby joins in execution of this Declaration by and through its authorized representatives this 14 day of JUNE, 2004.

RFC Construction Funding Corp., a Delaware corporation

By [Signature]

Name: M. FERENTINOS

Its: ASSISTANT VICE PRESIDENT

Attest: [Signature]

Name: DAVID H. PETERSON

Its: ASSISTANT VICE PRESIDENT

STATE OF Maryland

) SS

COUNTY OF Montgomery

I, Belona Teresita Kidd, a Notary Public in and for Montgomery County, Maryland do hereby certify that M. Ferentinou Asst. Vice Pres. of RFC CONSTRUCTION FUNDING CORP., a Delaware corporation, and David H. Peterson, AVP thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such M. Ferentinou and David H. Peterson, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th of June, 2004.

[Signature]
Notary Public

BELONA TERESITA KIDD

JOINDER AND CONSENT OF MORTGAGEE

The undersigned, being the holder of that certain mortgage encumbering a portion of the Condominium dated May 29, 2003, from Kimball Hill Wisconsin, Inc., a Wisconsin corporation, to RFC Construction Funding Corp., a Delaware corporation, recorded on June 20, 2003 in the office of the Register of Deeds for Milwaukee County, Wisconsin as Document No. 8558452, Reel 5608, Image 1258-1293 (the "Mortgage") and that security interest of RFC Construction Funding Corp., as secured party, disclosed by that Financing Statement filed June 19, 2003 as No. 030010300105 executed by Kimball Hill Wisconsin, Inc., a Wisconsin corporation, as debtor ("Financing Statement"), does hereby join in the execution of this Declaration to evidence its consent to this Declaration and to subordinate its interest under the Mortgage and Financing Statement to the Declaration.

IN WITNESS WHEREOF, the undersigned hereby joins in execution of this Declaration by and through its authorized representatives this 14 day of JUNE, 2004.

RFC Construction Funding Corp., a Delaware corporation

By: [Signature]
Name: M. FERENTINOS
Its: ASSISTANT VICE PRESIDENT

Attest: [Signature]
Name: DAVID H. PETERSON
Its: ASSISTANT VICE PRESIDENT

STATE OF Maryland)
) SS
COUNTY OF Montgomery

I, Belona Teresita Kidd, a Notary Public in and for Montgomery County, Maryland do hereby certify that M. Ferentino, Asst. Vice Pres. of RFC CONSTRUCTION FUNDING CORP., a Delaware corporation, and David H. Peterson, A.V.P. thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such M. Ferentino and David H. Peterson, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of June, 2004.

[Signature]
Notary Public

BELONA TERESITA KIDD
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires May 1, 2005