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DECLARATION
OF
WATER STREET LOFTS CONDOMINIUM

THIS DECLARATION is made pursuant to the Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes (the "**Act**"), by Water Street Development Corp., a Wisconsin corporation (the "**Declarant**").

1. **STATEMENT OF DECLARATION AND EXPANSION RIGHT.**

A. Original Property. Declarant hereby subjects the real property described in ***Exhibit A*** attached hereto (the "**Property**") to the condominium form of ownership in the manner provided by the Act and this Declaration. The Property consists of two (2) parcels of real property, one improved by a building that contains Residential Units and indoor Parking Units (the "**Building Land**") and the other which contains remote Parking Units (the "**Parking Land**").

B. Expansion Property. Declarant reserves, for a period of 10 years from the date this Declaration is recorded, the right to expand the Condominium by subjecting an additional parcel of real property to this Declaration. If such additional parcel is subjected to this Declaration, it shall become part of the "Property" and the "Building Land" under this Declaration, unless the context clearly indicates otherwise. The parcel of real property that Declarant reserves the right to add to the Condominium is described in **Exhibit B** attached hereto (the "**Expansion Land**"). Declarant is under no obligation of any kind to add the Expansion Land to the Condominium. If Declarant subjects the Expansion Land to this Declaration, a maximum of 36 additional Residential Units and a maximum of 50 additional Parking Units may be added to the Condominium.

C. Property Subject to Declaration and Act. The Property shall hereinafter be subject to the provisions, conditions, covenants, restrictions and easements of this Declaration and the Act. All provisions of this Declaration shall be deemed to run with the Property and shall constitute benefits and burdens to Declarant, its successors and assigns, and to all parties hereafter having any interest in the Property.

2. **DEFINITIONS.**

In addition to the other terms defined in this Declaration, unless the context otherwise requires:

A. "**Association**" means the Water Street Lofts Condominium Association, Inc.

B. **"Building"** means any structure on the Building Land or the Expansion Land, if it is added to the Condominium, which contains Residential Units.

C. **"Common Elements"** means all of the Property except the Units.

D. **"Common Expenses"** means the expenses of the Association.

E. **"Lender"** means the holder of any recorded mortgage or the vendor under any recorded land contract.

F. **"Limited Common Elements"** means those Common Elements identified in this Declaration or on the Plat as reserved for the exclusive use of one or more, but less than all, of the Unit Owners.

G. **"Parking Unit"** means a Unit that may only be used for parking uses as set forth in this Declaration.

H. **"Parking Unit Owner"** means any person who holds legal title to a Parking Unit or who has equitable ownership of a Parking Unit as a land contract vendee, but not those having an interest or lien in or on a Parking Unit solely as security for the performance of an obligation.

I. **"Person"** means an individual, corporation, partnership, association, trust or other legal entity.

J. **"Plat"** means the condominium plat that is recorded for the Condominium, a copy of which is attached hereto, as amended from time to time by expansion of the Condominium or otherwise.

M. **"Residential Unit"** means a Unit that may only be used for residential or "live/work" uses as set forth in this Declaration.

N. **"Residential Unit Owner"** means any person who holds legal title to a Residential Unit or who has equitable ownership of a Residential Unit as a land contract vendee, but not those having an interest or lien in or on a Residential Unit solely as security for the performance of an obligation.

O. **"Unit"** means a part of the Condominium intended for independent use as set forth in this Declaration and includes both Parking Units and Residential Units.

P. **"Unit Owner"** means either a Parking Unit Owner or a Residential Unit Owner.

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3. **NAME AND ADDRESS OF CONDOMINIUM.**

The condominium established by this Declaration shall be known as Water Street Lofts Condominium ("the **Condominium**"). The address of the Condominium is 200 S. Water Street, Milwaukee, Wisconsin 53204.

4. **DESCRIPTION AND USE OF BUILDING, UNITS AND COMMON ELEMENTS.**

A. Building. The floor plans and the approximate location and dimensions of the Building are shown on the Plat.

B. Units. The Condominium initially has forty-nine (49) Residential Units and seventy-five (75) Parking Units (46 indoor and 29 on the Parking Land). There may be fifty (50) Residential Units if Unit 110/110(A) is divided as permitted under paragraph 8.E. of this Declaration. Up to thirty-six (36) additional Residential Units and fifty (50) additional Parking Units may be added if the Expansion Land is added to the Condominium. The Plat, as it may be amended from time to time, shows the approximate dimensions, floor area, location and identifying number of each Residential Unit and Parking Unit. It is expressly stipulated, and each purchaser of a Unit acknowledges, for such purchaser and for the purchaser's heirs, successors and assigns, that the location, floor area and dimensions of each Unit as shown in this Declaration and on the Plat are approximate and are shown for descriptive purposes only. Declarant does not represent, warrant or guarantee that the Unit will be constructed exactly as shown on the Plat and each purchaser of a Unit expressly waives any claim or demand the purchaser may have against Declarant on account of any difference, shortage or discrepancy between the Unit as actually constructed and physically existing and as it is shown on the Plat. The boundaries and the additional elements that are a part of each Unit are as follows:

(1) Boundaries.

(a) Residential Unit. The vertical boundaries of a Residential Unit are the vertical planes of the interior surfaces of its stone, brick, masonry, stud or other perimeter walls or enclosed mechanical chases or drops, extended in each case to an intersection with the Residential Unit's horizontal boundaries. The upper horizontal boundary of a Residential Unit is the horizontal planes of the interior surfaces of the beams, joists, other structural members and wood decking of the ceilings and enclosed mechanical chases or drops, extended in each case to an intersection with the Residential Unit's vertical boundaries. The lower horizontal boundary of a Residential Unit is the horizontal plane of the interior surface of the concrete, extended to an intersection with the Residential Unit's vertical boundaries.

(b) Parking Unit. A Parking Unit consists of cube of air. The vertical boundaries of a Parking Unit are vertical planes extending upward from its lower boundary to its upper boundary around the perimeter of the Parking Unit as

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shown on the Plat. The lower boundary of a Parking Unit is the surface of the floor or ground within the vertical boundaries and the upper boundary of a Parking Unit is a horizontal plane within the vertical boundaries nine (9) feet from the lower boundary (for Parking Units on the Parking Land) or the interior surface of any materials within the vertical boundaries (for Parking Units in the Building).

(2) Build-Outs, Fixtures, Appliances, Etc. Anything constructed, installed, applied or located within the boundaries of a Unit shall be considered part of the Unit, including, but not limited to, non-perimeter walls, partitions, drywall, plaster, trim, paint, wood, paneling, wallpaper, sub-flooring, underlayment, finish flooring, tile, carpeting, drop ceiling components, fixtures, sinks, bathtubs, showers, stoves, ranges, microwaves, refrigerators, dishwashers, disposals, washers and dryers and other improvements or appliances.

(3) Doors and Windows. The entrance door(s) of a Unit (other than the outer surface treatment), all interior window and door trim (casing, moldings, etc.) and the interior frame surfaces on the widows and the entrance door(s) of a Unit, and all hardware (handles, locks, hinges, etc.), screens or screening and glass for or in such doors and windows, shall be considered part of the Unit.

(4) Systems and Equipment. Any systems, equipment, fixtures and installations, or any portion thereof, used exclusively to provide heating, ventilating, air conditioning, hot water, electric, gas, security, television, telephone, communications, computer, water, sewer or other services to a Unit, and all components thereof (pipes, wires, conduits, cables, ducts, chutes, flues, outlets, etc.), shall be considered part of that Unit even though portions thereof may be located outside the boundaries of the Unit.

C. Purpose and Use of Building and Units. Except as otherwise set forth or required in this Declaration, the Association By-Laws and Rules and Regulations or the laws, ordinances and regulations of the City of Milwaukee, Milwaukee County or the State of Wisconsin, the purposes for which the Building and the Units are intended and restricted as to use are as follows:

(1) Building and Residential Units. The Building and Residential Units are intended for, and are restricted exclusively to, residential use, except for the first floor Units along Water Street which have been designated by the City of Milwaukee as "live/work" units, and for the use of the Common Elements by Residential Unit Owners and their respective families, lessees, invitees and/or guests. If the Association, in its reasonable discretion, determines that the level or type of use in any "live/work" Residential Unit (other than as a sales office, model or other use by Declarant as permitted under this Declaration) is such that a separate entrance on Water Street is needed, the Unit Owner of such Residential Unit shall immediately install such an entrance, which must be constructed at the sole cost and expense of the Unit Owner in

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such location and in accordance with such plans and specifications as are approved by the Association, which approval may not be unreasonably withheld.

(2) Parking Units. Parking Units not held by Declarant or the Association may only be owned by a Unit Owner. However, a parking space may be transferred separate from a Unit. When a parking space is transferred, such transfer shall not be deemed complete until the Association receives a copy of the deed or other conveyance instrument. The Association shall keep such copy in its permanent files and shall maintain at all times a current record of each Parking Unit Owner. Parking Units may be used only for the parking of an operative vehicle by the Parking Unit Owner or another person with the Unit Owner's permission.

D. Common Elements.

(1) Description. The Common Elements shall consist of all of the Property except the Units, and shall include, without limitation:

(a) the Building Land, including the riverwalk, and the Parking Land;

(b) all of the Building other than the Units, including, but not limited to, the Building's: exterior; outside and bearing walls; girders, beams and supports; roof and foundations; foyers, stairways, halls and elevators; parking areas; doors not used to enter a Unit; sump pumps; systems, equipment, fixtures and installations, or any portion thereof, used to provide heating, ventilating, air conditioning, hot water, electric, gas, security, television, telephone, communications, computer, water, sewer or other services to more than one Unit, and all components thereof (pipes, wires, conduits, cables, ducts, chutes, flues, outlets, etc.); main utility services and main public utility lines; master basic television and cable television systems; water and sewer laterals; rooftop facilities; recreation facilities; balconies and patios;

(c) boat slip rights.

(2) Use. The manner of use of the Common Elements shall be governed by this Declaration, the By-Laws of the Association and such Rules and Regulations as the Association may from time to time establish.

E. Limited Common Elements.

(1) Description. Limited Common Elements are those parts or portions of the Common Elements that are reserved for the exclusive use of the particular Unit Owner(s) to which they are appurtenant or assigned, to the exclusion of the Owners of all other Units in the Condominium. The Limited Common Elements of the Condominium include the following:

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(a) Any balcony, patio, rooftop area, storage area or storage or boat locker appurtenant or assigned to a Unit.

(b) Boat slip rights assigned to a Unit. Each boat slip is numbered and has a specific location within the marina area along the river side of the Building. The boat slips are not on the Property and are not part of the Condominium. Only the rights to boat slips held by Unit Owners are Limited Common Elements. The rights to all boat slips are initially unassigned and held by Declarant. Any transfer of boat slip rights by Declarant will be "AS IS" with respect to the physical condition of the slip to which such rights pertain. Boat slip rights not held by Declarant or the Association may only be held by a Unit Owner. However, boat slip rights may be transferred separate from the Unit to which they are assigned at any time. When the rights to any boat slip are transferred, such transfer shall not be deemed complete until the transferee provides the Association with a copy of the deed or other conveyance instrument. The Association shall keep such copy in its permanent files and shall maintain at all times a current record of who owns the rights to each boat slip. A boat slip may be used only for the docking of an operative boat by the owner of the rights to such slip or another person with such owner's permission. Each boat slip must be repaired and maintained by the owner of the rights to such slip, at such owner's sole cost and expense. The Association shall have the right to charge, and the owner of the slip shall pay, a separate monthly assessment for marina insurance and utilities provided to the boat slips. Initially, this charge shall be $30 per month, to be paid along with the monthly assessment for common expenses. The use, repair and maintenance of any boat slip must also be in accordance with such rules and regulations as may be promulgated from time to time by the Association and must comply with such laws and regulations as may be applicable from time to time, including those promulgated by the State of Wisconsin Department of Natural Resources.

(2) Use. Except as otherwise stated in this Declaration, the use of the Limited Common Elements shall be governed by the By-Laws of the Association and such Rules and Regulations as the Association may from time to time establish. No Unit Owner shall alter, remove, repair, paint, decorate, landscape or adorn any Limited Common Element, or permit such, in any manner contrary to such By-Laws and Rules and Regulations. No changes or alterations shall be made by any Unit Owner to any of the Limited Common Elements without the prior written approval of the Association, which approval may be given upon such terms and conditions as the Association deems appropriate. A copy of the plans for any such work prepared by an engineer licensed to practice in Wisconsin may be required by the Association before the commencement of any work approved by the Association.

(3) Assignment. No Unit Owner or occupant may assign or transfer in any manner the rights to use any Limited Common Element assigned or appurtenant to a Unit except as specifically permitted in this Declaration and in the By-Laws of the Association.

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5. **PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS.**

Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all other Unit Owners and, except as to Limited Common Elements, shall have the right to use and occupy the Common Elements for all purposes incident to the use and occupancy of such Unit Owner's Unit as a place of residence or for such other uses as are permitted by this Declaration, which rights shall be appurtenant to and run with the Unit. The percentage of such undivided ownership interest in the Common Elements relating to each Unit and its owner for all purposes, including the proportionate payment of common expenses, shall be determined as follows: the Residential Units shall hold 93% of such interests, apportioned among them on an approximate square footage basis; the Parking Units in the Building shall hold 6% of such interests (6.5% if the Condominium is expanded), divided among them on a per unit basis; and, the Parking Units on the Parking Land shall hold 1% of such interests (½% if the Condominium is expanded), divided among them on a per unit basis. See ***Exhibit C*** attached to this Declaration for initial percentages for each Unit.

6. **ASSOCIATION OF UNIT OWNERS.**

A. Membership, Duties and Obligations. All Unit Owners shall be entitled and required to be members of the Association. The Association is responsible for carrying out the purposes of this Declaration, including the exclusive management and control of the Common Elements and Limited Common Elements. The rights, qualifications and obligations of the members shall be as set forth in this Declaration and in the By-Laws and any Rules and Regulations of the Association. Each Unit Owner, the occupants of the Units, and the guests and invitees of Unit Owners shall abide by and be subject to all of the rules, regulations, duties and obligations of this Declaration and the By-Laws and Rules and Regulations of the Association.

B. Voting Rights. There shall be one (1) vote in the Association for each Residential Unit. If more than one (1) person holds title to a Residential Unit, the membership related to that Residential Unit shall be shared by such persons in the same proportionate interests and by the same type of tenancy in which title to the Residential Unit is held; however, such persons shall designate one (1) person (**"Designated Voter"**) to cast the vote appurtenant to that Residential Unit. Voting rights may not be split, and shared membership interests must be voted by the Designated Voter for the Residential Unit. A Parking Unit Owner who does not also own a Residential Unit shall not have any voting rights in the Association.

C. Declarant Control. Declarant shall have the right to appoint and remove the directors and officers of the Association and to amend the By-Laws or Rules and Regulations of the Association, until the earlier of: (a) three (3) years from the date of the first conveyance of a Unit by Declarant to any person other than Declarant; (b) thirty (30) days after the conveyance of seventy-five percent (75%) of the Common Elements to purchasers by Declarant; or, (c) such earlier time as may be determined by

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Declarant, subject in each case to the provisions of the Act. Notwithstanding the foregoing, prior to the conveyance of 25% of the Common Elements by the Declarant to purchasers, a special meeting of the Association shall be called, at which time Unit Owners other than Declarant shall elect at least 25% of the Board of Directors, and prior to the conveyance of 50% of the Common Elements by the Declarant to purchasers, an Association meeting shall be held and the Unit Owners other than Declarant shall elect at least 33-1/3% of the Board of Directors. Each Unit Owner shall be deemed, by acceptance of the deed to a Unit, to agree, approve and consent to the rights of Declarant to so control the Association.

D. Association Personnel. The Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable, and may hire such other personnel as it shall determine to be necessary or advisable for the proper operation of the Condominium. The Association may contract for common services or utilities as may be required for each Unit.

E. Association Documents. The Association shall keep and maintain current copies, as amended to date, of this Declaration, the Articles of Incorporation of the Association, the By-Laws and Rules and Regulations of the Association, the Plat and all of the books, records and financial statements of the Association. All such documents, books, records and statements shall be available for inspection during normal business hours, upon reasonable prior notice, by any Unit Owner or by any Lender. Any Lender shall, upon written request, be provided with an audited financial statement of the Association, at the requester's expense, for the preceding fiscal year.

7. **REPAIRS, MAINTENANCE AND MODIFICATIONS.**

A. Units. Each Unit Owner, at the Unit Owner's sole expense, shall be responsible for keeping the Unit Owner's Unit and anything within its boundaries in good, clean and attractive condition, order and repair and in compliance with any requirements set forth in this Declaration or in the By-Laws and Rules and Regulations of the Association.

B. Common Elements. The Association shall be responsible for keeping the Common Elements, including the Limited Common Elements, in good, clean and attractive condition, order and repair, except for routine cleaning of the Limited Common Elements. The expense of such maintenance shall be a common expense of the Association, except for expenses related to Limited Common Elements, which shall be allocated and charged to the Unit Owners of the Units to which the affected Limited Common Elements are appurtenant or assigned.

C. Routine Cleaning of Limited Common Elements. Each Unit Owner, at the Unit Owner's sole expense, shall be responsible for the routine cleaning of the Limited Common Elements appurtenant or assigned to such Unit Owner's Unit.

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D. Prohibition Against Structural Modifications by Owner. Except as otherwise provided in this Declaration, a Unit Owner shall not, without first obtaining the written consent of the Association, make or permit to be made any structural alterations, changes or improvements to such Unit Owner's Unit or the Common Elements, or make or install any improvements or equipment which may affect other Units or the Common Elements. A Unit Owner shall not perform, or allow to be performed, any act, alteration or other work which would jeopardize the soundness or safety of the Property, reduce the value thereof, or impair any easement or hereditament.

E. Declarant's Right to Change Plans. Declarant reserves the right to chance the layout, location, dimensions and construction of the Units and Common Elements shown on the Plat, provided such changes do not substantially alter the nature, value and quality of the Units and Common Elements.

F. Future Alterations, Improvements and Additions After Declarant has constructed them, there shall be no material alterations, improvements or additions to the Common Elements without the prior written approval of at least seventy-five percent (75%) of the Residential Unit Owners.

8. **UNIT OWNER'S RIGHTS WITH RESPECT TO INTERIORS.**

A. Decorating. Each Residential Unit Owner shall have the exclusive right to carpet, paint, varnish, tile, panel, paper or otherwise refurbish and decorate the interior surfaces of the walls, ceilings, floors, doors (other than the outer surface of the entrance doors), door frames and window frames forming the boundaries of the Unit Owner's Residential Unit and to erect partition walls of a non-structural nature within the Unit Owner's Residential Unit.

B. Reallocation of Boundaries Prohibited. Except as provided in paragraphs 8.D. and 8.E., Unit Owners in the Condominium may not reallocate Unit boundaries between adjoining or adjacent Units.

C. No Subdivision Permitted. Except as provided in paragraph 8.E. of this Declaration, no Unit in the Condominium may be subdivided in any manner.

D. Combining Residential Units. If a Unit Owner owns two (2) or more adjoining or adjacent Residential Units (side-by-side or above-below), such Unit Owner may make such structural changes as may be approved by the Association to the Common Elements between such Residential Units to provide access between such Units for common living purposes, including the elimination of any hallways between such Residential Units if such hallways do not serve any other Residential Units. However, any such work shall be subject to paragraph 7.D. of this Declaration and, notwithstanding any such work, the Residential Units involved shall remain separate Units in the Condominium and under this Declaration.

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E. Subdivision and Modifications to Unit 110/110(A). The single Unit designated as 110 and 110(A) on the Plat currently has a loading dock in its 110(A) portion. The owner of this Unit may divide such Unit at any time in the future into two separate Units, to be separately known as Units 110 and 110(A). The location of such division shall be at the discretion of the owner. Until this Unit is divided, it shall have the combined percentage interests in the Common Elements shown for 110 and 110(A) on Exhibit C attached to this Declaration. Following division, the percentage of undivided ownership in the Common Elements formerly allocated to such Unit shall be apportioned between the two separate units on a square footage basis. It is contemplated by the Declarant that another loading area will be available to the Building when the Condominium is expanded to include the Expansion Land. Until such time, the loading dock portion of this Unit, whether or not it has been divided, shall remain subject to a temporary easement for the continued use of the loading dock by the Declarant, the Unit Owners and the Association. While such easement remains in effect, the owner of this Unit shall not be required to pay any Common Expenses on the 110(A) portion of this Unit, or on Unit 110(A) if there has been a division, and the loading dock area shall be maintained and insured by the Association, at its expense, in the same manner as if it was part of the Common Elements. When the temporary easement for the loading dock expires because another loading area is available to the Building, the owner of the Unit may make whatever structural and other modifications the owner deem necessary, desirable or appropriate to convert such area to residential or "live/work" use, including the installation of a door to the street side of the Unit.

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9. **INSURANCE, DESTRUCTION AND RECONSTRUCTION.**

A. Fire and Other Perils. The Association shall obtain and maintain fire and other perils broad form extended coverage insurance on the Building and Common Elements in an amount equal to the replacement value of the Building and Common Elements from time to time, including endorsements for automatic changes in insurance coverage as fluctuating values may warrant. The insurance shall be obtained in the name of the Association as trustee for each of the Unit Owners and their respective Lenders as their interests appear. Premiums for such insurance shall be a Common Expense. To the extent reasonably possible, the insurance shall provide that the insurer waives its rights of subrogation as to any claim against Unit Owners, the Association, and their respective servants, agents, guests, officers and directors, and that the insurance cannot be canceled, invalidated or suspended on account of the conduct of any one or more of the foregoing without at least thirty (30) days prior written notice to the Association giving it opportunity to cure the defect within that time. The Association shall review the amount of protection and the types of hazards to be covered at least annually and the amount of coverage may be increased or decreased at any time it is deemed necessary by the Association to conform to the requirements of replacement value. Copies of all policies or a certificate of insurance shall be provided to each Lender upon request.

B. Destruction and Use of Proceeds. In the event of the partial or total destruction of the Building or any Common Elements, the proceeds of any insurance covering such destruction shall be paid to the Association as trustee for the Unit Owners and their Lenders to be applied to the costs of repair or reconstruction. In the event any such proceeds are insufficient to pay the costs of repair or reconstruction, all costs of repair or reconstruction in excess of such proceeds shall be a Common Expense, except as otherwise provided in this Declaration for the allocation of expenses with respect to Limited Common Elements to the Unit Owners to which the Limited Common Elements are assigned or appurtenant. If, for any reason, the Association determines that all or any portion of the Building or any Common Elements that are destroyed should not be repaired or reconstructed, then any proceeds of insurance that are not so used shall be distributed to the Unit Owners and their Lenders, if any, as their respective interests in the Common Elements may appear.

C. Public Liability Insurance. The Association shall also obtain and maintain public liability insurance covering the Building and the Common Elements. The amount of such insurance coverage shall be as determined by the Board of Directors from time to time, provided, however, that it is at least One Million Dollars ($1,000,000) per single occurrence. To the extent reasonably possible, the insurance shall provide that the insurer waives its rights of subrogation as to any claim against Unit Owners, the Association, and their respective servants, agents, guests, officers and directors, and that the insurance cannot be canceled, invalidated or suspended on account of the conduct of any one or more of the foregoing without at least thirty (30) days prior written notice to the Association giving it opportunity to cure the defect within that time. Premiums for such insurance shall be a Common Expense.

D. Other Insurance. The Association shall also obtain and maintain worker's compensation insurance, to the extent necessary to comply with any applicable laws, and, to the extent obtainable, fidelity insurance covering each member of the Association who handles funds that the Association holds or administers. Such fidelity insurance shall be obtained with limits that are equal to or greater than the maximum funds held or administered at any one time by the Association. Premiums for such worker's compensation and fidelity insurance shall be a common expense. A management agent, if employed by the Association, shall be required to supply its own fidelity insurance policy that provides at least the same coverage as the fidelity insurance required of the Association.

E. Coverage for a Unit and Contents. Each Unit Owner shall be responsible for obtaining and maintaining liability insurance for the Unit Owner's Unit and any contents of such Unit, all at the Unit Owner's sole cost and expense.

F. Combined Protection Insurance. If insurance coverage is available to combine protection for the Association and the Unit Owners' individual personal property, liability and other needs, the Association is hereby given discretionary power to negotiate such combinations of insurance protection on an equitable cost-sharing

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