basis under which each Unit Owner would be assessed individually for the amount of insurance which the Unit Owner directs the Association to include in those policies for the Unit Owner's additional protection.

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10. **COMMON EXPENSES AND ASSESSMENTS.**

A. General Annual Assessment. All Units shall be subject to a general annual assessment determined and levied by the Association for the purpose of defraying the costs and expenses of the Association in performing its stated purposes and functions. The Association shall prepare an annual budget according to the By-Laws and shall determine a general annual assessment based on a budget deemed sufficient to meet the estimated costs and expenses of the Association for the next year. A portion of the general annual assessment may be allocated to and assessed among Unit Owners owning boat slip rights. Except for any portion related to any separate assessments for boat slips, the general annual assessment shall be allocated and prorated to the Unit Owners in proportion to their percentage interests in the Common Elements. The general annual assessment shall be paid in equal monthly installments to the Association on or before the first day of each month. A Unit Owner shall be liable for all assessments or installments that come due while owning a Unit. Liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Element or by abandonment of the Unit for which the assessments are made. Notwithstanding the foregoing provisions, any Units owned by Declarant shall not be subject to, and Declarant shall have no obligation to pay, general annual assessments (i) for one year after the date this Declaration is recorded, or for Units added by expansion for one year after the recording of the amendment adding such units or (ii) until Declarant chooses to have its Units become subject to general assessments and to commence such payments, whichever occurs first. Until all the Units owned by Declarant become subject to general assessments, Declarant shall be responsible for the payment of all costs and expenses of the Association that cannot be paid from the Association's operating funds.

B. Special Assessments. Each Unit shall be subject to special assessment by the Association to cover all or any part of any extraordinary or unanticipated expenses incurred by the Association. Any such special assessment shall be allocated and prorated to the Unit Owners in proportion to their percentage interests in the Common Elements unless the special assessment relates to Limited Common Elements, in which case the special assessment may be prorated and allocated to the Unit Owners of the Units to which the affected Limited Common Elements are assigned or appurtenant. Unless otherwise determined by the Association, any special assessment shall be due and payable sixty (60) days after the affirmative vote by the Association declaring the special assessment.

C. Interest; Application of Payments. All charges, fines, general assessments and special assessments levied by the Association which are not paid when due shall bear interest from the due date at the rate of twelve percent (12%) per

annum until paid in full. All payments upon account shall first be applied to interest and then to the charges, fines, assessments or special assessments.

D. Lien for Assessments. All assessments until paid, together with interest on them and actual costs of collection, including but not limited to attorney's fees and disbursements, constitute a lien on the Units on which they are assessed, if a Statement of Condominium Lien is filed within two (2) years after the date the assessment becomes due. The lien is effective against a Unit from the time the assessment became due regardless of when within the two (2) year period it is filed. A Statement of Condominium Lien shall be filed in the Land Records of the Clerk of Circuit Court for Milwaukee County, stating the description of the Unit, the name of the record Unit Owner, the amount due and the period for which the assessment was due. The Statement of Condominium Lien shall be signed and verified by an officer or agent of the Association as specified in the By-Laws.

E. Priority of Lien. The lien for assessments shall be prior to all other liens except as specified in the Act.

F. Enforcement of Lien. A lien may be enforced and foreclosed by the Association in the same manner and subject to the same requirements as a foreclosure for mortgages on real property in Wisconsin. The Association may recover its costs and actual attorney's fees. The Association may bid on the Unit at the foreclosure sale and acquire, hold, lease, mortgage and convey the Unit. A suit to recover a money judgment for unpaid charges, fines, general assessments, or special assessments may be maintained without foreclosing or waiving the lien securing the unpaid charge, fine, general assessment, or special assessment. A suit for any deficiency following foreclosure may be maintained in the same proceeding. No action may be brought to foreclose a lien unless brought within three (3) years following the recording of the Statement of Condominium Lien. No action may be brought to foreclose a lien except after ten (10) days prior written notice to the Unit Owner given by registered or certified mail, return receipt requested to the address of the Unit Owner shown on the books of the Association. A lien will not be affected by the sale or transfer of the Unit unless a foreclosure of the first mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments.

G. Acceleration. If a Unit Owner is in default in the payment of any charges, fines, assessments or special assessments for a period of more than thirty (30) days, the Association may accelerate the entire amount of the annual common charges and any other assessments remaining unpaid with respect to the delinquent Unit Owner for purposes of collection and/or enforcement of the lien against the Unit.

H. Collection and Enforcement. The Association shall have the exclusive and sole right and power to collect or enforce the collection of charges, fines, annual assessments and special assessments, and to bring any and all actions and

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proceedings for the collection thereof and for the foreclosure of the liens therefore. The Association, acting through its Board of Directors, and as representative of all members, may bring an action at law against any Unit Owner for payment of unpaid assessments and/or may foreclose a lien against any Unit. Upon the commencement or during the pendency of any action to foreclose the lien or enforce any other remedies of the Association for collection, the Association shall be entitled to the appointment of a receiver of the Unit (including homestead interests) without bond, with the power to take possession of the Unit and collect the rents, issues and profits of the Unit and exercise such other powers as the Court may grant until confirmation of the sale, and may order the rents, issues and profits when so collected to be held and applied as the Court may direct.

I. Working Capital Fund. Each purchaser of a Unit from the Declarant shall pay to the Association the equivalent of three (3) monthly installments of the general annual assessment at the time of conveyance by Declarant. This payment shall not be an advance payment of the general annual assessment, but rather an additional assessment for a working capital fund. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Unit Owners from the Declarant. The Declarant may not utilize the working capital fund to defray its own expenses while it maintains control of the Association.

11. **PARTITION OF COMMON ELEMENTS PROHIBITED.**

There shall be no partition of the Common Elements and Limited Common Elements through judicial proceedings or otherwise, except as otherwise provided in the Declaration, until this Declaration is terminated and the Property is withdrawn from its terms or from the terms of the Act or any other applicable statutes regarding unit ownership or condominium ownership; provided, however, that if any Unit shall be owned by two or more co-owners as tenants in Common or as joint tenants, nothing contained herein shall be deemed to prohibit a voluntary or judicial partition of said single Unit as between such co-owners so long as the Unit is not subdivided or separated from the Condominium.

12. **CONVEYANCE TO INCLUDE INTERESTS IN COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.**

The percentage of the undivided interest in the Common and Limited Common Elements shall not be separated from the Unit to which it appertains. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to such Unit Ownership without including therein both such Unit Owner's interest in the Unit and such Unit Owner's corresponding percentage of ownership in the Common and Limited Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without also including the other shall be deemed and taken to include

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the interest so omitted even though the latter is not expressly mentioned or described therein. Notwithstanding the foregoing provisions, a parking space or boat slip may be transferred separately from the Unit to which it is assigned as provided elsewhere in this Declaration.

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13. **EASEMENTS, RESERVATIONS, RIGHTS AND ENCROACHMENTS.**

A. Construction Easements. Notwithstanding anything in this Declaration or elsewhere to the contrary, until Declarant has, in its sole judgment, completed all renovations and improvements it plans to make to the Property, Declarant shall have an easement, for itself and its duly authorized agents, representatives, employees and contractors, over any portion of the Property, Building, Units and Common Elements for such renovations and improvements and for any related purposes, including, but not limited to: storage of tools, materials, equipment, appliances, supplies and other property; maintaining or correcting the drainage of any surface, roof or storm water; cutting trees, bushes and other vegetation. If it is necessary to enter any Unit in the exercise of the foregoing rights, Declarant shall give prior notice to the Unit Owner and use reasonable efforts to cause as little inconvenience as possible to the Unit Owner. The Unit Owners acknowledge that the renovation and improvement activities of Declarant may cause inconveniences to them until completed.

B. Sales Office, Model Units, Etc. Until all Units, including those contemplated on the Expansion Land, are sold, Declarant and Declarant's duly authorized agents, representatives and employees shall have: the right to use and maintain model Units and a sales office, for the Condominium and other projects, in any Unit owned or leased by Declarant; the right to place advertising signs and other promotional materials on any part of the Property, other than in sold Units; and, the right of ingress and egress in, over and across any part of the Property, other than sold Units and the right to store materials and make such other use of such portions of the Property as may be reasonably necessary in connection with sales within the Condominium project.

C. Utilities, Etc. Easements are declared and granted for the benefit of the Association and Unit Owners, and reserved for the benefit of the Declarant, over, under, along and on any part of the Common Elements for the installation and maintenance of utilities and for such other purposes as are necessary for the proper operation of the Condominium, any Unit and the Building, including, but not limited to, the right to install, construct, lay, maintain, repair and replace driveways, parking areas, walkways, water mains and pipes, water pressure tanks, sump pumps, sewer lines, steam lines, gas lines, pipes, mains and meters, telephone wires and equipment, cable television systems, electrical conduits, wires, meters and equipment, including power transformers.

D. Use of Future Terrace. If the planned construction on the Expansion Land is completed and added to the Condominium, the Owners of Units 109, 209 and

215 and their families, lessees, invitees and/or guests may use the terrace that is currently contemplated, if and when it is built, in the same manner other units in the expansion phase having access to such terrace. Access to such terrace from these Units shall be via a patio door from the Unit to such terrace, which must be constructed at the sole cost and expense of the Unit Owner in accordance with the plans and specifications for the other patio doors in the Unit Owner's Unit.

E. Encroachments. If any portion of the Common or Limited Common Elements shall encroach upon any Unit, or if any Unit shall encroach upon any other Unit or upon any portion of the Common or Limited Common Elements as a result of any duly authorized construction, reconstruction or repair of the Building or improvement, or as a result of settling or shifting of the Building or improvement, a valid easement for the encroachment and for its maintenance shall exist so long as the Building or improvement stands. The physical boundaries of a Unit or the Common Elements as they were constructed or reconstructed, provided same was in substantial conformity with the Plat, shall be conclusively presumed to be the actual boundaries, regardless of the settling or shifting of the Building and regardless of minor variations between the boundaries described in this Declaration or shown on the Plat and the actual physical boundaries as they were constructed.

F. Riverwalk. The Building Land either is or may become subject to such easements and agreements as Declarant or the Association has or may enter into with the City of Milwaukee or other governmental bodies or entities with respect to the riverwalk along the riverside of the Building. Declarant shall retain, and the Association shall have, the authority to enter into any easements or other agreements pertaining to such riverwalk as they, or either of them, may deem necessary or appropriate for the benefit of the public and the Condominium.

G. Unit Owner's Easements. Each Unit Owner shall have a valid easement to the interior portions of the walls, ceilings and floors on the boundaries of the Unit Owner's Unit for adding additional utility outlets, wall hangings, light fixtures, non-bearing partition walls and the like or for repairing or replacing any systems, equipment, fixtures or installations that are considered part of the Unit, where such easement is necessary for such purposes, provided that the Unit Owner shall do nothing to jeopardize the soundness, structural integrity or safety of the Property, reduce the value thereof or impair any other easement or hereditament, and provided further that the Common Elements be restored to their former condition by the Unit Owner at the Unit Owner's sole expense upon completion or termination of the work requiring the easement. Easements are also hereby granted and declared within or on any part of the Common Elements or any Units for the benefit of the Declarant for the construction any Unit or the Common Elements and for the Association for the construction, installation, maintenance and repair of the Common Elements.

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H. Entry for Maintenance, Construction or Repairs. Declarant and the Association shall have an irrevocable right and easement to enter any Unit when necessary in connection with any maintenance, construction or repair of Unit or Common Elements for which Declarant or the Association is responsible. Such entry shall be made only with reasonable prior notice to the Unit Owner, except in the case of an emergency when injury or property damage may result from delayed entry, and then with as little inconvenience to the Unit Owner as practical, and any damage caused thereby shall be repaired by the entering party except as allocable to an individual Unit or Units in the discretion of the Board of Directors. No such entry shall be considered a trespass.

I. Temporary Easements. Declarant, Unit Owners and the Association have the following temporary easements:

(a) An easement to use the loading dock as described in paragraph 8.E. of this Declaration.

(b) An easement over the easterly 4 feet of Parking Units 45 and 45T for ingress and egress to and from the lower level parking exit door. This easement shall expire when another exit door is available in the lower level parking area. While such easement remains in effect, the owner(s) of these Parking Units shall not be required to pay any Common Expenses on these Units and the easement area shall be maintained and insured by the Association, at its expense.

J. Binding Effect. All easements and rights described in this Declaration are easements appurtenant to and running with the Property, and are subject to the reasonable control of the Association. All easements and rights described in this Declaration are granted and reserved to, and shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and on all Unit Owners, purchasers, lenders, lessees and occupants and their heirs, executors, administrators, successors and assigns. The Association shall have the authority to execute all documents necessary to carry out the intent of this paragraph and this Declaration.

14. FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NOT WAIVER.

The failure of the Association to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future enforcement of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of payment of any assessment from a Unit Owner, with knowledge of the breach of any covenant hereof, shall not be deemed as a waiver of such breach,

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and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association.

15. **AMENDMENT TO DECLARATION.**

Except as otherwise provided by the Act with respect to termination of the condominium form of ownership, this Declaration may be amended only with the written consent of at least two-thirds of the Unit Owners. A Unit Owner's written consent is not effective unless it is approved by the mortgagee(s) of the Unit, if any. For purposes of this Section, Declarant shall be considered the owner of any Unit not sold. No amendment shall alter or abrogate the rights of Declarant as contained in this Declaration. Copies of amendments shall be certified by the President and Secretary of the Association in a form suitable for recording. A copy of the amendment shall be recorded with the Register of Deeds for Milwaukee County, and a copy of the amendment shall also be mailed or personally delivered to each Unit Owner at such Unit Owner's address on file with the Association.

16. **DISCLOSURE OF USE OF SURROUNDING PROPERTIES.**

The Condominium Property is surrounded by properties zoned for industrial and other non-residential uses, including, but not limited to, the tugboat operation conducted by The Great Lakes Towing Company on the property to west of the Building. Such uses may cause noises, odors and involve business activities that are not normally found in residential areas. Each Unit Owner or lessee of a Unit, and their heirs, successors and assigns, acknowledges that they are aware of the foregoing. Each Unit Owner or lessee of a Unit, and their heirs, successors and assigns acknowledge that the inclusion of this disclosure language in any agreement for the lease of a Unit formed the basis for Great Lakes Towing Company's withdrawal of its objection filed with the City of Milwaukee to the rezoning of the Building Land from industrial to residential. Unit Owners and the lessees of any Unit, and their heirs, successors and assigns, agree that no Unit Owner or lessee of a Unit, or their heirs, successors or assigns, shall have any standing to, and will not, complain about any non-residential use of any adjacent property so long as applicable zoning and other ordinances permit such use. Should any Unit Owner or lessee of a Unit, or their heirs, successors or assigns, agree to lease all or any portion of the Condominium, including any Unit, this disclosure language shall be included in such lease agreement. This disclosure language extends to the direct benefit of, and may be relied upon by, Declarant and The Great Lakes Towing Company and their heirs, successors and assigns, and, notwithstanding anything in this Declaration to the contrary, this provision shall not be amended, terminated, deleted or otherwise modified without first obtaining the written consent of: (i) one hundred percent (100%) of the Unit Owners and any lessees of Units; (ii) one hundred percent (100%) of the mortgagees of Unit Owners; and, (iii) The Great Lakes Towing Company, its heirs, successors or assigns.

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17. **ADDITIONAL RIGHTS OF LENDERS.**

A. Any Unit's Lender which has notified the Association in writing, delivered or mailed to the place for service of process stated in this Declaration, that it desires to receive written notice of any of the following matters shall be given such notice by mail:

(1) Any meeting of the membership or of the Board of Directors of the Association to be held for the purpose of considering any proposed amendment to this Declaration, the Articles or the By-Laws, or any action requiring approval by a specified percentage of mortgage holders.

(2) A copy of any notice of default which is given to the Unit Owner on any failure to comply with or violation of any of the provisions of this Declaration, the By-Laws and the Rules and Regulations promulgated thereunder, and any amendments thereto, simultaneously with the giving of required notice to the Unit Owner which shall be not later than within thirty (30) days of such failure;

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

(4) Any 60-day delinquency in the payment of assessments or charges by the Unit Owner;

(5) The amount of any assessments against the Unit then due and unpaid, within ten (10) business days after a request for such information is received;

(6) Any physical damage to the structure, fixtures or equipment of the Unit exceeding $10,000 or if the Common Elements of the Condominium are damaged in an amount exceeding $20,000, when such damage is known to the Association.

(7) Any condemnation proceedings concerning the Condominium.

B. Unless two-thirds of the number of holders of first mortgages on Units (based on one vote for each mortgage held) and all owners of affected Units have given their prior written approval, or unless the Association obtains such higher proportion of consent as may be required by the Act, the Association shall not:

(1) Change the undivided percentage interest in the Common Elements of the Condominium appertaining to each Unit;

(2) Partition or subdivide any Unit of the Condominium;

(3) By act or omission, seek to partition, subdivide, encumber, sell or transfer the Common Elements, except that the granting of easements for public utilities

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or other public purposes consistent with the intended use of the Common Elements by the Condominium shall not be deemed a transfer within the meaning of this clause; or

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

C. Unless all the holders of first mortgages on Units shall have given their written approval, the Association shall not by act or omission seek to abandon the Condominium status of the Condominium except as specifically provided in this Declaration.

D. Notwithstanding any other provisions of this Declaration, this section shall not be amended unless all Lenders have given their prior written approval.

18. **NOTICES.**

All notices and other documents required to be given by this Declaration or the By-Laws of the Association shall be sufficient if given to one (1) registered owner of a Unit regardless of the number of owners who have an interest therein. Notices and other documents to be served upon the Association shall be given to the Agent specified for service of process herein. All Unit Owners shall provide the Secretary of the Association with an address as provided for in the By-Laws for the mailing or service of any notices or other documents and the Secretary shall be deemed to have discharged the Association's duty with respect to the giving of notice by mailing it by regular mail or having it delivered personally to such address as is on file with the Secretary.

19. **AGENT FOR SERVICE OF PROCESS.**

The Agent of the Association for service of process shall be David Zazove, Water Street Development Corp., 200 S. Water Street, Milwaukee, Wisconsin 53204, or such other person or entity as may be designated from time to time by the Board of Directors of the Association, which designation shall be filed with the Department of Financial Institutions of the State of Wisconsin. The Association may designate successors to the Agent by affirmative vote of a majority of the Unit Owners present at a meeting of the Association at which a quorum is in attendance.

20. **NUMBER AND GENDER.**

Whenever used in this Declaration, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

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21. **CAPTIONS**.

The captions and section or paragraph headings of this Declaration are inserted only as matters of convenience and for reference and in no way define nor limit the scope or intent of the various provisions hereof.

22. **SEVERABILITY**.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of the remaining portion of said provision or of any other provision hereof.

IN WITNESS WHEREOF, the Declarant, has caused this document to be executed this 14th day of August, 2002.

WATER STREET DEVELOPMENT CORP.

By: _____
David Zazove, President

AUTHENTICATION

The signature of David Zazove is authenticated this 14th day of August, 2002.

_____
John E. Rupke
Member, State Bar of Wisconsin

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