DECLARATION OF CONDOMINIUM OF 601 LOFTS CONDOMINIUM

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DECLARATION OF CONDOMINIUM
OF
601 LOFTS CONDOMINIUM

THIS DECLARATION ("Declaration") is made pursuant to the Wisconsin Condominium Ownership Act, Chapter 703 of the Wisconsin Statutes, as amended from time to time or any corresponding provisions of succeeding law (the "Act") this 9th day of March, 2005, by 601 EAST OGDEN LLC, a Wisconsin limited liability company ("Declarant").

SECTION 1 -- STATEMENT OF DECLARATION

Declarant hereby declares that it is the sole owner of the real property described in Section 4 hereof (the "Land"), together with all buildings and improvements thereon or to be constructed thereon (the "Building"). The Land and the Building are hereby submitted to the condominium form of ownership as provided in the Act and this Declaration. The covenants, conditions and restrictions contained in this Declaration and the appendices and exhibits to the Declaration, shall be enforceable legal and equitable covenants, shall run with the land and shall constitute benefits and burdens to the Declarant, its successors and assigns, and to all parties hereafter having any interest in the Property. As of the date set forth above, no Person holds a mortgage against the Land.

SECTION 2 --DEFINITIONS

For convenience of presentation, definitions of certain of the terms used in the Declaration are set forth below:

"*Act*" has the meaning set forth in the Recitals.

"*Association*" means **601 LOFTS CONDOMINIUM OWNERS' ASSOCIATION, INC.**

"*Board*" refers to the Board of Directors of the Association that oversees and as has final authority over, as applicable, the decisions of the Residential Committee and of the Commercial Committee.

"*Building*" refers to the structure and improvements including above and below grade segments located at 601 East Ogden Avenue, Milwaukee, Wisconsin, in which the Units of the Condominium are located.

"*Bylaws*" refers to the Bylaws governing the operations of the Condominium, which are adopted by the Association, as amended from time to time.

"*Commercial Committee*" refers to the board of managers comprised of representatives of the Commercial Unit Owners, who, with the Board's approval, have the authority to administer the activities as described in the Bylaws.

"*Commercial Common Charges*" refers to assessments payable to the Association by the Commercial Unit Owners for the purpose of meeting: (a) Commercial Common Expenses and (b) each Commercial Unit Owner's pro rata share of General Common Expenses.

"*Commercial Common Expenses*" refers to the costs and expenses incurred or projected in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the Commercial Common Elements and Commercial Limited Common Elements.

"*Commercial Common Elements*" refers to those Common Elements which serve or benefit exclusively the Commercial Units and/or the Commercial Unit Owners.

"*Commercial Limited Common Elements*" refers to those Common Elements which serve or benefit one or more but not all of the Commercial Units and/or the Commercial Unit Owners.

"*Commercial Parking Unit*" means a Unit that may only be used for parking uses by an owner of a Commercial Unit and such Person's, invitee or customer, as set forth in this Declaration.

"*Commercial Section*" refers to the Commercial Units, the Commercial Parking Units, the Commercial Common Elements and the Commercial Limited Common Elements.

"*Commercial Unit*" or "*Commercial Units*" refers to the Retail Units located on the first floor of the Building.

"*Commercial Unit Owners*" refers to the Person or Persons who own the Retail Units.

"*Common Charges*" refers to the sum of the General Common Charges, Commercial Common Charges, and Residential Common Charges.

"*Common Elements*" when such terms appears herein without the prefatory descriptors, "General," "Residential," "Residential Limited," "Commercial" or "Commercial Limited;" refers to the General Common Elements, the Residential Common Elements, the Residential Limited Common Elements, the Commercial Common Elements and the Commercial Limited Common Elements.

"*Common Expenses*" refers to the General Common Expenses, the Residential Common Expenses, and the Commercial Common Expenses.

"*Common Interest*" refers to the proportionate undivided interest, expressed as a numerical percentage, in the General Common Elements appertaining to each Unit determined in accordance with the Declaration. **When the context requires a particular percentage of Common Interests to be calculated and such required percentage is in terms of Residential Unit Owners, as a group, or Commercial Unit Owners, as a group, (as opposed to all Unit Owners as a whole), such required percentage shall mean a percentage in terms of total Common Interests attributable to that particular group and not the percentage of Common Interests attributable to all Unit Owners.**

"*Condominium*" refers to 601 LOFTS CONDOMINIUM.

"*Damaged Premises*" has the meaning set forth in Section 15.1.

"*Declarant*" refers to 601 EAST OGDEN, LLC, a Wisconsin limited liability company, and its successors and assigns.

"*Declaration*" refers to the instrument creating the Condominium, as the same may be amended from time to time.

"*Facility*" or "*Facilities*" includes, but is not limited to, the following items (grouped more or less functionally) which are set forth only for purposes of illustrating the broad scope of that term: system, equipment, apparatus, convertor, radiator, heater, convertor, heat exchanger, mechanism, device, machinery, motor, pump, control, tank or tank assembly, insulation, induction unit, condenser, compressor, fan, damper, blower, thermostat, thermometer, coil, vent, sensor, shut-off valve or other valve, gong, panel, receptacle, outlet, relay, alarm, sprinkler head, electric distribution facility, wiring, wireway, switch, switchboard, circuit breaker, transformer, fitting, hose, plumbing fixture, lighting fixture, other fixture, bulb, sign, telephone, meter, meter assembly, scaffolding, piping, line, duct, conduit, cable, riser, main shaft, pit, flue, lock or other hardware, rack, screen, strainer, trap, drain, catch basin, leader, filter, canopy, incinerator, closet, cabinet, door, railing, coping, step, furniture, mirror, furnishing, appurtenance, basket, mail box, carpeting, tile or other floor covering, drapery, shade or other window covering, wallpaper or other wall covering, tree, shrubbery, flower or other planting and horticulture tub or box.

"*Floor Plans*" refers to the floor plans of the Building, as the same may be amended from time to time.

"*General Common Charges*" refers to assessments payable to the Board by the Residential Committee and the Commercial Committee for the purpose of meeting General Common Expenses.

"*General Common Elements*" refers to the Land and all parts of the Building, including its foundations, roofs and supports, other than all of the following: (i) the Units; (ii) the Residential Common Elements; (iii) the Commercial Common Elements; (iv) the Residential Limited Common Elements; and (v) the Commercial Limited Common Elements.

"*General Common Expenses*" refers to costs and expenses incurred or projected and attributable to the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the General Common Elements.

"*Limited Common Elements*" has the meaning set forth in Section 7.3.

"*Partition Proceeds*" has the meaning set forth in Section 15.2.

"*Permitted Mortgage*" refers to a mortgage permitted to be placed upon a Unit or Units pursuant to the provisions of the Bylaws.

"*Permitted Mortgagee*" means a bank, life insurance company, savings and loan association, savings bank, real estate investment trust, the Federal National Mortgage Association FANNIE MAE, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Veterans Administration, or any institution under the conservatorship or receivership of the Federal Deposit Insurance Corporation or any such affiliate who shall hold or guaranty mortgage on the Condominium, including, without limitation, the Declarant, if the Declarant holds a mortgage on the Condominium.

"*Person*" means any association, corporation, stock company, estate, general partnership, limited association, limited liability company, foreign limited liability company, joint venture, limited partnership, registered limited liability partnership, natural person, real estate investment trust, business trust or other trust, custodian, nominee or other individual in its own or any representative capacity. In addition, the term means the heirs, executors, administrators, legal representatives, successors and assigns of that "Person" where the context so permits.

"*Plat*" means the condominium plat of 601 LOFTS CONDOMINIUM.

"*Property*" refers to the Land, the Building and the appurtenances thereto.

"*Residential Committee*" refers to the board of managers representing the Residential Unit Owners, who, with the Board's approval, have the authority to administer the activities as described in the Bylaws.

"*Residential Common Charges*" refers to assessments payable to the Residential Committee by Residential Unit Owners for the purpose of meeting Residential Common Expenses and each Residential Unit Owner's pro rata share of General Common Charges.

"*Residential Common Elements*" refers to those Common Elements which serve or benefit exclusively the Residential Units and/or the Residential Unit Owners.

"*Residential Common Expenses*" refers to the costs and expenses incurred or projected in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the Residential Common Elements and the Residential Limited Common Elements.

"*Residential Limited Common Elements*" refers to those Common Elements which serve or benefit exclusively one or more but not all the Residential Units and/or the Residential Unit Owners.

"*Residential Section*" refers to the Residential Units, the Residential Common Elements and the Residential Limited Common Elements.

"*Residential Unit*" refers to any Unit designated as a Residential Unit in the Declaration.

"*Residential Unit Owner*" refers to any Person who owns a Residential Unit, and all such owners are, collectively, referred to as "Residential Unit Owners."

"*Retail Unit*" refers to the retail stores, shops, restaurants or other commercial enterprises located on the first floor of the Building.

"*Rules and Regulations*" refers to the rules and regulations made in accordance with the Bylaws.

"*Unit*" refers to a space designated as either a Residential Unit or a Commercial Unit in the Declaration, consisting, generally, of, as applicable, a portion of the commercial and residential space in the Building, together with an appurtenant proportionate undivided interest in the General Common Elements, and as the case may be, in the Residential Common Elements, the Residential Limited Common Elements, the Commercial Common Elements or in the Commercial Limited Common Elements. All of such Units are collectively referred to as "Units." Unless a prefatory descriptor, such as "Residential," "Commercial, "Residential Parking" or "Commercial Parking" precedes use of such word in this Declaration, "Unit" means collectively the Residential Parking Units, Commercial Parking Units, Commercial Units and Residential Units.

"*Unit Owner*" refers to any Residential Unit Owner or any Commercial Unit Owner, and all of such Residential Unit Owners and Commercial Unit Owners are collectively referred to as the "Unit Owners." Unless a prefatory descriptor, such as "Residential," "Commercial, "Residential Parking" or "Commercial Parking" precedes use of such word in this Declaration, "Unit" means collectively the Residential Parking Units, Commercial Parking Units, Commercial Units and Residential Units.

"*Unsold Residential Unit*" refers to any Residential Unit owned or retained, by way of lease or any other arrangement by which management and/or financial responsibility is retained, by Declarant; a Residential Unit that is acquired, individually or collectively, by a principal of Declarant or a group of which Declarant or one or more of the principals of any of them, is a member; or a Residential Unit that is acquired, individually or collectively, by either the holder of a Permitted Mortgage given by Declarant or the designee of a holder of such a Permitted Mortgage.

SECTION 3 -- NAME AND ADDRESS

The real estate described in Section 4 and all buildings and improvements thereon shall be known as **601 LOFTS CONDOMINIUM** (the "Condominium"). The address of the Condominium is reflected on the Plat of 601 LOFTS CONDOMINIUM (the "Plat"), which is attached hereto and incorporated herein by this reference.

SECTION 4 --LEGAL DESCRIPTION

The Land and Building (collectively the "Property") described in the Condominium plat (the "Plat") attached hereto as Exhibit A is hereby subjected to the provisions of this Declaration. The Land is owned by Declarant in fee simple absolute. The Land has an area of approximately twenty six thousand six hundred two square feet (26,602.00 square feet), upon which the Building, which has an approximate square footage of two hundred six thousand square feet (206,000.00 sq. feet) shall be constructed.

SECTION 5 --DESCRIPTION OF THE BUILDING.

The Condominium entails one (1) mixed-use building containing eighty (80) Residential Units, four (4) Commercial Units, one hundred twelve (112) Residential Parking Units and eight (8) Commercial Parking Units constructed at the location shown on the Plat attached as Exhibit A. Each Residential Unit and Commercial Unit is connected to the municipal water system and has individual electric service. The Floor Plans and the approximate location and dimensions of the Building are shown on the Plat. The Building is constructed of reinforced concrete and steel with concrete and/or steel floor systems, including reinforced columns, cavity walls and concrete footing.

The Residential Units, the Residential Parking Units together with the Residential Common Elements and the Residential Limited Common Elements, are collectively referred to as the "Residential Section." The Commercial Units, the Commercial Parking Units together with the Commercial Common Elements and the Commercial Limited Common Elements are collectively referred to as the "Commercial Section."

The Units may be used for any lawful uses subject to the limitations set forth in herein and in the Bylaws. Each purchaser of a Residential Unit, Commercial Unit, Residential Parking Unit and/or Commercial Parking Unit acknowledges and understands that the location, floor area and dimensions of each Residential Unit, Commercial Unit, Residential Parking Unit and/or Commercial Parking Unit as depicted in this Declaration and on the Plat are approximate and are shown for descriptive purposes only. Declarant does not represent, warrant or guarantee that any Unit shall be constructed exactly as shown on the Plat and each purchaser of a Unit hereby expressly waives any claim or demand such purchaser may have against the Declarant on account of any difference, shortage or discrepancy between the Unit as actually constructed and physically existing as it is shown on the Plat.

Each Unit Owner understands that the Condominium is located in an urban setting, and comprises a stacked condominium building set amidst other buildings located in close proximity to the Condominium. As such, each Unit owner expressly acknowledges that Declarant does not represent or warrant that:

(a) their Unit will be completely sound-proof, although Declarant will employ, or cause to be employed, reasonable construction methods to minimize sound transmission within the Building; AND/OR

(b) there exists no possibility that an adjacent property development may obstruct a Unit Owner's view.

SECTION 6 -- DESCRIPTION OF UNITS

Each Unit has a number, and the approximate area, location, and immediate common area to which it has access as shown on the Plat and Floor Plan attached to this Declaration.

Section 6.1 Boundaries of Units.

1. Residential Units.

The Condominium has eighty (80) Residential Units. The boundaries of each Residential Unit shall consist of that part of the area of the building designated as a Residential Unit which is enclosed as follows:

(i) Horizontal Boundaries. Each Residential Unit consists of the area measured horizontally from the exterior side of the glass or the exterior walls (perimeter columns and perimeter mechanical pipes included) to the center of the demising walls separating one Residential Unit from another Residential Unit or Commercial Unit, or to the Residential Unit side of the concealed partition on the structural members of the walls or partitions separating a Residential Unit from corridors, stairs, elevators and other mechanical equipment spaces.

(ii) Vertical Boundaries. Each Residential Unit consists of the area measured vertically from the top of the floor to the underside of the ceiling. However, any Common Elements located within a Residential Unit shall not be considered a part of such Residential Unit.

(iii) Interior Divisions.

(a) A Residential Unit includes interior walls and partitions contained within the horizontal and vertical boundaries of the Residential Unit.

(b) A Residential Unit Owner may erect or change non-structural walls and barriers within the Unit provided that such change shall not affect the structural and sound integrity of the Building.

(iv) Each Residential Unit shall include the inner surfaces of the finished walls, ceilings and floors. Windows, moldings, window frames and doors (including all glass in doors) shall be included as part of a Unit.

(v) Each Residential Unit includes, and each Residential Unit Owner shall be responsible for, the front entrance door and any other entrance doors to such Residential Unit, smoke detectors, for cleaning purposes, all windows to such Residential Unit, all plumbing, gas and heating fixtures and equipment such as refrigerators, dishwashers, heating, ventilating and air conditioning ("HVAC") units (including the fans inside the units), heating equipment, ranges and other appliances, as may be affixed, attached or appurtenant to such Residential Unit and serving such Residential Unit exclusively. Plumbing, gas and heating fixtures and equipment as used in the preceding sentence shall include any special pipes or equipment which a Residential Unit Owner may install within a wall or ceiling, or under the floor, but shall not include gas, water or other pipes, conduits, wiring or ductwork within the walls, ceilings or floors. Each Residential Unit shall also include (i) all lighting and electrical fixtures and appliances within the Residential Unit, and (ii) any special equipment, fixtures or Facilities affixed, attached or

appurtenant to the Residential Unit, to the extent located within a Residential Unit from the panel and serving or benefiting only that Residential Unit. Notwithstanding anything contained in this Section 6 to the contrary, each Residential Unit Owner will have the right, exercisable at any time, to install, at such Residential Unit Owner's sole cost and expense, decorations, fixtures and coverings (including, without limitation, painting, finishing, wall to wall carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of such Residential Unit Owner's Residential Unit and to a depth of one inch behind such surfaces for the purposes of installing nails, screws, bolts and the like, provided that no such installation shall impair the structural and sound integrity and mechanical and electrical systems of such Residential Unit or of the Building.

(vi) A Residential Unit Owner shall not own any pipes, wires, conduits or other utility lines running through his or her Unit which are utilized or serve more than one Residential Unit, which items are hereby made part of the Common Elements. All utility pipes, lines, heating systems, air conditioning systems, fixtures or appliances found within the boundary lines of the Residential Unit and servicing only that Unit, shall be part of a Residential Unit. Utility lines and pipes located outside of the Residential Units shall be repaired and maintained by and at the expense of the Association.

(vii) If any portion of the Common Elements ("Common Elements") or limited common elements ("Limited Common Elements") shall encroach upon any Residential Unit, or if any Residential Unit shall encroach upon any other Residential Unit or upon a portion of the Common Elements or Limited Common Elements as a result of the construction, reconstruction or repair of the Building, or as a result of settling or shifting of the Building, a valid easement for the encroachment and for its maintenance shall exist so long as the Building stands. The existing physical boundaries of a Residential Unit or Common Elements constructed or reconstructed in substantial conformity with the Plat shall be conclusively presumed to be the boundaries of the Residential Unit, regardless of the shifting, settlement or lateral movement of the Building and regardless of minor variations between the physical boundaries described in this Declaration or shown on the Plat and the existing physical boundaries of any such Residential Unit.

2. Residential Parking Units.

A Residential Parking Unit shall consist of a cube of air and may have a storage receptacle located thereon. A Residential Parking Unit consists of the area measured horizontally from the exterior side of the glass or the exterior walls (perimeter columns and perimeter mechanical pipes included) to the Residential Parking Unit side of the block or wall or partitions separating a Residential Parking Unit from corridors, stairs, elevators and other mechanical equipment spaces. The Residential Parking Unit consists of the area measured vertically from the top of the floor to the underside of the ceiling. However, any Common Elements located within a Residential Parking Unit shall not be considered a part of such Residential Parking Unit. Residential Parking Units not held by Declarant or the Association may only be owned by a Residential Unit Owner. A parking space may be transferred separate from a Residential 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 Residential Parking Unit owner. Each owner of a Residential Parking Unit shall keep the floor below such Unit free from debris of any nature, ice, snow and water. Any repair required to the underlying floor or beams, if any, immediately adjacent to such Unit, shall be carried out by the Association, and the costs associated therewith shall be borne as a Residential Common Expense; unless the repair is required due to the negligent act of a Unit Owner causing such damage, in which cases the Unit owner causing such damage shall bear the cost of any repair.

3. Commercial Units.

The Condominium has four (4) Commercial Units. The boundaries of each Commercial Unit shall consist of that part of the Building designated as such and enclosed as follows:

(i) Horizontal Boundaries. The area measured horizontally from the exterior side of the glass or the exterior walls (perimeter columns and perimeter mechanical pipes included) to the center of the demising walls separating one Commercial Unit from another Residential Unit or Commercial Unit, or to the Commercial Unit side of the concealed partitions on structural members of the walls or partitions separating a Residential Unit from corridors, stairs, elevators and other mechanical equipment spaces.

(ii) Vertical Boundaries. Each Commercial Unit consists of the area measured vertically from the top of the floor to the underside of the ceiling. However, any Common Elements located within a Commercial Unit shall not be considered a part of such Commercial Unit.

(iii) Interior Divisions.

(a) A Commercial Unit includes interior walls and partitions contained within the horizontal and vertical boundaries of the Commercial Unit.

(b) A Commercial Unit Owner may erect or change non-structural walls and barriers within the Unit provided that such change shall not affect the structural or sound integrity of the Building.

(iv) Each Commercial Unit shall include the inner surfaces of the finished walls, ceilings and floors. Windows, moldings, window frames and doors (including all glass in doors) shall be included as part of a Unit.

(v) Each Commercial Unit includes, and each Commercial Unit Owner shall be responsible for, the front entrance door and any other entrance doors to such Commercial Unit, smoke detectors, for cleaning purposes, all windows to such Commercial Unit, all plumbing, gas and heating fixtures and equipment such as refrigerators, dishwashers, heating, ventilating and air conditioning ("HVAC") units (including the fans inside the units), heating equipment, ranges and other appliances, as may be affixed, attached or appurtenant to such Commercial Unit and

serving such Commercial Unit exclusively. Plumbing, gas and heating fixtures and equipment as used in the preceding sentence shall include any special pipes or equipment which a Commercial Unit Owner may install within a wall or ceiling, or under the floor, but shall not include gas, water or other pipes, conduits, wiring or ductwork within the walls, ceilings or floors. Each Commercial Unit shall also include (i) all lighting and electrical fixtures and appliances within the Commercial Unit, and (ii) any special equipment, fixtures or Facilities affixed, attached or appurtenant to the Commercial Unit, to the extent located within a Commercial Unit from the panel and serving or benefiting only that Commercial Unit. Notwithstanding anything contained in this Section 6 to the contrary, each Commercial Unit Owner will have the right, exercisable at any time, to install, at such Commercial Unit Owner's sole cost and expense, decorations, fixtures and coverings (including, without limitation, painting, finishing, wall to wall carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of such Commercial Unit Owner's Residential Unit and to a depth of one inch behind such surfaces for the purposes of installing nails, screws, bolts and the like, provided that no such installation shall impair the structural and sound integrity and mechanical and electrical systems of such Commercial Unit or of the Building.

(vi) A Commercial Unit owner shall not own any pipes, wires, conduits or other utility lines running through his or her Unit which are utilized or serve more than one Commercial Unit, which items are hereby made part of the Common Elements. All utility pipes, lines, heating systems, air conditioning systems, fixtures or appliances found within the boundary lines of the Commercial Unit and servicing only that Unit, shall be part of a Commercial Unit. Utility lines and pipes located outside of the Commercial Units shall be repaired and maintained by and at the expense of the Association.

If any portion of the Common Elements or Limited Common Elements shall encroach upon any Commercial Unit, or if any Commercial Unit shall encroach upon any other Commercial Unit or upon a portion of the Common Elements or Limited Common Elements as a result of the construction, reconstruction or repair of the building, or as a result of settling or shifting of the Building, a valid easement for the encroachment and for its maintenance shall exist so long as the Building stands. The existing physical boundaries of a Commercial Unit or Common Elements constructed or reconstructed in substantial conformity with the Plat shall be conclusively presumed to be the boundaries of the Commercial Unit, regardless of the shifting, settlement or lateral movement of the Building and regardless of minor variations between the physical boundaries described in this Declaration or shown on the Plat and the existing physical boundaries of any such Commercial Unit.

4. Commercial Parking Units.

A Commercial Parking Unit shall consist of a cube of air. A Commercial Parking Unit consists of the area measured horizontally from the exterior side of the glass or the exterior walls (perimeter columns and perimeter mechanical pipes included) to the Commercial Parking Unit side of the block or walls or partitions separating a Commercial Parking Unit from corridors, stairs, elevators and other mechanical equipment spaces. A Commercial Parking Unit consists of the area measured vertically from the top of the floor to the underside of the ceiling. However, any Common Elements located within a Commercial Parking Unit shall not be considered a part

of such Commercial Parking Unit. Commercial Parking Units not held by Declarant or the Association may only be owned by a Commercial Unit Owner. A parking space may be transferred separate from a Commercial 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 Commercial Parking Unit Owner. Each owner of a Commercial Parking Unit shall keep the floor below such Unit free from debris of any nature, ice, snow and water. Any repair required to the underlying floor or beams, if any, immediately adjacent to such Unit, shall be carried out by the Association, and the costs associated therewith shall be borne as a Commercial Common Expense; unless the repair is required due to the negligent act of a Unit Owner causing such damage, in which cases the Unit owner causing such damage shall bear the cost of any repair.

SECTION 7 -- COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 7.1 Common Elements.

The Common Elements of the Condominium consist of the Property, and all parts of the Building and improvements thereon other than the Residential Units, Commercial Units, Residential Parking Units, and the Commercial Parking Units. The Common Elements include, but are not limited to, those rooms, areas, corridors, spaces and other parts of the Building and all Facilities therein for the common use of the Residential and Commercial Units and the Residential and Commercial Unit Owners or which are necessary or convenient for the existence, maintenance or safety of the Property.

Section 7.2 General Common Elements.

The General Common Elements are appurtenant to, serve and collectively benefit each Residential Unit and Commercial Unit to the extent of such Unit's percentage share of the General Common Elements. The General Common Elements are for the common use of all Resident and Commercial Unit Owners. The General Common Elements consist of the following:

(a) The Land (as more particularly described in Exhibit A attached to this Declaration), together with all easements, rights and privileges appurtenant thereto;

(b) Any of the following: all foundations, footings, columns, girders, floor slabs and ceilings, beams, and supports and interior load bearing walls, (except to the extent included in Residential Common Elements or Residential Limited Common Elements), together with those portions of the exterior walls of the Building beyond the Commercial and Residential Unit side of the glass or concealed partition walls or concealed structural members of those walls;

(c) The rooms and Facilities located as follows: fire pump and water meter room, electric switchboard room, restrooms on the first floor, Association office (if any), the water tank and mechanical room and related Facilities located on the roof;

(d) Fire pump room, gas meter room, water meter room including their respective floor slabs and ceilings;

(e) Fire pump, sump pump, manual and automatic fire pump system, manual fire pump controller;

(f) Water service and pumps located below grade level, combined sewer line, sanitary drain which connects the combined sewer line to drains, storm drain which connection combines the sewer line to storm leaders, trap and vent pipe which serve the sanitary system and running trap which serves the storm drain system;

(g) Lighting equipment which illuminates the exterior portions of all entrances to the Building;

(h) That portion of the sprinkler system which serves the General Common Elements, including, but not limited to, corridors which are not Residential Limited Common Elements;

(i) Zone control valves for the fire standpipe riser rising from the ground floor to the tank on the top roof of the Building, and common fire alarm riser;

(j) Tank located on the Building which supplies the domestic water system and fire standpipe in the Building;

(k) Exhaust systems including the exhaust fan, ductwork and intake and discharge connections;

(l) All passages and corridors, mechanical and other rooms and areas located at Property serving or benefiting both the Commercial Units and the Residential Section; AND

(m) Any other Facilities in the Building which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of all of the Commercial and Residential Section and are not a part of any Residential Unit, Commercial Unit, Residential Parking Unit, Commercial Parking Unit, Residential Common Elements, Commercial Common Elements or any Residential or Commercial Limited Common Element.

Section 7.3 Limited Common Elements.

The Limited Common Elements consist of those Common Elements that serve or benefit exclusively:

(a) All the Residential Units or all Residential Unit Owners (in which event they are called "Residential Common Elements");

(b) One or more but not all of the Residential Units or Residential Unit Owners (in which event they are called "Residential Limited Common Elements");

(c) The Commercial Units or all Commercial Unit Owners (in which event they are called "Commercial Common Elements"); or

(d) One or more but not all of the Commercial Units or Commercial Unit Owners (in which event they are called "Commercial Limited Common Elements").

Section 7.4 Residential Common Elements.
The Residential Common Elements consist of the following:

(a) Residential electric meters and panels, electric closets, feeders, risers and Facilities, Residential gas meter and direct telephone cables serving exclusively the Residential Section;

(b) Kitchen, bathroom and dryer exhaust ducts, corridor and Residential Unit supply air ducts, steam lines supply and return for heating, water pressure reducing valve system, and all other Facilities in the floor and ceilings serving or benefiting exclusively the Residential Section;

(c) CATV riser and all other Facilities located in the Property serving or benefiting exclusively the Residential Section;

(d) The rooms and Facilities located as follows: the entrances to the Residential Units; gas meter room, residential refuse rooms and/or chutes on each floor servicing the Residential Units and compactor room located in the Building;

(e) The passenger elevators, its shaft, pit, machine room and Facilities the mechanical equipment rooms and areas and the elevator machine rooms located on the roof; the residential lobby, mail room, concierge station, toilet, storage and sitting area, and elevator lobby all located on the ground floor;

(f) All passages, hallways, stairs and corridors, all mechanical space and all other rooms, areas, spaces and other parts of the Building which, including their floor slabs and ceilings, are not Residential Units, Residential Limited Common Elements or part of the Commercial Units, Commercial Common Elements, Commercial Limited Common Elements, or General Common Elements,;

(g) Window glass in the Residential Section which is not part of a Residential Unit;

(h) Heating and air conditioning units for the Residential Units consisting of a fan, motor, ductwork, piping and controls;

(i) Corridor supply risers and ducts, kitchen and toilet exhaust risers and ducts, kitchen and toilet water vent and soil stacks, gas risers, electric risers, and shafts serving Residential Units;

(j) Air conditioning system for the elevator machine room on the Building roof including fan, motor, ductwork and controls;

(k) Gas piping for domestic hot water heater serving Residential Limited Common Elements and Residential Units;

(l) All passages and corridors, mechanical and other rooms, areas and indoor and outdoor spaces located at the Property serving exclusively the Residential Section and which are not General Common Elements, Residential Limited Common Elements, Commercial Common Elements, Commercial Limited Common Elements or part of any Unit;

(m) All doors in the Residential Section, including without limitation, doors opening from common corridors and providing entrance to Residential Units, but excluding interior doors in the Residential Units and excluding doors in a Residential Unit leading to terraces and/or balconies (the excluded doors being considered part of the Residential Unit);

(n) All other facilities of the Property (including but not limited to shafts, pipes, wires, ducts, vents, cables, conduits and lines) which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Residential Section; AND

(o) All other Facilities exclusively serving the Residential Section, excluding General Common Elements, Residential Units, Commercial Units, Residential Parking Units, Commercial Parking Units, Commercial Common Elements or any Residential or Commercial Limited Common Element.

Notwithstanding anything to the contrary in this Section 7, if a Residential Common Element benefits only certain Residential Unit Owners, then the Residential Section's costs of alteration, addition, repair, replacement and restoration thereto shall be borne solely by those Residential Unit Owners who benefit from the Residential Common Element in the proportion that the Common Interest of each benefiting Residential Unit Owner bears to the Common Interests of all benefiting Residential Unit Owners. In addition, except as otherwise provided in the Bylaws, such Residential Unit Owners shall be responsible for the normal operation, maintenance and repair of any such Residential Common Element at their sole cost and expense.

*Section 7.5 **Residential Limited Common Elements.***

(a) **Definition of Residential Limited Common Elements.** Certain portions of the Residential Common Elements are limited and further restricted in use to the owners of Residential Units to which such Residential Limited Common Elements are appurtenant, or to which an exclusive right to use the same has been assigned to a particular Unit Owner, subject to the right of the Association to enter upon any such Residential Limited Common Element to make structural repairs or structural replacements to said Residential Limited Common Element or any Common Element contained therein, and subject to the Rules and Regulations of the Condominium. The Residential Limited Common Elements include, without limitation, the following:

(i) Windows servicing a Residential Unit and window frames located within said Unit;

(ii) Terrace or balcony appurtenant to a specified Residential Unit, and rails, if any, enclosing said terrace or balcony;

(iii) Storage rooms/lockers, if any, assigned/leased to a Residential Unit; AND

(iv) All other Facilities exclusively serving one or more but not all Residential Units, excluding any General Common Element, the Commercial Units, Residential Parking Units, Commercial Parking Units, Residential Common Elements, Commercial Common Elements or any Commercial Limited Common Element, and which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of one or more but not all of the Residential Units.

(b) **Usage of Residential Limited Common Elements.** Any portion of the Residential Limited Common Elements which is not restricted to the exclusive use of a particular Residential Unit Owner may be used by any Residential Unit Owner. All normal and ordinary maintenance, repair and replacement of Residential Limited Common Elements (i.e., cleaning surface areas, patching chipped concrete or pavers, repairing and/or replacing fencing, etc.) shall be tended to and paid for by the Residential Unit Owner having the exclusive use thereof. Major items of maintenance such as washing exteriors of windows and other items of maintenance described in Article 6.8 of the Bylaws, will be borne by the Residential Unit Owners as a Residential Common Expense. Residential Unit Owners shall be responsible for washing the interior side of any and all windows in their Residential Unit, and replacing broken window glass in their Unit, unless the glass was broken through the negligence of the Association or its agents, in which case the cost or replacement shall be borne by the Residential Unit Owners as a Residential Common Expense. Any Residential Unit Owner having access to a terrace or balcony shall keep it free from debris of any nature, ice, snow and water. Notwithstanding anything to the contrary contained in the Bylaws or this Declaration, the Residential Unit Owner who is so served or benefited by such Residential Limited Common Element shall have the exclusive right to use such Residential Limited Common Element and shall be responsible for its normal operation, maintenance and repair at such Unit Owner's sole cost and expense. No Residential Unit Owner may assign or transfer in any manner rights to use any Residential Limited Common Element assigned or appurtenant to a Residential Unit, except as specifically permitted in this Declaration or the Bylaws.

Section 7.6 Commercial Common Elements.

The Commercial Common Elements consist of the following:

(a) Utility meters (if any) serving or available for the exclusive use of the Commercial Section;

(b) Ductwork, and all other HVAC and electric and similar Facilities serving or benefiting exclusively the Commercial Section; AND

(c) All remaining Facilities exclusively serving the Commercial Units or which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of any Commercial Units, excluding General Common Elements, Residential Units, Commercial Units, Residential Parking Units, Commercial Parking Units, Residential Common Elements, Commercial Limited Common Elements or Residential Limited Common Elements.

Notwithstanding anything to the contrary in this Section 7, if a Commercial Common Element or a General Common Element benefits only certain Commercial Unit Owners, then the Commercial Section's costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation) shall be borne solely by those Commercial Unit Owners who benefit from the Commercial Common Element in the proportion that the Common Interest of each benefiting Commercial Unit Owner bears to the Common Interest of all benefiting Commercial Unit Owners. In addition, except as otherwise provided in the Bylaws, such Commercial Unit Owners shall be responsible for the normal operation, maintenance and repair, including but not limited to the cost of staff necessary for such operation, maintenance and repair, of any such Commercial Limited Common Element at their sole cost and expense.

Section 7.7 Commercial Limited Common Elements.

The Commercial Limited Common Elements consist of the following:

(a) All exterior glass surfaces of all windows in the Commercial Section; AND

(b) That portion of equipment, fixtures or Facilities serving or benefiting any Commercial Units, to the extent located within another Unit or within a Common Element to which there is direct and exclusive access from the interior of a Commercial Unit; AND

(c) Any area appurtenant to a particular Commercial Unit whose use has been specifically limited to a particular Commercial Unit.

Notwithstanding anything to the contrary contained in the Bylaws or this Declaration, the Commercial Unit Owner who is so served or benefited by such Commercial Limited Common Element shall have the exclusive right to use such Commercial Limited Common Element and shall be responsible for its normal operation, maintenance and repair at such Commercial Unit Owner's sole cost and expense.

Notwithstanding anything to the contrary in this Section 7 or the Bylaws, if a Commercial Limited Common Element benefits only certain Commercial Unit Owners, then the Commercial Section's costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation) shall be borne solely by those Commercial Unit Owners who benefit from the Commercial Limited Common Element in the proportion that the Common Interest of each benefiting Commercial Unit Owner bears to the Common Interest of

all benefiting Commercial Unit Owners. In addition, except as otherwise provided in the Bylaws, such Commercial Unit Owners shall be responsible for the normal operation, maintenance and repair, including but not limited to the cost of staff necessary for such operation, maintenance and repair, of any such Commercial Common Element at their sole cost and expense.

Section 7.8 No Partition of Residential, Commercial and General Common Elements Permitted.

The Common Elements will remain undivided and no Unit Owner or other Person will bring or will have the right to bring any action for partition or division thereof except as may be specifically provided for herein and in the Bylaws.

Section 7.9 Easements.

(a) Except as set forth in this Declaration, each Residential Unit Owner shall have, in common with all other Residential Unit Owners, an easement for the use of the Residential Common Elements.

(b) Except as set forth in this Declaration, each Commercial Unit Owner shall have, in common with all other Commercial Unit Owners, an easement for the exclusive use of the Commercial Common Elements.

(c) Each Unit Owner shall have, in common with all other Unit Owners, an easement for ingress and egress through the Residential Section and the Commercial Section as the case may be, and for the use of any Common Element, to the extent necessitated by an emergency including but not limited to an easement by a Commercial Unit Owner for emergency access through and over the fire stairs in the Building. The Residential Section and the Commercial Section shall be subject to such easement.

(d) Each Residential Unit Owner shall have, in common with all other Residential Unit Owners, and each Unit shall be subject to, an easement: (aa) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace the Residential Common Elements or Residential Limited Common Elements located in, over, under, through or upon any Unit, or any other Common Elements; and (bb) to maintain any encroachment on any Unit or Common Elements resulting from the repair, alteration, rebuilding, restoration or replacement of the Residential Units, the Residential Common Elements or the Residential Limited Common Elements; provided that access to any Unit or the Common Elements in furtherance of such easement shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Section or with the use of the Residential Units for their permitted purposes. Such entry shall be permitted on not less than one days' notice, except that no notice will be necessary in the case of an emergency.

(e) Each Commercial Unit Owner shall have, in common with all other Commercial Unit Owners, and each Unit shall be subject to, an easement (aa) to install, utilize, operate,

maintain, repair, alter, rebuild, restore and replace the Commercial Common Elements or the Commercial Limited Common Elements located in, over, under, through or upon any Unit, or any other Common Elements or elsewhere on the Property and (bb) to maintain any encroachment on any Unit or Common Elements resulting from the repair, alteration, rebuilding, restoration or replacement of any Commercial Unit, the Commercial Common Elements or the Commercial Limited Common Elements; provided that access to any Unit or the Common Elements in furtherance of such easement shall be exercised in such a manner as will not unreasonably interfere with the use of the Commercial Unit or Residential Units for their permitted purposes. Such entry shall be permitted on not less than one days' notice, except that no notice will be necessary in the case of an emergency.

(f) Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

(g) Declarant and the Commercial Unit Owners and their successors and assigns shall, to the extent permitted by law, have an easement to erect, maintain, repair and replace, from time to time, one or more signs on the Property (other than on the exterior walls of the Building surrounding Units not owned by the party erecting the sign) for the purposes of advertising: (i) the sale or lease of any Unsold Residential Unit, the sale or lease of all or any portion of the Commercial Unit; and (ii) the operation of any business of a tenant or occupant of all or any portion of any Commercial Unit or of any Unsold Residential Units, as the case may be.

(h) Declarant and/or the Board shall have the right to grant such additional electric, gas, steam, ventilation or other easements for utilities or otherwise, or relocate any easements in any portion of the Residential Section, the Commercial Section or the Property; as the case may be, as Declarant, the Residential Committee, or the Commercial Committee, shall deem necessary or desirable for the proper operation and maintenance of the Building or any portion thereof, or to complete the Building as described in the Floor Plans or for the general health or welfare of the owners, tenants and occupants of the appropriate Units; provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Unit or with the use of the Residential Units for their permitted purposes, and shall not result in the imposition of any mechanic's lien against any of the Units. Any utility company and its employees and agents shall have the right of access to any Unit or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such manner as shall not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Unit or with the use of the Residential Units for their permitted purposes.

(i) Declarant shall have (until Declarant shall have satisfied all of its obligations under any condominium instrument and all commitments in favor of any Unit Owner, the Association or other third party relative to the Condominium), and the Units and Common Elements shall be subject to, an easement:

(aa) to install, utilize, operate, maintain, repair, alter, rebuild, restore and replace satellite dishes and similar equipment on the roof of the Building and the conduit and

other Facilities relating thereto, other than those portions of the roof which constitute Residential Common Elements or Residential Limited Common Elements; and

(bb) to maintain any encroachment on any Unit, or any Common Elements or elsewhere on the Property resulting from the installation, operation, maintenance, repair, alteration, rebuilding, restoration or replacement thereof; provided that access to any Unit or Common Element in furtherance of such easement shall be exercised in a manner as will not unreasonably interfere with the normal conduct of business of the tenants and occupants of the Commercial Section or with the use of the Residential Units for their permitted purposes. Such entry shall be permitted on not less than one day's notice, except that no notice will be necessary in the case of an emergency. Declarant's right under this subsection shall extend for a period that terminates when Declarant no longer controls the Association; and

(cc) to maintain and correct drainage of surface, roof or storm water, which right includes the right to cut trees, bushes and shrubbery, to grade any soil, to landscape or take any other action reasonably necessary in relation thereto.

All easements and rights described in this Article 7 are granted and reserved and shall inure to the benefit and be binding upon, the Declarant, the Association, all Unit Owners and occupants their successors and assigns. Either the Association or the Declarant, as applicable, shall have the authority to execute all documents necessary to carry out the intent of this Article.

SECTION 8 -- USE OF BUILDING AND UNITS

Section 8.1 Building.

One Building is located on the Condominium. The Building contains all the Residential Units, Commercial Units, Commercial Parking Units and Residential Parking Units, and the use of each of the foregoing is subject to this Declaration, the Bylaws and the Rules and Regulations, as may be promulgated from time to time.

Section 8.2 Units.

The Condominium has eighty (80) Residential Units and four (4) Commercial Units, one hundred twelve (112) Residential Parking Units and eight (8) Commercial Parking Units. Each purchaser of a Unit acknowledges and understands that the location, floor area and dimensions of each Unit as depicted in this Declaration and on the Plat are approximate and are shown for descriptive purposes only. Declarant does not represent, warrant or guarantee that any Unit shall be constructed exactly as shown on the Plat and each purchaser of Unit hereby expressly waives any claim or demand such purchaser may have against the Declarant on account of any difference, shortage or discrepancy between the Unit as actually constructed and physically existing as it is shown on the Plat.

The Declarant reserves the right to change the style or location of any Unit prior to completion of construction, regardless of the initial designation of the style and location of a Unit on Exhibits

or anywhere in this Declaration; provided that Declarant shall ensure that any change shall result in a Unit of comparable style and quality. In interpreting the survey or Floor Plans of any deed or any other instrument affecting a Unit, the boundaries of the Unit constructed or reconstructed in substantially accordance with the survey and Floor Plans shall conclusively be presumed to be the actual boundaries rather than the description expressed in the Floor Plans, regardless of minor variations between the boundaries shown on the Floor Plans and survey and the actual boundaries of the Units as located and constructed.

Section 8.3 Residential Units.

As more particularly set forth in the Bylaws a Residential Unit may be used for any lawful purposes, subject, however, to: (a) the terms and conditions of the then existing certificate of occupancy for such Residential Unit; (b) applicable governmental laws and regulations; (c) the use of such Residential Unit not adversely affecting the use and enjoyment of neighboring or adjacent Residential Units for residential purposes; and (d) any restrictions described in the Bylaws. Residential Units may only be leased in accordance with the provisions set forth in Section 14 herein. Notwithstanding the foregoing or anything contained in the Bylaws or the Rules and Regulations to the contrary, Declarant may without the permission of the Board: (a) grant permission for the use of any Unsold Residential Unit owned by it as a temporary professional office or for any other purpose, provided such use is permitted by law, and does not violate the then existing certificate of occupancy for such Residential Unit or any other governmental regulations and (b) use any Unsold Residential Units owned by it as models and sales and/or promotion offices in connection with the sale or rental of the Units, subject only to compliance with applicable governmental laws and regulations.

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

(2) **Reallocation of Boundaries**. Except as provided in Section 9.2 of this Declaration, Residential Unit Owners other than the Declarant, may not reallocate the boundaries of Residential Units between adjacent and adjoining Residential Units or subdivide Residential Units.

Section 8.4 Commercial Units.

Commercial Units may be used for any lawful purposes, including, without limitation, department and other retail stores and outlets, storage, theaters, banks, restaurants and commercial and professional offices and studios. Except as provided in Section 10: (i) Commercial Unit Owners may not reallocate boundaries between adjacent or adjoining Commercial Units; or (ii) subdivide Commercial Units.

Section 8.5 Residential and Commercial Parking Units.

Residential and Commercial Parking Units may be used for any lawful purpose, including, without limitation, the parking of motor vehicles.

SECTION 9 -- CHANGES IN THE RESIDENTIAL SECTION

Section 9.1 Changes by Declarant.

Except to the extent prohibited by law, Declarant shall have the right, without the vote or consent of the Board, other Unit Owners or the Residential or Commercial Mortgage Representatives, if any, to:

(1) make alterations, additions or improvements to any Unsold Residential Units;

(2) change the use (to a Commercial Unit) or layout of, or number of rooms in, any Unsold Residential Units from time to time;

(3) change the size and/or number of Unsold Residential Units by subdividing one or more Unsold Residential Units into two or more separate Residential Units;

(4) combine separate Unsold Residential Units (including those resulting from such subdivision or otherwise) into one or more Residential Units;

(5) convert a Residential Unit or any portion thereof to a Residential Common Element, a Residential Limited Common Element, a Commercial Unit, a Commercial Common Element or a Commercial Limited Common Element;

(6) alter the boundary walls between any Unsold Residential Units; AND

(7) if appropriate, reapportion among the Unsold Residential Units affected by such change in size, use or number pursuant to the preceding clauses (1) through (6) their percentage interests in the Common Elements; provided, however, that (xx) the percentage interest in the Common Elements of any other Residential Units (other than Unsold Residential Units) shall not be changed by reason thereof unless all Commercial and Residential Unit Owners and their respective mortgagees provide their consent; and (yy) Declarant shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold Board, the Residential Committee and/or the Commercial Committee and all other Unit Owners harmless from any liability arising therefrom.

So long as Declarant controls the Association, the provisions of this Section 9.1 may not be added to, amended, modified or deleted without the prior written consent of Declarant. Further, Declarant hereby reserves the right to amend the Plat without the prior approval of the Residential and Commercial Unit Owners, to record any necessary documents in the public records, to reflect any changes that Declarant makes to the Residential Section pursuant to this Section 9.

Section 9.2 Merger of Units By Residential Unit Owner Other than Declarant.

If a Residential Unit Owner, other than Declarant, owns two (2) or more adjoining Residential Units (side-by-side), such Residential Unit Owner may effect such merger, by written permission of, as applicable, the Residential Committee and, if so long as Declarant controls the Association, the Declarant. Permission by the Residential Committee, and, if applicable, the Declarant to combine two (2) Residential Units into one Residential Unit shall not be unreasonably withheld. Notwithstanding the other provisions of this Article 9, no reapportionment of the interests in the Common Elements appurtenant to any Residential Unit shall be made unless there is first delivered to, as applicable, the Residential Committee or Declarant, a written certification stating that the percentage interests of the respective Units in the Common Elements, immediately after such reapportionment, will be based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit. The certification referred to in the preceding sentence shall be delivered to the Residential Committee of the Board for review and approval.

Any amendment to this Declaration to effect any changes in Residential Units under Section 9.1 and/or 9.2 shall be recorded by the Secretary of the Association. Any such combination shall also comply with the applicable provisions of §§ 703.13 (6), (7) and/or (8) of the Act, as the same may be amended or renumbered from time to time, and with all provisions of the Bylaws.

Section 9.3 Liens and Indemnification.

All work completed in connection with a combination of a Residential Unit shall be completed in a good and workmanlike manner, free and clear of all liens. The Residential Unit Owners with respect to which a combination occurs shall indemnify and hold harmless all other Unit owners, the Board and its Committees, the Declarant and the Association from and against all claims of third parties for personal injury or property damage arising from work completed in connection with such relocation or combination. The Residential Committee shall have the authority, upon approval by the Board, to assess against any such Residential Unit Owner, any and all costs reasonably incurred by the Association as the result of failure by said Residential Unit Owner to pay any and all costs associated with such work, which fall within the purview of the foregoing indemnity.

SECTION 10 -- CHANGES IN THE COMMERCIAL SECTION

Section 10.1 Changes by Declarant.

Except to the extent inconsistent with the Bylaws or prohibited by law, each Declarant shall have the right without the vote or consent of the Board, the Residential Committee, the Commercial Committee, other Residential Unit Owners or the Commercial or Residential Mortgage Representatives, if any, to:

(1) decorate or make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon the Commercial Limited Common Elements;

(2) change the use (to a Residential Unit), the layout or number of rooms in any Unsold Commercial Unit from time to time;

(3) change any unsold Commercial Unit, by subdividing the same, into any desired number of commercial condominium units, combining any of the Commercial Units or combining any units resulting from a subdivision, altering the boundary walls between the Commercial Units, or otherwise;

(4) designate a Commercial Limited Common Element as part of a newly created Commercial Unit;

(5) reapportion among the newly created Commercial Units resulting from any subdivision, combination or otherwise their percentage interests in the Common Elements which shall be based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit, and provided that in no case may such reapportionment result in a greater percentage of Common Interest for the total of the new Commercial Units and/or Residential Units than existed for the original Commercial Unit; AND

(6) change, alter or modify the facade and exterior portion of any unsold Commercial Unit up to the height of the ceiling of the first floor of the Condominium; provided, however, that the percentage interest in the Common Elements of any portion of a Commercial Unit owned by another Commercial Unit Owner or of any Residential Unit shall not be changed by reason thereof unless all Residential and Commercial Unit owners and their respective mortgagees provide their consent, and the Declarant shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Board, its Committees and all other Unit Owners harmless from any liability arising therefrom.

Further, Declarant hereby reserves the right to amend the Plat without the prior approval of the Residential and Commercial Unit Owners, to reflect any changes that Declarant makes to the Commercial Section, pursuant to this Section 10.

Section 10.2 Merger of Units By Commercial Unit Owner Other than Declarant.

If a Commercial Unit Owner, other than Declarant, owns two (2) or more adjoining Commercial Units (side-by-side), such Commercial Unit Owner may effect such merger, by written permission of, as applicable, the Commercial Committee and, if Declarant controls the Association, the Declarant,. Permission by the Commercial Committee, and, if applicable, the Declarant to combine two (2) Commercial Units into one Commercial Unit shall not be unreasonably withheld. Notwithstanding the other provisions of this Article 10, no reapportionment of the interests in the Common Elements appurtenant to any Commercial Unit

shall be made unless there is first delivered to, as applicable, the Commercial Committee or Declarant, a written certification stating that the percentage interests of the respective Units in the Common Elements, immediately after such reapportionment, will be based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit. The certification referred to in the preceding sentence shall be delivered to the Commercial Committee of the Board for review and approval.

Any amendment to this Declaration to effect any changes in Commercial Units under Section 10.1 and/or 10.2 shall be recorded by the Secretary of the Association. Any such combination shall also comply with the applicable provisions of §§ 703.13 (6), (7) and/or (8) of the Act, as the same may be amended or renumbered from time to time, and with all provisions of the Bylaws.

Section 10.3 Liens and Indemnification.

All work completed in connection with a combination or subdivision of a Commercial Unit shall be completed in a good and workmanlike manner, free and clear of all liens. The Commercial Unit Owners with respect to which a combination occurs shall indemnify and hold harmless all other Unit owners, the Board, the Residential Committee, Commercial Committee, the Declarant and the Association from and against all claims of third parties for personal injury or property damage arising from work completed in connection with such relocation, subdivision or combination. The Board, acting through the Commercial Committee, shall have the authority to assess against any such Commercial Unit Owner, any and all costs reasonably incurred by the Association as the result of failure by said Commercial Unit Owner to pay any and all costs associated with such work, which fall within the purview of the foregoing indemnity.

SECTION 11 -- PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 11.1 Determination of Percentage of Interest in Common Elements.

The percentage of interest in the Common Elements applicable to each Unit, as shown on Exhibit B was determined pursuant to Section 703.13 of the Condominium Act, and is based upon floor space, subject to the location of such space and additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of a particular Unit. The aggregate Common Interest for all Commercial and Residential Units is one hundred percent (100.00%).

Section 11.2 Method of Apportionment of Costs to General Common Elements.

Except as otherwise provided herein, all costs and expenses attributable to the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, the General Common Elements ("General Common Expenses") shall be determined by the Association as set forth below, and shall be borne by the Residential Committee and the Commercial Committee. General Common Expenses shall also include all such other items provided for in the Declaration or the Bylaws to be General Common Expenses.

General Common Expenses shall also include such amounts as the Association may deem proper for a general operating reserve or for a reserve for working capital or for replacements with respect to the General Common Elements. The Association shall from time to time and at least annually prepare a budget to meet General Common Expenses and shall allocate and assess to the Residential Unit Owners and the Commercial Unit Owners, pro rata in accordance with the aggregate respective Common Interests of the Residential Unit Owners and Commercial Unit Owners as set forth in the Exhibit B, charges ("General Common Charges") to meet General Common Expenses. Such budgets shall include such amounts for reserves, as the Association deems appropriate. In addition to basing charges on Common Interests, the Association may also make allocations and assessments of General Common Expenses in accordance with contract allocations and usage (both projected and actual) so long as such allocations are reasonable under the circumstances and are in accordance with applicable provisions of the law. Notwithstanding anything to the contrary set forth above, the Association may not modify its method of allocations and assessments or increase the number of building employees servicing the Commercial Units in such a manner as would increase the Common Charges otherwise payable by the Commercial Unit Owners, without the consent of the Commercial Unit Owners.

Section 11.3 Method of Apportionment of Costs to Limited Common Elements.

(1) **Residential Section.** Except as otherwise provided herein, all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of and any alteration, addition or improvement to, Residential Common Elements or the Residential Limited Common Elements ("Residential Common Expenses") shall be determined exclusively by the Residential Committee and shall be borne solely by the Residential Unit Owners in proportion to their respective Common Interests as shown in Exhibit C. Notwithstanding anything to the contrary in this Section 11.3(1)(1), if a Residential Common Element or Residential Limited Common Element benefits only certain Residential Unit Owners, then the costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation shall be borne solely by those Residential Unit Owners who benefit from the Residential Common Element or Residential Limited Common Element in the proportion that the Common Interest of each benefiting Residential Unit Owner bears to the Common Interest of all benefiting Residential Unit Owners. In addition, except as otherwise provided in the Bylaws, such Residential Unit Owners shall collectively be responsible for the normal operation, maintenance and repair, including but not limited to the cost of staff necessary for such operation, maintenance and repair, of any such Residential Common Element or Residential Limited Common Element at their sole cost and expense. Residential Common Expenses shall include, without limitation, such amounts as the Residential Committee may deem proper for a general operating reserve or for a reserve for working capital or for replacements with respect to the Residential Common Elements or the Residential Limited Common Elements. Residential Common Expenses shall also include all such other items provided for in the Declaration or the Bylaws to be Residential Common Expenses. The Residential Committee shall from time to time and at least annually prepare a budget to meet Residential Common Expenses and shall allocate and assess to the Residential Unit Owners, pro rata in accordance with their respective Common Interests (except as otherwise provided in this Declaration or the Bylaws), charges ("Residential Common Charges") to meet: (a) Residential Common Expenses; and (b) the

Residential Unit Owners' pro rata share of General Common Charges. Such budgets shall include such amounts for reserves as the Residential Committee deems appropriate

(2) **Commercial Section.** Except as otherwise provided herein, all costs and expenses in connection with the repair, maintenance, replacement, restoration and operation of, and any alteration, addition or improvement to, Commercial Common Elements or Commercial Limited Common Elements ("Commercial Common Expenses") shall be determined by the Commercial Committee and shall collectively be borne solely by the Commercial Unit Owners in proportion to their respective Common Interests as described in Exhibit D. Notwithstanding anything to the contrary in this Section 11.3(2), if a Commercial Common Element or Commercial Limited Common Element benefits only certain Commercial Unit Owners, then the Commercial Section's costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation) shall be borne solely by those Commercial Unit Owners who benefit from the Commercial Common Element or Limited Common Element in the proportion that the Common Interest of each benefiting Commercial Unit Owner bears to the Common Interest of all benefiting Commercial Unit Owners. In addition, except as otherwise provided in the Bylaws, such Commercial Unit Owners shall be responsible for the normal operation, maintenance and repair, including but not limited to the cost of staff necessary for such operation, maintenance and repair, of any such Commercial Common Element or Commercial Limited Common Element at their sole cost and expense. Commercial Common Expenses shall also include such amounts as the Commercial Committee may deem proper for a general operating reserve or for a reserve for working capital or for replacements with respect to the Commercial Common Elements. Commercial Common Expenses shall also include all such other items provided for in this Declaration or the Bylaws to be Commercial Common Expenses. The Commercial Committee shall from time to time and at least annually prepare a budget to meet Commercial Common Expenses and shall allocate and assess to the Commercial Unit Owners, pro rata in accordance with their respective Common Interests (except as otherwise provided in the Declaration or these Bylaws), charges ("Commercial Common Charges") to meet: (a) Commercial Common Expenses, and (b) the Commercial Unit Owner' pro rata share of General Common Charges. Such budgets shall include such amounts for reserves as the Commercial Committee deems appropriate. The Commercial Committee shall advise all Commercial Unit Owners promptly in writing of the amount of Commercial Common Charges payable by each of them and shall furnish copies of each budget on which such Commercial Common Charges are based to all Commercial Unit Owners and Permitted Mortgagees thereof.

SECTION 12 --NUMBER OF VOTES PER UNIT

At meetings of the Association:

(a) Each Residential Unit shall be entitled to one (1) vote; AND

(b) Each Commercial Unit Owner shall be entitled to two (2) votes in the Association; AND

(c) There shall be zero (0) votes appurtenant to each and all Residential and Commercial Parking Units.

After careful consideration of the relevant factors, the Declarant believes that the foregoing method of voting rights is fair and equitable as well as the most efficient for purposes of administration.

SECTION 13 --ASSOCIATION OF UNIT OWNERS

Section 13.1 Membership.

All Commercial and Residential Unit owners shall be members of an Association to be known as **601 LOFTS CONDOMINIUM OWNERS' ASSOCIATION, INC.** (the "Association"). As further described in the Bylaws, certain duties of the Association may be delegated to, as applicable, the Commercial or Residential Committee. The Association shall be responsible for carrying out the purposes of this Declaration, the Bylaws and the Rules and Regulations. The Association shall be incorporated as a nonprofit corporation under the laws of the State of Wisconsin. Each Residential and Commercial Unit Owner and the occupants of the Units shall abide by and be subject to all of the rules, regulations, duties and obligations of this Declaration, the Bylaws and the Rules and Regulations of the Association.

Section 13.2 Voting Rights.

Each Residential Unit shall be entitled to one (1) vote, each Commercial Unit Owner shall be entitled to two (2) votes in the Association; and there shall be zero (0) votes appurtenant to each and all Residential and/or Commercial Parking Units. Only one membership shall exist for each Residential and Commercial Unit in the Association. Voting rights may not be split even if title to a Unit is held by more than one Person must be voted pursuant to the designation contained in the membership list maintained pursuant to the Bylaws. The Declarant shall be entitled to cast the votes pertaining to any Unit or Units declared as a part of the Condominium that remain unsold. The respective rights, qualifications and obligations of the members shall be as set forth in the Bylaws of the Association.

Section 13.3 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, maintenance and administration of the Condominium. The Association may contract for common services or utilities as may be required for each Unit.

Section 13.4 Association Records.

The Association shall have current copies of this Declaration, the Articles of Incorporation and Bylaws of the Association, the Plat, any rules or regulations affecting the Condominium, and the Association's books, records and financial statements available for inspection during normal

business hours by Unit owners or by holders, insurers or guarantors of first mortgages secured by Units in the Condominium. Upon written request, the Association shall also provide a written financial statement for the preceding fiscal year to any such holder, insurer or guarantor.

Section 13.5 Monthly Payments.
The Board (through an appropriate Committee of the Board) shall levy and enforce monthly assessments of dues in accordance with the Bylaws.

SECTION 14 -- LEASING

So long as the Declarant or the Association determine that a lease or sublease of a Unit does not preclude the Condominium from qualifying as an eligible condominium project under Freddie Mac, Fannie Mae, HUD or VA residential mortgage programs then:

(i) for each lease contract (and for each extension thereof) a Unit Owner proposes to execute; AND

(ii) upon the express written approval of, as applicable, the Declarant or the Association,

a Unit Owner may lease or sublease his/her Unit provided that:

(a) No Unit, or any part thereof, may be leased or subleased for transient hotel purposes, or, other than leases for Residential and/or Commercial Parking Units, for an initial term of less than six (6) months; AND

(b) No Unit, or any part thereof, may be leased or subleased without a written lease or sublease; AND

(c) A copy of the lease, sublease (or extension of the lease or sublease) shall be furnished to the Association in order to obtain a written approval of the same; AND

(d) If a lease or sublease (or extension of the lease or sublease) is approved by, as applicable, the Declarant or the Association:

(xx) an executed copy of the lease or sublease shall be provided to the Association; AND

(yy) the right of any lessee or sublessee of a Unit, shall be subject to, and each lessee or sublesee shall be bound by, the covenants, conditions set forth in this Declaration, the Bylaws and the Rules & Regulations of the Condominium and a default thereunder shall constitute a default under the lease or sublease; provided, however, that the foregoing shall not impose any direct liability on any lessee or sublessee of a Unit to pay any

Common Expense assessments on behalf of a Unit Owner from which such Person has leased a Unit.

SECTION 15 -- RECONSTRUCTION AFTER LOSS

Section 15.1 Reconstruction.

In the event of fire, casualty or any other disaster affecting one or more Units in a Building or other improvements on the Condominium (the "Damaged Premises"), the Damaged Premises shall be reconstructed and repaired in accordance with the Bylaws, **UNLESS:** (i) there exist insufficient insurance proceeds; or (ii) estimated cost of repairing the Damaged Premises exceeds five hunderd thousand dollars ($500,000.00). Reconstruction and repair as used herein shall mean restoring the Damaged Premises to substantially the same size, location, and condition they were in prior to the fire, casualty or disaster, as more fully described in Section 6 of the Bylaws. The Association shall undertake to cause such reconstruction and repair to be accomplished within a reasonable period of time.

Section 15.2 Insufficient Insurance Proceeds or Costs Exceed One Million Dollars.

If: (i) the insurance proceeds are insufficient to reconstruct or repair the Damaged Premises; or (ii) estimated cost of repairing the Damaged Premises exceeds five hundred thousand dollars ($500,000.00) then within sixty (60) calendar days of the discovery of the damage:

(a) The written consent of at least seventy-five percent (75.00%) of all Unit Owners entitled to vote shall be required to determine whether to repair or reconstruct the Damaged Premises; or

(b) The Condominium shall be subject to an action for partition upon obtaining the written consent of at least seventy-five percent (75.00%) of the Unit owners entitled to vote.

In the event either: (i) there are sufficient insurance proceeds to repair and/or restore the Damaged Premises and the estimated cost of repairing or reconstructing the Damaged Premises is less than five hundred thousand dollars ($500,000.00); or (ii) seventy-five percent (75%) of all Unit Owners entitled to vote did not vote to waive, terminate or partition the Condominium, then the Condominium shall be repaired in accordance with Section 6 of the Bylaws. In the case of partition, the net proceeds of sale together with any net proceeds of insurance (the "Partition Proceeds") shall be considered as one fund and shall be divided among all Unit owners in proportion to their respective Common Interests.

If the property that is damaged is part of the Common Elements, the Partition Proceeds shall be divided among all Unit Owners in accordance with their respective interests in the Common Elements.

(c) If the consent required under subparagraph (b) above is not obtained within sixty (60) days from the date of the loss, then the Damaged Premises shall be reconstructed and repaired by the Association with the insurance proceeds and owners of Units in the Damaged

Premises shall be assessed for the deficiency in accordance with such Owner(s) proportionate Common Interest.

If the property that is damaged is part of the Common Elements, the deficiency shall be shared by the owners of all Units in accordance with their respective interests in the Common Interests. If the Damaged Premises consists only of parts of a Unit for which responsibility for maintenance and repair is that of the Unit owner, then the Unit owner shall be reponsible for the costs and expenses relating to the repair and/or reconstruction.

Section 15.3 Substantial Damages.

If two-thirds (2/3) or more of the Buildings and other improvements above foundation are destroyed, regardless of the sufficiency of any insurance proceeds for reconstruction and repair of the Damaged Premises, no such reconstruction and repair shall take place unless within ninety (90) days from the date of the loss, such reconstruction and repair have been approved by at least two-thirds (2/3) of the vote of all Unit owners. If such approval is not given within ninety (90) days, then the Condominium shall be subject to an action for partition in the same manner as is provided in section 15.2(b) above.

SECTION 16 --INSURANCE

Section 16.1 Unit Owners.

Individual Residential and Commercial Unit Owners shall provide insurance for their respective Units and all fixtures and improvements contained therein. Premiums for such insurance shall be an individual expense of the respective Unit owners.

Section 16.2 Authority to Purchase; Named Insured.

All insurance policies upon the Condominium shall be purchased by the Association. The named insured shall be the Association individually and as agent for the Unit Owners, without naming them, and as agent for their Permitted Mortgagees. Provisions shall be made for the issuance of the mortgagee endorsements and memoranda of issuance to the Permitted Mortgagees of Unit Owners. Such policies shall provide that payments by the insurer for losses shall be made to the Association, and all policies and their endorsements shall be deposited with the Association as set forth herein.

Section 16.3 Association Insurance.

The Association shall be required to obtain and maintain to the extent obtainable the following insurance:

(a) fire insurance with all risk extended coverage, vandalism and malicious mischief endorsements and increased cost of construction endorsements, insuring the entire Building (including each Unit, but excluding fixtures, furniture, furnishings or other personal property not constituting a part of such Unit), together with all service machinery contained therein and

covering the interests of the Condominium, the Residential Committee, the Commercial Committee and all Unit Owners and their Permitted Mortgagees, as their respective interests may appear, in an amount equal to the full replacement value of the building (inclusive of pilings, foundation and footings), said policies shall contain a standard mortgagee clause in favor of each Permitted Mortgagee which shall provide that the loss, if any, thereunder shall be payable to such Permitted Mortgagee as its interest may appear, subject however, to the loss payment provisions hereinafter set forth;

(b) if the Association has employees, worker's compensation insurance;

(c) boiler and machinery insurance;

(d) plate glass insurance to the extent, if any, determined by the Association;

(e) water damage insurance to the extent, if any, determined by the Association;

(f) general liability insurance;

(g) elevator liability and collision insurance;

(h) fidelity insurance covering the Association and all officers, directors, managing agents and employees of the Association, the Residential Section, and the Commercial Section;

(i) directors and officers liability insurance; AND

(j) such other insurance as the Association may reasonably determine is required by the Condominium.

The premiums for all insurance referred to above and for the liability insurance referred to below shall be a General Common Expense and shall be borne by the Residential Unit Owners and the Commercial Unit Owner in such proportions between them, with due consideration to their respective risks, liabilities and replacement values, as are equitable (as determined by the respective insurance carriers thereof or their agents, brokers or other such parties designated by the Association). All other matters related to insurance of the Condominium shall be governed in accordance with the Bylaws.

Section 16.4 Terms of Insurance.

To the extent possible, the insurance obtained by the Association shall provide that the insurer waives its rights of subrogation as to any claim against Unit owners, occupants, the Association and their respective agents, invitees, and guests, and that the insurance cannot be cancelled, invalidated nor suspended on account of conduct of any one or more Unit owners, occupants, or the Association, or their agents, invitees, and guests, without thirty (30) days prior written notice to the Association giving it opportunity to cure the defect within that time. The amount of protection and the types of hazards to be covered shall be reviewed by the Association at least annually and may be increased or decreased at any time it is deemed necessary or

advisable as determined by the Association to conform to the requirements of full insurable value.

SECTION 17 --ENCROACHMENTS

Section 17.1 Encroachments.

In the event that by reason of the construction, reconstruction, settlement, or shifting of any building or structure, or the design or construction of any Unit or structure, any part of the Common Elements or Limited Common Elements, encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements or Limited Common Elements, or any portion of any Unit encroaches upon any part of any other Unit, or any portion of any Limited Common Elements encroach upon other Limited Common Elements, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit, Common Elements or Limited Common Elements so long as all or any part of the building or structure containing such Unit, Common Elements or Limited Common Elements shall remain standing. However, in no event shall a valid easement for any such encroachment be created in favor of the owner of any Unit or rights to use of Common Elements or Limited Common Elements, if such encroachment occurred due to the willful and knowing conduct of said owner.

SECTION 18 --COVENANTS RUNNING WITH THE LAND

All provisions of this Declaration, the Bylaws and the Rules and Regulations as they exist from time to time, including, without limitation, the provisions of this Section 18, shall to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and his/her heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the general public. All present and future owners, tenants, subtenants, licensees, and other occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Residential and/or Commercial Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any Person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease or use and occupancy agreement thereof. If any provision which is necessary to cause this Declaration to be sufficient to submit the Property to the provisions of the Act is missing from this Declaration, then such provision shall be deemed included as part of this Declaration, for the purposes of submitting the Property to the provisions of the Act.