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**DECLARATION OF CONDOMINIUM  
OF  
KINGS POINTE**

THIS DECLARATION made and entered into this 31st day of October, 1994, by Mercantile Trust & Savings Bank as Trustee under the provision of a Trust Agreement dated August 9, 1979 and known as Trust Number 49-6669, having its principal office at 133 North 33rd Street, Quincy, Illinois, and its beneficial owners, hereinafter referred to as "Developer",

**W I T N E S S E T H:**

WHEREAS, Developer is the owner in fee simple of certain real estate, hereinafter described, located in Adams County, Illinois; and

WHEREAS, Developer intends to, and does hereby submit such real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, all rights and privileges belonging in or otherwise pertaining thereto and any and all easements pertinent thereto, to the provisions of the Illinois Condominium Property Act; and

WHEREAS, Developer desires to establish certain rights and easements in, over and upon said real estate for the benefit of itself and all future owners of any part of said real estate and any unit or units thereof or therein contained, and to provide for the harmonious beneficial and proper use and conduct of the real estate and all units; and

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

**NOW, THEREFORE, Developer DECLARES as follows:**

1. **DEFINITIONS.** Certain words and terms used in this Declaration and the Bylaws are defined as follows:

- (a) ACT: The Condominium Property Act of the State of Illinois, as amended from time to time.
- (b) ASSOCIATION: The Kings Pointe Homeowners Association being the Association of all the Unit Owners acting pursuant to the Bylaws attached hereto as Exhibit "C", through its duly elected Board.
- (c) BOARD: The Board of Managers of the Association as constituted at the time and from time to time.
- (d) BUILDINGS: All structures, attached or unattached, containing one or more Units.
- (e) BYLAWS: The Bylaws of the Association, which are attached hereto as Exhibit "C".
- (f) COMMON ELEMENTS: All portions of the Property except the Units, including without limiting the generality of the foregoing, the Parcel, common storage areas, mechanical rooms and equipment therein, refuse collection system, and structural parts of the improvements on the Parcel, wherever located.
- (g) COMMON EXPENSES: The proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board.
- (h) CONDOMINIUM INSTRUMENTS: All instruments and authorized amendments hereto recorded pursuant to the provisions of the Act, including the Declaration, Bylaws and Plat.
- (i) DEVELOPER: Mercantile Trust & Savings Bank as Trustee under the provision of a Trust Agreement dated August 9, 1979 and known as Trust Number 49-6669 and its beneficial owners, its successors and assigns.
- (j) FIRST MORTGAGE: An owner of a bona fide first mortgage covering any portion of the Property.
- (k) LIMITED COMMON ELEMENTS: That part of the Common Elements contiguous to and serving a single Unit as an inseparable appurtenance thereto, including, specifically, driveways, outside garden areas, and all fixtures and structures therein which lie outside the Unit boundaries, pipes, ducts, flues, shafts, electrical wiring or conduits or other system or component parts thereof which serve a Unit exclusively to the extent such system or component part is located outside the boundaries of a Unit.
- (l) MAINTENANCE FUND: All money collected or received

by the Association pursuant to the provisions of the Condominium Instruments.

(m) MAJORITY OR MAJORITY OF UNIT OWNERS: The owners of more than 50 percent in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Unit Owners means such percentage in the aggregate in interest of such undivided ownership.

(n) MEMBER: A person or entity who holds a membership in the Association.

(o) OCCUPANT: A person or persons, other than a Unit Owner, in possession of a Unit.

(p) PARCEL: The lot or lots, tract or tracts of land, described in paragraph 2 hereof, submitted to the provisions of the Act.

(q) PERSON: A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(r) PLAT: A plat or plat of surveys of the Parcel of all Units in the Property submitted to the provisions of the Act, which shall consist of delineation of all such Units and such other data as may be required by the Act.

(s) PROPERTY: All land, property and space comprising the Parcel, all improvements and structures erected, constructed or contained therein or thereon, including the Buildings and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual uses, benefit and enjoyment of the Unit Owners, submitted to the provisions of the Act.

(t) RECORD: To record in the Office of the Recorder of Deeds of Adams County, Illinois.

(u) RESERVES: Those sums paid by Unit Owners which are separately maintained by the Board for purposes specified by the Board or the Condominium instruments.

(v) UNIT: Any part of the Property designed and intended for any type of independent use and which is designated on the Plat as a Unit.

(w) UNIT OWNER: The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit and its appurtenant undivided ownership interest in the Common Elements.

2. NAME AND LOCATION OF CONDOMINIUM. The name by which the Property shall hereafter be known is Kings Pointe. Said Property is located at 2100 Koch's Lane, Adams County, Illinois.

3. LEGAL DESCRIPTION OF PARCEL. The Parcel hereby submitted to the provisions of the Act is legally described as follows:

See Exhibit "A" attached hereto and made a part hereof.

4. DESCRIPTIONS OF UNITS. All units are delineated on the Plat attached hereto as Exhibit "D" and made a part of this Declaration. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. It is understood that each Unit consists of the space set forth in the delineation on Exhibit "D" including the perimeter and exterior walls, floors, ceilings, roofs, garage, fireplace, chimneys, windows, doors, patio and fixtures appurtenant to the Unit.

5. USE AND OWNERSHIP OF THE COMMON ELEMENTS.

(a) The use of the Common Elements and the right of the Unit Owners with respect thereto shall be subject to and governed by the Act, the Condominium Instruments and the rules and regulations of the Board.

(b) Each Unit Owner shall own an undivided interest in the Common Elements, in the percentage set forth in Exhibit "B" attached hereto and made a part hereof, as a tenant in common with all other Unit Owners. Except for (i) portions of the Common Elements which have been assigned to the Unit Owners by the Board pursuant to the provisions of the Condominium Instruments and (ii) the Limited Common Elements, each Unit Owner, his agents, permitted occupants, family members and invitees shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidental uses permitted by the Condominium Instruments, which rights shall be appurtenant to, and run with, his Unit. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements, access to which is available only through his Unit. The right to the exclusive use and possession of the Limited Common Elements as aforesaid shall be appurtenant to and run with the Unit of such Unit Owner. Except as set forth in the preceding sentence, Limited Common Elements may not be transferred between or among Unit Owners.

6. ENCROACHMENTS AND EASEMENTS.

(a) If any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any

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 any portion of any Unit encroaches upon any part of any Unit as a result of the construction, repair, reconstruction, settlement or shifting of the Buildings, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit or Common Elements so encroaching so long as any part or all of the Building containing such Unit or Common Elements so encroaching shall remain standing; provided, however, that after the date this Declaration is recorded, a valid easement for the encroachment shall in no event be created in favor of any owner of a Unit other than Developer or in favor of the owners of the Common Elements if such encroachment occurred due to the willful conduct of said owner or owners.

(b) Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas lines, telephone wires and equipment, electrical conduits, wires and equipment over, under, along and on any part of the Common Elements as they exist on the date of the recording hereof.

(c) All easements and rights described herein are easements appurtenant, running with the Parcel, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said Parcel, or any part or portion thereof.

(d) Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcel as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

(e) Upon approval by at least 66 2/3 percent of the Unit Owners, portions of the Common Elements may be dedicated to a public body for purposes of streets or utilities. Any action pursuant to this subparagraph (e) of paragraph 6 must be taken at a meeting of Unit Owners duly called for that purpose.

#### **7. SALE OR OTHER ALIENATION.**

(a) Any Unit Owner who desires to sell his Unit or any interest therein to any person shall first obtain from the proposed purchaser a bona fide executed offer in writing,

setting forth all the terms and conditions of said proposed transaction. The offer shall be expressly subject to the terms of this paragraph 7. If any Unit Owner receives such an offer which he intends to accept, he shall accept such offer subject to the terms of this paragraph 7 and give written notice to the Association of such offer and acceptance, stating the name and address of such proposed purchaser, the terms of the proposed transaction, and such other information as the Association may reasonably require, and shall furnish a copy of such executed offer and acceptance to the Association. During the period of thirty (30) days following receipt by the Association of such written notice, the Association shall have the first right and option to purchase such Unit (or to cause the same to be purchased by any designee or assignee, corporate or otherwise, of the Association) upon the same terms and conditions as stated in the aforesaid notice received by the Association. If Association shall give written notice to the Unit Owner within said thirty (30) day period, of the exercise of its first right and option, the transaction between the Unit Owner and the Association or its designee shall be consummated upon the same terms as set forth in the notice to the Association.

If the Association shall give written notice to the Unit Owner within said thirty (30) day period that it has elected not to exercise such first right or option, or if the Association shall fail to give any notice within said thirty (30) day period, then the proposed transaction as described and set forth in the notice to the Association may be consummated within ninety (90) days after the expiration of said thirty (30) day period. If the Unit Owner fails to consummate such transaction within such ninety (90) day period, such Unit and all rights with respect thereto shall again become subject to the first right and option of the Association as herein provided.

(b) Any Unit Owner who wishes to make a gift of his Unit or any interest therein, or wishes to transfer his Unit or any interest therein for a consideration other than cash, or notes (secured or unsecured) of such transferee, or the assumption of an existing indebtedness, to any person or persons who would not be an heir at law of the Unit Owner under the Rules of Descent of the State of Illinois were he or she to die within sixty (60) days prior to the contemplated date of such gift or other transfer, shall give to the Association notice of his or her intent to make such gift or other transfer, not less than sixty (60) days prior to the contemplated date thereof. Said notice shall state the contemplated date of said gift or other transfer, the intended donee or transferee, and the terms in detail of such proposed other transfer and such other information as the Association may reasonably require. The Association shall have the first right and

option to purchase said Unit or interest therein (or to cause the same to be purchased by any designee or assignee, corporate or otherwise, of the Association) for cash at fair market value which is to be determined by arbitration as hereinafter provided in sub-paragraph (d).

(c) In the event that any Unit Owner dies leaving a Will devising his Unit, or any interest therein, to any person or persons not heirs at law of the deceased Unit Owner under the Rules of Descent of the State of Illinois, and said Will is admitted to probate, the Association shall have the first right and option to purchase said Unit or interest therein (or to cause the same to be purchased by any designee or assignee, corporate or otherwise, of the Association) from the estate of the deceased Unit Owner, or from the devisee or devisees named in such Will if no power of sale is confirmed by said Will upon the personal representative named therein, for cash at fair market value which shall be determined by arbitration as hereinafter provided in sub-paragraph (d).

(d) Within thirty (30) days after the appointment of a personal representative for the estate of the deceased Unit Owner, or the receipt by the Association of the written notice referred to in sub-paragraph (b) hereof, as the case may be, the Association on the one hand, and said owner of the Unit to be purchased, or devisee or devisees, or personal representatives as the case may be on the other hand, shall each appoint a qualified real estate appraiser to act as arbitrator and shall give written notice of such appointment to the other party to the arbitration. If either party fails to appoint an arbitrator, the arbitrator appointed by the one party shall act as sole arbitrator. If each party has so appointed an arbitrator, then within ten (10) days after the appointment of the last to be appointed of said arbitrators so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. If the two arbitrators so appointed fail to agree upon a third arbitrator, then such third arbitrator shall be appointed by the American Arbitration Association upon application of either party to the Arbitration. Within fifteen (15) days after the appointment of the third arbitrator, the three arbitrators will determine the fair market value of the Unit or interest therein and shall thereupon give written notice of such determination to the Association and said owner or devisee or devisees, or personal representative, as the case may be. If the three arbitrators fail to agree on a fair market value, then the mean average of the values fixed by the three arbitrators shall be the fair market value. The Association's right to purchase the Unit or interest therein at the price so determined shall expire sixty (60) days after the receipt of notice of such fair market value; provided, however, that such first right and option to purchase shall

expire seven (7) months after the appointment of a personal representative of a deceased Unit Owner who is not empowered to sell. The Association shall be deemed to have exercised its first right and option if it tenders the required sum of money to said owner or said devisee or devisees, or to said personal representative as the case may be, within said option period.

(e) In the event any Unit or interest therein is sold at judicial or execution sale (other than a mortgage foreclosure sale), the person acquiring title through such sale shall, before taking possession of the Unit so sold, give thirty (30) days' written notice to the Association of his intention so to do, whereupon the Association shall have the first right and option to purchase said Unit or interest therein at the same price for which it was sold at said sale. If said first right and option is not exercised by the Association within said thirty (30) days after receipt of such notice, the aforesaid option shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Association shall be deemed to have exercised its first right and option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

(f) In the event a Unit Owner leases a Unit owned by him, a copy of the executed lease and a copy of any sublease, or assignment or lease, as and when executed, shall be furnished by such lessor, sublessor, or assignor to the Association, and the lessee, sublessee or assignee thereunder shall be bound by and be subject to all the obligations of the owner with respect to such Unit as provided in this Declaration, and the lease, sublease or assignment shall expressly so provide. The person making any such lease, sublease or assignment shall not be relieved thereby from any of his obligations hereunder.

(g) The Association shall not exercise any option hereinabove set forth without the prior written consent of 66 2/3 percent of the Unit Owners which consent must be obtained, if at all, during the period of thirty (30) days following receipt by the Association of the notice described in paragraph 7(a) hereof or thirty (30) days following appointment of the personal representative as described in paragraph 7(d) hereof, as applicable. The Association may bid to purchase at any auction or sale of the Unit or interest therein of any Unit Owner, deceased or living, which sale is held pursuant to any order or direction of a court upon the prior written consent of 66 2/3 percent of the Unit Owners, which consent shall set forth a maximum price which the Association is authorized to bid and pay for the said Unit or interest therein.



(h) The terms of this paragraph 7 and the first right and option herein provided for shall not be applicable to:

(i) The transfer or conveyance, by operation of law or otherwise of the interest of a co-owner of any Unit, to any other co-owner of the same Unit where such co-owners hold title to such Unit or such beneficial interest as tenants in common or as joint tenants;

(ii) the transfer by sale, gift, devise or otherwise of any Unit or interest therein or beneficial interest of a land title holding trust in title to a Unit to or for the sole benefit of any spouse, descendant, ancestor or sibling (or the spouse of any such person) of the transferor;

(iii) the execution of a bona fide mortgage or other security interest;

(iv) the sale, conveyance or leasing of a Unit by the holder of a mortgage or trust deed who has acquired title to such Unit by deed in lieu of foreclosure or foreclosure of a mortgage or trust deed on the Property, or any Unit, provided such holder is a bank, savings and loan association, insurance company or like institutional mortgagee; and

(v) any sale, conveyance, lease or transfer of a Unit by the Developer.

(i) Acquisition of Units or interests therein under the provisions of this paragraph shall be made from the Maintenance Fund. If said fund is insufficient, the Association shall levy a special assessment against each Unit Owner other than the owner of the Unit which is to be acquired by the Association in the ratio that his percentage of ownership in the Common Elements bears to the total of such percentages applicable to Units subject to said special assessment, which assessment shall become a lien and may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses. Subject to the provisions of the Act and Bylaws, the Association may borrow money to finance the acquisition of Units or interests therein which acquisition is authorized by this paragraph; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Property other than the Unit or interest therein to be acquired.

(j) Units or interests therein acquired pursuant to the terms of this paragraph, and all proceeds of any sale or leasing thereof, shall be held of record in the name of the

Association for the use and benefit of the Unit Owners in the same proportions that the Association could levy a special assessment under the terms of subparagraph (l) hereof. Subject to the provisions of the Act and Bylaws, said Units or interest therein shall be sold or leased by the Association for the benefit of such Unit Owners upon such price and terms as the Association shall determine.

(k) Upon the written consent of all the members of the Board, any of the rights or options contained in this paragraph 7 may be released or waived and the Unit or interest therein which is subject to the rights and options of the Association set forth in this paragraph may be sold, conveyed, given or devised free and clear of the provisions of this paragraph.

(l) Upon the written request of any prospective transferor, purchaser, tenant or mortgagee of a Unit, the Association, by its Secretary shall issue a written and acknowledgment certificate evidencing:

(i) that the provision of this paragraph 7 have been complied with or duly waived by the Association and that the first right and option of the Association has been terminated, if such is the fact;

(ii) that any conveyance, deed or lease is, by the terms hereof, not subject to the provisions of this paragraph 7, if such is the fact;

and such a certificate shall be conclusive evidence of the facts contained therein.

#### **8. THE ASSOCIATION.**

(a) Developer, prior to the first annual meeting of Unit Owners, or the Association, thereafter, may cause the formation of an Illinois not-for-profit corporation for the purpose of facilitating the administration and operation of the Property and to act as the Association.

(b) Whether or not the Association is incorporated,

(i) each Unit Owner shall be a Member of such Association, which membership shall terminate upon the sale or other disposition by such Member of his Unit, at such time the new Unit Owner shall automatically become a Member thereof;

(ii) the provisions of Exhibit "C" of this Declaration shall be adopted as the Bylaws of such Association;

(iii) the name of such Association shall be the Kings Pointe Homeowners Association; or a similar name.

9. INSURANCE, REPAIR AND RECONSTRUCTION.

(a) The Association shall acquire and pay for out of the Maintenance Fund herein provided for, the following:

(i) Such insurance as the Association is required to obtain under the provisions of the Act and such other insurance as the Association deems advisable in the operation, and for the protection of the Common Elements and the Units. Any losses under such policies of insurance shall be payable, and all insurance proceeds recoverable thereunder shall be applied and disbursed in accordance with the provisions of this Declaration and the Act.

Each Unit Owner other than the Developer, shall notify the Association in writing of any additions, alterations or improvements to his Unit and he shall be responsible for any deficiency in any insurance loss resulting from his failure to notify the Association. The Association shall use its reasonable effort to obtain insurance on any such additions, alterations or improvements, if such Unit Owner requests it to do so and if such Unit Owner shall make arrangements satisfactory to the Association to reimburse it for any additional premiums attributable thereto, and in the absence of insurance on such additions, alterations or improvements, the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. All such policies of insurance shall contain standard mortgage clause endorsements in favor of the First Mortgage of each Unit and shall provide that each such policy shall not be terminated, cancelled or substantially modified without at least 30 days prior written notice to the mortgage of each Unit.

(ii) Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, provided that such limits shall not be less than \$1,000,000.00 per occurrence for personal injury and/or property damage, insuring the Association, the members of the Board, the managing agent, if any, and their respective agents and employees, and the Unit Owners from any liability in connection with the Property.

(iii) Such other forms of insurance as the

Association shall elect to effect including such workmen's compensation insurance as may be necessary to comply with applicable law.

(iv) In the event the Federal Home Loan Mortgage Corporation (FHLMC) is a mortgagee or an assignee of a mortgage with respect to any Unit, a fidelity bond or bonds to protect against dishonest acts on the part of the officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association shall be purchased. Such bond or bonds shall name the Association as an obligee and shall be in an amount at least equal to 150 percent of the estimated annual Common Expenses including Reserves, unless a different amount is required by the FHLMC. Such bond or bonds shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee".

(b) Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association and the cost of any appraisal which the Association deems advisable in connection with any insurance, shall be Common Expenses.

(c) The Association shall secure insurance policies that will provide for the following;

(i) with respect to the insurance provided for in (a)(ii) of this paragraph, for coverage of cross liability claims of one insurance against another; and

(ii) a waiver of any rights of subrogation by the insurance company against any named insured.

(d) The Association may, but shall not be required to, secure policies providing:

(i) with respect to the insurance provided for in (a)(i) of this paragraph, that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Unit Owner;

(ii) with respect to the insurance provided for in (a)(i) of this paragraph, that the insurer shall not have the option to restore the property, if the property is sold or removed from the provisions of the Act.

(e) Each Unit Owner shall be responsible for insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner and insurance for his personal liability to the extent not covered by insurance

**maintained by the Association.**

(f) Upon the cancellation of any policy of insurance which the Association is required to obtain hereunder, the Association shall notify each party insured thereunder of such cancellation.

(g) In the event of fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Unit(s), shall be applied to restore the Unit(s) to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and Common Elements to have the same vertical and horizontal boundaries as before the fire or other disaster.

(h) If, in the event of fire or other disaster, the insurance proceeds are insufficient to restore the Unit(s) as set forth in the preceding subparagraph, then,

(i) the Board shall cause a meeting of Unit Owners to be held not later than the first to occur of (a) the expiration of thirty (30) days after the final adjustments of the insurance claims or (b) the expiration of ninety (90) days after the fire or other disaster which caused the damage.

(ii) At such meeting, the Board shall present an estimate of the cost of repair or reconstruction, together with an estimate of the part thereof which must be raised by way of special assessment.

(iii) The Unit(s) shall be restored and the proposed special assessment shall be levied only upon the vote of 75 percent of the Unit Owners.

(iv) If the Unit Owners do not vote to restore the Unit(s) at the meeting provided for in (i) above, then the Board may, at its discretion, call another meeting of Unit Owners to reconsider the questions. If the Unit Owners do not vote to restore the Unit(s) within 180 days after the fire or other disaster, then the Board may (but shall not be required to) Record a notice as permitted under the Act.

(v) If the Unit Owners do not vote to restore the Unit(s) under the provisions of the immediately preceding subparagraph and the Board does not Record a notice as permitted under the Act, then the Unit Owners may, with the consent of all First Mortgagees, withdraw any Unit(s) so affected by such fire or other disaster from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common

elements pertinent to such Unit shall be reallocated among the remaining Units on the basis of the relative percentage interest of the remaining Units. If only a portion of a Unit is withdrawn, the percentage of interest pertinent to that Unit shall be reduced accordingly, upon the basis of diminution of the market value of the Unit as determined by the Board. The allocation of any insurance, or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage of interest in the Common Elements. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements not necessarily including the limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with those entitled to their use. Upon the withdraw of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.

10. SEPARATE REAL ESTATE TAXES. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and its corresponding percentage of ownership of the Common Elements, as provided in the Act. In the event that for any years such taxes are not separately taxed to each Unit Owner, but are taxed to the Property as a whole, then the Association shall collect from each Unit Owner his proportionate share thereof in accordance with his respective percentage of ownership of the Common Elements and such taxes, levied on the Property as a whole, shall be considered a Common Expense.

11. USE AND OCCUPANCY OF UNITS AND COMMON ELEMENTS. The Units and Common Elements shall be used and occupied as follows:

(a) No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed. Each Unit or any two or more adjoining Units used together shall be used as a residence for a single family or such other use as permitted by this Declaration and for no other purposes.

(b) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such locations and in such form as shall be determined by the Association. The

right is reserved by Developer or its agent or agents, to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and on any part of the Common Elements, and the right is hereby given to any mortgagee, who may become the Owner of any Unit, to place such signs on any Unit owned by such mortgagee. Until all the Units are sold and conveyed, Developer shall be entitled to access, ingress and egress, to the Property as it shall deem necessary in connection with the sale of, or work in, the Building or any Unit. Developer shall have the right to use any unsold Unit or Units as a model for sales or for display purposes, and to relocate the same from time to time, and to maintain on the Property, until the sale of the last Unit, all models, sales offices and advertising signs or banners, if any, and lighting in connection therewith.

(c) Each Unit Owner shall be obligated to maintain and keep his own Unit and the Limited Common Elements appurtenant thereto in good, clean, order and repair. The use and covering of the interior and exterior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the building shall be subject to the rules and regulations of the Association. Notwithstanding this provision, the Association shall maintain and repair the exterior walls of the Units and the driveways and outside garden areas which constitute a portion of the Limited Common Elements of each Unit.

(d) Nothing shall be done or kept in any Unit or any Common Element which will increase the rate of insurance on the Property, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of any insurance maintained by the Association, or which would be violation of any law. No waste shall be committed in the Common Elements.

(e) Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Unit(s) and no sign, awning, canopy, shutter, radio, satellite dishes or television antenna (except as installed as of the date this Declaration is recorded or except as thereafter installed by Developer or the Association) shall be affixed to or placed upon the exterior walls or roof or any part thereof or on the Common Elements, without the prior written consent of the Association.

No air conditioning Unit of whatever type other than those installed as of the date this Declaration is recorded or those thereafter installed by Developer or the Association may be installed without the prior written permission of the Association.

(f) No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that household pets, such as dogs or cats, may be kept in Units, subject to rules and regulations adopted by the Association. No household pet, such as dogs or cats shall be kept or maintained at any time in outside pens or enclosures and outdoor pens or other facilities for animals are strictly forbidden.

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

(h) Except as constructed or altered by or with the permission of Developer or the Association, nothing shall be done to any Unit or in, on or to the Common Elements which would impair the structural integrity, safety or soundness of any Unit or which would structurally change the Unit.

(i) No clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(j) Each Unit Owner and the Association hereby waive and release any and all claims which he or it may have against any other Unit Owner, the Association, members of the Board, Developer and their respective employees and agents, for damage to the Common Elements, the Units, or any other personal property located in the Units, or Common Elements, caused by fire or other casualty or any act or omission referred to in paragraph 11(k), to the extent that such damages are covered by fire or other form of hazard insurance.

(k) If the act or omission of a Unit Owner, or of a member of his family, a household pet, guest, occupant or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, to the extent such payment is not waived or released under the



provisions of paragraph 11(j).

(l) Any release or waiver referred to in paragraph 12(j) and 11(k) hereof shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder.

(m) This paragraph 11 shall not be construed to prevent or prohibit a Unit Owner from maintaining his personal professional library, keeping his personal business or professional records or accounts, handling his personal business or professional telephone calls, or conferring on a limited basis with business or professional associates, clients or customers, in his Unit.

(n) No trailer, camper, mobile home, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar equipment shall be permitted to remain upon any portion of the Property, other than temporarily, unless placed or maintained within an enclosed garage. Commercial vehicles shall not include sedans or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Association. No unlicensed motor vehicles shall be operated upon the Property.

(o) All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, wood piles or storage piles shall be kept clean and concealed from view of other Units, streets and common areas. The Association shall be responsible for the removal of garbage from central pickup points.

(p) No building, fence, wall, obstruction, outside or exterior wiring, patio cover, tent, awning, carport, carport cover, improvement structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Association.

(q) Reasonable regulations concerning use of the Property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws. Copies of such regulations and amendments, if any, shall be furnished by the Association to

all Unit Owners and Occupants of the Units upon request.

12. VIOLATION OF DECLARATION. The violation of any rule or regulation adopted by the Association or the breach of any covenant or provision herein or in the Bylaws contained, shall, in addition to any other rights provided for in this Declaration or the Bylaws, give the Association the right:

(a) to enter upon the Unit, or any portion of the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and neither the Association nor the officers, employees or agents thereof shall thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or

(c) to take possession of such Unit or Owners interest in the Property and to maintain an action for possession of such Unit in a manner provided for by law.

(d) To determine the rights of the Unit Owner to continue to occupy, use or control the Unit owned by him and to maintain an action to sell such Unit by judicial sale. In such event, the proceeds of such judicial sale shall first be paid to discharge any existing first mortgage and then to pay all court costs, reasonable attorney fees and other expenses of the proceeding and sale, all of which shall be taxed against the defaulting Unit Owner in said decree.

Provided, however, that except in the case of emergency where damage to property or a person is threatened, the Association shall not take any such action unless it has (a) first given the Unit Owner alleged to have violated any restriction, condition or regulation adopted by the Association or to be in breach of any covenant or provision hereof or in the Bylaws contained, a hearing on such allegations pursuant to rules and regulations adopted by the Association, (b) the Association shall determine such allegations to be true and (c) the Unit Owner shall not have desisted from such violation or breach or shall not have taken such steps as shall be necessary to correct such violation or breach within such reasonable period of time as determined by the Association and indicated to the Unit Owner. Any and all cost and expenses incurred by the Association in the exercise of its authority as granted in this paragraph 12, or in enforcing a Unit Owner's breach of the Bylaws or the rules and regulations of the Association including but not limited to

court costs, reasonable attorney fees as determined by a court of competent jurisdiction, and the cost of labor and materials shall be paid by the Unit Owner in violation and, until paid by such Unit Owner, shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses. Any such liens shall be junior and subordinate to the lien of the first mortgage with respect to such Unit.

Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Unit Owner.

**13. ANNEXING ADDITIONAL PROPERTY.**

(a) Developer reserves the right from time to time, within seven years of the date of the recording of this Declaration, to annex and add to the Parcel and Property and thereby add to the condominium created by this Declaration, all or any portion of the additional land legally described in Exhibit "E", attached hereto and made a part hereof by recording an amended plat in accordance with Section 5 of the Act and an Amended Declaration in accordance with Section 6 of the Act. No rights of any character whatsoever within the additional land attach to any owner except as to that portion described on Exhibit "A" and except as to that portion described in any recorded Amended Declaration annexing and adding such portion to this Declaration as part of the condominium created by this Declaration.

(b) Each Amended Declaration shall include an amended Exhibit "A", (the legal description of portions of additional land already subject to the provisions of the Act) which shall amend Exhibit "A" hereto by setting forth the amended legal description of the Parcel to include the additional parcel or parcels annexed hereto, as well as a separate legal description of such addition. The Amended Declaration shall also contain an amended Plat which shall amend Exhibit "D" showing the boundaries of such addition and the entire Parcel as amended, and delineating the additional Units of such addition, all in accordance with Section 5 of the Act.

Each Amended Declaration shall also include an amended Exhibit "B" which shall amend Exhibit "B" hereto by setting forth the amended percentages of the undivided interest in the Common Elements (as amended and added to by such Amended Declaration) allocated to each Unit (including all previous Units and the additional Units added by such Amended Declaration).

(c) Portions of the additional land may be added from

time to time and at different times without limitation on the order of such additions. Such additional land may be added without limitations fixing the boundaries of the portions added from time to time and without limitations on the location of improvements to be built on the additional land. However, the maximum number of Units to be constructed on the additional land, shall be thirty-six.

(d) Any additional Buildings and Units which are made a part of the Property pursuant to this paragraph 13 shall be compatible with and substantially the same in style, floor plan, size and construction as the Units currently located on the Property.

(e) The percentage of undivided ownership interest in the Common Elements as amended by such Amended Declaration, and as set forth in the amended Exhibit "B" shall be determined and adjusted in the following manner.

The Common Elements as amended by such Amended Declaration shall be deemed to consist of:

(i) the Common Elements as existing immediately prior to the recording of such Amended Declaration (hereinafter referred to as the "Existing Common Elements"); and

(ii) the Common Elements added by such Amended Declaration (hereinafter referred to as the "Added Common Elements").

The Units as amended by such Amended Declaration shall be deemed to consist of:

(iii) The Units as existing immediately prior to the recording of such Amended Declaration (hereinafter referred to as the "Existing Units"); and

(iv) the Units added by such Amended Declaration (hereinafter referred to as the "Added Units").

The value of each of the Added Units shall be added to the aggregate value of the Existing Units and the total thereof shall be deemed to be the new value of the Property as a whole. "Value" as used in this paragraph shall be determined by Developer as of the date of the recording of the Amended Declaration. Such determination by Developer shall be conclusive and binding upon all Unit Owners, mortgagees and other parties who then or in the future have any interest in the Property.

The percentage of undivided ownership interest,

as amended, and adjusted by such Amended Declaration, in the entire Common Elements, consisting of the Existing Common Elements plus the Added Common Elements, to be allocated among all the Units, consisting of the Existing Units plus the Added Units, shall be computed by taking as a basis the value of each Unit in relation to the value of the Property as a whole, determined as aforesaid.

The Existing Units shall be entitled to their respective percentages of ownership, as amended and described and set forth in amended Exhibit "B" attached to such Amended Declaration, in the Added Common Elements as well as in the Existing Common Elements.

Each and all of the provisions of this Declaration and the Exhibits attached hereto, as amended by each such successive Amended Declaration and the amended Exhibits attached thereto, shall be deemed to apply to each and all the Units, including all such Added Units as well as all Existing Units, and to all the Common Elements, including all such Added Common Elements as well as Existing Common Elements.

The recording of an Amended Declaration shall not alter or affect the amount of any liens for Common Expenses due from any Existing Unit Owners prior to such recording, nor the respective amounts thereto assessed to or due from Existing Unit Owners for Common Expenses or other assessments.

(f) The lien of any mortgage encumbering any Existing Unit, together with its appurtenant percentage of undivided ownership interest in Existing Common Elements, shall automatically be deemed to be adjusted and amended when an Amended Declaration is recorded, in accordance with the respective percentage of undivided ownership interest in the Common Elements for such Existing Units as set forth in the amended Exhibit "B" attached to such Amended Declaration, and the lien of such mortgage shall automatically attach in such percentage to the Added Common Elements.

(g) Each and all of the Unit Owners, of all Existing Units and of all Added Units hereafter, and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors and assigns, by the acceptance of any deed or mortgage or other interest or with respect to any of such Units, shall be deemed to have expressly agreed, assented and consented to each and all of the provisions of this Declaration, with respect to the recording of any and all Amended Declarations as aforesaid which may amend, adjust and reallocate from time to time their respective percentages of

undivided ownership interest in the Common Elements including the Existing Common Elements and Added Common Elements, from time to time as hereinabove provided; and hereby further agree to each and all of the provisions of each and all of said Amended Declarations which may hereafter be recorded in accordance with the foregoing provisions of this Declaration.

(h) Each and all of the Unit Owners, of all Existing Units and of all Added Units hereafter, and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors and assigns, by their acceptance of any deed or mortgage or other instrument in or with respect to any of such Units, further acknowledges, consents and agrees, as to each such Amended Declaration that is recorded, as follows:

(i) The portion of the additional land described in each such Amended Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The percentage of ownership in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded Amended Declaration and upon the recording of each such Amended Declaration, the amount by which such percentage appurtenant to a Unit is reduced, as set forth in each such recorded Amended Declaration, shall thereby be deemed to be released and divested from such Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in such recorded Amended Declaration.

(iii) Each deed, mortgage or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the percentage of ownership in the Common Elements appurtenant to each Unit shall, upon the recording of each Amended Declaration, be divested pro tanto to the reduced percentage set forth in such Amended Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Units in accordance with the terms and percentages of each such recorded Amended Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each such deed, mortgage or other instrument of a Unit to so amend and reallocate the percentage of ownership in the Common Elements appurtenant to each Unit.

(v) The percentage of ownership in the Common Elements appurtenant to each Unit shall include and be deemed to include any additional Common Elements annexed

hereto by a recorded Amended Declaration and each deed, mortgage or other instrument affecting a Unit shall be deemed to include such additional Common Elements and the ownership of any such Unit and the lien of any such mortgage shall automatically include and attach to such additional Common Elements as such Amended Declaration are recorded.

(vi) Each Owner shall have a perpetual easement, appurtenant to his Unit, for the use of any additional Common Elements annexed thereto by and described in any recorded Amended Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners of specific Units which may be provided by any such Amended Declaration, or this Declaration and except as to any portion which may be designated as Limited Elements.

(vii) Each Owner by acceptance of the deed conveying his Unit agrees for himself and all those claiming under him including mortgagees that this Declaration and each Amended Declaration is and shall be deemed to be in accordance with the Act and for purposes of this Declaration and the Act, any change in the respective percentage of ownership in the Common Elements as set forth in each such Amended Declaration shall be deemed to be made by agreement of all Unit Owners.

(viii) The Developer reserves the right to amend this Declaration in such manner and each Unit Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this paragraph 13 to comply with the Act as it may be amended from time to time.

(ix) The foregoing provisions of this Declaration and in deeds and mortgages of the Units and Common Elements contain and will contain clauses designed to accomplish a shifting of the Common Elements. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Elements can be accomplished.

14. ENTRY BY ASSOCIATION. The Association or its officers, agents or employees may enter any Unit when necessary in connection with any painting, maintenance, repair or reconstruction for which the Association is responsible, or which the Association has a right or duty to do. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and except in the event of emergency shall be done upon reasonable notice to the Unit Owner. Any damage caused thereby shall be repaired by the

## **Association as a Common Expense.**

15. GRANTEES. Each Grantee of the Developer, each purchaser under articles of agreement for deed and each tenant under a lease accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, the Bylaws, rules and regulations of the Association, if any, and the jurisdiction, right and powers created or reserved by this Declaration, and the provisions of the Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed 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 said land, shall inure to the benefit of each grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

16. FAILURE TO ENFORCE. No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

17. NOTICES. Whenever any notice is required to be given under the provisions of this Declaration, or the Bylaws, a waiver thereof in writing by the person or persons entitled to such notice whether before or at the time stated therein, shall be deemed equivalent to the giving of such notice, provided such waiver or the time of same is not contrary to the provisions of the Act. Notices required to be given to any devisee or personal representative of a deceased Unit Owner shall be delivered by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Owner is being administered.

18. AMENDMENTS. Except as hereinafter otherwise provided, the provisions of paragraphs 1, 2, 3, 4, 5, 6 and this paragraph 18 of this Declaration, may be amended, changed or modified by an instrument in writing setting forth in such amendment, change or modification, signed and acknowledged by all members of the Board, all of the Unit Owners and each mortgage having a bona fide lien of recovering against any Unit. Except as herein otherwise provided, other provisions of this Declaration may be amended, changed or modified upon approval by all members of the Board and at least 75 percent of the Unit Owners, by an instrument in writing setting forth such amendment, change or modification, signed and acknowledged by an authorized officer of the Board and containing an affidavit by an officer of the Association certifying that (i) at least 75 percent of the Unit Owners have approved such amendment, change or modification and (ii) a copy of the amendment, change, or modification has been mailed by certified mail to all mortgagees having bona fide liens of record against any Unit, not



less than ten (10) days prior to the date of such affidavit. The approval of 51 percent (by percentage ownership) of Units which are subject to a mortgage or trust deed shall be required to materially amend any provision of the Declaration or Bylaws or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of Common Elements;
- (4) Insurance or fidelity bonds;
- (5) Rights to use of the Common Elements;
- (6) Responsibility for maintenance and repair of the Common Elements;
- (7) The annexation or withdrawal of property to or from Kings Pointe Condominium;
- (8) Boundaries of any Unit;
- (9) Interests in the Common Elements or Limited Common Elements;
- (10) Convertibility of Units into Common Elements or of Common Elements into Units;
- (11) Leasing of Units;
- (12) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his Unit in the condominium;

Any amendment, change or modification shall conform to the provisions of the Act and shall be effective upon recording thereof. No change, modification or amendment which affects the rights, privileges or other obligations of Developer shall be effective without the prior written consent of the Developer. The Bylaws may be amended in accordance with the provisions of Article XIV thereof.

19. ARBITRATION. Any controversy between Unit Owners or any claim by a Unit Owner against the Association or another Unit Owner arising out of or relating to the Declaration, Bylaws or rules and regulations of the Association, if any, shall be settled by arbitration in accordance with the Rules of the American

Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

20. CONDEMNATION. In the event of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements on the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. In the event that part or all of one or more Units is taken or condemned, then the portion so taken or condemned shall be deemed to have been removed from the provisions of the Act and the percentage of ownership interest in the Common Elements allocated to such Unit or portions thereof (as determined by the Board on the basis of diminution in market value of the Unit) shall be reallocated among the remaining Units on the basis of the relative percentage of ownership interest in the Common Elements of the remaining Units. In such cases, the Declaration and the Plat shall be amended accordingly, pursuant to the provisions of the Act. The allocation of any condemnation award, or other proceeds to any withdrawing or remaining Unit Owners shall be on an equitable basis, which need not be a Unit's percentage of interest in the Common Elements. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with the interest of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.

21. VIOLATIONS OF CERTAIN RULES. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Bill Clinton, the now incumbent President of the United States.

22. SEVERABILITY. The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision shall not impair nor affect in any manner the validity, enforceability or effect of the rest of this Declaration and all the terms hereof are hereby declared to be severable.

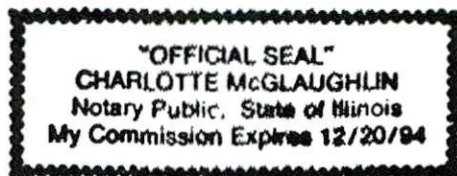
23. CONSTRUCTION. The provisions of this Declaration shall



be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Vice President, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth; and the said Trust Officer did also then and there acknowledge that the said Trust Officer, as custodian of the corporate seal of said Company, did affix the said corporate seal of said Company to said instrument as said Trust Officer's own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of October, 1994.

Charlotte McLaughlin  
Notary Public



This instrument was prepared by:  
Mays & Walden  
Attorneys at Law  
636 Hampshire, Suite 101  
P.O. Box 25  
Quincy, Illinois 62306-0025  
217-222-1526  
FAX 217-222-1568

**EXHIBIT "A"**

A part of the East 16.25 acres of the West 26.25 acres of the North 42.5 acres of the Northeast Quarter of Section 25 in Township 1 South of the Base Line and in Range 9 West of the Fourth Principal Meridian, Adams County, Illinois, being more particularly bounded and described as follows, to-wit:

*copy*

Commencing at a point on the North line of said Northeast Quarter, which point is a record North  $89^{\circ} 00'$  East 850.80 feet from the Northwest corner of said Northeast quarter, said point also being the Northeast corner of Steinkamp Subdivision as shown by the plat of said subdivision recorded in Book 7 of Plats at Page 12 in the Office of the Recorder of Deeds of Adams County, Illinois, thence from said point South  $00^{\circ} 07'$  West along the east line of said Steinkamp Subdivision 33 feet measured as South  $00^{\circ} 14' 47''$  West 33 feet, said point being a point on the south right of way of Kochs Lane and the northeast corner of Lot 1 of said Steinkamp Subdivision, thence from said point North  $88^{\circ} 58' 25''$  East along said south right-of-way line 222.56 feet, thence following a circular arc to the right having a central angle of  $91^{\circ} 19' 41''$  and a radius of 20.00 feet a chord distance of 28.61 feet, thence following a circular arc to the right having a central angle of  $05^{\circ} 01' 47''$  and a radius of 782.21 feet a chord distance of 68.64 feet, thence following a circular arc to the left having a central angle of  $12^{\circ} 55' 48''$  and a radius of 151.52 feet a chord distance of 34.12 feet, thence following a circular arc to the right having a central angle of  $77^{\circ} 48' 13''$  and a radius of 20 feet a chord distance of 25.12 feet, thence South  $70^{\circ} 12' 20''$  West 4.65 feet, thence following a circular arc to the right having a central angle of  $48^{\circ} 11' 14''$  and a radius of 25 feet a chord distance of 20.41 feet, thence following a circular arc to the left having a central angle of  $92^{\circ} 17' 20''$  and a radius of 50 feet a chord distance of 72.10 feet, thence following a circular arc to the left having a central angle of  $91^{\circ} 42' 30''$  and a radius of 50 feet a chord distance of 71.75 feet, thence following a circular arc to the left having a central angle of  $92^{\circ} 22' 37''$  a radius of 50 feet a chord distance of 72.16 feet, thence following a circular arc to the right having a central angle of  $48^{\circ} 11' 14''$  and a radius of 25 feet a chord distance of 20.41 feet, thence North  $70^{\circ} 12' 20''$  East 7.61 feet, thence following a circular arc to the right having a central angle of  $80^{\circ} 00' 54''$  and a radius of 20 feet a chord distance of 25.72 feet, thence South  $29^{\circ} 46' 46''$  East 101.91 feet, thence following a circular arc to the right having a central angle of  $33^{\circ} 01' 26''$  and a radius of 75 feet a chord distance of 42.63 feet, thence South  $03^{\circ} 14' 40''$  West 26.65 feet, thence following a circular arc to the right having a central angle of  $90^{\circ} 00' 08''$  and a radius of 20 feet a chord distance of 28.28 feet, thence

following a circular arc to the left having a central angle of  $47^{\circ} 32' 43''$  and a radius of 127.54 feet a chord distance of 102.83 feet, thence North  $46^{\circ} 10' 00''$  West 130.07 feet, thence North  $89^{\circ} 45' 13''$  West 120 feet to a point on the east line of said Steinkamp Subdivision, thence North  $00^{\circ} 07'$  East along the east line of said Steinkamp Subdivision measured as North  $00^{\circ} 14' 47''$  East 316.03 feet to the point of beginning, containing 2.01 acres.

**EXHIBIT "B"**

| <u>Unit</u> | <u>Percentage of Ownership<br/>Interest in the<br/>Common Elements</u> |
|-------------|--|
| 9           | 25%  |
| 10          | 25%  |
| 11          | 25%  |
| 12          | 25%  |

**EXHIBIT "C"**

**BYLAWS  
OF  
KINGS POINTE HOMEOWNERS ASSOCIATION**

**ARTICLE I**

**Name of Association**

The name of the Association is Kings Pointe Homeowners Association, hereinafter referred to as the "Association".

**ARTICLE II**

**Offices**

The Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board may from time to time determine. The Association's principal office shall be maintained at 133 North 33rd Street, Quincy, Illinois 62301.

**ARTICLE III**

**General Provisions**

The Association is responsible for the overall administration of the Property through its duly elected Board. Whether or not incorporated, the Association shall have such powers, not inconsistent with the Act, as are now or may hereafter be granted by the general Not-for-Profit Corporation Act of the State of Illinois. The Association shall have and exercise all powers necessary or convenient to effect any or all other purposes for which the Association is organized and to do every other act not inconsistent with law which may be appropriate to promote and obtain the purposes set forth in the Act or the Condominium instruments.

**ARTICLE IV**

**Members**

**SECTION 1. Classes of members, membership and termination thereof.** The Association shall have one class of Members. The designation of such class and the qualifications of the Members of such class be as follows:

Each Unit Owner shall be a member of the Association which membership shall terminate upon the sale or other disposition of such Member's Unit, at which time the new Unit Owner shall automatically become a Member of the Association. Such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred under or in any way connected with the Condominium or the Association during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies which the Board or others may have against such former Unit Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

## **SECTION 2. Votes and Voting Rights.**

(a) Until the date of the first annual meeting of the Members, as provided in ARTICLE V, Section 1 hereof, no Member of the Association shall have the right to elect the Board of Managers. All such Members of the Board of Managers shall be appointed and shall hold office as provided in ARTICLE VI, Section 2 of these Bylaws.

(b) Commencing with the date of the said first annual meeting of the Members, there shall be one vote for each Unit.

(c) If a Unit is owned by more than one person, the voting rights with respect to such unit shall not be divided, but shall be exercised as if the Unit Owner consisted of only one person in accordance with the proxy or other designation made by the Members constituting such Unit Owner.

(d) Any specified percentage of the Members, whether majority or otherwise, for purposes of voting or for all purposes and wherever provided in these Bylaws, shall mean such percentage of the total number of votes hereinabove set forth.

**SECTION 3. Transfer of Membership.** Membership in the Association is not transferrable or assignable, except as provided in ARTICLE IV, Section 1 hereof.

## **ARTICLE V**

### **Meeting of Members**

**SECTION 1. Annual Meeting.** The first annual meeting of the Members shall be held on such date as fixed by the Developer, which date shall in no event be later than the earlier of three years from the date the Declaration is recorded in the office of the Recorder of Adams County, Illinois, (b) sixty (60) days from the



date when 75% of the Units have been conveyed by the Developer or (c) such earlier time as selected by the Developer. Thereafter, an annual meeting of the Members for the purpose of electing Board Members and for the transaction of such other business as may come before the meeting shall be held on such date as is selected by the Board which date is within Thirty (30) days before or after the anniversary of the first annual meeting of the Members. If the election of Members of the Board shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Members called as soon thereafter as conveniently may be.

**SECTION 2. Special Meetings.** Special meetings of the Members may be called by the President, the Board or not less than 33 1/3 percent of the Members, the notice for which shall specify the matters to be considered at such special meeting. All matters to be considered at special meetings of the Members called by not less than 33 1/3 percent of the Members shall first be submitted in writing to the Board not less than ten (10) days prior to the date of the special meeting of the Members called to consider such matters.

**SECTION 3. Place and Time of Meeting.** All meetings of the Members shall take place at such time and in some section of the Property designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting.

**SECTION 4. Notice of Meetings.** Written or printed notice stating the purpose, place and time of any meeting of Members shall be mailed or delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, except that notice of the first annual meeting of the Members shall be given to the Members at least twenty (20) days prior thereto. The notice of a meeting shall be deemed mailed when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with proper postage thereon prepaid.

**SECTION 5. Quorum.** The Members present at a meeting in person or by proxy, holding 20 percent of the votes which may be cast at any meeting, shall constitute a quorum at such meeting. If a quorum is not present at the commencement of any meeting of Members, a majority of the Members present may adjourn the meeting from time to time without further notice.

**SECTION 6. Proxies.** At any meeting of Members, a Member entitled to vote may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact.

No proxy shall be valid after eleven months from the date of its execution. Every proxy must bear the date of its execution.

SECTION 7. Manner of Acting. Except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the Members at which a quorum is present shall be upon the affirmative vote of more than 50 percent of the Members represented at such meeting.

## ARTICLE VI

### Board of Managers

SECTION 1. In General. The affairs of the Association shall be managed by its Board of Managers, which shall act as the Board of Managers of the Condominium as provided in the Act and the Declaration.

SECTION 2. Number, Tenure and Qualification. The number of members of the Board shall be three. Until the date of the first annual meeting of the Members as hereinabove provided, the members of the Board shall be the directors named in the Articles of Incorporation of the Association, if the Association is incorporated; otherwise, the members of the Board shall be as appointed by the Developer. Such members of the Board shall hold office until the first annual meeting of the Members. Commencing with the date of the first annual meeting of the Members, the members of the Board shall each be elected at large solely by, from and among the Members. Each member of the Board shall serve for a term of one year and until his successor shall have been elected and qualified. The Board elected at such first annual meeting shall be the initial Board of Managers, as provided in the Act. Each member of the Board shall hold office without compensation. Only a Member of the Association may be a member of the Board. In the event that a Member of the Association is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any shareholder, officer or director of such corporation or partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity, may be eligible to serve as a member of the Board. Notwithstanding the above, only one person from each Unit may be a member of the Board. A member of the Board may succeed himself in office.

SECTION 3. Election. At each annual meeting of the Members, the members shall elect the entire Board for the forthcoming year. In all elections for the members of the Board, the three candidates receiving the highest number of votes shall be deemed elected.

SECTION 4. Duties, Powers, etc. of the Board. The Board of Managers shall be vested with and shall possess all of the rights, powers, options, duties and responsibilities as are provided for in the Declaration and the Act and these Bylaws.

**SECTION 5. Regular Meetings.** A regular annual meeting of the Board shall be held immediately after, and at the same place as, the annual meeting of the Members. The Board shall, by regulations, which the Board may, from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four times per year.

**SECTION 6. Special Meetings.** Special meetings of the Board of Managers may be called by or at the request of the President or any two members of the Board. The person or persons authorized to call special meetings of the Board may pick the time and place for holding any special meetings of the Board called by them.

**SECTION 7. Open Meetings.** All meetings of the Board, whether regular or special, shall be open to all Members, except for the portion of any meeting held (a) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board of Managers finds that such action is probable or imminent, (b) to consider information regarding appointment, employment or dismissal of an employee or (c) to discuss violations of rules and regulations of the Association or unpaid assessments owed to the Association, provided that the vote on any such matters shall be taken at a meeting or portion thereof open to any Member. Any Member may record the proceedings at meetings open to Members, by tape, film or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

**SECTION 8. Notice.** Written notice of any special meeting of the Board shall be mailed or delivered to all Members of the Association and all members of the Board not calling the meeting at least 48 hours prior to the date of such special meeting. Written notice of regular meetings of the board shall be mailed or delivered to all Members of the Association at least 48 hours prior to the date of such meeting. All such notices shall be deemed to be mailed when deposited in the United States mail addressed to each Member at his address as it appears on the records of the Association, with proper postage thereon prepaid. The business to be transacted at, or the purpose of any regular or special meeting of the Board, shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. However, copies of said notices of meetings of the Board shall be posted in entrance ways or other conspicuous places in the condominium designated by the Board at least 48 hours prior to the meeting. Written notice of any meeting of the Board of Managers at which the adoption of the proposed annual budget or any increase or establishment of an assessment is to be considered shall be mailed or delivered to all Members not less than ten (10) and not more than thirty (30) days prior to any such meeting. Written notice of other meetings of the Board of Managers shall be delivered or given

to each Member at least 48 hours prior thereto, subject to written waiver of such notice signed by the person or persons entitled thereto received by the Board of Managers prior to such meetings.

**SECTION 9. Quorum.** A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of said meeting, the majority of the members present may adjourn the meeting from time to time without further notice.

**SECTION 10. Manner of Acting.** The act of a majority of the members of the directors present at the meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except where otherwise provided by law or in the Condominium instruments.

**SECTION 11. Vacancies.** Any vacancy occurring in the Board by reason of death, removal or resignation of a member of the Board shall be filled by the two-thirds vote of the remaining members of the Board. A Member elected by the Board to fill a vacancy shall serve until the next meeting of the Members; provided, however, that if a petition is filed with the Board signed by Members holding 33 1/3 percent of the votes of the Association requesting a meeting of the Members to fill the vacancy for the balance of the unexpired term of office of his predecessor, the term of the Member so elected by the Board shall terminate 30 days after the filing of the petition and a meeting of the Members for the purpose of filling of such vacancy for such unexpired term shall be called no later than 30 days following the filing of such petition. Members of the Board, including those appointed by the Developer, may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective upon receipt of said resignation. If, as a result of the death, removal or resignation of a member of the Board, no member of the Board remains in office, a special meeting of Members may be called to fill all vacancies for the unexpired terms of the members of the Board.

**SECTION 12. Removal.** From and after the date of the first annual meeting of the Members, any member of the Board may be removed from office by the affirmative vote of 66 2/3 percent of all Members of the Association at a special meeting called for such purpose.

**SECTION 13. Adoption of Rules and Regulations.** All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the Members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations which rules and regulations conform to the requirements of the Act and the Declaration and these Bylaws. No rules or regulations may

impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution. Such rules and regulations shall be effective sixty (60) days after their adoption, provided that the Members may veto any rule or regulation at a special meeting of the Members called for such purpose, and held before the effective date of the rule or regulation, by a vote of 75 percent of all Members of the Association.

## ARTICLE VII

### Officers

SECTION 1. Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board), a Treasurer and a Secretary.

SECTION 2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at a regular annual meeting of the Board, from among the Members of the Association provided the President must also be a member of the Board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his successor shall have been duly elected and shall have qualified. An officer may succeed himself in office. Officers shall serve without compensation.

SECTION 3. Removal. Any officer elected by the Board may be removed by a majority vote of the members of the Board.

SECTION 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

SECTION 5. President. The President shall be the principal executive officer of the Association and shall, in general, supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Members and of the Board. He may sign, with the Secretary, or any other proper officer of the Association authorized by the Board, any deeds, mortgages, contracts, or other instruments which the Board has authorized to be executed and any amendment to the Declaration or Plat as provided in the Act, and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

SECTION 6. Vice President. In the absence of the President or in the event of his inability or refusal to act, the Vice President (or in the event that there be more than one Vice President, the Vice Presidents, in order of their election) shall

perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. any Vice President shall perform such other duties as from time to time may be assigned by the President or by the Board.

**SECTION 7. Treasurer.** The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for money due and payable to the Association from any source whatsoever, and deposit all such money in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of ARTICLE IX of these Bylaws; and in general perform all duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the President or by the Board.

**SECTION 8. Secretary.** The Secretary shall keep the minutes of the meetings of the Members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provision of these Bylaws or as required by law; receive all notices on behalf of the Association and, together with the President, execute on behalf of the Association amendments to Condominium Instruments and other documents as required or permitted by Declaration, these Bylaws or the Act; be custodian of the records and, if incorporated, of the seal of the Association, and, if the Association is incorporated, to see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association under its seal is duly authorized in accordance with the provisions of these Bylaws; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board.

## ARTICLE VIII

### Powers and Duties of the Association and Board

**SECTION 1. General Duties, Powers, Etc. of the Board.** The Board shall exercise for the Association all powers, duties and authority vested in the Association by the Act and the Condominium Instruments, including but not limited to the following:

- (a) Operation, care, upkeep, maintenance, replacement and improvements of the Common Elements.
- (b) Preparation, adoption and distribution of the annual budget for the Property.
- (c) Levying of assessments.
- (d) Collection of assessments from unit Owners.

(e) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements.

(f) Obtaining adequate and appropriate kinds of insurance.

(g) Owning, conveying, encumbering, leasing or otherwise dealing with Units conveyed to or purchased by it.

(h) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property.

(i) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property.

(j) Having access to each Unit, from time to time, as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units.

(k) Borrowing money at such rates of interest as it may determine; issuing its notes, bonds or other obligations to evidence such borrowing; and securing any of its obligations to evidence such borrowing; and securing any of its obligations by making a mortgage or giving a security interest in all or any of its property or income provided if such mortgage or security interest encumbers all or substantially all of the assets of the Association, the approval of the Members shall first be obtained pursuant to ARTICLE V, Section 7, of these Bylaws.

(l) Paying real estate property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the Condominium (other than assessments on Units not owned by the Association).

(m) Imposing charges for late payments of a Unit Owner's proportionate share of the common Expense, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levying reasonable fines for violations of the Declaration, Bylaws, and rules and regulations of the Association.

(n) Assigning its rights to future income, including the right to receive Common Expenses assessments.

(o) Recording the dedication of a portion of the Common Elements to a public body for use, as, or in connection with a street or utility where authorized by the Members under the provisions of Section 14.2 of the Act.

In the performance of their duties, the officers and members of the Board shall exercise, whether appointed by the Developer or elected by the Members, the care required of a fiduciary of the Members.

## **SECTION 2. Specific Powers and Duties.**

(a) Anything herein contained to the contrary notwithstanding, the Association shall have the power:

(i) To engage the services of a manager or managing agent, who may be any person, firm or corporation, upon such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than three years and must be terminable by either party to such agreement without cause and without payment of a termination fee, upon 90 days or less prior written notice;

(ii) To engage the services of any person (including, but not limited to, accountants and attorneys) deemed necessary by the Association, in the operation, repair, maintenance management of the Property, or in connection with any duty, responsibility or right of the Association and to remove at any time any such personnel;

(iii) To establish or maintain one or more bank accounts for the deposit of any funds paid to, or received by, the Association;

(iv) To invest any funds of the Association in certificates of deposits, money market funds, or comparable investments.

(v) Upon authorization of a 2/3 vote of the members of the Board or by affirmative vote of not less than a majority of the Members at a meeting duly called for such purpose, the Board acting on behalf of all Unit Owners shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments or charges of the State of Illinois or any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as Common Expenses.



**SECTION 3. Authorized Expenditures.** The Association shall acquire and make arrangements for, and pay out of the Maintenance Fund, in addition to the manager, managing agent or other personnel above provided for, the following:

(a) Water, waste removal, and other necessary utility services for the Common Elements and such services to the Units as are not separately metered or charged to the owners thereof;

(b) Such insurance as the Association is required or permitted to obtain as provided in the Declaration;

(c) Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements (but not including the limited Common Elements which the Unit Owners enjoying the full use thereof shall paint, clean, decorate, maintain and repair except as otherwise provided in paragraph 11(c) of the Declaration) and such furnishing and equipment for the Common Elements as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements. Anything in the foregoing to the contrary notwithstanding, and except where the need for repair or replacement is due to the act or omission of a Unit Owner, guest, occupant, family member or pet, the Association shall be responsible for the repair and replacement (and the cleaning of the exterior services) of all windows and walls. However, the repair and replacement of a roof shall be the responsibility of the Unit Owners of the Building needing repair or replacement. In the event of a leak needing repair, the affected Unit Owner shall be responsible for said repair. In the event that the entire roof requires replacement, it shall be agreed upon by a simple majority of the Owners of said Building and the cost of replacing the roof shall be born equally by all Owners of the Building through a special assessment. Any Owner refusing to contribute their share of such a special assessment shall be held accountable to the Association as provided by these bylaws;

(d) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments which the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein;

(e) any amount necessary to discharge any mechanic's liens or other encumbrances levied against the Property or any part thereof which may in the opinion of the Association constitute a lien against the Property or against the Common

Elements rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specifically assessed to said Unit Owners and shall, until paid by said Unit Owners, constitute a lien on the interest of such Unit Owners in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses;

(f) maintenance and repair of any Unit or any other portion of the property which a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance and repair is necessary, in the discretion of the Association, to protect the Common Elements, or any other portion of the Property, and the owner of said Unit has failed or refused to perform said maintenance and repair and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses;

(g) maintenance and repair (including payment of real estate taxes and Common Expenses) with respect to any Unit Owner by the Association.

All expenses, charges and cost of maintenance, repair or replacement of the Common Elements and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Association, and written memorandum thereof prepared and signed by the Treasurer. There shall be no structural alterations, capital additions to, or capital improvements on, the Common Elements (other than for purposes of repairing, replacing and restoring portions of the Common Elements) requiring an expenditure in excess of Five Thousand Dollars (\$5,000) without the prior approval of 66 2/3 percent of the Unit Owners.

**SECTION 4. Annual Budget.** Each year on or before November 1st, the Board shall estimate the annual budget of Common Expenses (the "Annual Budget") including: The total amount required for the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, all anticipated assessments and income and each Member's proposed Common Expense assessment. The Board shall deliver a copy of the proposed Annual Budget to each Member at least 30 days prior to the adoption thereof. The Association shall

give Members notice as provided in Section 8, ARTICLE VI of the Bylaws of the meeting of the Board at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted. Said Annual Budget shall be assessed to the Members according to each Member's percentage of ownership in the Common Elements. Each Member shall be obligated to pay to the Association, or as it may direct, the portion of the annual budget assessed to such Member in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1 of the ensuing year, and on the first day of every month of said year. The Association shall have no authority to forebear payment of assessments by any Member.

(a) The failure or delay of the Association to prepare or serve the Annual Budget on the Members shall not constitute a waiver or release in any manner of the Members' obligation to pay the maintenance and other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and in the absence of any Annual Budget, the Member shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the monthly assessment payment which is due more than ten (10) days after such new Annual Budget shall have been received.

(b) If an adopted Annual Budget requires assessments against the Members in any fiscal or calendar year exceeding 115 percent of the assessments for the preceding year, the Board, upon written petition by Members with 20 percent of the votes of the Association filed within 14 days of the Board action, shall call a special meeting of the Members within 30 days of the date of filing of the petition to consider the Annual Budget. Unless a majority of the votes of the Members are cast at the meeting to reject the Annual Budget, it shall be deemed to be notified, whether or not a quorum is present. If a majority of votes of the Members are cast to reject the Annual Budget at a special meeting of the Members a meeting of the Board shall be held within 30 days of the date of such special meeting to prepare a revised Annual Budget to send to the Members together with a notice of the meeting of the Board at which the adoption of such Annual Budget will be considered. In determining whether assessments exceed 115 percent of similar assessments in the preceding year, any authorized provisions for reasonable reserves for repair or replacement of the Common Elements, and anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis, shall be excluded from the computation.

Anything herein or in the Declaration to the contrary notwithstanding, the Association may charge to fewer than all Members such portion of the insurance premium for insurance the Association is required or permitted to obtain

which reflects increased charges for coverage on the Units owned by such Members, on such reasonable basis as the Association shall determine. Such charges shall be considered a Common Expense with respect to the Units owned by such Members for all purposes herein and under the Declaration.

**SECTION 5. Annual Accounting.** On or before the 1st day of April of each calendar year commencing in 1995, the Association shall supply to all Members an itemized accounting for the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus Reserves. Upon the written request of any FHLMC, FNMA, HUD, or VA the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the preceding calendar year. Any amount accumulated in excess of the amount required for actual expenses and Reserves shall be credited according to each Member's percentage of ownership in the Common Elements to the next monthly installments due from Members under the current year's Annual Budget, until exhausted, and any net shortage shall be added, according to each Member's percentage of ownership of the Common Elements, to the installments due in the succeeding six months after rendering of the accounting.

**SECTION 6. Reserves.** The Association may build up and maintain a reasonable Reserve for operations, contingencies and replacement. To establish such Reserve, the Developer shall collect from each Unit Owner upon conveyance by the Developer to such Unit Owner, an amount equal to 1/4 of the Annual Budget as initially established by the Developer and as allocable to such Unit, and shall remit such amounts to the Association. Extraordinary expenditures not originally included in the Annual Budget which may become necessary during the year shall be charged first against such Reserve. In addition, the Association shall have the right to segregate all or any portion of the Reserve for any special replacement or contingency upon such conditions as the Association deems appropriate. If said Annual Budget proves inadequate for any reason, including nonpayment of any Member's assessment, or any non-recurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, the Association may at any time levy a further assessment, which shall be assessed to the Members according to each Member's percentage of ownership in the Common Elements, and which may be payable in one lump sum or such installments as the Association may determine. The Board shall serve notice of such further assessment on all Members (in the manner provided in the Bylaws) by a statement in writing giving the amount and reasons therefore, and such further assessments shall become effective and shall be payable at such time or times as determined by the Association, provided, however, that in the event such further assessment with respect to any Unit exceeds the greater of five (5) times such Unit's most recent

monthly installment of common Expenses or \$300, such further assessments for all Units shall not be effective until approved by 66 2/3 percent of all Members at a meeting of Members duly called for such purposes. All Members shall be obligated to pay the further assessments.

**SECTION 7. Books of Account, Default, Statements of Account.**

(a) The Association shall keep full and correct books of account and the same shall be open for inspection by any Member or any representative of a Member duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Member. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Members and for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Members in their relative percentages of ownership in the Common Elements.

(b) If a Member is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Association may assess a service charge of 5 percent of the balance of the aforesaid charges and assessments for each month, or part thereof, that said balance or any part thereof remains unpaid. In addition to any remedies or liens provided by law, if a Member is in default in the monthly payment of the aforesaid charges or assessments for sixty (60) days, all other monthly payments of charges and assessments due for the calendar year in which such default occurs shall accelerate and become immediately due and payable. The Association may bring suit for and on behalf of itself and as representatives of all Members, to enforce collection thereof or to foreclose the lien therefore as provided by law; and there shall be added to the amount due, the cost of said suit, together with legal interest and reasonable attorney fees to be fixed by the court. In addition, the Association may also take possession of such defaulting Member's interest in the Property and maintain an action for possession of the Unit in the manner provided for by law. No Member may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Elements or abandonment of his Unit. Each such assessment, together with interest, costs and attorneys' fees shall also be the personal obligation of the person who was the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

(c) Upon ten (10) days notice to the Association, and

the payment of a reasonable fee fixed by the Association, not to exceed Twenty Dollars (\$20.00), any Member shall be furnished a statement of his accounts setting forth the amount of any unpaid assessments or other charges due and owing from such Member.

**SECTION 8. Priority of Liens.** Any mortgage or trust deed owned or held by a First Mortgagee and recorded prior to the recording or mailing of a notice by the Association of the amount owing by a Member who has refused or failed to pay his share of the monthly assessment when due shall be superior to the lien of such unpaid Common Expenses set forth in said notice and to all assessments for Common Expenses which became due and are unpaid subsequent to the date of recording of such first mortgage or first trust deed. Any First Mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or trust deed, foreclosure of the mortgage or trust deed or deed (or assignment) in lieu of foreclosure shall not be liable for, and shall take the Unit and its proportionate interest in the Common Elements free from, claims for unpaid common or special assessments levied by the Association which accrue prior to the date of possession as aforesaid.

## **ARTICLE IX**

### **Contracts, Checks, Deposits and Funds**

**SECTION 1. Contracts.** The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

**SECTION 2. Checks, Drafts, etc.** All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Association. In the absence of such determination by the Association, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

**SECTION 3. Deposits.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

**SECTION 4. Gifts.** The Board may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

## **ARTICLE X**

### **Books and Records**

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Members, Board and committees having any of the authority of the Board, and shall keep at the registered or principal office a record giving the names and addresses of the Members entitled to vote. All books and records of the Association may be inspected by any Member, or his agent or attorney, for any proper purpose at any reasonable time. A reasonable fee may be charged by the Association or its Board for the cost of copying any such records requested by a Member, his agent or attorney.

## **ARTICLE XI**

### **Fiscal Year**

The fiscal year of the Association shall begin the first day of January and end on the last day of December of each year.

## **ARTICLE XII**

### **Seal**

If the Association is incorporated, the Board shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words "Corporate Seal, Illinois".

## **ARTICLE XIII**

### **Waiver of Notice**

Whenever any notice whatever is required to be given under the provisions of the General Not-for-Profit Corporation Act of Illinois or under the provisions of the Articles of Incorporation or the Bylaws of the Association, or the Declaration, a waiver thereof, (subject to all provisions of such instruments) in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## **ARTICLE XIV**

### **Amendments to Bylaws**

These Bylaws, except Sections 4 and 9 of ARTICLE VIII, ARTICLE XVI and this ARTICLE XIV may be altered, amended or repealed and

new Bylaws may be adopted upon the affirmative vote of 66 2/3 percent of all of the Members at a regular meeting or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment or repeal, which is signed and acknowledged by an authorized Member of the Board and which contains an affidavit by an officer of the Association certifying that the necessary affirmative vote of the Members of the Association has been obtained. ARTICLE XVI, this ARTICLE XIV and Sections 4 and 9 of ARTICLE VIII may be amended as set forth in the first sentence of paragraph 18 of the Declaration.

#### ARTICLE XV

##### Liability and Indemnity

Members of the Board of Managers and officers thereof shall not be liable to the Members as members or owners for any acts or omissions made in good faith as such members of the Board or officers. The Association shall indemnify and hold harmless each of such Managers or officers against all contractual liability to others arising out of contracts made by such Managers or officers on behalf of the owners for the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of these Bylaws or the Declaration.

Every Manager and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Manager or officer of the Association, or any settlement thereof, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being for the best interest of the Association. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of members of the Board who were not parties to such action, suit or proceeding or (2) if such a quorum is not obtainable or, even if obtainable, if a quorum or disinterested directors so directs, (3) by independent legal counsel in a written opinion, or (4) by a majority of the Members of the Association.

The sums necessary to discharge the obligations of the Association under this ARTICLE shall be Common Expenses.

The indemnification provided by this ARTICLE shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote



of Members of the Association or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to action in other capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board or an officer of the Association.

The sums necessary to discharge the obligations of the Association under this ARTICLE shall be Common Expenses.

The indemnification provided by this ARTICLE shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of Members of the Association or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to action in other capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board or an officer of the Association.

#### **ARTICLE XVI**

##### **Construction**

Nothing hereinabove contained shall in any way be construed as altering, amending or modifying the Declaration. Said Declaration and these Bylaws shall always be construed to further the harmonious, beneficial, cooperative and proper use and conduct of the Property. If there is any inconsistency or conflict between these Bylaws and the aforesaid Declaration, the provisions of the Declaration shall control.

All words and terms used herein which are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.

In the event the Association is incorporated, the words, "Board of Directors" and "director" shall be substituted for the words "Board" and "member of the Board" respectively, wherever they appear herein, if at all.

**EXHIBIT "E"**

A part of the East 16.25 acres of the West 26.25 acres of the North 42.5 acres of the Northeast Quarter of Section 25 in Township 1 South of the Base Line and in Range 9 West of the Fourth Principal Meridian, Adams County, Illinois, being more particularly bounded and described as follows, to-wit:

*WJW*

Beginning at a point on the North line of said Northeast Quarter, which point is a record North 89°00' East 850.80 feet from the Northwest corner of said Northeast Quarter, said point also being the Northeast corner of Steinkamp Subdivision as shown by the plat of said subdivision recorded in Book 7 of Plats at Page 12 in the Office of the Recorder of Deeds of Adams County, Illinois, thence from said point North 89° 00' East along the North line of said Northeast quarter 614.9 feet more or less measured as North 88° 58' 25" East 614.49 feet to the Northwest corner of Cedardale Subdivision, a subdivision of a part of said Northeast Quarter as shown by the plat of said subdivision recorded in Book 6 of Plats at Page 41 in the Office of the Recorder of deeds of Adams County, Illinois, said northwest corner of said Cedardale Subdivision being a record South 89° 00' West 1201.20 feet from the northeast corner of said Northeast Quarter, thence along the west line of said Cedardale Subdivision South 00° 12' West 253 feet measured as South 00° 05' 28" West 252.80 feet to the southwest corner of said Cedardale Subdivision, thence along the south line of said subdivision North 89°00' East 182 feet measured as North 88° 58' 25" East 181.97 feet to the Southeast corner of said Cedardale Subdivision, said point being a record 1019.97 feet West of the East line of said Northeast Quarter, thence South 00° 12' West 440 feet measured as South 00° 00' 27" East 441.48 feet to a point, said point being a record 1021.32 feet West of the East line of said Northeast Quarter and a point on the north line of Edward Schneidman Industrial Park Subdivision as shown by the plat of said subdivision recorded in Book 13 of Plats at Pages 1538 and 1539, thence South 89° 00' West parallel with the North line of said Northeast Quarter 799.26 feet more or less measured as South 88° 50' 30" West 799.15 feet along the north line of said Edward Schneidman Industrial Park to a point on the east line extended of the aforesaid Steinkamp Subdivision, thence North 00° 07' East along the east line of said Steinkamp Subdivision 696.17 feet measured as North 00° 14' 47" East 696.17 feet to the point of beginning, said tract containing 11.65 acres, more or less.

