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MARY ANN LAMM

SANGAMON COUNTY RECORDER

**FIRST AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RIGHTS FOR HARBOR POINT**

Prepared by:

**Creighton R. Castle
Giffin, Winning, Cohen & Bodewes PC
1 W. Old State Capitol Plaza, Suite 600
Springfield, IL 62701**

Return to:

**DCR, LLC
c/o Doug Kent
13 West Fairview
Springfield, IL 62711**

**FIRST AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RIGHTS FOR HARBOR POINT**

This FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR HARBOR POINT (this "Declaration") is made and entered into on this 17th day of May, 2007, by Declarant, as defined below.

WITNESSETH

WHEREAS, Declarant is ground lessee under the Lakeshore Lease (as hereinafter defined), and is the developer, of certain real estate in the City of Springfield, County of Sangamon and State of Illinois, which real estate is legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Premises"); and

WHEREAS, Declarant, or its successors, sublessees or assigns, proposes to develop a first-class multi-residential development which may consist of no more than eleven (11) attached duplex single family residences (hereinafter individually called a "Unit" and collectively called the "Units") upon the Premises. The Units are described on Exhibit B attached hereto and by this reference made a part hereof, and the balance of the areas which comprise the Premises, which will be for the use and enjoyment of one or more of the Unit Owners (hereinafter defined) of the Units, subject, however, to the provisions set forth in this Declaration (hereinafter called the "Common Area" being described on Exhibit B attached hereto and by this reference made a part hereof); and

WHEREAS, the Common Area will generally consist of (a) one or more private roads (the "Access Road") serving all of the Premises; (b) a limited portion of the Common Area adjacent to each of the Units (hereinafter called the "Limited Common Area" or "Limited Common Areas"), which Limited Common Areas are depicted on Exhibit B attached hereto and by this reference made a part hereof and which shall be deemed to be that Unit's appurtenant Limited Common Area; and (c) the balance of the Common Area, which may include, without limitation, sidewalks, common parking spaces, emergency access to the Premises, landscaping, sewer lines, stormwater mains and service lines, stormwater retention/detention basins or ponds, trees, grassy and other open areas including the shoreline, docking facilities, a pool and clubhouse, and such further ancillary buildings and facilities as Master Lessee or the Homeowners Association shall from time to time construct and develop on the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefor; and

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all Unit Owners of the Units or any part thereof, and of all other owners, if any, of the Premises, certain easements and rights in, over, under, upon and along the Premises and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

WHEREAS, Declarant desires to subject its leasehold interest in the Premises, or portions thereof, to the covenants, conditions, restrictions, easements and rights set forth in this Declaration, each and all of which is and are for the benefit of the Premises and portions thereof and each Unit Owner of each Unit and shall inure to the benefit of and shall pass with each and every leasehold interest in the Premises and each and every portion thereof;

WHEREAS, Declarant recorded with the Sangamon County Recorder of Deeds the Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Harbor Point on July 6, 2005 as Document Number 2005R27069 ("Original Declaration"); and

WHEREAS, Declarant wishes to record this Amended and Restated Declaration to amend and restate in its entirety the terms, conditions and provisions of the Original Declaration.

NOW, THEREFORE, Declarant hereby declares that, all leasehold interests in the Premises created under the Lakeshore Lease (hereinafter defined), are and shall be transferred, held, sold, occupied, conveyed and accepted subject to this Declaration. Declarant does hereby further declare that the following easements, covenants, restrictions, rights, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquiring any right, title or interest in or to any portion of the leasehold in the Premises created by the Lakeshore Lease, (2) be binding upon and inure to the benefit of each owner of each Unit and (3) run with the land subjected to this Declaration to be held, sold and conveyed subject to this Declaration.

Harbor Point Homeowners Association

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ARTICLE 1
DEFINITIONS

1.1 "Access Road" shall mean the private roadways serving the Premises, as and when the same has been constructed by Declarant.

1.2 "Association Assessment" shall mean (1) regular assessment and charges, including a Unit Owner's share of Rental, and (2) special assessment for capital or other or maintenance requirements.

1.3 "Board" shall mean the Board of Directors of the Homeowners Association as constituted, at any time or from time to time, in accordance with the applicable provisions of Article 3 of this Declaration.

1.4 "Boat Dock" shall mean a steel and foam dock incorporating a walkway to each boat slip and consisting of up to twelve (12) boat slips adjacent to the walkway.

1.5 "Building" and "Buildings and Improvements" shall mean a building or buildings within a first-class multi-residential development which may consist of no more than eleven (11) attached duplex single family residences to be developed upon the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefore as Master Lessee or the Homeowners Association shall from time to time cause to be constructed and developed on the Premises.

1.6 "By-Laws" shall mean the By-Laws of the Homeowners Association, a copy of which is attached hereto as Exhibit C and by this reference made a part hereof.

1.7 "Casualty" shall mean any event or occurrence resulting in loss or damage to any portion of the Premises, including, but not limited to, fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, collision with aircraft and vehicles, vandalism and malicious mischief, sprinkler leakage, collapse, earthquake, war of public emergency, whether or not covered by insurance and regardless of the identity of the person or persons causing or otherwise responsible for the same.

1.8 "City" shall mean the City of Springfield, Illinois, an Illinois municipal corporation.

1.9 "Class B Member Termination Date" shall be the date that is the first to occur of (i) three and one-half (3 ½) years after the date of the first closing of a sale of a Sublease to a Unit Owner (other than Declarant) and (ii) the date of the closing of the sale of all twenty-two Units in the Premises by Sublease by Declarant to a Unit Owner (other than Declarant).

1.10 "Common Area" shall generally mean all portions of the Premises having then been subjected to the jurisdiction of this Declaration which are not Units or Limited Common Areas. Certain portions of the Common Area are intended to be for the benefit

of only one Unit Owner (that is, for example, the Limited Common Area appurtenant to a Unit Owner's Unit); other portions of the Common Area are intended to be for the benefit of all Unit Owners (such as, without limitation, the Access Road, sidewalks, open space areas on the Premises including the shoreline, common parking spaces, emergency access to the Premises, docking facilities, the pool and clubhouse [other than within the Limited Common Areas]). The maintenance, repair, improvement, use, enjoyment and operation of the Common Area shall be in accordance with the terms and provisions of this Declaration. A Unit Owner's interest in a Unit shall include an equal undivided interest in the Common Area (excluding the Limited Common Area) and the Limited Common Area appurtenant to such Unit.

1.11 "Declarant" shall mean DCR, LLC, an Illinois limited liability company, and its successors, sublessees and assigns; provided, however, that any rights specifically reserved herein to Declarant shall not inure to the benefit of the Unit Owners specifically assigned in a recorded instrument or conveyed by operation of law.

1.11 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Rights for the Harbor Point.

1.13 "Homeowners Association" shall mean and refer to an Illinois not for profit corporation, and its successors and assigns, to be organized at the sole cost and expense of Declarant under such name as Declarant shall designate. All Unit Owners (as hereinafter defined) of all Units shall be members of the Homeowners Association, all as more particularly described in this Declaration.

1.14 "Homeowners Association Incorporation Date" shall mean the date Declarant incorporates the Homeowners Association, but such date shall be no later than sixty (60) days before the Class B Termination Date.

1.15 "Lakeshore Lease" shall mean that certain Lakeshore Lease dated as of August 2, 2004 by and between City and Declarant and recorded in the Office of the Recorder of Deeds of Sangamon County, Illinois on August 24, 2004, as Document No. 2004R41981, as the same may be further amended from time to time.

1.16 "Limited Common Area" or "Limited Common Areas" shall mean those portions of the Common Area depicted as "Limited Common Area" on Exhibit B attached hereto. Each Unit's appurtenant Limited Common Area is, although not a part of a Unit, intended for the exclusive use and enjoyment of the Unit Owner of that Unit (except as otherwise set forth herein). Each Unit Owner shall have the right to improve such Unit Owner's appurtenant Limited Common Area, all subject to the terms and provisions of this Declaration. Each designated "Limited Common Area" shall be appurtenant to only one Unit.

1.17 "Master Lessee" shall mean Declarant, and any successor or assign to which its interest in the Lakeshore Lease is assigned.

1.18 "Member" shall mean and refer to any person or entity who holds membership in the Homeowners Association, as more specifically described in Section 3.1 of this Declaration.

1.19 "Plat" shall mean the Plat attached hereto as Exhibit B, and by this reference made a part hereof, sets forth one (1) Plat showing (1) the Premises, its exterior boundaries, Common Areas and Limited Common Areas and (2) each Unit.

1.20 "Rental Reserve" shall mean the total Rental required to be paid by the Master Lessee to the City on the ensuing anniversary date of the Lakeshore Lease.

1.21 "Restoration" shall mean any and all work necessary to repair any damage to the Project or the Premises as nearly as possible to the same value, condition and character as existed immediately prior to any loss due to a Casualty or any taking in any condemnation proceeding, as the case may be, lien-free and ready for use.

1.22 "Sublease" shall mean a lease of a Unit by the Master Lessee to a Unit Owner under the Lakeshore Lease.

1.23 "Sublease Agreement" shall mean the Sublease agreement between the Master Lessee and the Unit Owner.

1.24 "Unit" shall mean each of the areas numbered 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, inclusive, designated as such upon the Plat and upon which a single Unit may be constructed. Although depicted individually on the Plat, the Units are not lots of record.

1.25 "Unit Owner" shall mean an owner or owners of a Unit, and Master Lessee with respect to any Units owned by Master Lessee, or successors and assigns of Master Lessee, that are part of the Project. Any purchaser of a Unit from a seller other than Declarant pursuant to a contract for deed or an "installment contract" for purchase (as defined in subsection (e) or Section 1 of the Dwelling Unit Installment Contract Act) shall be deemed the Unit Owner of such Unit provided such purchaser resides in the Unit unless the seller expressly retains in writing all rights and obligations of ownership. Satisfactory evidence of the installment contract shall be made available to the Homeowners Association. Notwithstanding the foregoing, Declarant shall be deemed a Unit Owner for each Unit which has been subjected to the jurisdiction of this Declaration (as hereinafter provided) and which has not been transferred to a Unit Owner other than Declarant pursuant to a Sublease, unless otherwise provided to the contrary herein.

All capitalized terms used in this Declaration and not otherwise defined herein shall have the meanings ascribed to such terms in the Lakeshore Lease.

ARTICLE 2

GENERAL PROVISIONS

2.1 **Jurisdiction of this Declaration.** As of the date hereof, the jurisdiction of this Declaration shall be deemed to extend only to the Premises made subject to this Declaration.

2.2 **Purposes of this Declaration.** The Premises (or applicable portions) are made subject to this Declaration in order to insure proper use, appropriate development and improvement of the Premises and every part thereof; to protect each Unit Owner from the improper use of surrounding Units; to encourage attractive improvements on each Unit with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to insure desired high standards of maintenance for the benefit and convenience of all Unit Owners; to protect and preserve the open space located within the Premises (or applicable portions), including the shoreline; and in general to provide adequately for a quality residential subdivision.

2.3 **Purposes of the Homeowners Association.** In order to implement the general purposes of this Declaration, the Homeowners Association is being created with responsibility for, among other things, maintenance, repair and preservation of the Common Area (including, without limitation, the Access Road, docking facilities, the pool and clubhouse, landscaping, common parking spaces, sewer lines, stormwater mains and service lines, stormwater retention/detention areas, the sidewalks, emergency access and open space areas including the shoreline, and the Limited Common Area), and such further ancillary buildings and facilities as Master Lessee or the Homeowners Association shall from time to time construct and develop on the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefor except as otherwise set forth herein, enforcement of the restrictions contained in this Declaration and the levying and collection of assessments to fund all of its responsibilities (including, without limitation, Rental due under the Lakeshore Lease), all in accordance with the terms of this Declaration.

ARTICLE 3

THE HOMEOWNERS ASSOCIATION

3.1 **Membership in the Homeowners Association.** Every Unit Owner (including Declarant) shall be a Member of the Homeowners Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Each Unit Owner shall have one membership in the Homeowners Association for each Unit in which a Unit Owner holds the requisite interest therein. Membership shall be appurtenant to and may not be separated from the conveyed interest in each Unit. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successor in interest, if any, holds the leasehold interest in one or more Units. If the Unit Owner shall be more than one person, all such persons shall be Members, but the voting rights in the Homeowners Association

attributable to that Unit shall be exercised in the manner hereinafter provided. If a Unit Owner shall be a land trust, corporation, partnership or other legal entity, then the one individual who shall be entitled to exercise the rights and privileges (such as, to vote and be a director on the Board), and who shall be responsible to bear the obligations associated with membership in the Homeowners Association with respect to that Unit shall be designated by the Unit Owner thereof in writing to the Homeowners Association. Such designation may be changed from time to time thereafter by notice in writing from the Unit Owner to the Homeowners Association. No Unit Owner shall have any right or power to disclaim, terminate or withdraw from such Unit Owner's membership in the Homeowners Association or any of the obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Unit Owner shall be of any force or effect for any purpose.

3.2 **Voting Rights in the Homeowners Association.** The Homeowners Association shall have two classes of voting membership:

Class A. Class A Members shall be all of the Unit Owners, including Declarant for each Unit which has then been made subject to the jurisdiction of this Declaration and which has not been transferred to a Unit Owner other than Declarant pursuant to a Sublease. Class A Members shall be entitled to cast one (1) vote for each Unit in which they hold the interest required for membership in the Homeowners Association. When more than one person holds such interest in any Unit, all such persons shall be Members, but the right to vote for such Unit shall be exercised as they among themselves determine; provided, however, that in no event shall more than one vote be cast with respect to each Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to cast twenty-two (22) votes, provided that the Class B Membership shall cease on the "Class B Member Termination Date".

3.3 **The Board.** The Homeowners Association shall have a Board of not less than five (5) directors (hereinafter individually a "Director" and collectively "Directors") who shall be determined as follows:

A. The first Board shall consist of three (3) Directors, each of whom shall be appointed by Declarant or its designee on the Homeowners Association Incorporation Date.

B. Subsequent to the Homeowners Association Incorporation Date and continuing until the Class B Member Termination Date, the Board shall be elected by combined majority vote of the Class A and Class B Members of the Homeowners Association at meetings to be held for such purpose at such intervals as are provided in the articles of incorporation of the Homeowners Association or the By-Laws, as the case may be. Such Board shall consist of three (3) Directors.

C. Subsequent to the Class B Member Termination Date, the Board shall be elected by majority vote of the Class A Members of the Homeowners Association, at meetings to be held for such purpose at such intervals as are provided in the articles of incorporation of the Homeowners Association or the By-Laws, as the case may be. Such Board shall consist of five (5) Directors.

Vacancies in the Board occurring prior to the first annual meeting of the Board following the Class B Member Termination Date shall be filled by Declarant appointing a person to fill such vacancy and thereafter vacancies in the Board occurring between meetings of the Members may be filled by the majority vote of the remaining Directors then sitting on the Board if so provided in the articles of incorporation of the Homeowners Association or the By-Laws. Notwithstanding anything to the contrary, Declarant may voluntarily terminate its right to appoint Directors and to fill vacancies pursuant to this Section, in which event the Class A Members (including Declarant) shall elect Directors and the Directors may fill vacancies occurring between meetings of the Members. Except for Directors to be appointed by Declarant, all other Directors shall be Members.

3.4 **Officers of the Homeowners Association.** The Homeowners Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Homeowners Association under the direction of the Board. All officers of the Homeowners Association shall be Directors on the Board. Except as expressly otherwise provided by the articles of incorporation of the Homeowners Association or the By-Laws, all power and authority to act on behalf of the Homeowners Association both pursuant to this Declaration and otherwise shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of the Members.

3.5 **Prohibition on Distribution to Members.** The Homeowners Association, being a not for profit corporation, shall not distribute to the Members (being, in effect, the "shareholders") any sums in the nature of dividends.

3.6 **Agreements Between the Homeowners Association and Others.** Whenever possible, the Homeowners Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with persons and business entities regularly engaged in the performance of generally similar functions and duties, which agreements shall be with such parties, for such length of time, at such rates of compensation and upon such other terms and provisions, all as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Premises or any part thereof. The Homeowners Association itself shall also have power to perform its functions and carry out its duties.

3.7 **Rules and Regulations of the Homeowners Association.** The Homeowners Association, through the resolutions of the Board shall have the right to adopt rules and regulations governing the Units and the Common Area; provided, however, that no rule or regulation shall conflict with any provision of this Declaration (including the By-Laws), the Lakeshore Lease, or with any applicable law, ordinance or code.

3.8 **Books and Records of the Homeowners Association.** The books and records to be kept by the Board shall be available for inspection by any Member or any representative of a Member duly authorized in writing at such reasonable time or times during the normal business hours as may be requested by the Member or its representative.

3.9 **Liability of the Directors and Officers of the Homeowners Association.** Neither the Directors nor the officers of the Homeowners Association shall be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors and officers, except for any acts or omissions finally adjudged by a court of competent jurisdiction to constitute gross negligence or fraud. The Unit Owners (including the Directors and the officers of the Homeowners Association in their capacity as Unit Owners) shall indemnify and hold harmless each of the Directors and each of the officers of the Homeowners Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Homeowners Association on behalf of the Unit Owners or arising out of their status as Directors or officers of the Homeowners Association, unless any such contract or act shall have been finally adjudged by a court of competent jurisdiction to have been made fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, attorneys' costs, amounts or judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any Director or officer of the Homeowners Association may be involved by virtue of such persons being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of such person's duties as such Director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable grounds for such person being adjudged liable for gross negligence or fraud in the performance of such person's duties as such Director or officer. It is also intended that the liability of each Unit Owner arising out of any contract made by, or other acts of, the Board or officers of the Homeowners Association, or out of the aforesaid indemnity in favor of the Directors or officers of the Homeowners Association, shall be limited to an amount equal to the total liability thereunder divided by the then total number of Units. Every agreement made by the Board on behalf of the Unit Owners shall be deemed to provide that the Directors are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that

each Unit Owner's liability thereunder shall be limited to an amount equal to the total liability thereunder divided by the then total number of Units.

ARTICLE 4

COMMON AREA

4.1 **Description of the Common Area.** The Common Area shall consist of all portions of the Premises having then been subjected to this Declaration which are not Units. Without limiting the generality of the forgoing, the Common Area may include, among other things the Limited Common Area, the Access Road, docking facilities, a pool and clubhouse, emergency access, sidewalks, street lighting, common parking spaces, landscaping, slopes and trees, berms, sewer lines, stormwater mains and service lines, stormwater detention/retention basins or ponds, open space areas including the shoreline and other improvements, all as may be located within the Premises. Except for the Limited Common Area and driveways, service walks and other permitted improvements on other portions of the Common Area intended to serve exclusively a Unit as herein set forth, the Common Area is intended to be for the non-exclusive mutual use and enjoyment of all Unit Owners.

4.2 **Rights of Unit Owners, the Homeowners Association and Declarant.**

A. Unless otherwise set forth herein to the contrary, every Unit Owner shall have a non-exclusive right and easement of ingress and egress in, over, upon and to, and use and enjoyment of, all portions of the Common Area (other than the Limited Common Area) and all portions of the Common Area (other than the Limited Common Area) shall be held for the use, benefit and enjoyment of each Unit Owner. The aforesaid non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Unit and with the delivery of each Sublease and each assignment of the Lakeshore Lease, subject to the following reserved rights and easements in favor of others (each of which following described reserved rights and easements apply to all portions of the Common Area, including all Limited Common Area):

(a) From and after the Homeowners Association Incorporation Date, and in all cases subject to the limitations of the Lakeshore Lease, the right of the Homeowners Association to dedicate or transfer (including by means of easements) all or any portion of the Common Area to any public body, agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless accomplished by means of an instrument signed (A) by Members entitled to cast not less than three-fourths (3/4) of the votes and (B) if such dedication or transfer includes any Limited Common Area, by the Unit Owner(s) of each Unit to which said Limited Common Area is appurtenant.

(b) The Homeowners Association is hereby granted and reserves to itself the right to grant, at any time and from time to time after Declarant's leasehold interest in the Common Area has been transferred by Declarant to the Homeowners Association, utility easement(s) for sanitary and storm sewers, water, gas, electricity, telephone, cable television and any other necessary public or municipal service over, through, upon and across all or any portion of the Common Area, all upon such terms and conditions as the Board deems necessary or appropriate.

(c) As part of the overall program of development of the Premises into a residential community and to encourage the marketing and construction thereof, Declarant hereby reserves for itself, its assigns, its contractors and their respective subcontractors, agents and employees the right and easement of ingress and egress and of access and use in, over, upon, under and across each and every portion of the Common Area (including Limited Common Area), for sales and construction purposes, as well as the right and easement of use of certain Units and the Common Area and facilities thereof, all without charge during the entire sales and construction period on the Premises.

(d) At any time prior to the Class B Member Termination Date, subject to the limitations of the Lakeshore Lease, and notwithstanding that Declarant may have theretofore transferred the leasehold interest in the Common Area to the Homeowners Association, Declarant shall have and hereby reserves the right, without having to obtain the consent of any other party (A) to grant and record such easements over, under, through, across, upon, in and on the Common Area or portions thereof for the provision of any utility service, landscaping, buffering, ingress and egress, and such other purposes as Declarant, in its reasonable discretion deems necessary, desirable or required by the final engineering plans for the Premises or by the "as-built" condition of the Premises, or any part or portion thereof; and (B) to reclassify any of the Units then controlled by Declarant or Common Area (such as, for example, to designate a portion of the Common Area to be Limited Common Area or to convert a Unit then controlled by Declarant to Common Area or vice versa) which reclassification results from the "as-built" condition of the Premises, a matter of convenience or any other reason and shall be accomplished by causing an amendment to this Declaration to be recorded by Declarant, which amendment shall designate by legal description or attached plat, or both, what real property is being so reclassified; provided, however, that each such reclassification shall in all events be consistent with the intent and purposes of this Declaration, any applicable provisions of the Lakeshore Lease, and any applicable City ordinances and resolutions and further provided, however, that once Declarant has subleased its interest in the Lakeshore Lease with respect to a particular Unit to a Unit Owner (other than Declarant), no reclassification of the Limited Common Area appurtenant to such Unit shall be effective without, in each instance, the prior written consent of the Unit Owner whose appurtenant Limited Common Area is proposed to be affected by such reclassification.

B. The foregoing described non-exclusive easement and right granted to the Unit Owners shall extend not only to each Unit Owner, but also to members of the immediate family, authorized guests, other authorized occupants and visitors of such Unit Owner. The use and enjoyment of the Common Area shall be subject to such reasonable rules and regulations as are adopted from time to time by the Homeowners Association; provided, however, that in no event shall any rule or regulation limit or restrict the use and enjoyment of the Common Areas by any Unit Owner and/or guest of a Unit Owner, except in the case of rules or regulations applicable equally to all Unit Owners and guests and applicable only to (i) closing of a Common Area for maintenance or repair; (ii) establishment of reasonable daily hours of operation; and (iii) occasional closing with Board approval of a Common Area (no more than 12 hours in each calendar month for any given Common Area) for the private use of a given Unit Owner(s) and guests of that Owner; nor have the effect of reducing or adversely affecting the obligations of the Homeowners Association to maintain all portions of the Common Area and, as and to the extent provided herein, the Limited Common Area.

C. To the extent portions of driveways and service walks appurtenant to and serving exclusively a Unit are located on portions of the Common Area other than the Limited Common Areas in order to provide access, ingress and egress to, from and between a Unit and the Access Road, and to the extent decks, patios, fences, mailboxes, air conditioning compressors, eaves, overhangs, basement area window wells, gutters and downspouts and other improvements having been approved by the Homeowners Association appurtenant to and serving exclusively a Unit are located on portions of the Common Area other than the Limited Common Areas and in the immediate area of such Unit, each affected Unit Owner is hereby granted a right and easement so as to permit, at the sole cost and expense of said Unit Owner (unless otherwise provided to the contrary herein), the location, maintenance, repair, reconstruction, operation and restoration of the portions of said permitted improvements on said portions of the Common Area; provided, however, that the location of such permitted improvements on said portions of the Common Area shall have been approved by the Board and that no such permitted improvements in such portions of the Common Area shall be detrimental to or interfere with the use and enjoyment of all Unit Owners of the Common Area (other than the Limited Common Areas), and that all such improvements shall comply with the Large Scale Ordinance of the City (Ordinance No. 503-09-04), which strictly limits the construction and location of all such improvements.

4.3 The Limited Common Area.

A. The Limited Common Areas shall consist of those portions of the Common Area depicted on Exhibit B attached hereto and each portion thereof shall serve exclusively only that Unit to which said portion is appurtenant as depicted on Exhibit B attached hereto.

B. Each Unit Owner shall be entitled to the exclusive use and enjoyment of the Limited Common Area adjacent to such Unit Owner's Unit and an irrevocable license is hereby granted to each Unit Owner over the Limited Common Area appurtenant to such Unit for such purposes.

C. Subject to the provisions contained in Section 8.7 and Article 9, each Unit Owner, at such Unit Owner's sole cost and expense (unless otherwise provided herein), shall be entitled to construct, install, repair, maintain, locate, use and decks, patios, fences, service walks, air conditioning compressor(s), overhangs, eaves, gutters and downspouts, basement area window wells, mailboxes and other improvements which are deemed consistent therewith as may first be approved by the Board in the Limited Common Area appurtenant to such Unit Owner's Unit. The location of any of said improvements in the Limited Common Area shall be deemed to be a permissible use thereof and shall not be deemed to be an encroachment. All such items shall be subject to the limitations of the Large Scale Ordinance of the City (Ordinance No. 503-09-04).

D. It is the intent of Declarant to provide three (3) Boat Docks for Harbor Point. The final number of Boat Docks installed to the shoreline of the Premises and boat slips associated with each Boat Dock shall be determined by the Declarant, subject to the Lakeshore Lease. Subsequent to the assignment of the Boat Docks by the Declarant, such determination shall be made by the Homeowners Association. A Unit Owner is permitted to lease up to two (2) boat slips per Unit. Unit Owners who are lessees of boat slips are hereinafter referred to as "Slip Owners". Slip Owners and Declarant shall have the right to assign their Slip(s) to a Unit Owner at any time without interference from the Homeowners Association or Declarant, as the case may be, so long as the assignee does not hold more than two (2) leases of boat slips after the assignment. Nothing contained herein shall prevent a Unit Owner from allowing the use of another Unit Owner's boat slip provided that the Slip Owner provides prior written permission to the user. The lease shall be in substantially the same form as Exhibit D, attached hereto and incorporated herein by reference. When Forty-Four (44) boat slips are fully leased or at such earlier time that Declarant in its sole and absolute discretion determines, Declarant shall assign its ownership interest in the Boat Docks and its interest as lessor in each of the leases associated therewith to the Homeowners Association.

E. Notwithstanding any of the foregoing provisions to the contrary concerning exclusive use and possession of the Limited Common Area, all of the Limited Common Area shall be subject to such easements and rights as are expressly referred to or set forth in this Declaration.

4.4 **Permitted Encroachments of Units.** In the event that any part of any Unit encroaches or shall hereafter encroach by no more than six inches (6") upon any part of the Common Area (including the Limited Common Area) immediately surrounding and adjacent to the Unit on which said Unit is located, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner if such

encroachment or use is detrimental to or interferes with the reasonable use or enjoyment by another Unit Owner of such Unit Owner's Unit, or the Limited Common Area surrounding such Unit Owner's Unit, or if such encroachment occurred due to the intentional or willful conduct or gross negligence of any Unit Owner, or if such encroachment does not comply with applicable City codes, ordinance, standards, rules, regulations or agreements governing the Premises. The foregoing easement for encroachments shall not be deemed to preclude or abrogate the right of the Unit Owner of a Unit from locating, using or enjoying the patios, decks, fences, service walks, air conditioning compressor(s), overhangs, eaves, gutters and downspouts, basement area window wells, mailboxes and other improvements approved by the Board in the Unit's appurtenant Limited Common Area or, if applicable, in other portions of the Common Area, all as specifically provided in and consistent with Sections 4.2.C and 4.3.C of this Declaration, and consistent with the Large Scale Ordinance of the City (Ordinance No. 503-09-04).

4.5 Improvement of the Common Area.

A. Declarant shall initially cause to be constructed, installed and/or located upon the Common Area docking facilities, a pool and clubhouse and such driveways (or portions thereof), the Access Road, emergency access and walkways as shall be necessary to provide ingress and egress to and from the Units for the use and benefit of the Unit Owners and their guests and invitees, and such landscaping, other private streets and walkways, common parking spaces, street lighting, benches, paths, berms, walking trails, such sewer lines, stormwater mains and services lines and stormwater retention or detention basins, ponds and other similar improvements, all as Declarant shall from time to time, in its sole discretion, determine to be necessary, appropriate or desirable or to be required by the governmental laws, ordinances or regulations as shall be in effect during, and applicable to, the development of the Premises. Subsequent to the Homeowners Association Incorporation Date, the Homeowners Association shall have the right, subject to obtaining the approval of a majority of the Members, to further improve the Common Area in a manner consistent with the intent and purpose of this Declaration. The foregoing shall not be deemed to preclude the right of each Unit Owner, at such Unit Owner's sole cost and expense and subject to having received prior Board approval as provided in Article 9 of this Declaration, and also subject to compliance with the Large Scale Ordinance of the City (Ordinance No. 503-09-04) from locating within those portions of the Common Area which are not Limited Common Area, and in the immediate area of such Unit Owner's Unit, the decks, patios, fences, driveways, service walk, mailbox(es), air conditioning compressor(s), eaves, overhangs, basement area window wells, gutters and downspouts and such other improvements having been approved by the Board as being consistent with the foregoing and serving the Unit located on such Unit Owner's Unit as set forth in Section 4.2.C above.

B. In the event, in the course of undertaking the construction, installation and/or location of improvements permitted hereunder on a Unit, the Limited Common Area or, as applicable, other portions of the Common Area, a Unit Owner (or anyone undertaking such construction, installation and/or location on behalf of Unit Owner)

causes damage to the Common Area (other than the Limited Common Area) which, in the opinion of the Board, requires the repair or restoration thereof, restoration of or repairs to the Common Area shall be undertaken by the Homeowners Association and such Unit Owner shall reimburse the Homeowners Association for the Homeowners Association's costs of such repair or restoration within thirty (30) days of receipt of a written invoice from the Homeowners Association therefor, and in the event such Unit Owner fails to pay the amounts the Homeowners Association incurs to undertake such repair or restoration within said thirty (30) days, such amounts, together with interest at nine (9) percent per annum and all reasonable cost of collection, including attorneys' fees and litigation expenses, shall become (i) a lien upon such Unit Owner's Unit, enforceable by an action similar to the type of action instituted to foreclose the lien of a mortgage or deed of trust on real property, and/or (ii) a default under the Sublease entitling the Master Lessee to the remedies under Section 8.12 of this Declaration.

4.6 **Dedication of the Common Area.** Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

4.7 **Transfer of the Common Area.** Declarant shall assign its leasehold interest in the Common Area to the Homeowners Association at such time as Declarant determines in its sole discretion, but no later than the date of either the Homeowners Association Incorporation Date or the date Rental is first paid to the City under Section 3.01(b) of the Lakeshore Lease. The form of assignment shall contain an express assumption by the Homeowners Association of Declarant's rights and obligations pursuant to the Lakeshore Lease. The Homeowners Association shall not be relieved of any of its obligations under this Declaration or the Lakeshore Lease by reason of Declarant's retention of the leasehold interest in all or any portion of the Common Area prior to its transfer to the Homeowners Association, including without limitation, the obligation to pay all general and special real estate taxes and assessments levied with respect to the Common Area, and including further, the obligation to maintain, repair and reconstruct the Common Area and to defray the cost thereof by Member assessments. Upon any transfer of the Common Area to the Homeowners Association, Declarant shall be entitled to a proration credit for all expenses of the Homeowners Association defrayed by Declarant (including insurance and real estate taxes), which have not theretofore been reimbursed to Declarant. The Common Area shall be transferred subject to all covenants, conditions, and restrictions of record (except the liens of any mortgages or trust deeds granted by Declarant) and without any express or implied warranties of merchantability of fitness for a particular purpose, which warranties are expressly disclaimed by Declarant.

4.8 **Transfer of Lakeshore Lease.** Declarant shall assign the Lakeshore Lease to the Homeowners Association no later than the first to occur of (i) five (5) years after the date of the first closing of a sale by Declarant of a Sublease to a Unit Owner (other than Declarant) and (ii) the date of the closing of all twenty-two (22) Units in the Premises by Sublease by Declarant to a Unit Owner (other than Declarant). The form of assignment shall contain an express assumption by the Homeowners Association of

Declarant's rights and obligations pursuant to the Lakeshore Lease and the collection and payment of Rental from Unit Owners to City for Rental as set forth in Section 3.01 of the Lakeshore Lease. Concurrently with the assignment of the Lakeshore Lease by Declarant to the Homeowners Association, the Homeowners Association shall execute one or more Sublease Agreements in the form last executed by Declarant and a Unit Owner transferring by Sublease all interests in the Unit(s) which remain unsold by Declarant, including the Limited Common Areas appurtenant to each such Unit(s) and undivided one twenty-second (1/22nd) interests in the Common Areas for each such Unit (the "Unsold Units"). The Declarant shall pay to the Homeowners Association the amount of one dollar (\$1.00) as consideration for each such Sublease Agreement executed between the Homeowners Association and the Declarant. Notwithstanding anything contained in the Declarations to the contrary, in the event such Unit(s) are subleased by the Homeowners Association to Declarant, the Declarant's rights under this Declaration, including, but not limited to those rights under Section 4.2 and Section 8.9, shall survive the assignment of the Lakeshore Lease by Declarant to the Homeowners Association as if the Lakeshore Lease was not transferred by Declarant, but such rights shall terminate on the date Declarant closes the sale of all Unsold Units pursuant to a Sublease Agreement with a Unit Owner (other than Declarant). The Declarant and the Homeowners Association shall enter into an agreement incorporating the provisions of this Agreement which shall be executed by the Declarant and the Homeowners Association as a condition precedent to the assignment of the Lakeshore Lease by Declarant to the Homeowners Association.

ARTICLE 5

MAINTENANCE OF COMMON AREAS, LIMITED COMMON AREAS, AND UNITS

5.1 Maintenance of the Common Area and Limited Common Area.

A. The Homeowners Association shall carry out or cause to be performed all maintenance, improvement, repair and replacement of the Common Area and Limited Common Area, excluding those portions of the Common Area and Limited Common Area or facilities located thereon which have been or are hereafter dedicated to City or other public or quasi-public body by means of valid easements and items installed by the Unit Owner on the Common Area or within said Unit Owner's appurtenant Limited Common Area (including, but not limited to satellite dishes not exceeding twenty inches (20") in diameter, mailboxes, patios, decks, and fences) and other similar matters, whether or not specifically described or existing on the date hereof.

B. The Homeowners Association, at all times, shall have the right of ingress and egress on, over, upon, and to the Common Area and Limited Common Area for any and all purposes connected with the use, maintenance, repair, operation, improvement, replacement, and reconstruction of the Common Area and Limited Common Area.

5.2 **Maintenance of Unit.** Except as otherwise provided in this Declaration, each Unit Owner shall have the obligation to maintain in good condition and repair the structural components of the Unit including the foundation, driveway, walkway from the front door to the driveway, roofs, perimeter and load bearing walls, subfloors, trusses and the exterior shell (surface items including, without limitation, windows, doors, garage doors, gutter, soffit, fascia, down spouts, decorative shutters, and exterior painting), and all other permitted improvements located on such Unit Owner's Unit. Each Unit Owner shall have the obligation to maintain in good condition and repair the Unit's drywall, pipes, plumbing, ducts, electrical wiring, gas lines and conduits serving any one Unit or Units, or heating, ventilating and air conditioning systems or plumbing systems within any Unit or Units. If a component, in need of repair or replacement, affects more than one (1) Unit, each affected Unit Owner shall be responsible for an equal share of the cost to repair or replace such defective component. Upon the failure of any Unit Owner to so maintain such Unit Owner's Unit in a manner satisfactory to the Homeowners Association (including, without limitation, exterior painting), the Homeowners Association, through its agents and employees, is hereby granted the right to enter upon such Unit and make such reasonable repairs, maintenance, rehabilitation, restoration or repainting thereof as may be necessary, and the costs thereof shall become a lien upon such Unit in the same manner as provided in Article 6 for nonpayment of maintenance assessments.

ARTICLE 6

COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 **Covenant for Assessments.** Subject to the provisions of Section 6.6 below, Declarant, for each Unit owned within those portions of the Premises having then been subjected to the jurisdiction of this Declaration, hereby covenants, and each Unit Owner, by acceptance of a sublease of the Lakeshore Lease, whether or not it shall be so expressed in such Unit Lease or other partial assignment, is deemed to covenant and agree to pay to the Homeowners Association the Association Assessment. The amount of the Association Assessment to be fixed, established and collected from time to time as provided in this Declaration. The Association Assessment, together with such late charges thereon and cost of collection thereof, as thereafter provided, shall be a charge on each Unit and shall be a continuing lien upon such Unit against which such Association Assessment is levied. Each such Association Assessment, together with such late charges and cost of collection, including reasonable attorneys' fees and costs, shall also be the personal obligation of the Unit Owner of such Unit at the time when the Association Assessment or installation thereof became due. Such personal obligation shall continue to said Unit Owner despite a sale or transfer of said Unit. Upon the collection of each installment of the Association Assessment by the Homeowners Association, that portion of the Association Assessment allocated to the payment of Rental due under the Lakeshore Lease (including proceeds from the Rental Reserve) shall be deposited immediately in a trust account separate from other funds of the Homeowners Association at such bank or financial institution as may be approved from time to time by the Homeowners Association for such purpose pending its payment to

City. The trust account shall be established for the benefit of the City on terms and provisions that shall not be subject to termination, amendment or modification without the prior written consent of City.

6.2 **Purposes and Use of Assessment.** The Association Assessment shall be used exclusively for the purpose of payments of Rental due under the Lakeshore Lease and for promoting the health, safety, and welfare of the Premises or any portion thereof and in particular for the improvement and maintenance (i) of the Premises, and (ii) of the services and facilities devoted to or serving the Premises or related to the use or enjoyment of any part or portion of the Common Area, and for the establishment and maintenance of adequate reserves. Such uses shall include, but are not limited to, the cost of the Homeowners Association of any taxes and all insurance premiums with respect to, and the expense of operation, repair, replacement and maintenance of, the Common Area (or those portions of the Common Area as to which the Homeowners Association is, pursuant to this Declaration, responsible to perform such function or incur such expense) as may from time to time be authorized by the Board. The Homeowners Association shall establish and maintain a special reserve account to account for capital expenditures and major repairs and replacements that may be required from time to time, as determined by the Board and for the maintenance of adequate reserves. In addition, cable, electric, gas, water, waste removal and/or any other utilities which are not separately metered or otherwise directly charged to individual Unit Owners shall be paid for by the Homeowners Association and such costs shall be included in calculating the amount of the Association Assessment. The Board reserves the right to levy additional specific assessments against any Unit Owner for (i) excessive or disproportionate use by such Unit Owner of any utility or other service or (ii) improvement or use of a Unit Owner's Limited Common Area which causes excessive or disproportionate real estate taxes, if any, to be levied upon the Common Area generally, the proportionate expense of which excessive or disproportionate use or improvement shall be included in the Association Assessment. At the time each Unit is transferred by Declarant to a Unit Owner pursuant to a Sublease, such Unit Owner shall pay, in addition to the first monthly (or other then applicable assessment period) installment of the Association Assessment attributable to that Unit, to the manager or managing agent, or as otherwise directed by the Board, an amount equal to no less than two (2) times the first full monthly assessment for such Unit (but including an amount no less than shall be required from such Unit Owner to maintain adequate reserves, which amount shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses of the Homeowners Association and held for future working capital needs. The payment from the initial Unit Owner of each Unit (other than Declarant) described in this Section 6.2 shall not be refundable or be applied as a credit against the Unit Owner's installments of the Association Assessment. The Board or the Declarant shall have the right to transfer such funds from time to time as may be necessary to fund a reserve for capital improvements and major repairs.

6.3 Establishment of Assessment.

A. The Board shall, on or before October 1 of each year, estimate the total amount necessary to pay all costs and expenses to be incurred, such as, but not limited to, Rental due under the Lakeshore Lease, real estate taxes, if any, and costs and expenses of maintaining sidewalks and streets, common parking spaces, emergency access to the Premises, landscaping, sewer lines, stormwater mains and service lines, stormwater retention/detention basins or ponds, trees, grassy and other open areas including the shoreline, visitor boat docking, a pool and clubhouse, and such further ancillary buildings and facilities as Master Lessee or the Homeowners Association shall from time to time construct and develop on the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefore during the ensuing calendar year to effect the purposes of the Homeowners Association, including the establishment and maintenance of a Rental Reserve payable to City under the Lakeshore Lease and other reasonable reserves for capital improvements and major repair; a copy of which estimated budget shall be provided to all Unit Owners at least thirty (30) days prior to its adoption by the Board. With respect to the Rental Reserve, each Unit Owner is obligated to pay to the Homeowner's Association an amount equal to the annual rental required under Article III of the Lakeshore Lease for the Unit owned by such Unit Owner and such payment shall be due and payable to the Homeowner's Association as an Assessment and collected on or before the date being one-hundred eighty (180) days immediately preceding the anniversary date of the Lakeshore Lease. In the event Master Lessee shall be in default under the Lakeshore Lease, each Unit Owner shall remit directly to the City the Rental required of each Unit under the Lakeshore Lease and the Homeowners Association shall be discharged of its obligation to assess Rental against each Unit Owner or maintain a Rental Reserve. The estimated cash requirement to discharge the operating costs reference herein shall be allocated among and assessed to the Unit Owners in the manner hereinafter described. The Board shall give written notice, mailed or delivered, to each Unit Owner no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of any proposed budget or any increase or establishment of an assessment. On January 1st of the ensuing year and on or before the 1st day of each and every month (or other assessment period as the Board may establish as hereinafter provided) thereafter during said year, each Unit Owner shall be personally obligated to pay an installment of said Unit Owner's annual Association Assessment. Notwithstanding anything contained herein to the contrary, the Board shall have the right to establish that each Unit Owner shall be obligated to pay the annual Association Assessment due hereunder in one annual payment, two equal semi-annual installments or four equal quarterly installments, as well as twelve equal monthly installments; provided, however, that said payment schedule shall be uniformly and equally applicable to all Unit Owners within the Board's jurisdiction. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said "estimated cash requirement", any shortage or excess shall entitle the Board, upon giving written notice thereof to all Unit Owners within its jurisdiction, to adjust accordingly the amount of those installments of the current year's Association Assessment falling due after the date when the amount of such storage or excess is determined.

B. If, during an assessment year, said "estimated cash requirement" proves inadequate for any reason (including, for example, nonpayment by one or more Unit Owner of the respective Association Assessment), the Board may at any time levy an additional assessment. The Board shall serve notice of such additional assessment on all affected Unit Owners by a statement in writing setting forth the amount of such additional assessment and the reasons for it, and thereupon, such additional assessment shall become effective with the next installment of the applicable Association Assessment and all affected Unit Owners shall be personally liable for and obligated to pay their respective adjusted installments of that Association Assessment.

C. The failure or delay of a Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Unit Owner's obligation to pay the installment of the Homeowners Association Assessment, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, each Unit Owner shall continue to pay at the then existing Association Assessment rate established for the previous period.

D. On or before October 1 of each year, the Slip Owners shall provide the President of the Association with an estimate of the total amount necessary to pay for all costs and expense to be incurred for the maintenance, operation, security, insurance and repair and replacement of the Boat Docks during the ensuing calendar year. The Slip Owner's estimated expense shall be based upon the total number of boat slips existing on the date that the budget is submitted. For example, a Slip Owner's assessment shall be 1/12th of such total estimated costs and expenses for the ensuing calendar year if twelve (12) boat slips exist on the date the budget is submitted. Such assessment shall be paid in advance by each Slip Owner on January 1st of each year. In the event of a partial year, the assessment shall be prorated. If, during the calendar year, the assessment proves inadequate for any reason, the Board may levy at any time an additional assessment on the Slip Owners. The Board shall serve notice of such additional assessment on all Slip Owners by a statement in writing setting forth the amount of such additional assessment and the reasons for it, and thereupon, such additional assessment shall be paid by the Slip Owners on the 1st day of the month following the date the Board approves such additional assessment. The Slip Owners shall be personally liable for and obligated to pay their respective share of such assessment based on the number of slips existing on the date of the additional assessment is approved. The expense of any unleased boat slips shall be borne by the Declarant utilizing the same formula contained within this paragraph.

6.4 **Special Assessment.** In addition to the annual Association Assessments authorized above, the Homeowners Association, with respect to the Common Area (except for the Limited Common Area), may levy in any assessment year a special assessment applicable to that year only or for several specified years, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, if any. The foregoing special assessment may be levied notwithstanding the fact that the Homeowners Association may have then accumulated a reserve.

6.5 **Uniform Assessment Amount.** Except as set forth in Section 6.6 below, both annual and special Association Assessments shall be the same amount for each Unit, notwithstanding the size of the Unit or the size or nature of the improvements on the Unit. Such Association Assessment shall be levied, paid, and collected on a monthly basis or on such other alternative payment schedule as the Board may establish in the manner provided in this Declaration.

6.6 **Commencement of Assessments.** The Association Assessment for each Unit shall commence on the date Master Lessee subleases that Unit to the Unit Owner thereof. Each Unit Owner shall be obligated to pay his, her, its or their share of the Rental of a Unit as determined in accordance with Section 3.01(b), (c) and (e) of the Lakeshore Lease and such Rental shall be assessed by the Association as part of the Association Assessment to the relevant Unit Owner. Notwithstanding anything in this Declaration which is or may appear to be to the contrary, as to the Association Assessment due with respect to those Units which have then been subjected to the jurisdiction of this Declaration but which have not been subleased to a Unit Owner (and except with respect to the payment of Rental under Section 3.01(a) of the Lakeshore Lease) Declarant shall only be obligated to pay to the Homeowners Association an eighteen twenty seconds (18/22nds) share of the amount of operating expenses incurred and paid with respect to those portions of the Premises having been subjected to the Declaration for use by the Homeowners Association. As each Unit is transferred to a Unit Owner by a Sublease, other than Declarant, Declarant's obligation to fund an eighteen twenty seconds (18/22nds) share of the Homeowners Association's operating expenses shall be reduced by one-eighteenth (1/18). When eighteen (18) Units have been transferred by a Sublease to a Unit Owner, other than Declarant, Declarant shall not be obligated to pay any further operating expenses or assessments of the Association. With respect to Rental, Master Lessee shall only be obligated to pay its share of Rental as determined in accordance with Section 3.01 of the Lakeshore Lease. Declarant shall make such payments to the Homeowners Association as needed from time to time after the Homeowners Association Incorporation Date (but at least quarterly) and a final accounting shall be made between Declarant and the Homeowners Association within 120 days of the date of the initial meeting of the Members as provided in the By-Laws. For purposes of this Section 6.6, the operating expenses shall refer solely to the ordinary expenses attributable only to the period in question covering maintenance and operation of the Common Area and shall not include, nor shall Declarant be responsible for the payment of, capital expenditures, reserves for contingencies or replacement, special assessments, repair items or inventory items.

6.7 **Delinquent Assessments.** Installments of any Association Assessment shall be due on the first day of each applicable assessment period and if not paid when due, shall be delinquent. If payment of said installment of an Homeowners Association Assessment is not made on or before the 10th day following the date upon which it is due, then the delinquent Unit Owner shall pay to the Homeowners Association (which, in turn, shall, if applicable, be paid by the Homeowners Association to any management company or agent responsible for maintenance, repair and replacement of the Common

Area or other matters hereunder) a late charge of nine (9) percent of the installment amount for each month or portion thereof that said installment remains delinquent, said late charge to cover the Homeowners Association's administrative costs in monitoring and collecting said installment. In addition, the Homeowners Association may bring an action at law against the Unit Owner personally obligated to pay said delinquent installment(s), or may foreclose its lien against said Unit Owner's Unit, and in either event, there shall be added to the amount of such delinquent Homeowners Association Assessment installment(s) (and in the amount of said lien) late charge(s) and the cost of collection, including reasonable attorneys' fees and all court costs. Each Unit Owner, by the acceptance of a sublease of an undivided interest under the Lakeshore Lease with respect to a Unit, hereby expressly vests in the Homeowners Association or its agents, the right and power to bring all actions against such Unit Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien or liens by all methods available or the enforcement of such liens including foreclosure by an action brought in the name of the Homeowners Association in a manner similar to the type of action instituted to foreclose the lien of a mortgage or deed of Trust on real property and/or maintain an action under Article IX of the Illinois Code of Civil Procedure (Forcible Entry and Detainer).

6.8 Priority of the Lien for Assessment. The lien or liens for any Association Assessment as it relates to each Unit shall be subordinate to the liens of any Unit Mortgage now or hereafter recorded against the leasehold interest in and to any Unit provided that said Mortgage is recorded prior to the recording of any such liens for delinquent Association Assessment installment(s). In the event that title to any Unit is transferred either pursuant to the foreclosure of a Mortgage or by assignment in lieu of such foreclosure, such transfer shall extinguish the lien for Association Assessment payment(s) for sums which became due prior to the first to occur of (a) the date of the transfer of the aforesaid interest and (b) the date on which the transferee comes into possession of the Unit. Notwithstanding the foregoing, said transferee of said Unit shall be liable for said transferee's share of any sums with respect to which a lien against said transferee's Unit has been extinguished pursuant to the preceding sentence and non-payment thereof by said transferee shall result in a lien against said transferee's Unit. The amount of the delinquency will be reallocated equally among all Unit Owners other than the transferee and will be paid by those Unit Owners through a special assessment. When such lien is paid in full by transferee to the Homeowners Association, the Unit Owners who paid the special assessment will receive a credit against their monthly assessments allocated equally over a twelve-month period.

Any Mortgage recorded against a leasehold interest in and to any Unit by a Unit Mortgagee shall also provide for a collateral assignment of the leasehold interest in favor of the Unit Mortgagee. The Sublease between Master Lessee and the Unit Owner shall provide that in the event a Unit Owner fails to pay Master Lessee rent due under the Sublease, Master Lessee may take any and all action permitted under Article IX of the Illinois Code of Civil Procedure (Forcible Entry and Detainer) to terminate the Sublease and take possession of the Unit along with Buildings and Improvements thereon. Subject to Section 11.8A of this Declaration, a Unit Mortgagee may cure Unit Owner defaults

within thirty (30) days after written notice to a Unit Mortgagee or to permit an assignment of the Sublease provided that Unit Owner defaults are cured before such assignment.

6.9 **Itemized Accounting.** The Board shall annually supply to all Unit Owners an itemized accounting of the expenses incurred or paid for the preceding year, together with a tabulation of the assessments collected for such year, and showing the net excess or deficit of income over expenditures plus reserves.

6.10 **Real Estate Taxes for the Common Area and the Units.** Notwithstanding anything to the contrary herein contained, from and after the date of recording of this Declaration, the Unit Owners shall be responsible to pay and discharge any and all general and special real estate taxes and assessments levied by any public authority with respect to the Common Area, including the Limited Common Areas. Notwithstanding anything to the contrary herein contained, from and after the date of recording of this Declaration, each Unit Owner shall be responsible to pay and discharge any and all general and special real estate taxes and assessments levied by any public authority with respect to such Unit Owner's Unit. In the event of a failure by a Unit Owner or such other responsible person to pay such general and special real estate taxes and assessment with respect to such Unit Owner's Unit when due, and if such failure would give rise to a lien on City's Estate, then (to the extent permitted by law) the Homeowners Association shall be obligated to redeem or purchase any defaulted taxes and specially assess the cost of such redemption or purchase against the Unit to which such defaulted taxes are attributable.

ARTICLE 7

INSURANCE

7.1 **Insurance to be Maintained by the Homeowners Association.** The Board, on behalf of the Homeowners Association, shall have the authority to and shall obtain (and the Board shall obtain with the premiums therefor being part of the assessment levied pursuant to Article 6) the following policies of insurance:

A. Physical damage insurance on the Common Area (and including fixtures on the Common Area and any personal property and supplies of the Homeowners Association) against loss or damage by fire and against loss or damage by all other hazards now or hereafter covered by the standard extended coverage endorsement, with an inflation guard endorsement and a building ordinance or law endorsement, all in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof. The "full insurable replacement cost" of the Common Area shall be determined from time to time by the Board, which determination may be based upon appropriate insurance appraisals. Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property and such other perils as may be

determined by the Board. All such policies of insurance shall name as insureds the Declarant so long as the Declarant has an insurable interest, the Homeowners Association, and those parties specified in Section 13.09 of the Lakeshore Lease.

B. Commercial general liability insurance against claims for personal injury or death or property damage suffered by the public or by any Unit Owner occurring in, on or about the Common Area or upon, in or about the streets and passageways and other areas adjoining the Common Area, with such limits as the Board shall deem desirable; provided, however, that such limit, shall be no less than \$1,000,000.00 per occurrence for bodily injury, including death and property damage and no less than \$1,000,000.00 in the aggregate for personal injury. All policies of insurance of the character described in this subparagraph shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner on account of the negligent acts of the Homeowners Association or another Unit Owner, and shall be endorsed to cover cross-liability claims of one insured against the other. All such policies shall name as insureds the Declarant so long as the Declarant has an insurable interest, the Homeowners Association, and those parties specified in Section 13.09 of the Lakeshore Lease.

C. Such worker's compensation insurance as may be necessary to comply with applicable Federal and State of Illinois laws.

D. Employer's liability insurance in such amount as required to be maintained pursuant to Section 13.09 of the Lakeshore Lease.

E. Fidelity insurance against dishonest acts on the part of directors, officers, managers, trustees, employees, managing agents or volunteers responsible for handling funds belonging to or administered by the Homeowners Association, written in an amount which is no less than the amount of funds within the custody or control of the Homeowners Association at any time, plus all reserves held by the Homeowners Association. Such policy of insurance or bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such policy of insurance or bond shall name as insured or obligee the Homeowners Association.

F. If any improvements on the Premises are within a Special Flood Hazard Area as shown on the applicable Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, flood insurance on the Common Area, including all contents which are located on the Common Area, for an amount not less than one hundred percent (100%) of the full replacement cost thereof on a blanket basis or the maximum coverage available through the National Flood Insurance Program, if less than full replacement cost.

G. All insurance required to be maintained by the Homeowners Association pursuant to Section 13.09 of the Lakeshore Lease, including comprehensive automobile liability insurance.

H. Such other insurance in such reasonable amounts as the Board shall deem desirable.

All insurance provided for in this Section 7.1 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Site Category Rating of not less than A/VIII to Best's Insurance Reports-International Edition or a substantially equivalent rating from a nationally-recognized insurance rating service. All such policies shall provide a minimum of ten (10) days advance notice of modification or cancellation in writing to the insured thereunder. The Board shall have the right to select deductibles to the insurance coverages required or permitted under this Section 7.1 if the economic savings justify the additional risk and if permitted by law; provided, however, that no deductibles shall exceed the lesser of (i) \$1,000.00 (\$5,000.00 with respect to a flood insurance policy); or (ii) one percent (1%) of the face amount of the insurance policy to which such deductible applies, and further provided that funds to cover any deductible amounts shall be maintained as part of the reserve account.

I. The policies of insurance, or a certificate thereof, shall be approved by the Risk Management Department of City and shall be deposited with and kept on file by the Risk Management Department. Declarant's and the Homeowners Association's policies are subject to annual review by City and an increase in the amounts of coverage may be required by City to account for inflation.

7.2 Unit Owner's Insurance.

A. Each Unit Owner with respect to such Unit Owner's Unit, hereby agrees and covenants to procure and maintain in full force and effect at all times liability insurance with such limits of liability as the Board may prescribe from time to time, including liability for injuries to and death of persons, in connection with such Unit Owner's exclusive use and possession of such Unit Owner's Limited Common Area and those portions of the Common Area other than the Limited Common Area upon which permitted improvements serving exclusively a Unit may be situated pursuant hereto, and to this end, the Limited Common Area appurtenant to such Unit Owner's Unit and such other portions of the Common Area as aforesaid shall be considered as if it were a part of such Unit Owner's Unit.

B. Each Unit Owner hereby agrees and covenants to procure and maintain insurance in full force and effect at all times insuring the Unit and other improvements comprising such Unit in an amount equal to not less than 100% of the replacement cost of such Unit and other improvements. In addition, each Unit Owner further agrees to procure sufficient insurance to cover the cost to remove any and all debris from the Premises (including removal and demolition of the improvement located on the Unit Lease) and filling all excavations and returning to surface grade upon a Casualty occurring with respect to such Unit Owner's Unit.

C. All insurance required to be maintained by a Unit Owner under Sections 7.2(A) and 7.2(B) shall include endorsements naming as insureds the Homeowners Association as additional insureds as their interests may appear.

7.3 Damage and Restoration.

A. If a Unit shall be damaged by a Casualty (regardless of the amount of the loss or the existence of insurance to cover such loss, the Unit Owner shall have two hundred seventy (270) days from the event giving rise to the Casualty to cause the Restoration of the Unit and receive a Certificate of Occupancy from the City for such Unit ("Completion Date").

B. If the Unit Owner does not complete Restoration within the Completion Date (hereinafter "Defaulting Unit Owner"), Master Lessee may, at its option, upon written notice to the Defaulting Unit Owner, terminate such Defaulting Unit Owner's Sublease or (with or without terminating the Unit Lease), to terminate the Defaulting Unit Owner's possession of the Premises. In either event, Master Lessee or its agents and servants may, unless prevented by court order, immediately or at any time thereafter re-enter the Premises, remove all persons and all or any property therefrom, whether or not by any available action or proceeding at law or in equity, and repossess and enjoy the Premises, as its former estate, together with the Buildings and Improvements made to any of the foregoing or to the Premises during the term of the Lakeshore Lease. In addition, as to a Defaulting Unit Owner, Master Lessee may, but shall have no obligation to, at any time after the Completion Date, whether or not the Sublease has been terminated, relet the Unit, and receive and collect Association Assessments from such subsequent Unit Owner. The Defaulting Unit Owner shall be responsible for the payment of any costs and expenses (including reasonable attorneys' fees and costs) incurred by Master Lessee in recovering possession of the Unit Lease. Defaulting Unit Owner shall be liable for Association Assessments through the date the Unit is relet by Master Lessee and liquidated damages in the amount of Twenty Thousand (\$20,000.00) Dollars to compensate the Association for costs related to making the Unit available for reletting in such event of casualty.

ARTICLE 8

**SPECIFIC RESTRICTIONS AND
PROVISIONS RELATING TO USE AND
IMPROVEMENT OF UNITS AND COMMON AREA**

8.1 **Improvements on a Unit.** Subject to Declarant's development plan and its large scale development plan approved by City pursuant to the Large Scale Ordinance of the City (Ordinance No. 503-09-04) each Unit may be improved to the property boundary line of that Unit, provided that only one Unit for a single family occupancy and accessory structures incident thereto shall be constructed or located on that Unit. The exterior walls of all Units shall be of brick construction. The improvement of a Unit with one Unit shall conform with applicable ordinances of City.

8.2 Restriction on the Use of a Unit.

A. A Unit Owner's use of the Premises is restricted by the terms and conditions contained in the Lakeshore Lease. In addition, each Unit shall be used only for residential purpose, and not for the conduct of any trade or business; provided, however, each Unit Owner shall have the right, subject to applicable City ordinances, to (i) maintain such Unit Owner's personal professional library therein; (ii) keep such Unit Owner's personal, business or professional records or accounts therein; (iii) handle such Unit Owner's personal, business or professional telephone calls or correspondence therefrom; and (iv) maintain a computer or other office equipment therein. A Unit Owner's use of a Unit shall not endanger the health or disturb the reasonable enjoyment of any other Unit Owner or Occupant, except that the foregoing restriction on disturbing reasonable enjoyment shall not be deemed to preclude or prohibit any of the rights or activities expressly reserved by or granted in this Declaration, to Declarant and the Homeowners Association. All uses of Units shall comply with all applicable ordinances of the City, including the City's zoning code.

B. No Unit Owner shall do or permit to be done on such Unit Owner's Unit or anywhere else in the Premises any act or thing which will impair any easement or hereditament granted to any other party, nor shall any Unit Owner create or permit to exist on such Unit Owner's Unit or anywhere else in the Premises any condition which will adversely affect the use or enjoyment of the Premises or any part or portion thereof by any party entitled to such use or enjoyment.

C. No nuisance, noxious or offensive activity shall be or permitted to be carried on by any Unit Owner on such Unit Owner's Unit or anywhere else in the Premises nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to any other Unit Owner or Occupant.

D. In addition to the restrictions set forth in this Declaration, the Homeowners Association may from time to time adopt such rules and regulations governing the use or enjoyment of the Units as the Board, in its reasonable discretion, deems desirable, appropriate or necessary; provided, however, that, except as stated in the Declaration, the Homeowner's Association shall not establish (by rule, regulation or otherwise) any restriction on ownership or occupancy of Units by Unit Owners and/or guests of a Unit Owner based on age or family relationship, except by vote of the holders of eighty (80) percent or more vote of the Unit Owners.

8.3 Prohibition on Use or Occupancy of Temporary Structures. Except as expressly hereinafter provided, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used as a residence at any time, either temporarily or permanently.

8.4 **Prohibition on Advertising.** Except for Declarant and its activities within the Premises, no advertising sign (excluding customary "For Rental" and "For Sale" signs), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on a Unit, a Unit or any Limited Common Area, except as may be approved in advance by the Board.

8.5 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Unit, Common Area or Limited Common Area, except dogs, cats or other common household pets (not to exceed a total of two (2) pets for each Unit) may be so kept; provided, that they are not kept, bred or maintained for any commercial purpose and provided further that they are kept, bred and maintained solely on the Unit and in accordance with rules and regulations adopted by the Board.

8.6 **Garbage.** All rubbish, trash, and garbage shall be kept on each Unit so as not to be seen from neighboring Units or the Access Drive and shall be regularly removed from each Unit and shall not be allowed to accumulate thereon. In addition to the foregoing, all rubbish, trash and garbage shall be stored and removed in accordance with the rules and regulations adopted by the Board.

8.7 **Prohibited Exterior Activities/Improvements.**

A. Hanging of clothes shall be confined to the interior of each Unit.

B. Without prior written authorization of the Board, no television or radio antennas or television satellite dishes of any sort shall be placed, allowed or maintained on the exterior of any Unit, on any portion of the exterior of any other improvements located on any Unit, nor in a free-standing nature elsewhere on any Unit or Limited Common Area.

8.8 **Parking of Automobiles, Boats, Vans and other Vehicles.** Parking areas and driveways shall be used for parking operable automobiles and private vans only. No pick-up trucks and trucks of similar size and nature, vans, campers, trailers, boats, snowmobiles and other vehicles shall be parked on the exterior of any Unit, Unit or the Common Area. No parking of any vehicles shall be allowed in any portion of the Common Area except in areas which may be designated by the Board for such parking (if any). The Board may authorize vehicles parked in violation of the Homeowners Association's rules and regulations with respect thereto to be towed away and any such towing charge shall become a lien upon the Unit of the Unit Owner who owns such vehicle or of whom the owner of such vehicle is the guest, in the same manner as provided in this Declaration for nonpayment of assessments.

8.9 **Exceptions to Restrictions.**

A. The foregoing covenants of this Article shall not apply to the activities of Declarant or the Homeowners Association.

B. Declarant, or parties who enter into a sales agreement with Declarant with respect to the development of the Premises, may maintain, while engaged in constructing and selling activities, in or upon such portions of the Premises as Declarant determines, such vehicles and temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, garages, signs and construction and storage trailers.

8.10 Party Walls and Common Roofs.

A. All dividing walls which straddle the boundary line between Units and which serve two Units shall at all times be considered party walls, and each of the Unit Owners of the affected Unit upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for support of said Units and for the support of any building constructed to replace the same. Each affected Unit Owner shall have the right to maintain in or on said wall any pipes, ducts and conduits originally located therein or thereon, subject to the restrictions herein contained. No Unit Owner shall have the right to extend any such party wall in any manner, either in length, height or thickness. All roofs which straddle the boundary line between Units and which serve two Units shall at all times be considered common roofs, and each of the Unit Owners of the affected Units shall have the right to use said common roofs, including in any building constructed to replace an original building. No Unit Owner shall have the right to extend said roofs in any manner.

B. In the event of required repairs or damage to or destruction by fire or other casualty of all or any portion of any party wall, including the foundation thereof, or any common roof, the Unit Owners of the Unit upon which such party wall or common roof may rest shall have the obligation to repair or rebuild such wall or roof and the Unit Owner of any Unit upon which such wall or common roof shall rest, be served or be benefited by shall pay such Unit Owner's equal share of the cost of such repair, replacement or rebuilding. All such repair, replacement or rebuilding shall be done within a reasonable time in a good and workmanlike manner with materials comparable to those used in the original wall or roof and shall conform in all respects to applicable laws or ordinances in force at the time of such repair, replacement or reconstruction. Whenever any such wall or roof (or portion thereof) shall be repaired, replaced or rebuilt, it shall be erected in the same location and be of the same size and materials as the original wall or roof. The foregoing notwithstanding, a Unit Owner shall retain the right to receive a larger contribution from another Unit Owner or others under any rule or laws regarding liability for negligent or willful acts or omissions. The right of any Unit Owner to contribution from any other Unit Owner or others under this Section 8.10 shall be appurtenant to the land and shall pass to such Unit Owners successors in title. If either Unit Owner shall neglect or refuse to pay his/her/its/their common share, or all or part of such costs in the case of negligence, the other Unit Owner may have such common structure repaired or restored and shall be entitled to have a lien on the Unit of the other Unit Owner so failing to pay for the amount of such defaulting Unit Owner's share of the repair or replacement costs together with interest at the rate of six (6) percent per annum.

The Unit Owner having such common structure repaired or replaced shall, in addition to the lien provided for herein, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or at law. The lien granted herein is effective only if recorded in the Recorder's Office of Sangamon County, Illinois, by affidavit declaring under oath the claim of the lien.

C. A Unit Owner, who by his/her/its/their negligence, disinterest or willful act causes a party wall or roof to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and shall pay damages from such exposure. Each Unit Owner shall share equally in the costs to repair or maintain the roof over the party wall due to normal wear or physical damage. If both roofs need to be replaced, replacement shall be coordinated between the Unit Owners.

D. The title of each Unit Owner to the portion of a party wall or common roof within or a part of a Unit is subject to a cross easement in favor of the adjoining Unit Owner for joint use of said wall or common roof. In the event that the party wall, or any portion thereof now or at any time in the future, because of shifting, settling, original construction or otherwise, actually encroaches upon any portion of the Unit of another Unit Owner, there shall be deemed an easement therefore in favor of the Unit Owner whose Unit so encroaches, but only to the extent and for so long as such encroachment shall exist. Except as expressly provided to the contrary herein, the easements or cross-easements hereby created shall not terminate in the event that the party wall, or any portion thereof, has been destroyed or materially damaged but shall remain in full force and effect.

8.11 Sales, Transfer, Leases, and Mortgages by Unit Owners. If any Unit Owner, other than the Declarant, or Unit Mortgagee taking possession of a Unit Owner's Unit under applicable Illinois law (a "Seller"), shall desire at any time to sell or assign to purchaser such Unit Owner's Unit and Sublease, other than to a co-owner of the same Unit, Seller shall first give the Board at least thirty (30) days' prior written notice of the proposed sale, which notice shall state the name and address of the proposed purchaser and the terms of the proposed sale. During the period of thirty (30) days following the receipt by the Board of such written notice, the Board shall have the first right at its option to purchase such Unit upon the terms as the proposed sale described in such notice. Notwithstanding the provisions of this Article, a Unit Owner shall have the right without the consent of the City, the Homeowner's Association or the Board, to collectively assign such Unit Owner's Unit and Sublease with respect to such Unit Owner's Unit. However, no Unit Mortgage shall extend to or affect all or any portion of the City's Estate. The Unit Owner's interests in the Sublease, including, but not limited to, the Unit, the Limited Common Area appurtenant to the Unit, and the undivided one twenty-second (1/22nd) interest in the Common Area, shall not be separately transferable, and any attempted assignment or lease of one or more (but not less than all) of such interests shall be deemed an assignment or lease of all interests. The foregoing provision shall not apply to the Unit Owner's interest in a boat slip, which is a Limited Common Area and covered separately under Section 4.3 D of this Declaration.

If the Board shall give written notice to such Seller within said thirty (30) day period that it has elected not to exercise such option, or if the Board shall fail to give written notice to such Seller within said thirty (30) day period that it does or does not elect to purchase such Unit upon the same terms as herein provided them, such Seller may proceed to consummate said proposed sale transaction at any time within the next ninety (90) days thereafter; and if Seller fails to consummate said proposed sale transaction within said ninety (90) days, Seller's Unit shall again become subject to the Board's right of first option as herein provided. If the Unit Sublease is sold, the Unit will be subject to all of the provisions of this Declaration.

If the Board shall give written notice to such Seller within said thirty (30) day period of its election to purchase such Unit upon the same terms as the proposed sale described in said written notice to it, then such purchase by the Board shall be closed upon the same terms as such proposed sale. The Board shall have the authority to elect not to exercise such option and to give written notice to such election. A certificate executed and acknowledged by the president or secretary of the Board, certifying that the Board has elected not to exercise such option to purchase such Unit upon the terms of such proposed sale, shall be conclusive evidence of such election by the Board and of the compliance with the provisions hereof by the Seller proposing to make such proposed sale. Such certificate shall be furnished to such Seller upon his compliance with the provisions hereof.

If the Board shall adopt a resolution recommending that it shall exercise its option to purchase such Unit upon the terms of such proposed sale, the Board shall promptly call a meeting of all of the Unit Owners for the purpose of voting upon such option, which meeting shall be held within said thirty (30) day period. If Unit Owners owning not less than 66-2/3 % in the aggregate in interest of the undivided ownership of the Common Area by affirmative vote at such meeting, authorize the Board to exercise such option to make such purchase, then the Board shall promptly give written notice of such election as herein provided. In such event, such purchase by the Board shall be closed and consummated, and, to such purpose, the Board shall have the authority to make such mortgage or other financing arrangements, and to make such assessments proportionately among all the respective Unit Owners, and to make such other arrangements, as the Board may deem desirable in order to close and consummate such purchase or lease of such Unit by the Board.

If the Board shall make any such purchase of a Unit as herein provided, the Board or its nominee shall hold the same for the benefit of the remaining Unit Owners and shall have the authority at any time thereafter, upon the approval of not less than 66- 2/3 % in the aggregate in interest of the undivided ownership of the Common Area obtained at a meeting duly called for such purpose, to sell and/or lease such Unit upon such terms as the Board shall deem desirable, and all of the net proceeds or deficit therefrom shall be applied among or charged to, such remaining Unit Owners in proportion to their respective ownership interest in such Unit pursuant to the schedule attached hereto as Exhibit C.

A Unit Owner shall not lease his, her or its Unit and Sublease without the prior written consent of the Board. If a lease of any Unit and Sublease is made by any Unit Owner, after compliance with the foregoing provisions, a copy of the lease as and when

executed shall be furnished by such Unit Owner to the Board, and the lessee thereunder shall be bound by and be subject to all of the obligations of such Unit Owner with respect to such Unit as provided in this Declaration and the By-Laws, and the lease shall expressly so provide. The Unit Owner making any such lease shall not be relieved thereby from any of his, her or its obligations under the lease with Master Lessee. Upon the expiration or termination of such lease, a Unit Owner must receive the Board's prior written consent to re-let the Unit and Sublease.

If any sale of a Unit and Sublease or lease of a Unit and Sublease is made or attempted by any Unit Owner without complying with the foregoing provisions, such sale or lease shall be subject to each and all of the rights and options of the Board hereunder and each and all of the remedies and actions available to the Board hereunder or at law or in equity in connection therewith including, but not limited to, having the sale or lease declared void by a court of competent jurisdiction.

The foregoing provisions with respect to the Board's right of first option as to any proposed sale shall be and remain in full force and effect, unless sooner rescinded or amended by the Unit Owners in the manner herein provided for amendments of this Declaration. The Board may adopt rules and regulations from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and effectuating the foregoing provisions. For the purposes of this Article VI, the word "Unit Owner" shall include any beneficiary of a trust, shareholder or a corporation or partner of a partnership holding legal title to a Unit.

A Unit Owner's Unit, the Sublease and any subsequent Sublease of each Unit Owner's Unit and Sublease to a Tenant are subject to the terms and conditions incorporated in this Declaration and the Lakeshore Lease.

8.12 Initial Construction of a Unit. Upon the initial construction of each Unit subject to this Declaration a Unit Owner (other than Declarant) must construct and obtain a Certificate of Occupancy from the City on the Unit within eighteen (18) months from the date that the Unit Owner takes possession of the Unit under a sublease from Master Lessee. If such Unit Owner fails to comply with this Section 8.12, then the Unit Owner's interest under the Sublease shall be terminated through eviction proceedings by Master Lessee under Article IX of the Illinois Code of Civil Procedure (Forcible Entry and Detainer) without any compensation to such Unit Owner therefore whatsoever. Such Unit Owners shall be responsible for (i) Association Assessments through the date the Unit is relet by the Master Lessee, and (ii) the payment of any costs and expenses (including reasonable attorneys' fees and costs) incurred by Master Lessee in recovering possession of the Unit Lease.

ARTICLE 9

ARCHITECTURAL CONTROLS

9.1 **Architectural Standards.** All Units, accessory structures, additions thereto, landscaping, and any other exterior aspect of a Unit or of the Common Area (including the Limited Common Area), whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled on the exterior, placed or installed in compliance with all requirements of this Article 9 and other applicable provisions of this Declaration as well as all applicable City ordinances and codes, and all applicable provisions of the Lakeshore Lease. All Units, accessory structures, additions thereto, landscaping, patios and any other exterior aspect of a Unit or of the Common Area (including the Limited Common Area), whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled on the exterior, placed or installed in such manner so as to preserve the architectural and aesthetic appearance of the Premises and so as not to impair the value of the property of all Unit Owners and shall be undertaken in a manner that is consistent with the use of the Premises as a quality residential subdivision. Any Unit, accessory structure, additions thereto, landscaping, and any other exterior aspect of a Unit or of the Common Area constructed and installed by the Declarant in connection with the initial construction of improvements and in accordance with all applicable City ordinances, codes, standards, rules and regulations shall conclusively be deemed to comply with the standard contained in this Section 9. Each of Units 1 through 6 shall be constructed to conform to existing exterior components of Units previously constructed within this set of Units unless all Unit Owners approve of a requested change to this requirement by a Unit Owner at a duly called meeting of the Voting Members or by all Unit Owners prior to formation of the Homeowners Association. By way of illustration, the steel roof, stone, fascia/soffit, gutters, windows, and other exterior components must be of like color and grade and the square footage of this set of Units shall be equivalent. Each of Units 7 through 11 shall be constructed to conform and duplicate as nearly as possible the existing exterior components, style and architectural aspects and features of Units 1 through 6, excepting a walk-out basement. No structure shall be built on any Unit lot larger than a duplex.

9.2 **Board Approval.** Other than as installed or approved by Declarant in connection with the initial construction of Units and the Common Area, no building, wall or other structure, landscaping or other permitted improvement, or any change in the exterior color of any Unit, shall be commenced, erected, maintained or undertaken upon a Unit or upon the Common Area (including the Limited Common Area) nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration be made to the exterior portion of any Unit until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structure and topography and compliance with the provisions of Section 9.1 by the Board or by an architectural committee initially comprised of the Declarant and, thereafter, after the Class B Member Termination Date or at such earlier date as approved by Declarant, of three or more persons appointed by the Board. The

Board's, or its architectural committee's, failure to notify the Unit Owner who has submitted such plans and specifications of its approval or disapproval of such design, location and compliance within ninety (90) days after said plans and specifications have been submitted shall be deemed to be the Board's, or its architectural committee's disapproval thereof. Any work performed in accordance with this Section 9.2 shall not be undertaken without the issuance of all appropriate permits and approvals by the City.

9.3 **Effect of Board Approval.** The approval by the Board of plans, specifications and standards pursuant to Section 9.2 shall in no event be construed as representing or implying that such plans and specifications or standards shall, if followed, result in properly designed construction. Such approvals and standards shall in no event be construed as representing or guaranteeing the Unit or other improvement/landscaping performed in accordance therewith shall be built in a good and workmanlike manner. Neither Declarant nor the Homeowners Association shall be responsible or liable for any defects in any plans or specifications or standards submitted, revised or approved pursuant to this Article 9, any loss or damage to any person or property arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans and specifications or standards with any governmental ordinances or regulations, or any defects in construction pursuant to such plans or specifications or standards. The applicable Unit Owner shall be solely responsible to apply and pay for and obtain any and all required governmental approvals, permits and licenses, and to comply with the requirements of all ordinances and regulations of the City (including its zoning ordinance), all applicable building, health, and safety codes and all recorded restrictions, covenants and conditions applicable to said Unit, including, but not limited to, the provisions of the Lakeshore Lease. Architectural approval given to any one Unit Owner shall be based upon the Board's reasonable discretion and shall not be construed as, or interpreted to be or require, architectural approval of any part or portion of any other Unit Owner's proposed action even if such proposed action is identical or substantially similar to an action which has previously received architectural approval.

ARTICLE 10

REQUIRED PROVISIONS

The Homeowners Association and the Unit Owners agree as follows:

A. The Homeowners Association shall give to each Unit Owner and to each Unit Mortgagee prompt notice of the receipt by the Homeowners Association of any notice of Default under the Lakeshore Lease given at any time by City to the Homeowners Association or of a default by the Unit Owner under the sublease provided that written notice of the Unit Mortgagee's contact information, along with identifying Unit information, is tendered to the Homeowners Association by Unit Mortgagee prior to an event of default.

B. With at least 24 hours advance written notice delivered to the Unit Owner, the Homeowners Association shall have the right of access to each Unit (by means of duplicate or master keys or other similar technology); provided, however, that authorized representatives of the Homeowners Association may, without notice in case of a bona fide emergency, enter upon such Unit.

C. Each Unit Owner shall be obligated to comply with the provisions of the Lakeshore Lease to the extent that such requirements apply directly and exclusively to the Unit Owner or to the Unit of such Unit Owner.

D. Each Unit Owner hereby expressly acknowledges that he, she, it or they take their Sublease subject to the provisions of the Lakeshore Lease.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement of this Declaration.

A. The Homeowners Association, any Unit Owner, City (only with respect to its specific rights hereunder), and at all times prior to the Class B Member Termination Date, Declarant (in its capacity as such), shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, rights, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Unit Owner found by a court of competent jurisdiction to be in violation of any of the foregoing shall also be liable for reasonable attorneys' fees and court costs incurred by the prevailing party in prosecuting such action. The amount of such attorneys' fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Unit Owner's Unit, enforceable as other liens herein established. Failure by the Homeowners Association, any Unit Owner, the City (with respect to its rights hereunder) or Declarant to enforce any covenant, restriction, easement, condition, reservation, lien or charge herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. In amplification of and in addition to the provisions contained in the other provisions of this Declaration, in the event that any Unit Owner shall be in violation of any provision of this Declaration, the Homeowners Association may and shall have each and every right and remedy as shall otherwise be provided or permitted by law, including the right to take possession of such Unit Owner's Unit for the benefit of all other Unit Owners by an action for possession in the manner prescribed in Article IX of the Code of Civil Procedure.

11.2 **Partial Invalidity.** Invalidation by judgment or court order, of any one of the covenants, conditions, restrictions, terms, reservations, rights, liens, charges or other provisions in this Declaration or of the application thereof to any particular person or circumstance shall in no way affect any other covenant, condition, restriction, term,

easement, reservation, right, lien, charge or other provision, or the application of such covenant, condition, restriction, term, easement, reservation, right, lien, charge or other provision, to other persons or circumstances and this Declaration in all such other respects shall remain in full force and effect.

11.3 Term of this Declaration and Amendment of this Declaration by Unit Owners. The covenants, conditions, easements, rights, reservations and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, Declarant (prior to the Class B Termination Date), the Homeowners Association, City and each Unit Owner subject to this Declaration, their respective legal representatives, heirs, successors, sublessees and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions, easements, rights, reservations and restrictions shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants, conditions, easements, rights, reservations and restrictions of this Declaration may be amended during the first sixty (60) year period or within any successive ten (10) year period by an instrument signed by those Members entitled to cast eighty percent (80%) or more of the total votes of the Homeowners Association and, before the Class B Termination Date, the affirmative vote of the Declarant, and joined by City, which executed instrument is then properly recorded. Notwithstanding the foregoing sentence to the contrary, (i) no such amendment whose purpose or effect is to reclassify the Limited Common Area appurtenant to a Unit or is to limit, diminish or otherwise alter the rights of any Unit Owner in and to the Limited Common Area appurtenant to such Unit Owner's Unit, shall be of any force or effect without the express prior written consent of each Unit Owner whose appurtenant Limited Common Area is proposed to be effected thereby; and (ii) no such amendment whose purpose or effect is to modify a Required Provision shall be of any force or effect without the prior written consent of City. Further, no amendment of City's rights herein contained shall be effective without having first obtained the prior written approval thereof by the corporate authorities of City. Any request by the Homeowners Association for an amendment to the Large Scale Ordinance of the City (Ordinance No. 503-09-04) must be signed by those Members entitled to cast seventy-five percent (75%) or more of the votes of the Homeowners Association and before the Class B Termination Date, the affirmative vote of the Declarant and joined by City. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of the Recorder of Deeds of Sangamon County, Illinois and a true, complete copy of such instrument shall be transmitted to each Unit Owner and City promptly. Notwithstanding the foregoing, Declarant shall have the right, without having to obtain the signature or consent of any other party, to amend this Declaration in the manner herein expressly provided; provided however, that any amendment by Declarant to this Declaration whose purpose or effect is (i) to reclassify any Limited Common Area appurtenant to a Unit or is to limit, diminish or otherwise alter the right of a Unit Owner in and to the Limited Common Area appurtenant to such Unit shall require the written consent of such Unit Owner to such amendment; and (iii) to modify or amend a Required Provision shall require the express prior written consent of City. Notwithstanding any of the foregoing to the contrary, this Declaration shall automatically terminate and be of no further force or effect upon the Termination Date (as defined under Section 2.01 of the

Lakeshore Lease), unless the lease is extended pursuant to the provisions of Section 3.02 of the Lakeshore Lease.

11.4 **Rule Against Perpetuities.** If and to the extent that any of the covenants, conditions, restrictions, terms, easements, reservations, rights, liens, charges or other provisions contained in this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants, conditions, restrictions, terms, easements, reservations, rights, liens, charges or other provisions may be valid, then the covenant, condition, restriction, term, easement, reservation, right, lien, charge or other provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants who are living at the date of this Declaration of Tim Davlin, current Mayor of Springfield, Illinois.

11.5 **Notices.** Any notices required or desired to be sent to any Member of the Homeowners Association, a Unit Owner, or City under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of the City, such Member of the Homeowners Association or Unit Owner (as the case may be), as such address appears on the records of the Homeowners Association at the time of such mailing. All notices so mailed shall be deemed received three (3) business days after mailing.

11.6 **Covenants, Conditions, Restrictions, Rights, Reservations, Easements, Agreements and other Provisions to Run with Land.** All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Premises and their respective grantees, heirs, successors, personal representatives, sublessees, and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Premises or any part thereof. Reference in the respective sublease of an undivided interest under the Lakeshore Lease, or in any mortgage or trust deed or other evidence of obligation with respect to any part of the Premises, to the easements, rights, covenants, agreements, reservations, restrictions and conditions herein described shall be sufficient to create and reserve such easements, rights, covenants, agreements, reservations, restrictions and conditions to the respective grantees, mortgagees or trustees of such parts of the Premises as fully and completely as though said easements, rights, covenants, agreements, reservations, restrictions and conditions were fully recited and set forth in their entirety in such document.

11.7 **Interpretation of this Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a quality residential development.

11.8 Rights of Unit Mortgagees, Insurers and Guarantors. The following provisions are intended for the benefit of each Unit Mortgagee and to the extent, if at all, that any other provision of this Declaration conflicts with the following provisions, the following provisions of this Section shall, in all instances, control:

A. Upon request in writing to the Homeowners Association identifying the name and address of the Unit Mortgagee or the insurer or guarantor of a recorded mortgage or trust deed on a Unit ("Insurer or Guarantor") and the Unit number, the Homeowners Association shall furnish each Unit Mortgagee, Insurer or Guarantor a written notice of the default of any Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any Unit Mortgagee of a Unit who comes into possession of the said Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or assignment in lieu of foreclosure shall, to the extent permitted by law, take said Unit subject to any claims for unpaid assessments or charges in favor of the Homeowners Association against said Unit which became due prior to the first to occur of (i) the date on which the Unit Mortgagee or its successor or assigns comes into possession of said Unit and (ii) the date on which the aforesaid interest to said Unit was transferred to the Unit Mortgagee or its successor or assigns. In general a Unit Mortgagee shall have thirty (30) days from the date of notice of default to cure a Unit Owner's default before Master Lessee may assert its rights and remedies under the Declaration, By-Laws and Sublease Agreement; however, a Unit Mortgagee shall not have a right to cure a Unit Owner's default under Sections 7.3 and 8.12 of this Declaration.

B. Upon request in writing, each Unit Mortgagee, Insurer or Guarantor shall have the right:

(a) to examine current copies of this Declaration, and the By-Laws, rules and regulations and the books and records of the Homeowners Association during normal business hours;

(b) to receive, without charge and within a reasonable time after such request, a copy of the then most current set of such financial statements as are prepared by the Homeowners Association at the end of each of their respective fiscal years;

(c) to receive written notices of all meetings of the Homeowners Association and the Board and to designate a representative to attend all such meetings;

(d) to receive written notices of any decision by the Homeowners Association to make a material amendment to this Declaration or to the By-Laws or the articles of incorporation of the Homeowners Association;

(e) to receive written notice of any proposed action which would require the consent of a specified percentage of Unit Mortgagees; and

(f) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Premises or the Unit on which it holds, insures or guarantees the mortgage.

C. No provisions of this Declaration, the By-Laws or the articles of incorporation of the Homeowners Association or any similar instrument pertaining to the Premises or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the Unit Mortgagees pursuant to their mortgages in the case of distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of either or both the Units and the Common Area, or any portion thereof or interest therein. In such event, the Unit Mortgagee, Insurers or Guarantors of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

D. Upon specific written request to the Homeowners Association, each Unit Mortgagee, Insurer or Guarantor of a Unit shall be furnished notice in writing by the Homeowners Association of any damage to or destruction or taking of the Common Area if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or of any damages to the Unit in excess of One Thousand Dollars (\$1,000.00).

E. If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Unit Mortgagee, Insurer or Guarantor of said Unit will be entitled to timely written notice, upon specific written request, of any such proceedings or proposed acquisition and no provisions of this Declaration, the articles of incorporation or By-Laws of the Homeowners Association or any other instrument pertaining to the Premises or the Units will entitle the Unit Owner of a Unit or other party to priority over such Unit Mortgagee with respect to the distribution of the proceeds of any award or settlement with respect to such Unit.

F. No amendment to, change or modification of either Section 6.8 (dealing with the priority of assessment liens) or Section 11.3 (dealing with the method of amending this Declaration) shall be effective unless, in addition to the terms and conditions set forth in Sections 6.8 and 11.3, such change or amendment shall be first consented to in writing by not less than seventy-five percent (75%) of the Unit Owners and their respective Unit Mortgagees.

11.9 **Condemnation.** If all or any portion of the Premises shall be taken pursuant to a condemnation proceeding, the provisions of Article 9 of the Lakeshore Lease shall control. Any allocation of any award in a Condemnation Proceeding to the Unit Owners shall be distributed equally to all affected Unit Owners.

11.10 **Dissolution of the Homeowners Association.** Upon any dissolution of the Homeowners Association its assets shall be transferred to another homeowners association or homeowners associations having similar purposes.

11.11 Declarant's Rights with Respect to Amending the Plat of the Premises and this Declaration.

A. Declarant hereby reserves to itself the right, subject to the approval of the City and the joinder of City, to re-record the Plat to correct any inaccuracies, errors or mistakes contained therein.

B. Declarant hereby reserves to itself the right and power to record a special amendment ("Special Amendment") to this Declaration or to the Plat of Subdivision at any time and from time to time, which right and power may be exercised without the consent of any Unit Owner or such Unit Owner's Unit Mortgagee, but with the joinder of City (which, by joining in this Declaration, City agrees to execute, provided such Special Amendment does not materially adversely affect any rights or interest of the Lessor under this Declaration or the Lakeshore Lease), for any of the following purposes:

(a) To cause this Declaration or the Plat to comply with the requirements of the Federal National Mortgage Homeowners Association, the Government National Mortgage Homeowners Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Homeowners Association, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those current performed by such entities;

(b) To induce any of the aforesaid agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering a Unit;

(c) To correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto;

(d) To change, amend or modify any of the terms or conditions of this Declaration or of the Plat based upon Declarant's determination, made in good faith, that such change or modification is in the best interests of the Premises and is consistent with the intent and purposes of this Declaration; provided, however, that any Special Amendment changing, amending or modifying any Required Provision shall require the prior written consent of City to the extent, but only to the extent, of the minimal requirement of a Required Provision.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each Unit Lease or other partial assignment of the Lakeshore Lease, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent

to the reservation of the power of Declarant to vote in favor of, make, execute and record Special Amendments. The right of Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as Declarant no longer holds or controls the leasehold interest in and to any Unit.

11.12 **Interpretation with Lakeshore Lease.** In the event of any contradiction, conflict or ambiguity between the terms and provisions of this Declaration and the terms and provisions of the Lakeshore Lease, the terms and provisions of the Lakeshore Lease shall, in all instances, control and prevail, except in those instances involving or affecting rights, easements, obligations of, or terms or provisions regarding, the City.

11.13 **Easement Interpretation Provisions.** The Plat grants and reserves certain easements relative to use, access, maintenance, repair and operation of all or parts of the Common Area for utility and other purposes. In the event of any conflict or ambiguity between the terms and conditions of the easements granted and reserved in the Plat with respect to the Common Area and the terms and conditions of the easements granted and reserved in this Declaration with respect to the Common Area, those terms and conditions which are more restrictive or more specific and consistent with the intent and purposes of this Declaration and the Plat (whether set forth herein or therein) shall, in all instances, control and prevail over the less restrictive or less specific terms and conditions.

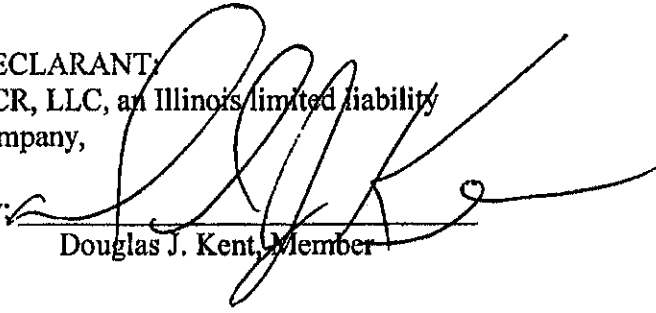
11.14 **Assignments by Declarant.** All rights which are specified in this Declaration to be rights of Declarant are mortgageable, pledgeable, assignable or transferable. Subject to and in accordance with the provisions of the Lakeshore Lease, any successor to, sublessee or assignee of the right of Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

11.15 **Severability.** In case any provisions of the Declaration shall be held by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein, so long as the remaining provisions shall be sufficient, as determined by such court, to carry out the overall intent of the parties as expressed herein.

11.16 **Binding Effect.** The Declaration shall be binding upon and shall inure to the benefit of City, the Homeowners Association, Unit Mortgagees, Leasehold Mortgagees, Declarant, and Master Lessee and their respective heirs, personal representatives, beneficiaries, successors and permitted sublessees and assigns.

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Harbor Point to be executed as of the date first above written.

DECLARANT:
DCR, LLC, an Illinois limited liability
company,

By: 
Douglas J. Kent, Member

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that DOUGLAS J. KENT, personally known to me to be the sole Member of DCR, LLC, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the forgoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of May, 2009.





Notary Public

EXHIBIT A

BOUNDARY DESCRIPTION LOT BD#1 OF THE
CITY OF SPRINGFIELD LAKE LANDS

Part of Section 19 and part of Section 30, Township 15 North, Range 4 West of the Third Principal Meridian, Sangamon County, Illinois, more particularly described as follows:

Commencing at the Southeast Corner of the Northwest Quarter of the Southeast Quarter of said Section 19; thence South 45 degrees 56 minutes 00 seconds West 1880.9 feet to the point of beginning; thence South 89 degrees 52 minutes 00 seconds West 398.54 feet; thence South 44 degrees 08 minutes 11 seconds West 87.04 feet; thence South 56 degrees 50 minutes 48 seconds West 219.96 feet; thence North 25 degrees 10 minutes 13 seconds West 432.02 feet; thence along a meander of the shore water line of Lake Springfield the following eleven courses: North 63 degrees 37 minutes 26 seconds East 431.88 feet; South 79 degrees 00 minutes 48 seconds East 107.38 feet; South 85 degrees 16 minutes 20 seconds East 56.60 feet; North 56 degrees 56 minutes 26 seconds East 36.03 feet; South 87 degrees 37 minutes 07 seconds East 45.88 feet; South 84 degrees 41 minutes 28 seconds East 123.03 feet; South 12 degrees 15 minutes 40 seconds West 137.69 feet; South 10 degrees 31 minutes 05 seconds West 110.57 feet; North 89 degrees 28 minutes 46 seconds East 81.32 feet; North 10 degrees 43 minutes 13 seconds East 144.23 feet; North 41 degrees 26 minutes 48 seconds East 62.97 feet; thence South 03 degrees 36 minutes 44 seconds West 327.46 feet to the point of beginning, containing 6.71 acres, more or less.

NOTICE

DOCUMENT# 2007R17674

DESCRIPTION: BOUNDARY DESCRIPTION
LOT BD # 1 OF THE CITY OF SPFLD.
LAKE LANDS (HARBOR POINT). PT. SEC. 19
& PT. SEC. 30, T15N, R4W OF THE
3RD PM

DATE: 5 - 17 - 07

CABINET: H145 - B



HARBOR POINT HOMEOWNERS ASSOCIATION
BY-LAWS

By-Laws of Harbor Point Homeowners Association

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By-Laws of Harbor Point Homeowners Association

ARTICLE I
Members

Section 1. Eligibility. Until the Class B Termination Date, there shall be two classes of membership being the Class A Members and the Class B Members. Subsequent to the Class B Termination Date, there shall be one class of membership, being the Class A Members. With respect to the Class A Members there shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Unit Owners. Such person shall be known (and hereinafter referred to) as a "Voting Member." The Voting Member may be the Unit Owner or one of the group composed of all the Unit Owners of a Unit, or may be some person designated by such Unit Owner or Unit Owners to act as proxy on his, her or their behalf and who need not be a Unit Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Unit Owner or Unit Owners. Any or all of such Unit Owners may be present at any meeting of the Voting Members and (those constituting a group acting unanimously) may vote or take any other action as a Voting Member either in person or by proxy.

Section 2. Proxy. A Unit Owner may vote by proxy executed in writing by the Unit Owner or by his duly authorized attorney in fact. The proxy shall be invalid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 3. Voting. Subsequent to the closing of the twenty-second (22nd) Unit in the Premises to a person other than Declarant, the total number of votes of all Voting Members shall be twenty-two (22), and each Unit Owner shall be entitled to one vote. Until then, the voting rights shall be as prescribed by Section 3.2 of the Declarations.

Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meeting.

Section 4. Special Majority. Anything herein to the contrary notwithstanding, the following actions shall require the affirmative vote of not less than 2/3 of the votes of the Voting Members present at a meeting duly called for that purpose:

- (1) merger or consolidation of the association;
- (2) sale, lease, exchange or other disposition (excluding the mortgage or pledge) of all, or substantially all, of the property and assets of the association; and
- (3) the purchase or sale of land or of units on behalf of all Unit Owners.

Section 5. Initial Meeting. The initial meeting of the Unit Owners shall be held at 7:30 P.M. on the second Tuesday of October two years following the date of the first Sublease of a Unit to a Unit Owner other than Declarant.

Section 6. Annual Meeting. There shall be an annual meeting of the Unit Owners one year following such initial meeting, and annually thereafter, at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be

designated by written notice of the Board delivered to the Unit Owners not less than ten (10) days, nor more than thirty (30) days, prior to the date fixed for said meeting. One of the purposes of such annual meeting shall be to elect members of the Board.

Section 7. Special Meetings. Special meetings of the Voting Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, the President, or by the Voting Members having thirty (30) percent of the total votes, and delivered not less than ten (10) days nor more than thirty (30) days prior to the date fixed for said meeting. The notices shall specify the date, time, and place of the meeting and the matters to be considered. All matters to be considered at special meetings called by not less than thirty (30%) percent of the members shall first be submitted in writing to the Board not later than ten (10) days prior to the date of the special meeting called to consider such matters.

Section 8. Quorum. A quorum of Unit Owners for any meeting shall be constituted by Unit Owners, represented in person or proxy, holding at least thirty (30%) percent of the votes entitled to be cast at such meeting. If a quorum is not present at any meeting of the Unit Owners, a majority of the Unit Owners present may adjourn the meeting from time to time without further notice.

In the event of a resale of a Unit, the purchaser of a Unit from a seller other than the Declarant (successor or assigns) pursuant to a contract for deed or an installment contract for purchase shall during such times as he or she resides in the Unit on a full time continuing basis be counted toward a quorum for purposes of election of Board members at any meeting of the Unit Owners called for purposes of electing Board members, shall have the right to vote for the election of the Board members and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents. For purposes of this paragraph, "installment contract" shall have the same meaning as set forth in Section 1(e) of "An Act relating to installment contracts to sell dwelling structures", approved August 11, 1967, as amended.

Section 9. Notice. Notice of meetings required to be given herein shall be delivered either personally or by mail to the persons entitled to vote at such meetings, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Unit of the Unit Owner with respect to which such voting pertains, if no address has been given to the Board.

Section 10. Place of Meeting. Meetings of the Voting Members shall be held at the Premises or at such other convenient place in the county wherein the Premises are situated, as may be designated by the Board, the President, or by the Voting Members in any notice of a meeting.

Section 11. Rules of Meetings. The Board may prescribe reasonable rules for the conduct of all meetings of Unit Owners and the Board. In absence of such rules, Robert's Rules of Order shall be used.

Section 12. Nondelegation of Duties. A Unit Owner may not assign, delegate, transfer, surrender, or avoid the duties, responsibilities, and liabilities of a Unit Owner under the Declaration, By-Laws, or the rules and regulations of the Association; and such attempted assignment, delegation, transfer, surrender, or avoidance shall be deemed void.

ARTICLE II
Board of Directors
(Board of Managers)

Section 1. Number, Election and Term of Office. The direction and administration of the Premises shall be vested in a Board of Managers (hereinafter referred to as the "Board"). The Board shall consist initially of three (3) Directors. After the Class B Member Termination Date, the Board shall consist of five (5) Directors.

Subsequent to the Homeowners Association Date, the Voting Members shall elect a Board. In all elections for members of the Board, each Voting Member shall be entitled to vote on a cumulative voting basis, and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting, and at each successive annual meeting thereafter, members of the Board shall be elected for a term of one (1) year and until his successor shall have been appointed or elected and qualified. Board members and officers may succeed themselves. The Voting Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease such number of persons on the Board or may increase the term of office of Board members at any annual or special meeting, provided that such number shall not be less than three (3), and that the terms of at least one-third (1/3) of the persons on the Board shall expire annually.

Section 2. Elections. (a) A candidate for election to the Board, or such candidate's representative, shall have the right to be present at the counting of ballots for such election.

(b) The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if (i) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated and (ii) the Board does not express a preference in favor of any candidate.

(c) The association may, upon adoption of the appropriate rules by the Board, conduct elections by secret ballot whereby the voting ballot is marked only with the percentage interest for the Unit and the vote itself, provided that the Board further adopt rules to verify the status of the Unit Owner issuing a proxy or casting a ballot. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election.

Section 3. Qualification. Each member of the Board, except for the Members of the first board, if any, shall be one of the Unit Owners or a spouse of a Unit Owner; provided however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer or director of such corporation, partner of such partnership, beneficiary of such trust, or manager of such other legal entity, shall be eligible to

serve as a member of the Board. If a director shall cease to meet such qualifications, he shall thereupon cease to be a director and his place on the Board shall be deemed vacant.

Section 4. Vacancies. The remaining Board members are authorized to fill a vacancy by three-fifths (3/5) vote until the next annual meeting of Unit Owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by Voting Members holding thirty (30%) percent of the votes of the association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. A meeting of the Unit Owners shall be called for purposes of filling a vacancy on the Board no later than thirty (30) days following the filing of such petition.

Section 5. Meetings. (a) Meetings of the Board shall take place at least four (4) times annually, one of which shall be within ten (10) days following the regular annual meeting of the Unit Owners. The regular annual meeting of the Board shall be held each year at 7:30 P.M. on the second Tuesday of November. Special meetings of the Board shall be held upon a call by the President or by three-fifths (3/5) vote of the members of the Board. Notice of meetings of the Board shall be mailed, sent by facsimile or electronic mail, or personally delivered to all Unit Owners and Directors at least forty-eight (48) hours prior thereto, except notices of a meeting concerning the adoption of the proposed annual budget or any increase or establishment of an assessment must be mailed or personally delivered to the Unit Owners no less than ten (10) and no more than thirty (30) days prior thereto, and copies of the proposed budget furnished at least thirty (30) days prior to the adoption. Any person entitled to such notice may waive such notice in writing before the meeting is convened. Any Director may consent in writing to any action proposed to be taken by the Board without a meeting. A Director's attendance at a meeting shall constitute a waiver of notice of that meeting.

(b) Meetings of the Board shall be open to any Unit Owner, except for the portion of any meeting held (i) 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 finds that such action is probable or imminent, (ii) to consider information regarding appointment, employment or dismissal of an employee, or (iii) to discuss violations of rules and regulations of the Association or a Unit Owner's unpaid share of common expenses.

(c) Any Unit Owner may record the proceedings at meetings or portions thereof by tape, film or other means. The Board may prescribe reasonable rules and regulations to govern the right to make such recordings.

Section 6. Removal. Any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent meeting called for that purpose.

Section 7. Compensation. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Voting Members having two-thirds (2/3) of the total votes.

Section 8. Quorum. A majority of the total number of members on the Board shall constitute a quorum.

Section 9. The Board shall have the following additional powers and duties:

- (a) To engage the services of a manager or managing agent who shall manage and operate the Premises for all the Unit Owners upon such terms and with such authority as the Board may approve.
- (b) To formulate policies for the administration, management, and operation of the Premises.
- (c) To adopt rules and regulations, with written notice thereof to all Unit Owners, governing the administration, management, maintenance, operation, use, conservation and beautification of the Premises and for the health, comfort, safety and general welfare of the Unit Owners, and to amend such rules and regulations from time to time. Such rules and regulation shall apply, for example, to garbage pick up, lawn care, snow removal and cable and satellite television.
- (d) To provide for any construction, alteration, installation, maintenance, repair, painting and replacement for which the Board is responsible under the Declaration and By-Laws and for such purposes to enter and to authorize entry into any Unit and/or Limited Common Area, causing as little inconvenience to the Unit Owner as practicable and repairing any damage caused by any such entity at the expense of the maintenance fund.
- (e) To provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Premises, and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent).
- (f) To estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses, as hereinafter provided.
- (g) To pay out of the maintenance fund hereinafter provided for, the following:
 - (i) Water, waste removal, electricity and telephone and other necessary utility services for the Common Area and (if not separately metered or charged) for the Units.
 - (ii) The services of a manager or managing agent or any other person or firm employed by the Board.
 - (iii) Payment for the maintenance, repair and replacement of the Common Area.
- (h) To bid for and purchase any Unit at a sale pursuant to a mortgage foreclosure, or a foreclosure of the lien for common expenses, or at a sale pursuant to an order of

direction of a court, or other involuntary sale, upon the consent or approval of Unit Owner owning not less than sixty-six and two-thirds (66-2/3%) percent in the aggregate in interest of the undivided ownership of the Common Area.

- (i) To comply with the instructions of a majority of the Unit Owners, as expressed in a resolution duly adopted at any annual or special meeting of the Unit Owner;
- (j) To furnish to any Unit Owner requesting same (upon such Unit Owner's ten (10) day prior notice), a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.
- (k) To exercise all other powers and duties of the Board of Managers or Unit Owners as a group referred to in the Declaration or these By-Laws.
- (l) To exercise all powers specified in the General Not-For-Profit Corporation Act.
- (m) To establish and maintain a system of master metering of public utility services and collect payments in connection therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act.
- (n) To issue estoppel certificates as permitted under the Declaration.
- (o) To provide for the maintenance, operation, security, insurance, repair and replacement of all or part of the Boat Dock(s).
- (p) To promulgate reasonable rules and regulations pertaining to the use of the Boat Dock(s).

Section 10. Prohibited Transactions. No Board member may enter into a contract with a current Board member or with a corporation or partnership in which a Board member or member of the Board member's immediate family has twenty-five (25%) percent or more interest, unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by twenty (20%) percent of the Unit Owners, for an election to approve or disapprove the contract; such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition; for purposes of this paragraph, a Board member's immediate family means the Board member's spouse, parents and children.

Section 11. All rates and regulations, or amendments thereto, adopted by the Board, shall be effective sixty (60) days after their adoption, provided that the Board members may veto the 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 seventy-five (75%) percent of the members present at such special meeting, in person or proxy.

Section 12. Non-Delegation. Nothing in this Article or elsewhere in these By-Laws shall be considered to grant to the Board, the directors or the officers of the Association any powers or duties which, by law, have been delegated to the Unit Owners.

ARTICLE III
Officers

Section 1. Designation. Annually, at the regular Board meeting following the regular annual meeting of the Unit Owners, the Board members present at said meeting shall elect the following officers of the Association by a majority vote:

a) a President, who shall be a Board member and who shall preside over the meetings of the Board and of the Unit Owners, and who shall be the chief executive officer of the Association;

b) a Secretary, who shall be a Board member and who shall keep the minutes of all meetings of the Board and of the Unit Owners, and who shall, in general, perform all the duties incident to the office of Secretary;

c) a Treasurer, who shall be a Board member and who shall be responsible for the financial records and books of account and the manner in which such records and books are kept and reported.

d) the designation of an officer to mail and receive all notices and execute amendments to Homeowners Association instruments; and

e) Such additional officers as the Board shall see fit to elect.

Section 2. Powers. The respective officers shall have the general powers usually vested in such officers; provided that the Board may delegate any specific powers to any other officer or impose such limitations or restrictions upon the powers of any officer as the Board may see fit. The President is empowered to execute amendments with the attestation of the Secretary to Homeowners Association instruments as provided under the Declaration and By-Laws and either the President or the Secretary may mail and receive, or otherwise give notices as provided by the Declaration and these By-Laws.

Section 3. Term of Office. Each officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified. Officers may succeed themselves in office.

Section 4. Vacancies. Vacancies in any office shall be filled by the Board by a two-thirds (2/3) vote of the Board members thereof at a special meeting of the Board. An officer so elected to fill a vacancy shall hold office until the next annual meeting of Unit Owners or for a period terminating no later than thirty (30) days following the filing of a petition signed by Voting Members holding thirty (30%) percent of the votes of the association requesting a meeting of the Unit Owners to fill the vacancy for the balance of the term. A meeting of the Unit Owners shall be called for the purpose of filling a vacancy on the Board no later than thirty (30) days following the filing of such petition. Any officer may be removed for cause at anytime by a vote of two-thirds (2/3) of the Board at a special meeting thereof.

Section 5. Compensation. The officers shall receive no compensation for their services, unless expressly provided for in a resolution duly adopted by the Unit Owners at the Annual Meeting.

ARTICLE IV
Assessments

Section 1. Annual Budget. Each year the Board shall cause to be prepared an estimated annual budget for the ensuing year. Such budget shall take into account the estimated common expenses and cash requirements for the year, including Rental reserve payable to City under the Lakeshore Lease and as described in the Declaration, salaries, wages, payroll taxes, legal and accounting fees, supplies, material, parts, services, maintenance, repairs, reserves, replacements, landscaping, insurance, fuel, power, real estate taxes and all other common expenses, excluding the costs and expenses associated with the Boat Dock(s). To the extent that the assessments and other cash income collected from the Unit Owners during the preceding year shall be more or less than the expenditures for such preceding year, such surplus or deficit, as the case may be, shall also be taken into account. Each Unit Owner shall receive a copy of the proposed annual budget at least thirty (30) days prior to the adoption thereof by the Board. The annual budget shall also take into account the estimated net available cash income for the year from the operation or use of the Common Area. The annual budget shall provide for a reserve for contingencies for the year and a reserve for replacements, in reasonable amounts as determined by the Board. The reserve for capital expenditures shall be held in a segregated account in the name of the Association.

Section 2. Assessments. On or before January 1st of the ensuing year, and the 1st of each and every month of said year, each Unit Owner shall be obligated to pay to the Board as it may direct, one-twelfth (1/12) of the assessment made pursuant to this section. The Rental Reserve, however, shall be payable as dictated by the Declaration. On or before the date of the annual meeting of each calendar year, the Board shall supply to all Unit Owners an itemized accounting of the common maintenance expenses for the preceding calendar year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment provided, and showing the net amount over or short of the actual expenditures, plus reserves. Specifically, the accounting shall indicate which portions were for reserves, capital expenditures or repairs or payment of real estate taxes. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Unit Owner's percentage of ownership in the Common Area to the next monthly installments due from Unit Owner under the current year's estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership in the Common Area to the installments due in the succeeding six months after rendering of the accounting.

If an adopted budget or any special assessment would result in the sum of all regular and special assessments payable in the current fiscal year to be greater than one hundred fifteen (115%) percent of the sum of all regular and special assessments for the preceding year, the Board of Managers, upon written petition by Unit Owners with thirty (30%) percent of the votes of the Association, filed within fourteen (14) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of filing of the petition to consider the budget or special assessment. Unless a majority of the votes of the Unit Owners are cast at the meeting to reject the budget or special assessment, that budget shall be deemed ratified, whether or not a quorum is present. In determining whether assessments exceed one hundred fifteen (115%) percent of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the Premises, or Rental Reserve 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. Any common expenses not set forth in the budget shall be separately assessed against all Unit Owners.

The Board may adopt special assessments payable over more than one fiscal year. Other than for multi-year assessments for emergencies, additions or alterations, the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

Section 3. Boat Dock(s). On or before October 1 of each year, the Slip Owners shall provide the President of the Association with an estimate of the total amount necessary to pay for all costs and expenses to be incurred for the maintenance, operation, security, insurance and repair and replacement of the Boat Docks during the ensuing calendar year. The Board shall assess each Slip Owner a proportionate share of such total estimated costs and expenses. The Slip Owner's estimated expense shall be based upon the total number of boat slips existing on the date that the budget is submitted. For example, a Slip Owner's assessment shall be 1/12th of such total estimated costs and expenses for the ensuing calendar year if twelve (12) boat slips exist on the date the budget is submitted. Such assessment shall be paid in advance by each Slip Owner on January 1st of each year. In the event of a partial year, the assessment shall be prorated. If, during the calendar year, the assessment proves inadequate for any reason, the Board may levy at any time an additional assessment on the Slip Owners. The Board shall serve notice of such additional assessment on all Slip Owners by a statement in writing setting forth the amount of such additional assessment and the reasons for it, and thereupon, such additional assessment shall be paid by the Slip Owners on the 1st day of the month following the date the Board approves such additional assessment. The Slip Owners shall be personally liable for and obligated to pay their respective share of such assessment based on the number of slips existing on the date of the additional assessment is approved. The expense of any unleased boat slips shall be borne by the Declarant utilizing the same formula contained within this paragraph.

Section 4. Partial Year or Month. For the first fiscal year, the annual budget shall be as approved by the Declarant. If such first fiscal year, or any succeeding fiscal year, shall be less than a full year, then the monthly assessments for each Unit Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date of acquisition of a Unit by each Unit Owner, he or she shall pay his or her assessment for the following month or fraction of the month, which assessments shall be in proportion to his or her respective ownership interest in the Common Area and the number of months and days remaining in the period covered by the current annual budget, and which assessment shall be computed by the Board.

Section 5. Annual Report. Within ninety (90) days after the end of each fiscal year covered by the annual budget, or as soon thereafter as shall be practicable, the Board shall cause to be furnished to each Unit Owner an itemized accounting of the common expenses for the preceding year actually incurred or paid, with an indication of which portions were for reserves or capital expenditures or repairs or payment of real estate taxes, 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. The Homeowners Association shall also complete, mail and pay on a timely basis all reports due to the Illinois Secretary of State.

Section 6. Supplemental Budget. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. In the event that during the course of any year it

shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated common and other expenses for the remainder for such year, or if a nonrecurring expenditure not provided for in the budget is required, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency for the remainder of such year, copies of which supplemental budget shall be made to each Unit Owner. Such assessment shall be assessed to the Unit Owner according to each Unit Owner's ownership in the Common Area.

Before adopting such further assessment, the Board shall serve notice of the meeting at which it intends to adopt such further assessment in the manner provided in these By-Laws and shall deliver such further assessment to all Unit Owners by a statement in writing, giving the amount and reasons therefore, and such further assessment shall become effective with the next monthly maintenance payment, which is due no more than ten (10) days after the delivery or mailing of such notice of further assessment adoption thereof by the Board. All Unit Owners shall be obligated to pay the adjusted monthly amount. Any such further assessment shall be subject to approval by the affirmative vote of at least two-thirds (2/3) of the Voting Members voting at a meeting of Unit Owners duly called for the purpose of approving the further assessment, if it involves proposed expenditures resulting in a total payment assessed to a Unit equal to \$300.00 per Unit.

Section 7. Emergency Assessments. Special assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Unit Owner approval. The term "emergency" means an immediate danger to the structural integrity of the Common Area or to the life, health, safety or property of the Unit Owner. The Board may adopt such special assessments payable over more than one fiscal year.

Section 8. Damages to Common Area. If a Unit Owner or his agent, servant, tenant, family member, invitee, guest, or licensee damages the Common Area or Limited Common Area, or any part thereof, or permits or allows such property to be damaged, then said Unit Owner shall be responsible for the full cost of repair or replacement thereof in excess of amounts covered by insurance.

Section 9. Additions and Alteration Assessments. Assessments for additions and alterations to the Common Area or to Association-owned property not included in the adopted annual budget shall be separately assessed and are subject to approval of two-thirds of the total votes of all Voting Members. The Board may adopt such separate assessment payable over more than one fiscal year.

Section 10. Replacements. The replacement of the Common Area may result in an improvement over the original quality of such elements or facilities; provided that, unless the improvement is mandated by law or in an emergency, as defined in Section 6 of this Article, if the improvement results in a proposed expenditure exceeding 5% of the annual budget, the Board, upon written petition by Unit Owners with 20% of the votes of the Association delivered to the Board within 14 days of Board action to approve the expenditure, shall call a meeting of the Unit Owners within 30 days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the Unit Owners are cast at the meeting to reject the expenditure, it is ratified. The Board may adopt such separate assessment payable over more than one fiscal year.

Section 11. Lien. It shall be the duty of every Unit Owner to pay his proportionate share of the common and limited common expenses, including any special assessment, as assessed in the manner herein provided. The association shall have no authority to forbear the payment of assessments by any Unit Owner.

If any Unit Owner shall fail or refuse to make any such payment of the expenses including special assessments or fines when due, the amount thereof together with interest thereon at the rate of nine (9%) percent per annum or such greater percent as determined by resolution of the Board and as allowed under the laws of the State of Illinois after said expenses or assessments become due and payable shall constitute a lien, as provided in the Declaration, on the interest of such Unit Owner in the Premises.

The Association or its successors and assigns, or the Board or its agents, shall have the right to maintain a suit to foreclose any such lien in the manner permitted under Article XV of the Illinois Code of Civil Procedure (Illinois Mortgage Foreclosure Law), and there shall be added to the amount due the costs of said suits and other fees and expenses, together with interest and reasonable attorneys' fees to be fixed by the Court. Furthermore, if any Unit Owner shall fail or refuse to pay when due his proportionate share of the common and limited common expenses and such Unit Owner withholds possession of his Unit after demand by the Board or Association in writing setting forth the amount claimed, the Board or the Association shall have the right to possession of such Unit. The Board or the Association shall have the authority to exercise and enforce any and all rights and remedies as provided for in the Forcible Entry and Detainer Act, the Declaration or these By-Laws, or as are otherwise available at law or in equity, for the collection of all unpaid assessments.

A sublease by Master Lessee with a Unit Owner shall permit a Unit Mortgagee to (i) cure Unit Owner defaults within thirty (30) days following written notice to a Unit Mortgagee of a Unit Owner's default under the sublease and (ii) assign the sublease provided that Unit Owner's defaults are cured before such assignment. The Homeowners Association shall give to each Unit Owner and to each Unit Mortgagee prompt notice of the receipt by the Homeowners Association of any notice of Default under the Lakeshore Lease tendered by City to the Homeowners Association or of a default by the Unit Owner under the Unit Owner's sublease with Master Lessee, provided, however that the Unit Mortgagee shall be entitled to notice only if written notice of the Unit Mortgagee's contact information, along with identifying Unit information, is tendered to the Homeowners Association by the Unit Mortgagee prior to an event of default under the sublease.

The lien provided for in these By-Laws shall be subordinate to the lien of any Unit Mortgagee, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such building site pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 12. Records and Statements of Account. The Board shall cause to be kept such records as may be required by law, and detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the common

expenses incurred. Payment vouchers may be approved in such manner as the Board may determine. Records of the Association shall be available to Unit Owners or their mortgagors and their duly authorized agents or attorneys as provided by law.

The Association shall, upon request of a member, at any reasonable time, furnish an estoppel certificate signed by an officer or other authorized agent of the Association, setting forth the amount of unpaid assessments and/or other charges, if any, against said Unit, up to a given date or time of conveyance. The Association shall also certify as to whether or not there are violations of the governing documents on the building site as of the date of preparation of the certificate. Said certificate shall be delivered to the place of closing and all outstanding assessments and other charges, if any, and a reasonable charge, as determined by the Board, to cover the cost of providing such certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

Each month, the Treasurer shall prepare a list of all vouchers that were not previously approved by the Board. For each voucher, the Treasurer will include, at a minimum, the name of the payee, the description of the expense, and the amount of the expense. Before the voucher is paid, the Treasurer will deliver the voucher to the Board for approval.

Section 13. Discharge of Liens. The Board of Directors may cause the Association to discharge a mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Premises or the Common Area, rather than a lien against only a particular Unit. When less than all the Unit Owners are responsible for the existence of any such lien, the Unit Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

Section 14. Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held by the Board as trustee for the sole benefit, use and account of all the Unit Owners in equal percentages.

Section 15. Characterization of Assessments. All charges classified hereunder as "assessments" shall constitute such Unit Owner's rental obligation under the sublease with Master Lessee.

ARTICLE V Use and Occupancy Restrictions

Section 1. General. Each Unit Owner shall be obligated to maintain and keep in good order and repair his own Unit. Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the building, or contents thereof, applicable for residential use, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Area.

Section 2. Unit Owner shall not cause or permit anything to be placed on the outside walls of the Premises and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board.

Section 3. No animals, rabbits, livestock, fowl or poultry, of any kind, shall be raised, bred, or kept in any Unit or in the Common Area, except that dogs, cats, or other household pets may be kept in Units, subject to rules and regulations adopted by the Board, provided they are not kept, bred, or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Premises upon three (3) days written notice from the Board.

Section 4. No noxious or offensive activity shall be carried on in any Unit or in the Common Area, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owner or Occupants.

Section 5. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed on any part of the Common Area. The Common Area shall be kept free and clean of rubbish, debris and other unsightly materials.

Section 6. No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Premises except at such location and in such form as shall be determined by the Board, and except as Declarant is permitted under Section 3.

Section 7. During the period of construction of a building on the Premises by the Declarant (successors or assigns), the Declarant (successors or assigns) and his/their contractors and sub-contractors, and his/their respective agents and employees, shall be entitled to access, ingress and egress to his/their own Unit and Premises as may be required in connection with said construction.

ARTICLE VI Fidelity Insurance

The Association shall obtain and maintain fidelity insurance covering the Treasurer for the maximum amount of coverage available to protect funds in the custody or control of the Association plus the Association reserve fund. All management companies which are responsible for the funds held or administered by the Association shall maintain and furnish to the Association a fidelity bond for the maximum amount of coverage available to protect funds in the custody of the management company at any time. The Association shall bear the cost of the fidelity insurance and fidelity bond, unless otherwise provided by contract between the Association and management company. The Association shall be the direct obligee of any such fidelity bond. A management company holding reserve funds of the Association shall at all times maintain a separate account for the Association, provided, however, that for investment purposes, the Board may authorize the management company to maintain the Association's reserve funds in a single interest bearing account with similar funds of other associations. The management company shall at all times maintain records identifying all monies of the Association in such investment account. The management company may hold all operating funds of associations which it manages in a single operating account but shall at all times

maintain records identifying all moneys of each association in such operating account. Such operating and reserve funds held by the management company for the Association shall not be subject to attachment by any creditor of the management company.

For purposes of this Article, a management company shall be defined as a person, partnership, corporation, or other legal entity entitled to transact business on behalf of others, acting on behalf of or as an agent for a Unit Owner, Unit Owners or association of Unit Owners for the purpose of carrying out the duties, responsibilities, and other obligations necessary for the day to day operation and management of the Premises. For purposes of this Article, the term "fiduciary insurance coverage" shall be defined as both a fidelity bond and directors and officers liability coverage, the fidelity bond in the full amount of association funds and association reserves that will be in the custody of the association, and the directors and officers liability coverage at a level as shall be determined to be reasonable by the Board.

ARTICLE VII Amendments

These By-laws may be amended or modified from time to time by action or approval of the Voting Members having at least eighty (80%) percent of the total votes and, before the Class B Termination Date, the affirmative vote of Declarant. Such amendments shall be recorded in the Office of the Recorder of Deeds of the County wherein the Premises are located.

ARTICLE VIII Declarant's Rights

Section 1. Combination and Division of Units. Anything herein to the contrary notwithstanding, the Declarant hereby reserves the right, and may without the consent or joinder of any person, adjust or change the percentage of ownership of the Common Area allocable to Units then owned by the Declarant which have been so divided or combined, so long as such adjustment does not increase or decrease the total percentage of Units of the Common Area allocable to all Units then owned by the Declarant. Any such division or combination, and adjustment or change, shall be set forth in an amendment to the Declaration insofar as may be necessary in the judgment of the Declarant to reflect such division, combination, adjustment or change, including (but not limited to) the elimination of portions of the Common Area which formerly separated one or more Units, by converting the same into portions of units, or the conversion of any portion of a Unit into Common Area. Each and all of the Unit Owners, and their respective mortgagees, grantees, heirs, legal representatives, successors and assigns, by their acceptance of any deed of mortgage or other interest in or with respect to any of such Units, shall be deemed irrevocably to have expressly agreed and consented to all of the provisions of this Declaration and to the recording of any amendment to the Declaration.



**BOAT SLIP LEASE AGREEMENT
HARBOR POINT
SPRINGFIELD, ILLINOIS**

THIS LEASE AGREEMENT made and entered into as of the _____ day of _____, 2007, by and between DCR,LLC an Illinois Limited Liability Company, (hereinafter referred to as "Lessor"), and _____ (hereinafter referred to as "Lessee").

WITNESSETH:

WHEREAS, Lessee is the owner of Unit ___ Harbor Point, Springfield, Illinois as defined in the DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR HARBOR POINT, recorded July 6, 2005, as Doc # 2005R27069, as may be amended from time to time (hereinafter referred to as the "Declarations") and

WHEREAS, Lessor is the owner of one or more certain steel and foam docks located upon and attached to the shoreline of Lake Springfield adjacent to Harbor Point (hereinafter referred to as "Boat Dock"), and

WHEREAS, Lessor as Declarant of Harbor Point is provided the right to lease Slips (hereinafter referred to as "Slip") in the Boat Dock, and

WHEREAS, Lessee desires the exclusive use and Lessor desires to lease for the exclusive use of Lessee, one Slip of the Boat Dock, subject to certain conditions.

NOW THEREFORE, in consideration of the mutual covenants contained herein Lessor and Lessee agree as follows:

1. Lessor does hereby lease to Lessee, under and subject to the terms and conditions hereof, and for the term hereinafter provided, the exclusive use of one (1) boat slip (12' x 28') in the Boat Dock, to-wit: Dock #___ Slip #_____, as further defined on Exhibit A attached hereto. Lessee acknowledges and agrees that walkways on the Boat Dock are for the use of all Slip lessee's and Unit Owners, their invitees and guests.

2. The term of this lease shall be co-extensive with the period during which Lessee shall be a Unit Owner referred to hereinabove. In the event of the termination of Lessee's Unit by reason of sale, transfer, gift, bequest, or other conveyance, (a) Lessee shall assign all rights and obligations under this lease to the then Unit Owner or other Unit Owners subject to the Declarations; or (b) Lessee's interest in the Slip shall revert back to Lessor. A copy of the Assignment shall be delivered to the President of the Homeowners Association of Harbor Point, and such assignment shall be in substantially the same form as attached hereto and incorporated herein by reference as Exhibit B.

3. The base fee for the term of this lease, defined in paragraph 2., above shall be the sum of _____ payable upon execution and delivery of this Lease Agreement, the receipt and payment of which is hereby acknowledge.

4. In addition to the cost of the Slip, Lessee shall pay in advance on the first day of January an amount equal to the estimated expense attributable to the maintenance, operation, security, insurance and repair and replacement of the Boat Dock, partial year shall be prorated, as provided by the Declarations. It is the intent of the DCR, LLC to lease all Slips in the Boat Dock to Unit Owners. Further, it is the intent of the DCR, LLC to provide three (3) Boat Docks consisting of twelve (12) Slips per Boat Dock for a total of thirty-six (36) Slips. Lessee's estimated expense shall be based upon the total number of Slips, meaning Lessee's expense will be $1/12^{\text{th}}$ if one (1) Boat Dock is installed, $1/24^{\text{th}}$ if two (2) Boat Docks are installed and $1/36^{\text{th}}$ if the third Boat Dock is installed. A Unit Owner's failure to pay assessments for his, her, its, or their share of expenses associated with the Boat Dock and/or Slip(s) by the payment due date shall cause lessee's interest in this Agreement to be terminated and such Slip(s) shall revert back to Lessor. All un-leased Slips shall be the expense of DCR, LLC or, if the Boat Dock has been conveyed to the Homeowners Association, the Homeowners Association, under this same formula. Lessee shall cooperate with other Slip tenants and Lessor as the case may be in preparing an annual estimated expense for the Boat Dock. Said estimate shall be delivered to the President of the Homeowners Association prior to the Homeowner's annual meeting for budgeting purposes. All expenses associated with the Boat Dock shall be borne by the Slip lessees. For the years 2007 and 2008 the estimated annual

cost will be \$300. Payment shall be made to the Homeowners Association of Harbor Point. In the event the Homeowners Association has not been formed payment shall made to Lessor.

5. Lessee shall not obtain a boat that does not fit in the Slip. The boat shall not in any way obstruct the walkway or extend out past the drip line of the dock roof.

6. Lessee shall not (1) affix to the Boat Dock, any lift or other machinery, storage facility, structures, or other property without prior written approval of Lessor; (2) store, permit or suffer storage of inflammable fuels, oils, chemicals or other flammable items at or near the Slip or on the Boat Dock, and shall otherwise comply with all reasonable rules and regulations which may be adopted by Lessor or the Homeowners Association relating to the use of said Slip and Boat Dock. The parties acknowledge and agree that only Hydrohoist, Galva-Lift or equivalent boatlifts as determined by Lessor shall be attached to the Boat Dock. Installation of Hydrohoist or Galva-Lift Boatlifts do not require Lessor's prior written approval.

7. Lessee shall at all times use the Slip only for its intended purpose and for docking of a boat or personal watercraft and at all times in use of the Slip observe the highest standards of safety, courtesy and cleanliness and comply fully with all applicable laws, ordinances, rules and regulations of government authorities, and shall observe and comply fully with, and agrees that this Lease Agreement is subject at all times to reasonable rules and regulations, including fines for violations thereof, adopted by the Harbor Point Homeowners Association pursuant to the By-Laws.

8. Lessee shall at all times be responsible for the actions of any persons using the Slip hereby leased at the invitation of or by sufferance of the Lessee and shall not permit or suffer any damage or waste to the said Slip and Boat Dock and will not commit or suffer any waste or refuse to be deposited or discharged on or in the vicinity of the Slip and Boat Dock.

9. Lessee shall be prohibited from using any boat docked, or any boat located in the Boat Dock as a domicile, and shall not permit anyone to reside or live in it at anytime.

10. Lessee shall not permit the use of the Slip or Boat Dock to any person or entity for any use other than; a) fishing b) visitor boat parking, which shall be limited to thirty (30) days in a calendar year. Swimming is prohibited from or around the Boat Dock.

11. Lessee is in possession of and shall at all times conform to and abide by the Declarations, By-Laws of Harbor Point Homeowners Association and the LAKESHORE LEASE dated August 2, 2004.

12. That this agreement shall be binding upon the parties hereto, their heirs, assigns and successors in interest and title. A copy of this Lease Agreement or Assignments of this Lease Agreement shall be given to the President of the Harbor Point Homeowners Association.

13. When Forty-Four (44) Boat Slips are fully leased, or at such earlier time that Declarant in its sole and absolute discretion determines, Declarant shall assign its ownership interest in Boat Docks and its interest as Lessor in each of the leases associated therewith to the Homeowners Association.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

LESSOR:
DCR, LLC

LESSEE:

BY _____

BY _____

DATE: _____

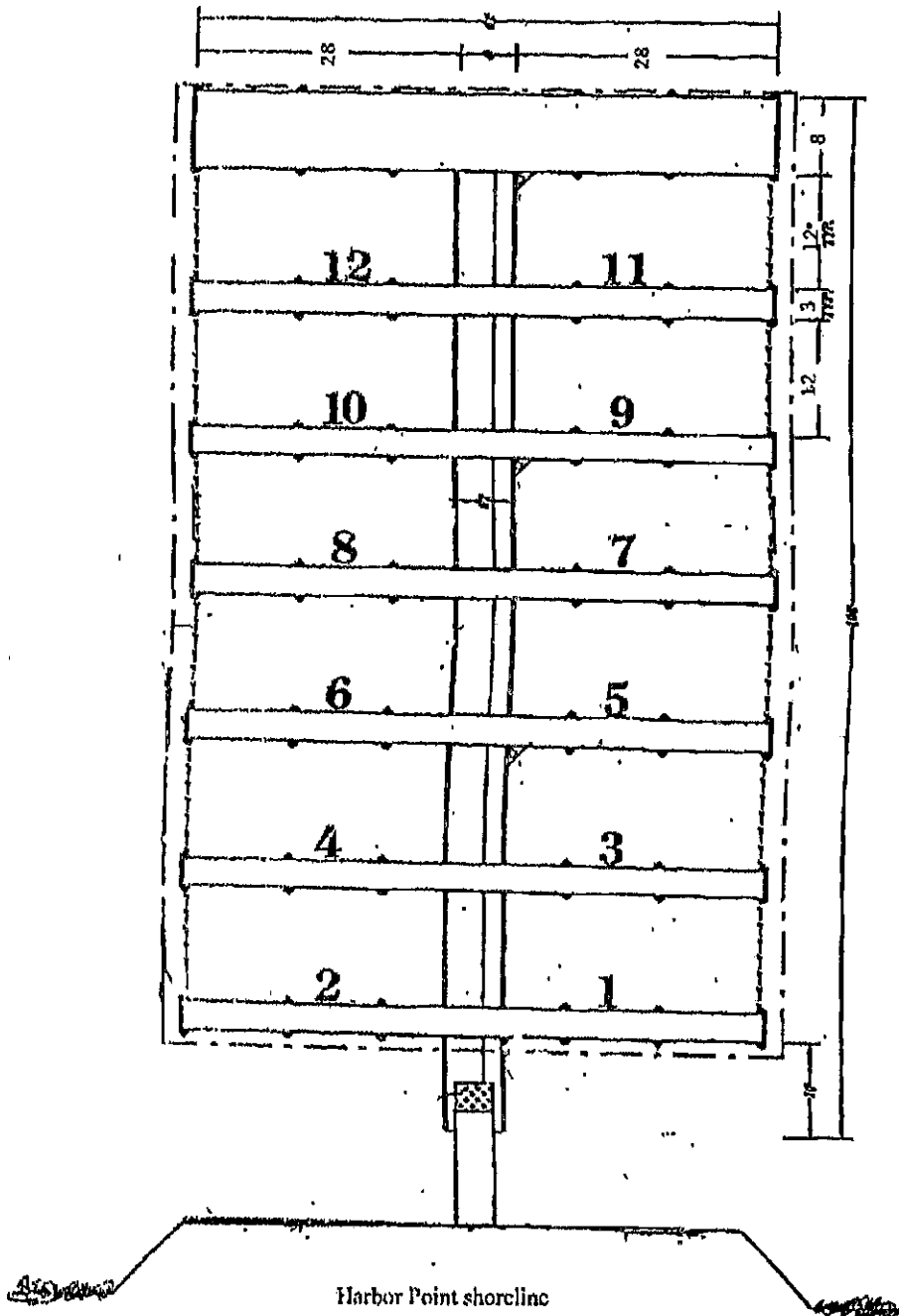
DATE: _____

BOAT SLIP LEASE AGREEMENT

EXHIBIT A

Boat Dock A

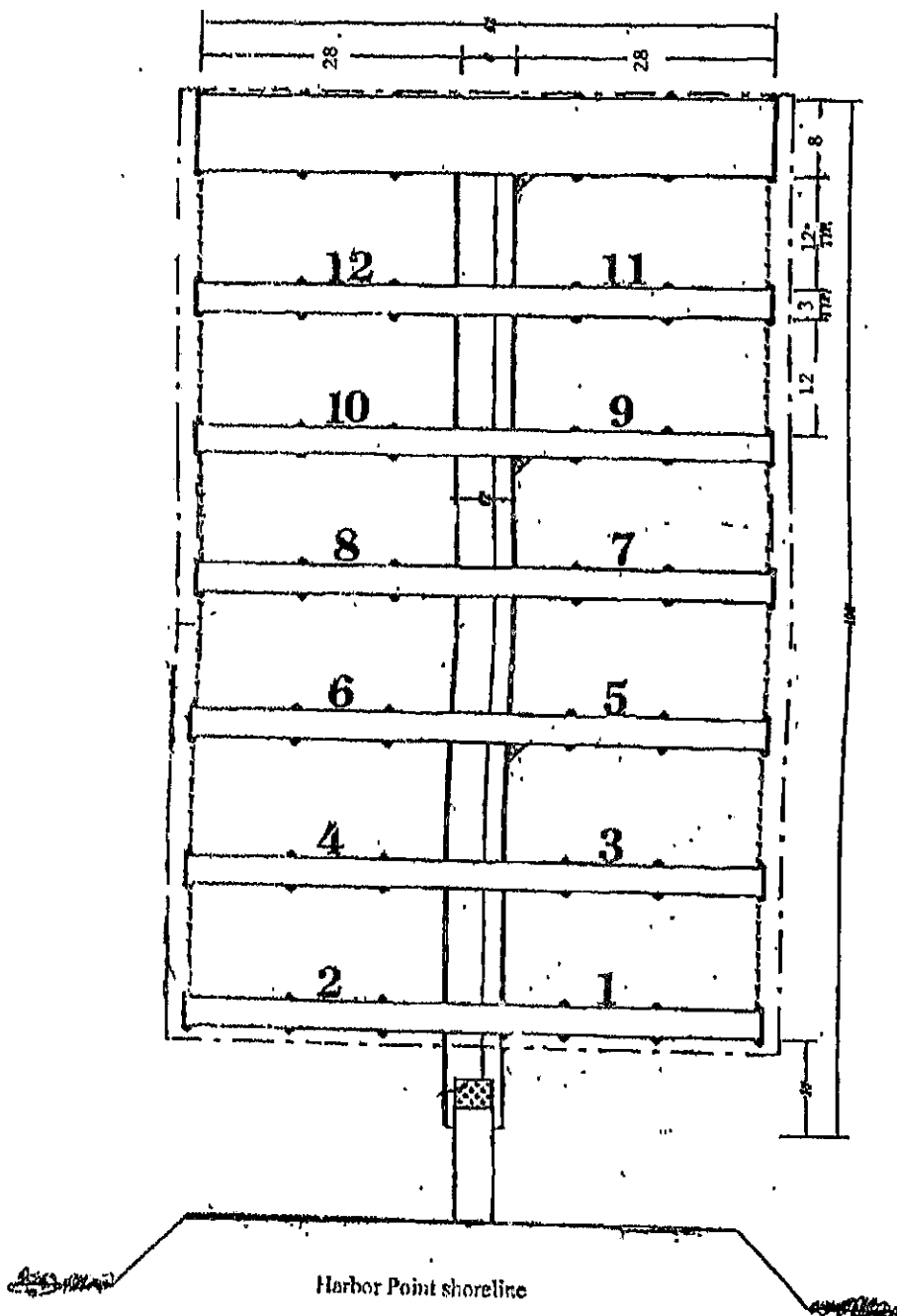
(west dock - north of buildings 1 & 2)



BOAT SLIP LEASE AGREEMENT

EXHIBIT A

Boat Dock B
(center dock - north of buildings 3 & 4)



BOAT SLIP LEASE AGREEMENT

EXHIBIT A

Boat Dock C
(east dock - north of buildings 5 & 6)

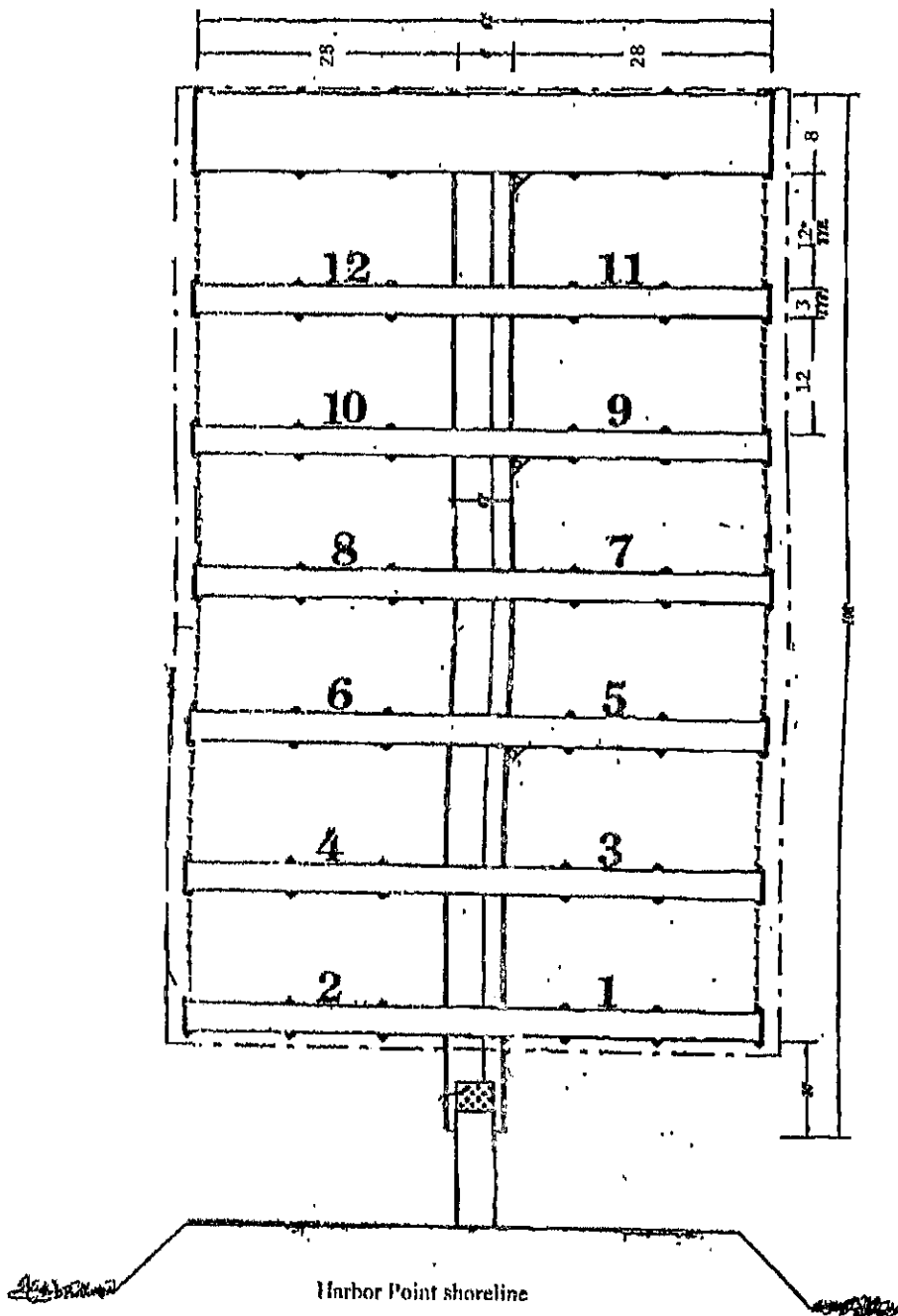


EXHIBIT B

ASSIGNMENT
BOAT SLIP LEASE AGREEMENT
HARBOR POINT
SPRINGFIELD, ILLINOIS

This Assignment is made this _____ day of _____, 2007,
by and between _____ (hereinafter referred to as
Assigner) and _____ (hereinafter referred to as
Assignee)

WITNESSTH:

WHEREAS, Assigner has a lease for the exclusive use of Slip #
_____ in Boat Dock # _____ under a lease dated
_____, 2007 by _____ and _____ between
_____ and Assigner, the BOAT SLIP
LEASE AGREEMENT, attached hereto.

WHEREAS, Assigner desires to assign and Assignee desires to
receive all rights and obligations under the BOAT SLIP LEASE
AGREEMENT.

NOW THEREFORE, in consideration of the mutual covenants
contained herein Assigner and Assignee agree as follows:

1. Assignee has read and will abide by all terms and conditions contained in the BOAT SLIP LEASE AGREEMENT and the Declarations.

2. Assignee is the owner of Unit # _____ in Harbor Point.

3. Assignee agrees to pay Assigner \$_____ upon execution of this ASSIGNMENT as consideration for the assignment, the receipt and payment of which is hereby acknowledged.

4. Assignee shall promptly deliver a copy of this assignment to the President of the Harbor Point Homeowners Association.

5. This agreement shall be binding upon the parties hereto, their heirs, assigns and successors in interest and title.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

ASSNER

ASSNEE

printed name

printed name

Date _____, 200_

Date _____, 200_

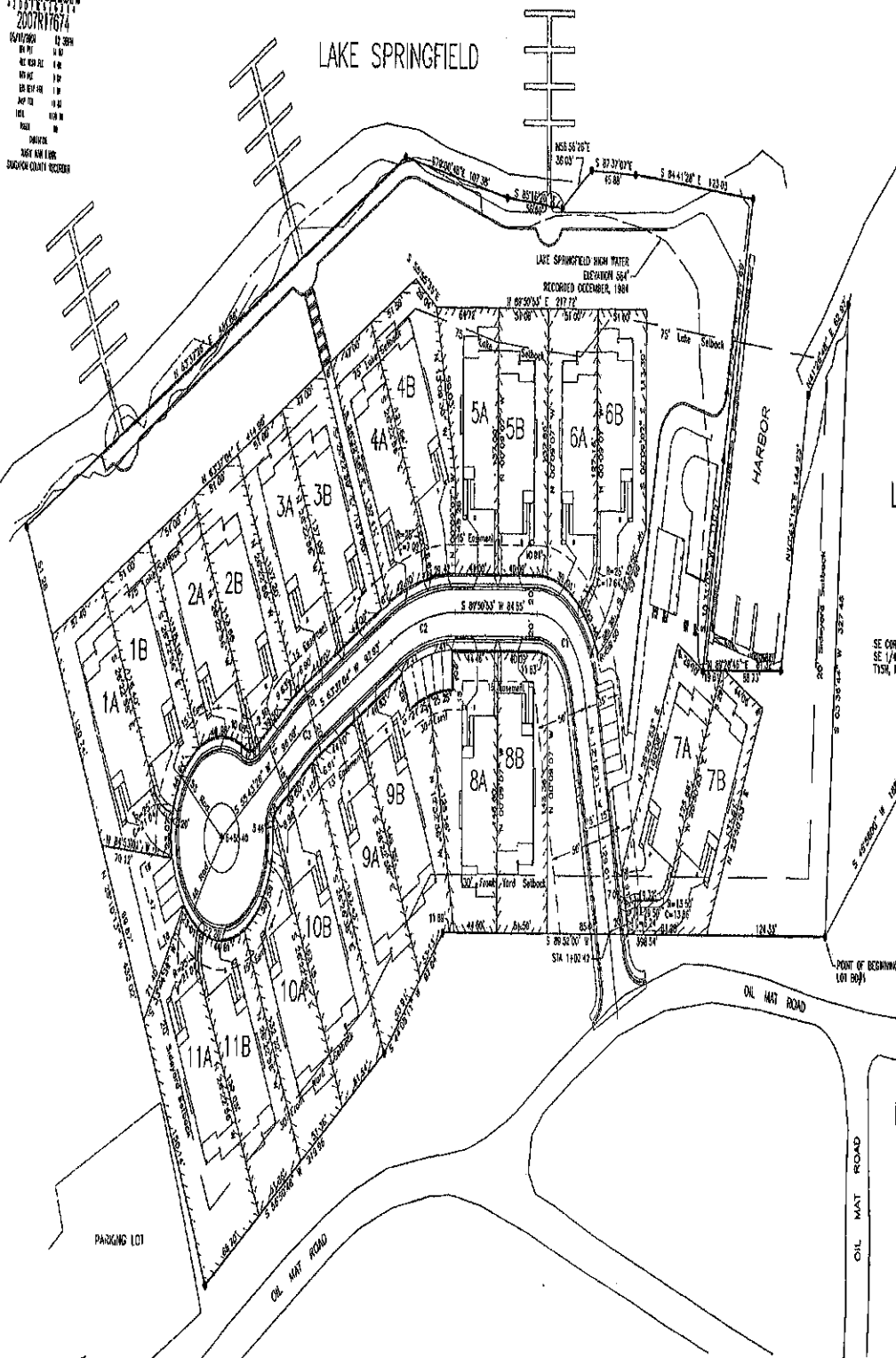
200717674
DAVID L. COOMBE
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 2730
JANUARY 2008

LAKE SPRINGFIELD

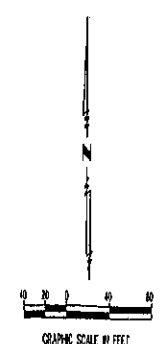
BOUNDARY DESCRIPTION LOT 8D(1) OF THE CITY OF SPRINGFIELD LAKE LANDS

Part of Section 10 and part of Section 20, Township 15 North, Range 4 West of the Third Principal Meridian, Sangamon County, Illinois, more particularly described as follows:

Commencing at the Southeast Corner of the Northeast Quarter of the Southeast Quarter of East Section 10, thence South 45 degrees 58 minutes 00 seconds West 1850.0 feet to the point of beginning; thence South 88 degrees 02 minutes 00 seconds East 308.54 feet, thence South 84 degrees 08 minutes 11 seconds West 87.04 feet, thence South 58 degrees 30 minutes 40 seconds West 219.96 feet, thence North 25 degrees 10 minutes 15 seconds West 432.00 feet, thence along a meander of the shore water line of Lake Springfield the following course: North 33 degrees 37 minutes 25 seconds East 631.88 feet, South 72 degrees 02 minutes 48 seconds East 197.58 feet, South 33 degrees 18 minutes 28 seconds East 58.00 feet, North 56 degrees 58 minutes 26 seconds East 38.02 feet, South 87 degrees 37 minutes 07 seconds East 43.88 feet, South 84 degrees 41 minutes 28 seconds East 182.03 feet, South 12 degrees 15 minutes 40 seconds West 137.88 feet, South 10 degrees 31 minutes 05 seconds West 110.37 feet, North 89 degrees 28 minutes 48 seconds East 81.32 feet, North 10 degrees 43 minutes 15 seconds East 144.23 feet, North 41 degrees 28 minutes 48 seconds East 82.97 feet, thence South 62 degrees 36 minutes 14 seconds West 327.48 feet to the point of beginning, containing 6.71 acres, more or less.



LAKE PARK



--- INDICATES LOTS OF UNITED COMMON AREA ASSIGNED TO A UNIT

GENERAL NOTES:

- 1 THE AREA WITHIN THE BOUNDARY OF A NUMBERED UNIT IS "UNITED COMMON AREA" AS DEFINED IN THE "DECLARATIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR HARBOR POINT"
- 2 THE AREA WITHIN THE BOUNDARY OF LOT 8D(1) THAT IS NOT WITHIN A NUMBERED UNIT IS "COMMON AREA" AS DEFINED IN THE "DECLARATIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR HARBOR POINT"
- 3 REFERENCE IS MADE TO THE PLAT OF SURVEY LOT 8D(1) OF THE CITY OF SPRINGFIELD LAKE LANDS AS OF MAY 2003 PREPARED MAY 16, 2003 BY RICHARD A. GAVIS ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 2086

CENTERLINE CURVE DATA

CURVE	C1	C2	C3
R	50.00'	150.00'	103.00'
Δ	77°52'36"	26°13'49"	07°53'36"
L	67.86'	88.67'	43.78'
T	40.40'	34.85'	6.90'
C	82.85'	68.07'	13.77'
PC STA	2+31.43	3+83.94	5+45.54
PI STA	2+71.83	4+18.07	5+52.44
PT STA	2+89.38	4+52.61	5+59.32

NOTE: CHORD DIMENSIONS SHOWN ON CURVES, UNLESS INDICATED OTHERWISE



This Exhibit was prepared under my supervision on a mathematical representation of the Common Areas and Limited Common Areas of Harbor Point within the boundary of Lot 8D(1) of the City of Springfield Lake Lands. No encumbrances were noted on the Common Areas or Limited Common Areas as depicted on this Exhibit.

Signature: *William J. Coombe*
DAVID L. COOMBE
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 2730
DATE: September 21, 2005

EXHIBIT B	
PROJECT: HARBOR POINT 1085 EAST LAKE SHORE DRIVE SPRINGFIELD, ILLINOIS	DATE: 09/21/05
LOT 8D(1) - 6.71 ACRES ±	PREPARED BY: DAVID L. COOMBE
COOMBE-BLOXDORF P.C. Engineers / Land Surveyors Springfield, Illinois Design Firm License No. 184-082403	DATE: 09/21/05

46



* 2 0 0 9 R 5 2 3 7 8 *

2009R52378

11/16/2009 09:09AM

REC FEE: 57.00

REC REST FEE: 4.00

SIS FEE: 9.00

SIS REST FEE: 1.00

TOTAL: \$81.00

PAGES: 46

CHRISTINE

JOSHUA A. LANGFELDER
SANGAMON COUNTY RECORDER

**SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RIGHTS FOR HARBOR POINT**

Prepared by:

**Creighton R. Castle, Esq.
Giffin, Winning, Cohen & Bodewes PC
1 W. Old State Capitol Plaza, Suite 600
Springfield, IL 62701**

Return to:

**DCR, LLC
c/o Doug Kent
13 West Fairview
Springfield, IL 62711**

**SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RIGHTS FOR HARBOR POINT**

This ~~SECOND AMENDED AND RESTATED~~ DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR HARBOR POINT (this "Declaration") is made and entered into on this 3rd day of March, 2009, by Declarant, as defined below.

WITNESSETH

WHEREAS, Declarant is ground lessee under the Lakeshore Lease (as hereinafter defined), and is the developer, of certain real estate in the City of Springfield, County of Sangamon and State of Illinois, which real estate is legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Premises"); and

WHEREAS, Declarant, or its successors, sublessees or assigns, proposes to develop a first-class multi-residential development which may consist of no more than eleven (11) attached duplex single family residences (hereinafter individually called a "Unit" and collectively called the "Units") upon the Premises. The Units are described on Exhibit B attached hereto and by this reference made a part hereof, and the balance of the areas which comprise the Premises, which will be for the use and enjoyment of one or more of the Unit Owners (hereinafter defined) of the Units, subject, however, to the provisions set forth in this Declaration (hereinafter called the "Common Area" being described on Exhibit B attached hereto and by this reference made a part hereof); and

WHEREAS, the Common Area will generally consist of (a) one or more private roads (the "Access Road") serving all of the Premises; (b) a limited portion of the Common Area adjacent to each of the Units (hereinafter called the "Limited Common Area" or "Limited Common Areas"), which Limited Common Areas are depicted on Exhibit B attached hereto and by this reference made a part hereof and which shall be deemed to be that Unit's appurtenant Limited Common Area; and (c) the balance of the Common Area, which may include, without limitation, sidewalks, common parking spaces, emergency access to the Premises, landscaping, sewer lines, stormwater mains and service lines, stormwater retention/detention basins or ponds, trees, grassy and other open areas including the shoreline, docking facilities (excluding the Boat Slips), a pool and clubhouse, and such further ancillary buildings and facilities as Master Lessee or the Homeowners Association shall from time to time construct and develop on the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefor; and

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all Unit Owners of the Units or any part thereof, and of all other owners, if any, of the Premises, certain easements and rights in, over, under, upon and along the

Premises and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

WHEREAS, Declarant desires to subject its leasehold interest in the Premises, or portions thereof, to the covenants, conditions, restrictions, easements and rights set forth in this Declaration, each and all of which is and are for the benefit of the Premises and portions thereof and each Unit Owner of each Unit and shall inure to the benefit of and shall pass with each and every leasehold interest in the Premises and each and every portion thereof;

WHEREAS, Declarant recorded with the Sangamon County Recorder of Deeds the Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Harbor Point on July 6, 2005 as Document Number 2005R27069 ("Original Declaration"); and

WHEREAS, Declarant wishes to record this Amended and Restated Declaration to amend and restate in its entirety the terms, conditions and provisions of the Original Declaration.

NOW, THEREFORE, Declarant hereby declares that, all leasehold interests in the Premises created under the Lakeshore Lease (hereinafter defined), are and shall be transferred, held, sold, occupied, conveyed and accepted subject to this Declaration. Declarant does hereby further declare that the following easements, covenants, restrictions, rights, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquiring any right, title or interest in or to any portion of the leasehold in the Premises created by the Lakeshore Lease, (2) be binding upon and inure to the benefit of each owner of each Unit and (3) run with the land subjected to this Declaration to be held, sold and conveyed subject to this Declaration.

Harbor Point Homeowners Association

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Exhibits as defined below are not attached, however remain unchanged from the FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR HARBOR POINT recorded May 17, 2007	
Exhibit A, Description of Real Estate	
Exhibit B, Plat Showing Description of Units, Common Area and Limited Common Areas	
Exhibit C, By-Laws of Homeowners Association	
Exhibit D, Boat Slip Lease Agreement.	

ARTICLE 1
DEFINITIONS

1.1 "Access Road" shall mean the private roadways serving the Premises, as and when the same has been constructed by Declarant.

1.2 "Association Assessment" shall mean (1) regular assessment and charges, including a Unit Owner's share of Rental, and (2) special assessment for capital or other or maintenance requirements.

1.3 "Board" shall mean the Board of Directors of the Homeowners Association as constituted, at any time or from time to time, in accordance with the applicable provisions of Article 3 of this Declaration.

1.4 "Boat Dock" shall mean a steel and foam dock incorporating a walkway to each boat slip ("Boat Slip") and consisting of up to twelve (12) boat slips adjacent to the walkway.

1.5 "Building" and "Buildings and Improvements" shall mean a building or buildings within a first-class multi-residential development which may consist of no more than eleven (11) attached duplex single family residences to be developed upon the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefore as Master Lessee or the Homeowners Association shall from time to time cause to be constructed and developed on the Premises.

1.6 "By-Laws" shall mean the By-Laws of the Homeowners Association, a copy of which is attached hereto as Exhibit C and by this reference made a part hereof.

1.7 "Casualty" shall mean any event or occurrence resulting in loss or damage to any portion of the Premises, including, but not limited to, fire, lightning, windstorm, hail, smoke, explosion, riot, riot attending a strike or civil commotion, collision with aircraft and vehicles, vandalism and malicious mischief, sprinkler leakage, collapse, earthquake, war of public emergency, whether or not covered by insurance and regardless of the identity of the person or persons causing or otherwise responsible for the same.

1.8 "City" shall mean the City of Springfield, Illinois, an Illinois municipal corporation.

1.9 "Class B Member Termination Date" shall be the date that is the first to occur of (i) three and one-half (3 ½) years after the date of the first closing of a sale of a Sublease to a Unit Owner (other than Declarant) and (ii) the date of the closing of the sale of all twenty-two Units in the Premises by Sublease by Declarant to a Unit Owner (other than Declarant).

1.10 "Common Area" shall generally mean all portions of the Premises having then been subjected to the jurisdiction of this Declaration which are not Units or Limited

Common Areas. Certain portions of the Common Area are intended to be for the benefit of only one Unit Owner (that is, for example, the Limited Common Area appurtenant to a Unit Owner's Unit); other portions of the Common Area are intended to be for the benefit of all Unit Owners (such as, without limitation, the Access Road, sidewalks, open space areas on the Premises including the shoreline, common parking spaces, emergency access to the Premises, docking facilities, the pool and clubhouse [other than within the Limited Common Areas]). The maintenance, repair, improvement, use, enjoyment and operation of the Common Area shall be in accordance with the terms and provisions of this Declaration. A Unit Owner's interest in a Unit shall include an equal undivided interest in the Common Area (excluding the Limited Common Area) and the Limited Common Area appurtenant to such Unit.

1.11 "Declarant" shall mean DCR, LLC, an Illinois limited liability company, and its successors, sublessees and assigns; provided, however, that any rights specifically reserved herein to Declarant shall not inure to the benefit of the Unit Owners specifically assigned in a recorded instrument or conveyed by operation of law.

1.11 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Rights for the Harbor Point.

1.13 "Homeowners Association" shall mean and refer to an Illinois not for profit corporation, and its successors and assigns, to be organized at the sole cost and expense of Declarant under such name as Declarant shall designate. All Unit Owners (as hereinafter defined) of all Units shall be members of the Homeowners Association, all as more particularly described in this Declaration.

1.14 "Homeowners Association Incorporation Date" shall mean the date Declarant incorporates the Homeowners Association, but such date shall be no later than sixty (60) days before the Class B Termination Date.

1.15 "Lakeshore Lease" shall mean that certain Lakeshore Lease dated as of August 2, 2004 by and between City and Declarant and recorded in the Office of the Recorder of Deeds of Sangamon County, Illinois on August 24, 2004, as Document No. 2004R41981, as the same may be further amended from time to time.

1.16 "Limited Common Area" or "Limited Common Areas" shall mean those portions of the Common Area depicted as "Limited Common Area" on Exhibit B attached hereto. Each Unit's appurtenant Limited Common Area is, although not a part of a Unit, intended for the exclusive use and enjoyment of the Unit Owner of that Unit (except as otherwise set forth herein). Each Unit Owner shall have the right to improve such Unit Owner's appurtenant Limited Common Area, all subject to the terms and provisions of this Declaration. Each designated "Limited Common Area" shall be appurtenant to only one Unit.

1.17 "Master Lessee" shall mean Declarant, and any successor or assign to which its interest in the Lakeshore Lease is assigned.

1.18 "Member" shall mean and refer to any person or entity who holds membership in the Homeowners Association, as more specifically described in Section 3.1 of this Declaration.

1.19 "Plat" shall mean the Plat attached hereto as Exhibit B, and by this reference made a part hereof, sets forth one (1) Plat showing (1) the Premises, its exterior boundaries, Common Areas and Limited Common Areas and (2) each Unit.

1.20 "Rental Reserve" shall mean the total Rental required to be paid by the Master Lessee to the City on the ensuing anniversary date of the Lakeshore Lease.

1.21 "Restoration" shall mean any and all work necessary to repair any damage to the Project or the Premises as nearly as possible to the same value, condition and character as existed immediately prior to any loss due to a Casualty or any taking in any condemnation proceeding, as the case may be, lien-free and ready for use.

1.22 "Sublease" shall mean a lease of a Unit by the Master Lessee to a Unit Owner under the Lakeshore Lease.

1.23 "Sublease Agreement" shall mean the Sublease agreement between the Master Lessee and the Unit Owner.

1.24 "Unit" shall mean each of the areas numbered 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, inclusive, designated as such upon the Plat and upon which a single Unit may be constructed. Although depicted individually on the Plat, the Units are not lots of record.

1.25 "Unit Owner" shall mean an owner or owners of a Unit, and Master Lessee with respect to any Units owned by Master Lessee, or successors and assigns of Master Lessee, that are part of the Project. Any purchaser of a Unit from a seller other than Declarant pursuant to a contract for deed or an "installment contract" for purchase (as defined in subsection (e) or Section 1 of the Dwelling Unit Installment Contract Act) shall be deemed the Unit Owner of such Unit provided such purchaser resides in the Unit unless the seller expressly retains in writing all rights and obligations of ownership. Satisfactory evidence of the installment contract shall be made available to the Homeowners Association. Notwithstanding the foregoing, Declarant shall be deemed a Unit Owner for each Unit which has been subjected to the jurisdiction of this Declaration (as hereinafter provided) and which has not been transferred to a Unit Owner other than Declarant pursuant to a Sublease, unless otherwise provided to the contrary herein.

All capitalized terms used in this Declaration and not otherwise defined herein shall have the meanings ascribed to such terms in the Lakeshore Lease.

ARTICLE 2

GENERAL PROVISIONS

2.1 **Jurisdiction of this Declaration.** As of the date hereof, the jurisdiction of this Declaration shall be deemed to extend only to the Premises made subject to this Declaration.

2.2 **Purposes of this Declaration.** The Premises (or applicable portions) are made subject to this Declaration in order to insure proper use, appropriate development and improvement of the Premises and every part thereof; to protect each Unit Owner from the improper use of surrounding Units; to encourage attractive improvements on each Unit with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to insure desired high standards of maintenance for the benefit and convenience of all Unit Owners; to protect and preserve the open space located within the Premises (or applicable portions), including the shoreline; and in general to provide adequately for a quality residential subdivision.

2.3 **Purposes of the Homeowners Association.** In order to implement the general purposes of this Declaration, the Homeowners Association is being created with responsibility for, among other things, maintenance, repair and preservation of the Common Area (including, without limitation, the Access Road, docking facilities, the pool and clubhouse, landscaping, common parking spaces, sewer lines, stormwater mains and service lines, stormwater retention/detention areas, the sidewalks, emergency access and open space areas including the shoreline, and the Limited Common Area), and such further ancillary buildings and facilities as Master Lessee or the Homeowners Association shall from time to time construct and develop on the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefor except as otherwise set forth herein, enforcement of the restrictions contained in this Declaration and the levying and collection of assessments to fund all of its responsibilities (including, without limitation, Rental due under the Lakeshore Lease), all in accordance with the terms of this Declaration.

ARTICLE 3

THE HOMEOWNERS ASSOCIATION

3.1 **Membership in the Homeowners Association.** Every Unit Owner (including Declarant) shall be a Member of the Homeowners Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Each Unit Owner shall have one membership in the Homeowners Association for each Unit in which a Unit Owner holds the requisite interest therein. Membership shall be appurtenant to and may not be separated from the conveyed interest in each Unit. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successor in interest, if any, holds the leasehold interest in one or more Units. If the Unit Owner shall be more than one person, all such persons shall be Members, but the voting rights in the Homeowners Association

attributable to that Unit shall be exercised in the manner hereinafter provided. If a Unit Owner shall be a land trust, corporation, partnership or other legal entity, then the one individual who shall be entitled to exercise the rights and privileges (such as, to vote and be a director on the Board), and who shall be responsible to bear the obligations associated with membership in the Homeowners Association with respect to that Unit shall be designated by the Unit Owner thereof in writing to the Homeowners Association. Such designation may be changed from time to time thereafter by notice in writing from the Unit Owner to the Homeowners Association. No Unit Owner shall have any right or power to disclaim, terminate or withdraw from such Unit Owner's membership in the Homeowners Association or any of the obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Unit Owner shall be of any force or effect for any purpose.

3.2 **Voting Rights in the Homeowners Association.** The Homeowners Association shall have two classes of voting membership:

Class A. Class A Members shall be all of the Unit Owners, including Declarant for each Unit which has then been made subject to the jurisdiction of this Declaration and which has not been transferred to a Unit Owner other than Declarant pursuant to a Sublease. Class A Members shall be entitled to cast one (1) vote for each Unit in which they hold the interest required for membership in the Homeowners Association. When more than one person holds such interest in any Unit, all such persons shall be Members, but the right to vote for such Unit shall be exercised as they among themselves determine; provided, however, that in no event shall more than one vote be cast with respect to each Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to cast twenty-two (22) votes, provided that the Class B Membership shall cease on the "Class B Member Termination Date".

3.3 **The Board.** The Homeowners Association shall have a Board of not less than three (3) directors (hereinafter individually a "Director" and collectively "Directors") who shall be determined as follows:

A. The first Board shall consist of three (3) Directors, each of whom shall be appointed by Declarant or its designee on the Homeowners Association Incorporation Date.

B. Subsequent to the Homeowners Association Incorporation Date and continuing until the Class B Member Termination Date, the Board shall be elected by combined majority vote of the Class A and Class B Members of the Homeowners Association at meetings to be held for such purpose at such intervals as are provided in the articles of incorporation of the Homeowners Association or the By-Laws, as the case may be. Such Board shall consist of three (3) Directors.

C. Subsequent to the Class B Member Termination Date, the Board shall be elected by majority vote of the Class A Members of the Homeowners Association, at meetings to be held for such purpose at such intervals as are provided in the articles of incorporation of the Homeowners Association or the By-Laws, as the case may be. Such Board shall consist of three (3) Directors.

Vacancies in the Board occurring prior to the first annual meeting of the Board following the Class B Member Termination Date shall be filled by Declarant appointing a person to fill such vacancy and thereafter vacancies in the Board occurring between meetings of the Members may be filled by the majority vote of the remaining Directors then sitting on the Board if so provided in the articles of incorporation of the Homeowners Association or the By-Laws. Notwithstanding anything to the contrary, Declarant may voluntarily terminate its right to appoint Directors and to fill vacancies pursuant to this Section, in which event the Class A Members (including Declarant) shall elect Directors and the Directors may fill vacancies occurring between meetings of the Members. Except for Directors to be appointed by Declarant, all other Directors shall be Members.

3.4 **Officers of the Homeowners Association.** The Homeowners Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Homeowners Association under the direction of the Board. All officers of the Homeowners Association shall be Directors on the Board. Except as expressly otherwise provided by the articles of incorporation of the Homeowners Association or the By-Laws, all power and authority to act on behalf of the Homeowners Association both pursuant to this Declaration and otherwise shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of the Members.

3.5 **Prohibition on Distribution to Members.** The Homeowners Association, being a not for profit corporation, shall not distribute to the Members (being, in effect, the "shareholders") any sums in the nature of dividends.

3.6 **Agreements Between the Homeowners Association and Others.** Whenever possible, the Homeowners Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with persons and business entities regularly engaged in the performance of generally similar functions and duties, which agreements shall be with such parties, for such length of time, at such rates of compensation and upon such other terms and provisions, all as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Premises or any part thereof. The Homeowners Association itself shall also have power to perform its functions and carry out its duties.

3.7 **Rules and Regulations of the Homeowners Association.** The Homeowners Association, through the resolutions of the Board shall have the right to adopt rules and regulations governing the Units and the Common Area; provided, however, that no rule or regulation shall conflict with any provision of this Declaration (including the By-Laws), the Lakeshore Lease, or with any applicable law, ordinance or code.

3.8 **Books and Records of the Homeowners Association.** The books and records to be kept by the Board shall be available for inspection by any Member or any representative of a Member duly authorized in writing at such reasonable time or times during the normal business hours as may be requested by the Member or its representative.

3.9 **Liability of the Directors and Officers of the Homeowners Association.** Neither the Directors nor the officers of the Homeowners Association shall be liable to the Unit Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors and officers, except for any acts or omissions finally adjudged by a court of competent jurisdiction to constitute gross negligence or fraud. The Unit Owners (including the Directors and the officers of the Homeowners Association in their capacity as Unit Owners) shall indemnify and hold harmless each of the Directors and each of the officers of the Homeowners Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Homeowners Association on behalf of the Unit Owners or arising out of their status as Directors or officers of the Homeowners Association, unless any such contract or act shall have been finally adjudged by a court of competent jurisdiction to have been made fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, attorneys' costs, amounts or judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any Director or officer of the Homeowners Association may be involved by virtue of such persons being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of such person's duties as such Director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable grounds for such person being adjudged liable for gross negligence or fraud in the performance of such person's duties as such Director or officer. It is also intended that the liability of each Unit Owner arising out of any contract made by, or other acts of, the Board or officers of the Homeowners Association, or out of the aforesaid indemnity in favor of the Directors or officers of the Homeowners Association, shall be limited to an amount equal to the total liability thereunder divided by the then total number of Units. Every agreement made by the Board on behalf of the Unit Owners shall be deemed to provide that the Directors are acting only as agents for the Unit Owners, and shall have no personal liability thereunder (except as Unit Owners) and that

each Unit Owner's liability thereunder shall be limited to an amount equal to the total liability thereunder divided by the then total number of Units.

ARTICLE 4

COMMON AREA

4.1 **Description of the Common Area.** The Common Area shall consist of all portions of the Premises having then been subjected to this Declaration which are not Units. Without limiting the generality of the forgoing, the Common Area may include, among other things the Limited Common Area, the Access Road, docking facilities, excluding the Boat Slips, a pool and clubhouse, emergency access, sidewalks, street lighting, common parking spaces, landscaping, slopes and trees, berms, sewer lines, stormwater mains and service lines, stormwater detention/retention basins or ponds, open space areas including the shoreline and other improvements, all as may be located within the Premises. Except for the Limited Common Area and driveways, service walks and other permitted improvements on other portions of the Common Area intended to serve exclusively a Unit as herein set forth, the Common Area is intended to be for the non-exclusive mutual use and enjoyment of all Unit Owners.

4.2 **Boat Docks.**

A. It is the intent of Declarant to provide three (3) Boat Docks for Harbor Point. The final number of Boat Docks installed to the shoreline of the Premises and Boat Slips associated with each Boat Dock shall be determined by the Declarant, subject to the provisions of the Lakeshore Lease. Subsequent to the assignment of the Boat Docks by the Declarant to the Homeowners Association, such determination shall be made by the Homeowners Association. When Forty-Four (44) Boat Slips are fully leased or at such earlier time that Declarant in its sole and absolute discretion determines, Declarant shall assign its ownership interest in the Boat Docks, along with its interest as lessor in each of the existing leases associated with the Boat Slips, to the Homeowners Association. If Declarant assigns its ownership interest in the Boat Docks to the Homeowners Association prior to the date that forty four (44) Boat Slips are fully leased, Declarant shall retain, and the right to convey, its ownership interest in the remaining unleased Boat Slips to a third person and Declarant, or such transferee, shall have the right to lease the remaining unleased Boat Slips associated with each of the Boat Docks in place at the date of Declarant's assignment of the Boat Docks to the Homeowners Association. Should said transferee be a Unit Owner he/she shall be allowed to lease more than two (2) Boat Slips. The transferee, other than the Declarant or a Unit Owner, shall have no use of the Boat Slip (s) other than for repairs, maintenance and showings to Unit Owners exclusively with the intent to lease the Boat Slip. Declarant or transferee, as the case may be, will lease it's Boat Slip to a Unit Owner in an amount not to exceed \$12,000 plus cost of repairs, maintenance and replacements from the date of transfer or March 1, 2009 in the case of the Declarant, in no event will the total cost exceed \$15,000. In the event Declarant, DCR, LLC becomes insolvent for any reason all rights in the remaining Boat Slips shall be conveyed to Douglas J. Kent who shall retain all rights and

privileges provided to the Declarant herein. As each remaining Boat Slip is leased to a Unit Owner by Declarant or its transferee, Declarant, or its transferee, shall assign its interest as lessor of the leased Boat Slip to the Homeowners Association within thirty (30) days of the commencement date of the lease. The Declarant, or its transferee, shall have the right to retain the proceeds from the lease of such remaining Boat Slips.

B. Notwithstanding any of the foregoing provisions to the contrary concerning exclusive use and possession of the Limited Common Area, all of the Limited Common Area shall be subject to such easements and rights as are expressly referred to or set forth in this Declaration except for a Boat Slip transferee who shall be given reasonable access to Limited Common Areas to access transferees Boat Slip as set forth in 4.2 A. above

4.3 Rights of Unit Owners, the Homeowners Association and Declarant.

A. Unless otherwise set forth herein to the contrary, every Unit Owner shall have a non-exclusive right and easement of ingress and egress in, over, upon and to, and use and enjoyment of, all portions of the Common Area (other than the Limited Common Area) and all portions of the Common Area (other than the Limited Common Area) shall be held for the use, benefit and enjoyment of each Unit Owner. The aforesaid non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Unit and with the delivery of each Sublease and each assignment of the Lakeshore Lease, subject to the following reserved rights and easements in favor of others (each of which following described reserved rights and easements apply to all portions of the Common Area, including all Limited Common Area):

(a) From and after the Homeowners Association Incorporation Date, and in all cases subject to the limitations of the Lakeshore Lease, the right of the Homeowners Association to dedicate or transfer (including by means of easements) all or any portion of the Common Area to any public body, agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless accomplished by means of an instrument signed (A) by Members entitled to cast not less than three-fourths (3/4) of the votes and (B) if such dedication or transfer includes any Limited Common Area, by the Unit Owner(s) of each Unit to which said Limited Common Area is appurtenant.

(b) The Homeowners Association is hereby granted and reserves to itself the right to grant, at any time and from time to time after Declarant's leasehold interest in the Common Area has been transferred by Declarant to the Homeowners Association, utility easement(s) for sanitary and storm sewers, water, gas, electricity, telephone, cable television and any other necessary public or municipal service over, through, upon and across all or any portion of the Common Area, all upon such terms and conditions as the Board deems necessary or appropriate.

(c) As part of the overall program of development of the Premises into a residential community and to encourage the marketing and construction thereof, Declarant hereby reserves for itself, its assigns, its contractors and their respective subcontractors, agents and employees the right and easement of ingress and egress and of access and use in, over, upon, under and across each and every portion of the Common Area (including Limited Common Area), for sales and construction purposes, as well as the right and easement of use of certain Units and the Common Area and facilities thereof, all without charge during the entire sales and construction period on the Premises.

(d) At any time prior to the Class B Member Termination Date, subject to the limitations of the Lakeshore Lease, and notwithstanding that Declarant may have theretofore transferred the leasehold interest in the Common Area to the Homeowners Association, Declarant shall have and hereby reserves the right, without having to obtain the consent of any other party (A) to grant and record such easements over, under, through, across, upon, in and on the Common Area or portions thereof for the provision of any utility service, landscaping, buffering, ingress and egress, and such other purposes as Declarant, in its reasonable discretion deems necessary, desirable or required by the final engineering plans for the Premises or by the "as-built" condition of the Premises, or any part or portion thereof; and (B) to reclassify any of the Units then controlled by Declarant or Common Area (such as, for example, to designate a portion of the Common Area to be Limited Common Area or to convert a Unit then controlled by Declarant to Common Area or vice versa) which reclassification results from the "as-built" condition of the Premises, a matter of convenience or any other reason and shall be accomplished by causing an amendment to this Declaration to be recorded by Declarant, which amendment shall designate by legal description or attached plat, or both, what real property is being so reclassified; provided, however, that each such reclassification shall in all events be consistent with the intent and purposes of this Declaration, any applicable provisions of the Lakeshore Lease, and any applicable City ordinances and resolutions and further provided, however, that once Declarant has subleased its interest in the Lakeshore Lease with respect to a particular Unit to a Unit Owner (other than Declarant), no reclassification of the Limited Common Area appurtenant to such Unit shall be effective without, in each instance, the prior written consent of the Unit Owner whose appurtenant Limited Common Area is proposed to be affected by such reclassification.

B. The foregoing described non-exclusive easement and right granted to the Unit Owners shall extend not only to each Unit Owner, but also to members of the immediate family, authorized guests, other authorized occupants and visitors of such Unit Owner. The use and enjoyment of the Common Area shall be subject to such reasonable rules and regulations as are adopted from time to time by the Homeowners Association; provided, however, that in no event shall any rule or regulation limit or restrict the use and enjoyment of the Common Areas by any Unit Owner and/or guest of a Unit Owner, except in the case of rules or regulations applicable equally to all Unit Owners and guests

and applicable only to (i) closing of a Common Area for maintenance or repair; (ii) establishment of reasonable daily hours of operation; and (iii) occasional closing with Board approval of a Common Area (no more than 12 hours in each calendar month for any given Common Area) for the private use of a given Unit Owner(s) and guests of that Owner; nor have the effect of reducing or adversely affecting the obligations of the Homeowners Association to maintain all portions of the Common Area and, as and to the extent provided herein, the Limited Common Area.

C. To the extent portions of driveways and service walks appurtenant to and serving exclusively a Unit are located on portions of the Common Area other than the Limited Common Areas in order to provide access, ingress and egress to, from and between a Unit and the Access Road, and to the extent decks, patios, fences, mailboxes, air conditioning compressors, eaves, overhangs, basement area window wells, gutters and downspouts and other improvements having been approved by the Homeowners Association appurtenant to and serving exclusively a Unit are located on portions of the Common Area other than the Limited Common Areas and in the immediate area of such Unit, each affected Unit Owner is hereby granted a right and easement so as to permit, at the sole cost and expense of said Unit Owner (unless otherwise provided to the contrary herein), the location, maintenance, repair, reconstruction, operation and restoration of the portions of said permitted improvements on said portions of the Common Area; provided, however, that the location of such permitted improvements on said portions of the Common Area shall have been approved by the Board and that no such permitted improvements in such portions of the Common Area shall be detrimental to or interfere with the use and enjoyment of all Unit Owners of the Common Area (other than the Limited Common Areas), and that all such improvements shall comply with the Large Scale Ordinance of the City (Ordinance No. 503-09-04), which strictly limits the construction and location of all such improvements.

4.4 The Limited Common Area.

A. The Limited Common Areas shall consist of those portions of the Common Area depicted on Exhibit B attached hereto and each portion thereof shall serve exclusively only that Unit to which said portion is appurtenant as depicted on Exhibit B attached hereto.

B. Each Unit Owner shall be entitled to the exclusive use and enjoyment of the Limited Common Area adjacent to such Unit Owner's Unit and an irrevocable license is hereby granted to each Unit Owner over the Limited Common Area appurtenant to such Unit for such purposes.

C. Subject to the provisions contained in Section 8.7 and Article 9, each Unit Owner, at such Unit Owner's sole cost and expense (unless otherwise provided herein), shall be entitled to construct, install, repair, maintain, locate, use and decks, patios, fences, service walks, air conditioning compressor(s), overhangs, eaves, gutters and downspouts, basement area window wells, mailboxes and other improvements which are deemed consistent therewith as may first be approved by the Board in the Limited

Common Area appurtenant to such Unit Owner's Unit. The location of any of said improvements in the Limited Common Area shall be deemed to be a permissible use thereof and shall not be deemed to be an encroachment. All such items shall be subject to the limitations of the Large Scale Ordinance of the City (Ordinance No. 503-09-04).

4.5 **Permitted Encroachments of Units.** In the event that any part of any Unit encroaches or shall hereafter encroach by no more than six inches (6") upon any part of the Common Area (including the Limited Common Area) immediately surrounding and adjacent to the Unit on which said Unit is located, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner if such encroachment or use is detrimental to or interferes with the reasonable use or enjoyment by another Unit Owner of such Unit Owner's Unit, or the Limited Common Area surrounding such Unit Owner's Unit, or if such encroachment occurred due to the intentional or willful conduct or gross negligence of any Unit Owner, or if such encroachment does not comply with applicable City codes, ordinance, standards, rules, regulations or agreements governing the Premises. The foregoing easement for encroachments shall not be deemed to preclude or abrogate the right of the Unit Owner of a Unit from locating, using or enjoying the patios, decks, fences, service walks, air conditioning compressor(s), overhangs, eaves, gutters and downspouts, basement area window wells, mailboxes and other improvements approved by the Board in the Unit's appurtenant Limited Common Area or, if applicable, in other portions of the Common Area, all as specifically provided in and consistent with Sections 4.2.C and 4.3.C of this Declaration, and consistent with the Large Scale Ordinance of the City (Ordinance No. 503-09-04).

4.6 **Improvement of the Common Area.**

A. Declarant shall initially cause to be constructed, installed and/or located upon the Common Area docking facilities, a pool and clubhouse and such driveways (or portions thereof), the Access Road, emergency access and walkways as shall be necessary to provide ingress and egress to and from the Units for the use and benefit of the Unit Owners and their guests and invitees, and such landscaping, other private streets and walkways, common parking spaces, street lighting, benches, paths, berms, walking trails, such sewer lines, stormwater mains and services lines and stormwater retention or detention basins, ponds and other similar improvements, all as Declarant shall from time to time, in its sole discretion, determine to be necessary, appropriate or desirable or to be required by the governmental laws, ordinances or regulations as shall be in effect during, and applicable to, the development of the Premises. Subsequent to the Homeowners Association Incorporation Date, the Homeowners Association shall have the right, subject to obtaining the approval of a majority of the Members, to further improve the Common Area in a manner consistent with the intent and purpose of this Declaration. The foregoing shall not be deemed to preclude the right of each Unit Owner, at such Unit Owner's sole cost and expense and subject to having received prior Board approval as provided in Article 9 of this Declaration, and also subject to compliance with the Large

Scale Ordinance of the City (Ordinance No. 503-09-04) from locating within those portions of the Common Area which are not Limited Common Area, and in the immediate area of such Unit Owner's Unit, the decks, patios, fences, driveways, service walk, mailbox(es), air conditioning compressor(s), eaves, overhangs, basement area window wells, gutters and downspouts and such other improvements having been approved by the Board as being consistent with the foregoing and serving the Unit located on such Unit Owner's Unit as set forth in Section 4.2.C above.

B. In the event, in the course of undertaking the construction, installation and/or location of improvements permitted hereunder on a Unit, the Limited Common Area or, as applicable, other portions of the Common Area, a Unit Owner (or anyone undertaking such construction, installation and/or location on behalf of Unit Owner) causes damage to the Common Area (other than the Limited Common Area) which, in the opinion of the Board, requires the repair or restoration thereof, restoration of or repairs to the Common Area shall be undertaken by the Homeowners Association and such Unit Owner shall reimburse the Homeowners Association for the Homeowners Association's costs of such repair or restoration within thirty (30) days of receipt of a written invoice from the Homeowners Association therefor, and in the event such Unit Owner fails to pay the amounts the Homeowners Association incurs to undertake such repair or restoration within said thirty (30) days, such amounts, together with interest at nine (9) percent per annum and all reasonable cost of collection, including attorneys' fees and litigation expenses, shall become (i) a lien upon such Unit Owner's Unit, enforceable by an action similar to the type of action instituted to foreclose the lien of a mortgage or deed of trust on real property, and/or (ii) a default under the Sublease entitling the Master Lessee to the remedies under Section 8.12 of this Declaration.

4.7 **Dedication of the Common Area.** Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

4.8 **Transfer of the Common Area.** Declarant shall assign its leasehold interest in the Common Area to the Homeowners Association at such time as Declarant determines in its sole discretion, but no later than the date of either the Homeowners Association Incorporation Date or the date Rental is first paid to the City under Section 3.01(b) of the Lakeshore Lease. The form of assignment shall contain an express assumption by the Homeowners Association of Declarant's rights and obligations pursuant to the Lakeshore Lease. The Homeowners Association shall not be relieved of any of its obligations under this Declaration or the Lakeshore Lease by reason of Declarant's retention of the leasehold interest in all or any portion of the Common Area prior to its transfer to the Homeowners Association, including without limitation, the obligation to pay all general and special real estate taxes and assessments levied with respect to the Common Area, and including further, the obligation to maintain, repair and reconstruct the Common Area and to defray the cost thereof by Member assessments. Upon any transfer of the Common Area to the Homeowners Association, Declarant shall be entitled to a proration credit for all expenses of the Homeowners Association defrayed by Declarant (including insurance and real estate taxes), which have not theretofore been

reimbursed to Declarant. The Common Area shall be transferred subject to all covenants, conditions, and restrictions of record (except the liens of any mortgages or trust deeds granted by Declarant) and without any express or implied warranties of merchantability of fitness for a particular purpose, which warranties are expressly disclaimed by Declarant.

4.9 **Transfer of Lakeshore Lease.** Declarant shall assign the Lakeshore Lease to the Homeowners Association no later than the first to occur of (i) five (5) years after the date of the first closing of a sale by Declarant of a Sublease to a Unit Owner (other than Declarant) and (ii) the date of the closing of all twenty-two (22) Units in the Premises by Sublease by Declarant to a Unit Owner (other than Declarant). The form of assignment shall contain an express assumption by the Homeowners Association of Declarant's rights and obligations pursuant to the Lakeshore Lease and the collection and payment of Rental from Unit Owners to City for Rental as set forth in Section 3.01 of the Lakeshore Lease. Concurrently with the assignment of the Lakeshore Lease by Declarant to the Homeowners Association, the Homeowners Association shall execute one or more Sublease Agreements in the form last executed by Declarant and a Unit Owner transferring by Sublease all interests in the Unit(s) which remain unsold by Declarant, including the Limited Common Areas appurtenant to each such Unit(s) and undivided one twenty-second (1/22nd) interests in the Common Areas for each such Unit (the "Unsold Units"). The Declarant shall pay to the Homeowners Association the amount of one dollar (\$1.00) as consideration for each such Sublease Agreement executed between the Homeowners Association and the Declarant. Notwithstanding anything contained in the Declarations to the contrary, in the event such Unit(s) are subleased by the Homeowners Association to Declarant, the Declarant's rights under this Declaration, including, but not limited to those rights under Section 4.2 and Section 8.9, shall survive the assignment of the Lakeshore Lease by Declarant to the Homeowners Association as if the Lakeshore Lease was not transferred by Declarant, but such rights shall terminate on the date Declarant closes the sale of all Unsold Units pursuant to a Sublease Agreement with a Unit Owner (other than Declarant). The Declarant and the Homeowners Association shall enter into an agreement incorporating the provisions of this Agreement which shall be executed by the Declarant and the Homeowners Association as a condition precedent to the assignment of the Lakeshore Lease by Declarant to the Homeowners Association.

4.10 **Transfer of Boat Slips.** A Unit Owner is permitted to lease up to two (2) Boat Slips per Unit, **except as provided for in 4.2 above.** Unit Owners who are lessees of Boat Slips are hereinafter referred to as "Slip Owners". Slip Owners and Declarant shall have the right to assign their Boat Slip(s) to a Unit Owner at any time without interference from the Homeowners Association or Declarant, as the case may be, so long as the assignee does not hold more than two (2) leases of Boat Slips after the assignment. The lease shall be in substantially the same form as Exhibit D, attached hereto and incorporated herein by reference. Nothing contained herein shall prevent a Unit Owner from allowing the use of another Unit Owner's Boat Slip provided that the Slip Owner provides prior written permission to the user.

ARTICLE 5

MAINTENANCE OF COMMON AREAS, LIMITED COMMON AREAS, AND UNITS

5.1 Maintenance of the Common Area and Limited Common Area.

A. The Homeowners Association shall carry out or cause to be performed all maintenance, improvement, repair and replacement of the Common Area and Limited Common Area, excluding those portions of the Common Area and Limited Common Area or facilities located thereon which have been or are hereafter dedicated to City or other public or quasi-public body by means of valid easements and items installed by the Unit Owner on the Common Area or within said Unit Owner's appurtenant Limited Common Area (including, but not limited to satellite dishes not exceeding twenty inches (20") in diameter, mailboxes, patios, decks, and fences) and other similar matters, whether or not specifically described or existing on the date hereof.

B. The Homeowners Association, at all times, shall have the right of ingress and egress on, over, upon, and to the Common Area and Limited Common Area for any and all purposes connected with the use, maintenance, repair, operation, improvement, replacement, and reconstruction of the Common Area and Limited Common Area.

5.2 Maintenance of Unit. Except as otherwise provided in this Declaration, each Unit Owner shall have the obligation to maintain in good condition and repair the structural components of the Unit including the foundation, driveway, walkway from the front door to the driveway, roofs, perimeter and load bearing walls, subfloors, trusses and the exterior shell (surface items including, without limitation, windows, doors, garage doors, gutter, soffit, fascia, down spouts, decorative shutters, and exterior painting), and all other permitted improvements located on such Unit Owner's Unit. Each Unit Owner shall have the obligation to maintain in good condition and repair the Unit's drywall, pipes, plumbing, ducts, electrical wiring, gas lines and conduits serving any one Unit or Units, or heating, ventilating and air conditioning systems or plumbing systems within any Unit or Units. If a component, in need of repair or replacement, affects more than one (1) Unit, each affected Unit Owner shall be responsible for an equal share of the cost to repair or replace such defective component. Upon the failure of any Unit Owner to so maintain such Unit Owner's Unit in a manner satisfactory to the Homeowners Association (including, without limitation, exterior painting), the Homeowners Association, through its agents and employees, is hereby granted the right to enter upon such Unit and make such reasonable repairs, maintenance, rehabilitation, restoration or repainting thereof as may be necessary, and the costs thereof shall become a lien upon such Unit in the same manner as provided in Article 6 for nonpayment of maintenance assessments.

ARTICLE 6

COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 **Covenant for Assessments.** Subject to the provisions of Section 6.6 below, Declarant, for each Unit owned within those portions of the Premises having then been subjected to the jurisdiction of this Declaration, hereby covenants, and each Unit Owner, by acceptance of a sublease of the Lakeshore Lease, whether or not it shall be so expressed in such Unit Lease or other partial assignment, is deemed to covenant and agree to pay to the Homeowners Association the Association Assessment. The amount of the Association Assessment to be fixed, established and collected from time to time as provided in this Declaration. The Association Assessment, together with such late charges thereon and cost of collection thereof, as hereinafter provided, shall be a charge on each Unit and shall be a continuing lien upon such Unit against which such Association Assessment is levied. Each such Association Assessment, together with such late charges and cost of collection, including reasonable attorneys' fees and costs, shall also be the personal obligation of the Unit Owner of such Unit at the time when the Association Assessment or installation thereof became due. Such personal obligation shall continue to said Unit Owner despite a sale or transfer of said Unit. Upon the collection of each installment of the Association Assessment by the Homeowners Association, that portion of the Association Assessment allocated to the payment of Rental due under the Lakeshore Lease (including proceeds from the Rental Reserve) shall be deposited immediately in a trust account separate from other funds of the Homeowners Association at such bank or financial institution as may be approved from time to time by the Homeowners Association for such purpose pending its payment to City. The trust account shall be established for the benefit of the City on terms and provisions that shall not be subject to termination, amendment or modification without the prior written consent of City.

6.2 **Purposes and Use of Assessment.** The Association Assessment shall be used exclusively for the purpose of payments of Rental due under the Lakeshore Lease and for promoting the health, safety, and welfare of the Premises or any portion thereof and in particular for the improvement and maintenance (i) of the Premises, and (ii) of the services and facilities devoted to or serving the Premises or related to the use or enjoyment of any part or portion of the Common Area, and for the establishment and maintenance of adequate reserves. Such uses shall include, but are not limited to, the cost of the Homeowners Association of any taxes and all insurance premiums with respect to, and the expense of operation, repair, replacement and maintenance of, the Common Area (or those portions of the Common Area as to which the Homeowners Association is, pursuant to this Declaration, responsible to perform such function or incur such expense) as may from time to time be authorized by the Board. The Homeowners Association shall establish and maintain a special reserve account to account for capital expenditures and major repairs and replacements that may be required from time to time, as determined by the Board and for the maintenance of adequate reserves. In addition, cable, electric, gas, water, waste removal and/or any other utilities which are not separately metered or otherwise directly charged to individual Unit Owners shall be paid for by the Homeowners Association and such costs shall be included in calculating the amount of the Association Assessment. The Board reserves the right to levy additional specific assessments against any Unit Owner for (i) excessive or disproportionate use by

such Unit Owner of any utility or other service or (ii) improvement or use of a Unit Owner's Limited Common Area which causes excessive or disproportionate real estate taxes, if any, to be levied upon the Common Area generally, the proportionate expense of which excessive or disproportionate use or improvement shall be included in the Association Assessment. At the time each Unit is transferred by Declarant to a Unit Owner pursuant to a Sublease, such Unit Owner shall pay, in addition to the first monthly (or other then applicable assessment period) installment of the Association Assessment attributable to that Unit, to the manager or managing agent, or as otherwise directed by the Board, an amount equal to no less than two (2) times the first full monthly assessment for such Unit (but including an amount no less than shall be required from such Unit Owner to maintain adequate reserves, which amount shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses of the Homeowners Association and held for future working capital needs. The payment from the initial Unit Owner of each Unit (other than Declarant) described in this Section 6.2 shall not be refundable or be applied as a credit against the Unit Owner's installments of the Association Assessment. The Board or the Declarant shall have the right to transfer such funds from time to time as may be necessary to fund a reserve for capital improvements and major repairs.

6.3 Establishment of Assessment.

A. The Board shall, on or before October 1 of each year, estimate the total amount necessary to pay all costs and expenses to be incurred, such as, but not limited to, Rental due under the Lakeshore Lease, real estate taxes, if any, and costs and expenses of maintaining sidewalks and streets, common parking spaces, emergency access to the Premises, landscaping, sewer lines, stormwater mains and service lines, stormwater retention/detention basins or ponds, trees, grassy and other open areas including the shoreline, visitor boat docking, a pool and clubhouse, and such further ancillary buildings and facilities as Master Lessee or the Homeowners Association shall from time to time construct and develop on the Premises, together with any additions thereto, renewals or replacements thereof and substitutions therefore during the ensuing calendar year to effect the purposes of the Homeowners Association, including the establishment and maintenance of a Rental Reserve payable to City under the Lakeshore Lease and other reasonable reserves for capital improvements and major repair; a copy of which estimated budget shall be provided to all Unit Owners at least thirty (30) days prior to its adoption by the Board. With respect to the Rental Reserve, each Unit Owner is obligated to pay to the Homeowner's Association an amount equal to the annual rental required under Article III of the Lakeshore Lease for the Unit owned by such Unit Owner and such payment shall be due and payable to the Homeowner's Association as an Assessment and collected on or before the date being one-hundred eighty (180) days immediately preceding the anniversary date of the Lakeshore Lease. In the event Master Lessee shall be in default under the Lakeshore Lease, each Unit Owner shall remit directly to the City the Rental required of each Unit under the Lakeshore Lease and the Homeowners Association shall be discharged of its obligation to assess Rental against each Unit Owner or maintain a Rental Reserve. The estimated cash requirement to discharge the operating costs reference herein shall be allocated among and assessed to the Unit Owners in the

manner hereinafter described. The Board shall give written notice, mailed or delivered, to each Unit Owner no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of any proposed budget or any increase or establishment of an assessment. On January 1st of the ensuing year and on or before the 1st day of each and every month (or other assessment period as the Board may establish as hereinafter provided) thereafter during said year, each Unit Owner shall be personally obligated to pay an installment of said Unit Owner's annual Association Assessment. Notwithstanding anything contained herein to the contrary, the Board shall have the right to establish that each Unit Owner shall be obligated to pay the annual Association Assessment due hereunder in one annual payment, two equal semi-annual installments or four equal quarterly installments, as well as twelve equal monthly installments; provided, however, that said payment schedule shall be uniformly and equally applicable to all Unit Owners within the Board's jurisdiction. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said "estimated cash requirement", any shortage or excess shall entitle the Board, upon giving written notice thereof to all Unit Owners within its jurisdiction, to adjust accordingly the amount of those installments of the current year's Association Assessment falling due after the date when the amount of such storage or excess is determined.

B. If, during an assessment year, said "estimated cash requirement" proves inadequate for any reason (including, for example, nonpayment by one or more Unit Owner of the respective Association Assessment), the Board may at any time levy an additional assessment. The Board shall serve notice of such additional assessment on all affected Unit Owners by a statement in writing setting forth the amount of such additional assessment and the reasons for it, and thereupon, such additional assessment shall become effective with the next installment of the applicable Association Assessment and all affected Unit Owners shall be personally liable for and obligated to pay their respective adjusted installments of that Association Assessment.

C. The failure or delay of a Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Unit Owner's obligation to pay the installment of the Homeowners Association Assessment, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, each Unit Owner shall continue to pay at the then existing Association Assessment rate established for the previous period.

D. On or before October 1 of each year, the Slip Owners shall provide the President of the Association with an estimate of the total amount necessary to pay for all costs and expense to be incurred for the maintenance, operation, security, insurance and repair and replacement of the Boat Docks during the ensuing calendar year. The Slip Owner's estimated expense shall be based upon the total number of boat slips existing on the date that the budget is submitted. For example, a Slip Owner's assessment shall be 1/12th of such total estimated costs and expenses for the ensuing calendar year if twelve (12) boat slips exist on the date the budget is submitted. Such assessment shall be paid in advance by each Slip Owner on January 1st of each year. In the event of a partial year, the assessment shall be prorated. If, during the calendar year, the assessment proves

inadequate for any reason, the Board may levy at any time an additional assessment on the Slip Owners. The Board shall serve notice of such additional assessment on all Slip Owners by a statement in writing setting forth the amount of such additional assessment and the reasons for it, and thereupon, such additional assessment shall be paid by the Slip Owners on the 1st day of the month following the date the Board approves such additional assessment. The Slip Owners shall be personally liable for and obligated to pay their respective share of such assessment based on the number of slips existing on the date of the additional assessment is approved. The expense of any unleased boat slips shall be borne by the Declarant utilizing the same formula contained within this paragraph.

6.4 **Special Assessment.** In addition to the annual Association Assessments authorized above, the Homeowners Association, with respect to the Common Area (except for the Limited Common Area), may levy in any assessment year a special assessment applicable to that year only or for several specified years, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, if any. The foregoing special assessment may be levied notwithstanding the fact that the Homeowners Association may have then accumulated a reserve.

6.5 **Uniform Assessment Amount.** Except as set forth in Section 6.6 below, both annual and special Association Assessments shall be the same amount for each Unit, notwithstanding the size of the Unit or the size or nature of the improvements on the Unit. Such Association Assessment shall be levied, paid, and collected on a monthly basis or on such other alternative payment schedule as the Board may establish in the manner provided in this Declaration.

6.6 **Commencement of Assessments.** The Association Assessment for each Unit shall commence on the date Master Lessee subleases that Unit to the Unit Owner thereof. Each Unit Owner shall be obligated to pay his, her, its or their share of the Rental of a Unit as determined in accordance with Section 3.01(b), (c) and (e) of the Lakeshore Lease and such Rental shall be assessed by the Association as part of the Association Assessment to the relevant Unit Owner. Notwithstanding anything in this Declaration which is or may appear to be to the contrary, as to the Association Assessment due with respect to those Units which have then been subjected to the jurisdiction of this Declaration but which have not been subleased to a Unit Owner (and except with respect to the payment of Rental under Section 3.01(a) of the Lakeshore Lease) Declarant shall only be obligated to pay to the Homeowners Association an eighteen twenty seconds (18/22nds) share of the amount of operating expenses incurred and paid with respect to those portions of the Premises having been subjected to the Declaration for use by the Homeowners Association. As each Unit is transferred to a Unit Owner by a Sublease, other than Declarant, Declarant's obligation to fund an eighteen twenty seconds (18/22nds) share of the Homeowners Association's operating expenses shall be reduced by one-eighteenth (1/18). When eighteen (18) Units have been transferred by a Sublease to a Unit Owner, other than Declarant, Declarant shall not be obligated to pay any further operating expenses or assessments of the Association. With

respect to Rental, Master Lessee shall only be obligated to pay its share of Rental as determined in accordance with Section 3.01 of the Lakeshore Lease. Declarant shall make such payments to the Homeowners Association as needed from time to time after the Homeowners Association Incorporation Date (but at least quarterly) and a final accounting shall be made between Declarant and the Homeowners Association within ~~120 days of the date of the initial meeting of the Members as provided in the By-Laws.~~ For purposes of this Section 6.6, the operating expenses shall refer solely to the ordinary expenses attributable only to the period in question covering maintenance and operation of the Common Area and shall not include, nor shall Declarant be responsible for the payment of, capital expenditures, reserves for contingencies or replacement, special assessments, repair items or inventory items.

6.7 Delinquent Assessments. Installments of any Association Assessment shall be due on the first day of each applicable assessment period and if not paid when due, shall be delinquent. If payment of said installment of an Homeowners Association Assessment is not made on or before the 10th day following the date upon which it is due, then the delinquent Unit Owner shall pay to the Homeowners Association (which, in turn, shall, if applicable, be paid by the Homeowners Association to any management company or agent responsible for maintenance, repair and replacement of the Common Area or other matters hereunder) a late charge of nine (9) percent of the installment amount for each month or portion thereof that said installment remains delinquent, said late charge to cover the Homeowners Association's administrative costs in monitoring and collecting said installment. In addition, the Homeowners Association may bring an action at law against the Unit Owner personally obligated to pay said delinquent installment(s), or may foreclose its lien against said Unit Owner's Unit, and in either event, there shall be added to the amount of such delinquent Homeowners Association Assessment installment(s) (and in the amount of said lien) late charge(s) and the cost of collection, including reasonable attorneys' fees and all court costs. Each Unit Owner, by the acceptance of a sublease of an undivided interest under the Lakeshore Lease with respect to a Unit, hereby expressly vests in the Homeowners Association or its agents, the right and power to bring all actions against such Unit Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien or liens by all methods available or the enforcement of such liens including foreclosure by an action brought in the name of the Homeowners Association in a manner similar to the type of action instituted to foreclose the lien of a mortgage or deed of Trust on real property and/or maintain an action under Article IX of the Illinois Code of Civil Procedure (Forcible Entry and Detainer).

6.8 Priority of the Lien for Assessment. The lien or liens for any Association Assessment as it relates to each Unit shall be subordinate to the liens of any Unit Mortgage now or hereafter recorded against the leasehold interest in and to any Unit provided that said Mortgage is recorded prior to the recording of any such liens for delinquent Association Assessment installment(s). In the event that title to any Unit is transferred either pursuant to the foreclosure of a Mortgage or by assignment in lieu of such foreclosure, such transfer shall extinguish the lien for Association Assessment payment(s) for sums which became due prior to the first to occur of (a) the date of the

transfer of the aforesaid interest and (b) the date on which the transferee comes into possession of the Unit. Notwithstanding the foregoing, said transferee of said Unit shall be liable for said transferee's share of any sums with respect to which a lien against said transferee's Unit has been extinguished pursuant to the preceding sentence and non-payment thereof by said transferee shall result in a lien against said transferee's Unit. The amount of the delinquency will be reallocated equally among all Unit Owners other than the transferee and will be paid by those Unit Owners through a special assessment. When such lien is paid in full by transferee to the Homeowners Association, the Unit Owners who paid the special assessment will receive a credit against their monthly assessments allocated equally over a twelve-month period.

Any Mortgage recorded against a leasehold interest in and to any Unit by a Unit Mortgagee shall also provide for a collateral assignment of the leasehold interest in favor of the Unit Mortgagee. The Sublease between Master Lessee and the Unit Owner shall provide that in the event a Unit Owner fails to pay Master Lessee rent due under the Sublease, Master Lessee may take any and all action permitted under Article IX of the Illinois Code of Civil Procedure (Forcible Entry and Detainer) to terminate the Sublease and take possession of the Unit along with Buildings and Improvements thereon. Subject to Section 11.8A of this Declaration, a Unit Mortgagee may cure Unit Owner defaults within thirty (30) days after written notice to a Unit Mortgagee or to permit an assignment of the Sublease provided that Unit Owner defaults are cured before such assignment.

6.9 **Itemized Accounting.** The Board shall annually supply to all Unit Owners an itemized accounting of the expenses incurred or paid for the preceding year, together with a tabulation of the assessments collected for such year, and showing the net excess or deficit of income over expenditures plus reserves.

6.10 **Real Estate Taxes for the Common Area and the Units.** Notwithstanding anything to the contrary herein contained, from and after the date of recording of this Declaration, the Unit Owners shall be responsible to pay and discharge any and all general and special real estate taxes and assessments levied by any public authority with respect to the Common Area, including the Limited Common Areas. Notwithstanding anything to the contrary herein contained, from and after the date of recording of this Declaration, each Unit Owner shall be responsible to pay and discharge any and all general and special real estate taxes and assessments levied by any public authority with respect to such Unit Owner's Unit. In the event of a failure by a Unit Owner or such other responsible person to pay such general and special real estate taxes and assessment with respect to such Unit Owner's Unit when due, and if such failure would give rise to a lien on City's Estate, then (to the extent permitted by law) the Homeowners Association shall be obligated to redeem or purchase any defaulted taxes and specially assess the cost of such redemption or purchase against the Unit to which such defaulted taxes are attributable.

ARTICLE 7

INSURANCE

7.1 Insurance to be Maintained by the Homeowners Association. The Board, on behalf of the Homeowners Association, shall have the authority to and shall obtain (and the Board shall obtain with the premiums therefor being part of the assessment levied pursuant to Article 6) the following policies of insurance:

A. Physical damage insurance on the Common Area (and including fixtures on the Common Area and any personal property and supplies of the Homeowners Association) against loss or damage by fire and against loss or damage by all other hazards now or hereafter covered by the standard extended coverage endorsement, with an inflation guard endorsement and a building ordinance or law endorsement, all in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof. The "full insurable replacement cost" of the Common Area shall be determined from time to time by the Board, which determination may be based upon appropriate insurance appraisals. Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property and such other perils as may be determined by the Board. All such policies of insurance shall name as insureds the Declarant so long as the Declarant has an insurable interest, the Homeowners Association, and those parties specified in Section 13.09 of the Lakeshore Lease.

B. Commercial general liability insurance against claims for personal injury or death or property damage suffered by the public or by any Unit Owner occurring in, on or about the Common Area or upon, in or about the streets and passageways and other areas adjoining the Common Area, with such limits as the Board shall deem desirable; provided, however, that such limit, shall be no less than \$1,000,000.00 per occurrence for bodily injury, including death and property damage and no less than \$1,000,000.00 in the aggregate for personal injury. All policies of insurance of the character described in this subparagraph shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner on account of the negligent acts of the Homeowners Association or another Unit Owner, and shall be endorsed to cover cross-liability claims of one insured against the other. All such policies shall name as insureds the Declarant so long as the Declarant has an insurable interest, the Homeowners Association, and those parties specified in Section 13.09 of the Lakeshore Lease.

C. Such worker's compensation insurance as may be necessary to comply with applicable Federal and State of Illinois laws.

D. Employer's liability insurance in such amount as required to be maintained pursuant to Section 13.09 of the Lakeshore Lease.

E. Fidelity insurance against dishonest acts on the part of directors, officers, managers, trustees, employees, managing agents or volunteers responsible for handling funds belonging to or administered by the Homeowners Association, written in an

amount which is no less than the amount of funds within the custody or control of the Homeowners Association at any time, plus all reserves held by the Homeowners Association. Such policy of insurance or bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such policy of insurance or bond shall name as insured or obligee the Homeowners Association.

F. If any improvements on the Premises are within a Special Flood Hazard Area as shown on the applicable Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, flood insurance on the Common Area, including all contents which are located on the Common Area, for an amount not less than one hundred percent (100%) of the full replacement cost thereof on a blanket basis or the maximum coverage available through the National Flood Insurance Program, if less than full replacement cost.

G. All insurance required to be maintained by the Homeowners Association pursuant to Section 13.09 of the Lakeshore Lease, including comprehensive automobile liability insurance.

H. Such other insurance in such reasonable amounts as the Board shall deem desirable.

All insurance provided for in this Section 7.1 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Site Category Rating of not less than A/VIII to Best's Insurance Reports-International Edition or a substantially equivalent rating from a nationally-recognized insurance rating service. All such policies shall provide a minimum of ten (10) days advance notice of modification or cancellation in writing to the insured thereunder. The Board shall have the right to select deductibles to the insurance coverages required or permitted under this Section 7.1 if the economic savings justify the additional risk and if permitted by law; provided, however, that no deductibles shall exceed the lesser of (i) \$1,000.00 (\$5,000.00 with respect to a flood insurance policy); or (ii) one percent (1%) of the face amount of the insurance policy to which such deductible applies, and further provided that funds to cover any deductible amounts shall be maintained as part of the reserve account.

I. The policies of insurance, or a certificate thereof, shall be approved by the Risk Management Department of City and shall be deposited with and kept on file by the Risk Management Department. Declarant's and the Homeowners Association's policies are subject to annual review by City and an increase in the amounts of coverage may be required by City to account for inflation.

7.2 Unit Owner's Insurance.

A. Each Unit Owner with respect to such Unit Owner's Unit, hereby agrees and covenants to procure and maintain in full force and effect at all times liability

insurance with such limits of liability as the Board may prescribe from time to time, including liability for injuries to and death of persons, in connection with such Unit Owner's exclusive use and possession of such Unit Owner's Limited Common Area and those portions of the Common Area other than the Limited Common Area upon which permitted improvements serving exclusively a Unit may be situated pursuant hereto, and to this end, the Limited Common Area appurtenant to such Unit Owner's Unit and such other portions of the Common Area as aforesaid shall be considered as if it were a part of such Unit Owner's Unit.

B. Each Unit Owner hereby agrees and covenants to procure and maintain insurance in full force and effect at all times insuring the Unit and other improvements comprising such Unit in an amount equal to not less than 100% of the replacement cost of such Unit and other improvements. In addition, each Unit Owner further agrees to procure sufficient insurance to cover the cost to remove any and all debris from the Premises (including removal and demolition of the improvement located on the Unit Lease) and filling all excavations and returning to surface grade upon a Casualty occurring with respect to such Unit Owner's Unit.

C. All insurance required to be maintained by a Unit Owner under Sections 7.2(A) and 7.2(B) shall include endorsements naming as insureds the Homeowners Association as additional insureds as their interests may appear.

7.3 Damage and Restoration.

A. If a Unit shall be damaged by a Casualty (regardless of the amount of the loss or the existence of insurance to cover such loss, the Unit Owner shall have two hundred seventy (270) days from the event giving rise to the Casualty to cause the Restoration of the Unit and receive a Certificate of Occupancy from the City for such Unit ("Completion Date").

B. If the Unit Owner does not complete Restoration within the Completion Date (hereinafter "Defaulting Unit Owner"), Master Lessee may, at its option, upon written notice to the Defaulting Unit Owner, terminate such Defaulting Unit Owner's Sublease or (with or without terminating the Unit Lease), to terminate the Defaulting Unit Owner's possession of the Premises. In either event, Master Lessee or its agents and servants may, unless prevented by court order, immediately or at any time thereafter re-enter the Premises, remove all persons and all or any property therefrom, whether or not by any available action or proceeding at law or in equity, and repossess and enjoy the Premises, as its former estate, together with the Buildings and Improvements made to any of the foregoing or to the Premises during the term of the Lakeshore Lease. In addition, as to a Defaulting Unit Owner, Master Lessee may, but shall have no obligation to, at any time after the Completion Date, whether or not the Sublease has been terminated, relet the Unit, and receive and collect Association Assessments from such subsequent Unit Owner. The Defaulting Unit Owner shall be responsible for the payment of any costs and expenses (including reasonable attorneys' fees and costs) incurred by Master Lessee in recovering possession of the Unit Lease. Defaulting Unit Owner shall be liable for

Association Assessments through the date the Unit is relet by Master Lessee and liquidated damages in the amount of Twenty Thousand (\$20,000.00) Dollars to compensate the Association for costs related to making the Unit available for reletting in such event of casualty.

ARTICLE 8

SPECIFIC RESTRICTIONS AND PROVISIONS RELATING TO USE AND IMPROVEMENT OF UNITS AND COMMON AREA

8.1 **Improvements on a Unit.** Subject to Declarant's development plan and its large scale development plan approved by City pursuant to the Large Scale Ordinance of the City (Ordinance No. 503-09-04) each Unit may be improved to the property boundary line of that Unit, provided that only one Unit for a single family occupancy and accessory structures incident thereto shall be constructed or located on that Unit. The exterior walls of all Units shall be of brick construction. The improvement of a Unit with one Unit shall conform with applicable ordinances of City.

8.2 **Restriction on the Use of a Unit.**

A. A Unit Owner's use of the Premises is restricted by the terms and conditions contained in the Lakeshore Lease. In addition, each Unit shall be used only for residential purpose, and not for the conduct of any trade or business; provided, however, each Unit Owner shall have the right, subject to applicable City ordinances, to (i) maintain such Unit Owner's personal professional library therein; (ii) keep such Unit Owner's personal, business or professional records or accounts therein; (iii) handle such Unit Owner's personal, business or professional telephone calls or correspondence therefrom; and (iv) maintain a computer or other office equipment therein. A Unit Owner's use of a Unit shall not endanger the health or disturb the reasonable enjoyment of any other Unit Owner or Occupant, except that the foregoing restriction on disturbing reasonable enjoyment shall not be deemed to preclude or prohibit any of the rights or activities expressly reserved by or granted in this Declaration, to Declarant and the Homeowners Association. All uses of Units shall comply with all applicable ordinances of the City, including the City's zoning code.

B. No Unit Owner shall do or permit to be done on such Unit Owner's Unit or anywhere else in the Premises any act or thing which will impair any easement or hereditament granted to any other party, nor shall any Unit Owner create or permit to exist on such Unit Owner's Unit or anywhere else in the Premises any condition which will adversely affect the use or enjoyment of the Premises or any part or portion thereof by any party entitled to such use or enjoyment.

C. No nuisance, noxious or offensive activity shall be or permitted to be carried on by any Unit Owner on such Unit Owner's Unit or anywhere else in the Premises nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to any other Unit Owner or

Occupant.

D. In addition to the restrictions set forth in this Declaration, the Homeowners Association may from time to time adopt such rules and regulations governing the use or enjoyment of the Units as the Board, in its reasonable discretion, deems desirable, appropriate or necessary; provided, however, that, except as stated in the Declaration, the Homeowner's Association shall not establish (by rule, regulation or otherwise) any restriction on ownership or occupancy of Units by Unit Owners and/or guests of a Unit Owner based on age or family relationship, except by vote of the holders of eighty (80) percent or more vote of the Unit Owners.

8.3 **Prohibition on Use or Occupancy of Temporary Structures.** Except as expressly hereinafter provided, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used as a residence at any time, either temporarily or permanently.

8.4 **Prohibition on Advertising.** Except for Declarant and its activities within the Premises, no advertising sign (excluding customary "For Rental" and "For Sale" signs), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on a Unit, a Unit or any Limited Common Area, except as may be approved in advance by the Board.

8.5 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Unit, Common Area or Limited Common Area, except dogs, cats or other common household pets (not to exceed a total of two (2) pets for each Unit) may be so kept; provided, that they are not kept, bred or maintained for any commercial purpose and provided further that they are kept, bred and maintained solely on the Unit and in accordance with rules and regulations adopted by the Board.

8.6 **Garbage.** All rubbish, trash, and garbage shall be kept on each Unit so as not to be seen from neighboring Units or the Access Drive and shall be regularly removed from each Unit and shall not be allowed to accumulate thereon. In addition to the foregoing, all rubbish, trash and garbage shall be stored and removed in accordance with the rules and regulations adopted by the Board.

8.7 **Prohibited Exterior Activities/Improvements.**

A. Hanging of clothes shall be confined to the interior of each Unit.

B. Without prior written authorization of the Board, no television or radio antennas or television satellite dishes of any sort shall be placed, allowed or maintained on the exterior of any Unit, on any portion of the exterior of any other improvements located on any Unit, nor in a free-standing nature elsewhere on any Unit or Limited Common Area.

8.8 **Parking of Automobiles, Boats, Vans and other Vehicles.** Parking

areas and driveways shall be used for parking operable automobiles and private vans only. No pick-up trucks and trucks of similar size and nature, vans, campers, trailers, boats, snowmobiles and other vehicles shall be parked on the exterior of any Unit, Unit or the Common Area. No parking of any vehicles shall be allowed in any portion of the Common Area except in areas which may be designated by the Board for such parking (if any). ~~The Board may authorize vehicles parked in violation of the Homeowners Association's rules and regulations with respect thereto to be towed away and any such towing charge shall become a lien upon the Unit of the Unit Owner who owns such vehicle or of whom the owner of such vehicle is the guest, in the same manner as provided in this Declaration for nonpayment of assessments.~~

8.9 Exceptions to Restrictions.

A. The foregoing covenants of this Article shall not apply to the activities of Declarant or the Homeowners Association.

B. Declarant, or parties who enter into a sales agreement with Declarant with respect to the development of the Premises, may maintain, while engaged in constructing and selling activities, in or upon such portions of the Premises as Declarant determines, such vehicles and temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, garages, signs and construction and storage trailers.

8.10 Party Walls and Common Roofs.

A. All dividing walls which straddle the boundary line between Units and which serve two Units shall at all times be considered party walls, and each of the Unit Owners of the affected Unit upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for support of said Units and for the support of any building constructed to replace the same. Each affected Unit Owner shall have the right to maintain in or on said wall any pipes, ducts and conduits originally located therein or thereon, subject to the restrictions herein contained. No Unit Owner shall have the right to extend any such party wall in any manner, either in length, height or thickness. All roofs which straddle the boundary line between Units and which serve two Units shall at all times be considered common roofs, and each of the Unit Owners of the affected Units shall have the right to use said common roofs, including in any building constructed to replace an original building. No Unit Owner shall have the right to extend said roofs in any manner.

B. In the event of required repairs or damage to or destruction by fire or other casualty of all or any portion of any party wall, including the foundation thereof, or any common roof, the Unit Owners of the Unit upon which such party wall or common roof may rest shall have the obligation to repair or rebuild such wall or roof and the Unit Owner of any Unit upon which such wall or common roof shall rest, be served or be benefited by shall pay such Unit Owner's equal share of the cost of such repair,

replacement or rebuilding. All such repair, replacement or rebuilding shall be done within a reasonable time in a good and workmanlike manner with materials comparable to those used in the original wall or roof and shall conform in all respects to applicable laws or ordinances in force at the time of such repair, replacement or reconstruction. Whenever any such wall or roof (or portion thereof) shall be repaired, replaced or rebuilt, it shall be erected in the same location and be of the same size and materials as the original wall or roof. The foregoing notwithstanding, a Unit Owner shall retain the right to receive a larger contribution from another Unit Owner or others under any rule or laws regarding liability for negligent or willful acts or omissions. The right of any Unit Owner to contribution from any other Unit Owner or others under this Section 8.10 shall be appurtenant to the land and shall pass to such Unit Owners successors in title. If either Unit Owner shall neglect or refuse to pay his/her/its/their common share, or all or part of such costs in the case of negligence, the other Unit Owner may have such common structure repaired or restored and shall be entitled to have a lien on the Unit of the other Unit Owner so failing to pay for the amount of such defaulting Unit Owner's share of the repair or replacement costs together with interest at the rate of six (6) percent per annum. The Unit Owner having such common structure repaired or replaced shall, in addition to the lien provided for herein, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or at law. The lien granted herein is effective only if recorded in the Recorder's Office of Sangamon County, Illinois, by affidavit declaring under oath the claim of the lien.

C. A Unit Owner, who by his/her/its/their negligence, disinterest or willful act causes a party wall or roof to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and shall pay damages from such exposure. Each Unit Owner shall share equally in the costs to repair or maintain the roof over the party wall due to normal wear or physical damage. If both roofs need to be replaced, replacement shall be coordinated between the Unit Owners.

D. The title of each Unit Owner to the portion of a party wall or common roof within or a part of a Unit is subject to a cross easement in favor of the adjoining Unit Owner for joint use of said wall or common roof. In the event that the party wall, or any portion thereof now or at any time in the future, because of shifting, settling, original construction or otherwise, actually encroaches upon any portion of the Unit of another Unit Owner, there shall be deemed an easement therefore in favor of the Unit Owner whose Unit so encroaches, but only to the extent and for so long as such encroachment shall exist. Except as expressly provided to the contrary herein, the easements or cross-easements hereby created shall not terminate in the event that the party wall, or any portion thereof, has been destroyed or materially damaged but shall remain in full force and effect.

8.11 **Sales, Transfer, Leases, and Mortgages by Unit Owners.** If any Unit Owner, other than the Declarant, or Unit Mortgagee taking possession of a Unit Owner's Unit under applicable Illinois law (a "Seller"), shall desire at any time to sell or assign to purchaser such Unit Owner's Unit and Sublease, other than to a co-owner of the same Unit, Seller shall first give the Board at least thirty (30) days' prior written notice of the proposed sale, which notice shall state the name and address of the proposed purchaser

and the terms of the proposed sale. During the period of thirty (30) days following the receipt by the Board of such written notice, the Board shall have the first right at its option to purchase such Unit upon the terms as the proposed sale described in such notice. Notwithstanding the provisions of this Article, a Unit Owner shall have the right without the consent of the City, the Homeowner's Association or the Board, to ~~collectively assign such Unit Owner's Unit and Sublease with respect to such Unit Owner's Unit.~~ However, no Unit Mortgage shall extend to or affect all or any portion of the City's Estate. The Unit Owner's interests in the Sublease, including, but not limited to, the Unit, the Limited Common Area appurtenant to the Unit, and the undivided one twenty-second ($1/22^{\text{nd}}$) interest in the Common Area, shall not be separately transferable, and any attempted assignment or lease of one or more (but not less than all) of such interests shall be deemed an assignment or lease of all interests. The foregoing provision shall not apply to the Unit Owner's interest in a boat slip, which is a Limited Common Area and covered separately under Section 4.3 D of this Declaration.

If the Board shall give written notice to such Seller within said thirty (30) day period that it has elected not to exercise such option, or if the Board shall fail to give written notice to such Seller within said thirty (30) day period that it does or does not elect to purchase such Unit upon the same terms as herein provided them, such Seller may proceed to consummate said proposed sale transaction at any time within the next ninety (90) days thereafter; and if Seller fails to consummate said proposed sale transaction within said ninety (90) days, Seller's Unit shall again become subject to the Board's right of first option as herein provided. If the Unit Sublease is sold, the Unit will be subject to all of the provisions of this Declaration.

If the Board shall give written notice to such Seller within said thirty (30) day period of its election to purchase such Unit upon the same terms as the proposed sale described in said written notice to it, then such purchase by the Board shall be closed upon the same terms as such proposed sale. The Board shall have the authority to elect not to exercise such option and to give written notice to such election. A certificate executed and acknowledged by the president or secretary of the Board, certifying that the Board has elected not to exercise such option to purchase such Unit upon the terms of such proposed sale, shall be conclusive evidence of such election by the Board and of the compliance with the provisions hereof by the Seller proposing to make such proposed sale. Such certificate shall be furnished to such Seller upon his compliance with the provisions hereof.

If the Board shall adopt a resolution recommending that it shall exercise its option to purchase such Unit upon the terms of such proposed sale, the Board shall promptly call a meeting of all of the Unit Owners for the purpose of voting upon such option, which meeting shall be held within said thirty (30) day period. If Unit Owners owning not less than $66\frac{2}{3}\%$ in the aggregate in interest of the undivided ownership of the Common Area by affirmative vote at such meeting, authorize the Board to exercise such option to make such purchase, then the Board shall promptly give written notice of such election as herein provided. In such event, such purchase by the Board shall be closed and consummated, and, to such purpose, the Board shall have the authority to make such mortgage or other financing arrangements, and to make such assessments proportionately among all the respective Unit Owners, and to make such other arrangements, as the

Board may deem desirable in order to close and consummate such purchase or lease of such Unit by the Board.

If the Board shall make any such purchase of a Unit as herein provided, the Board or its nominee shall hold the same for the benefit of the remaining Unit Owners and shall have the authority at any time thereafter, upon the approval of not less than 66- 2/3 % in the aggregate in interest of the undivided ownership of the Common Area obtained at a meeting duly called for such purpose, to sell and/or lease such Unit upon such terms as the Board shall deem desirable, and all of the net proceeds or deficit therefrom shall be applied among or charged to, such remaining Unit Owners in proportion to their respective ownership interest in such Unit pursuant to the schedule attached hereto as Exhibit C.

A Unit Owner shall not lease his, her or its Unit and Sublease without the prior written consent of the Board. If a lease of any Unit and Sublease is made by any Unit Owner, after compliance with the foregoing provisions, a copy of the lease as and when executed shall be furnished by such Unit Owner to the Board, and the lessee thereunder shall be bound by and be subject to all of the obligations of such Unit Owner with respect to such Unit as provided in this Declaration and the By-Laws, and the lease shall expressly so provide. The Unit Owner making any such lease shall not be relieved thereby from any of his, her or its obligations under the lease with Master Lessee. Upon the expiration or termination of such lease, a Unit Owner must receive the Board's prior written consent to re-let the Unit and Sublease.

If any sale of a Unit and Sublease or lease of a Unit and Sublease is made or attempted by any Unit Owner without complying with the foregoing provisions, such sale or lease shall be subject to each and all of the rights and options of the Board hereunder and each and all of the remedies and actions available to the Board hereunder or at law or in equity in connection therewith including, but not limited to, having the sale or lease declared void by a court of competent jurisdiction.

The foregoing provisions with respect to the Board's right of first option as to any proposed sale shall be and remain in full force and effect, unless sooner rescinded or amended by the Unit Owners in the manner herein provided for amendments of this Declaration. The Board may adopt rules and regulations from time to time, not inconsistent with the foregoing provisions, for the purpose of implementing and effectuating the foregoing provisions. For the purposes of this Article VI, the word "Unit Owner" shall include any beneficiary of a trust, shareholder or a corporation or partner of a partnership holding legal title to a Unit.

A Unit Owner's Unit, the Sublease and any subsequent Sublease of each Unit Owner's Unit and Sublease to a Tenant are subject to the terms and conditions incorporated in this Declaration and the Lakeshore Lease.

8.12 Initial Construction of a Unit. Upon the initial construction of each Unit subject to this Declaration a Unit Owner (other than Declarant) must construct and obtain a Certificate of Occupancy from the City on the Unit within eighteen (18) months from the date that the Unit Owner takes possession of the Unit under a sublease from Master

Lessee. If such Unit Owner fails to comply with this Section 8.12, then the Unit Owner's interest under the Sublease shall be terminated through eviction proceedings by Master Lessee under Article IX of the Illinois Code of Civil Procedure (Forcible Entry and Detainer) without any compensation to such Unit Owner therefore whatsoever. Such Unit Owners shall be responsible for (i) Association Assessments through the date the Unit is relet by the Master Lessee, and (ii) the payment of any costs and expenses (including reasonable attorneys' fees and costs) incurred by Master Lessee in recovering possession of the Unit Lease.

ARTICLE 9

ARCHITECTURAL CONTROLS

9.1 **Architectural Standards.** All Units, accessory structures, additions thereto, landscaping, and any other exterior aspect of a Unit or of the Common Area (including the Limited Common Area), whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled on the exterior, placed or installed in compliance with all requirements of this Article 9 and other applicable provisions of this Declaration as well as all applicable City ordinances and codes, and all applicable provisions of the Lakeshore Lease. All Units, accessory structures, additions thereto, landscaping, patios and any other exterior aspect of a Unit or of the Common Area (including the Limited Common Area), whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled on the exterior, placed or installed in such manner so as to preserve the architectural and aesthetic appearance of the Premises and so as not to impair the value of the property of all Unit Owners and shall be undertaken in a manner that is consistent with the use of the Premises as a quality residential subdivision. Any Unit, accessory structure, additions thereto, landscaping, and any other exterior aspect of a Unit or of the Common Area constructed and installed by the Declarant in connection with the initial construction of improvements and in accordance with all applicable City ordinances, codes, standards, rules and regulations shall conclusively be deemed to comply with the standard contained in this Section 9. Each of Units 1 through 6 shall be constructed to conform to existing exterior components of Units previously constructed within this set of Units unless all Unit Owners approve of a requested change to this requirement by a Unit Owner at a duly called meeting of the Voting Members or by all Unit Owners prior to formation of the Homeowners Association. By way of illustration, the steel roof, stone, fascia/soffit, gutters, windows, and other exterior components must be of like color and grade and the square footage of this set of Units shall be equivalent. Each of Units 7 through 11 shall be constructed to conform and duplicate as nearly as possible the existing exterior components, style and architectural aspects and features of Units 1 through 6, excepting a walk-out basement. No structure shall be built on any Unit lot larger than a duplex.

9.2 **Board Approval.** Other than as installed or approved by Declarant in connection with the initial construction of Units and the Common Area, no building, wall or other structure, landscaping or other permitted improvement, or any change in the exterior color of any Unit, shall be commenced, erected, maintained or undertaken upon a

Unit or upon the Common Area (including the Limited Common Area) nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration be made to the exterior portion of any Unit until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structure and topography and compliance with the provisions of Section 9.1 by the Board or by an architectural committee initially comprised of the Declarant and, thereafter, after the Class B Member Termination Date or at such earlier date as approved by Declarant, of three or more persons appointed by the Board. The Board's, or its architectural committee's, failure to notify the Unit Owner who has submitted such plans and specifications of its approval or disapproval of such design, location and compliance within ninety (90) days after said plans and specifications have been submitted shall be deemed to be the Board's, or its architectural committee's disapproval thereof. Any work performed in accordance with this Section 9.2 shall not be undertaken without the issuance of all appropriate permits and approvals by the City.

9.3 **Effect of Board Approval.** The approval by the Board of plans, specifications and standards pursuant to Section 9.2 shall in no event be construed as representing or implying that such plans and specifications or standards shall, if followed, result in properly designed construction. Such approvals and standards shall in no event be construed as representing or guaranteeing the Unit or other improvement/landscaping performed in accordance therewith shall be built in a good and workmanlike manner. Neither Declarant nor the Homeowners Association shall be responsible or liable for any defects in any plans or specifications or standards submitted, revised or approved pursuant to this Article 9, any loss or damage to any person or property arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans and specifications or standards with any governmental ordinances or regulations, or any defects in construction pursuant to such plans or specifications or standards. The applicable Unit Owner shall be solely responsible to apply and pay for and obtain any and all required governmental approvals, permits and licenses, and to comply with the requirements of all ordinances and regulations of the City (including its zoning ordinance), all applicable building, health, and safety codes and all recorded restrictions, covenants and conditions applicable to said Unit, including, but not limited to, the provisions of the Lakeshore Lease. Architectural approval given to any one Unit Owner shall be based upon the Board's reasonable discretion and shall not be construed as, or interpreted to be or require, architectural approval of any part or portion of any other Unit Owner's proposed action even if such proposed action is identical or substantially similar to an action which has previously received architectural approval.

ARTICLE 10

REQUIRED PROVISIONS

The Homeowners Association and the Unit Owners agree as follows:

A. The Homeowners Association shall give to each Unit Owner and to each Unit Mortgagee prompt notice of the receipt by the Homeowners Association of any notice of Default under the Lakeshore Lease given at any time by City to the Homeowners Association or of a default by the Unit Owner under the sublease provided that written notice of the Unit Mortgagee's contact information, along with identifying Unit information, is tendered to the Homeowners Association by Unit Mortgagee prior to an event of default.

B. With at least 24 hours advance written notice delivered to the Unit Owner, the Homeowners Association shall have the right of access to each Unit (by means of duplicate or master keys or other similar technology); provided, however, that authorized representatives of the Homeowners Association may, without notice in case of a bona fide emergency, enter upon such Unit.

C. Each Unit Owner shall be obligated to comply with the provisions of the Lakeshore Lease to the extent that such requirements apply directly and exclusively to the Unit Owner or to the Unit of such Unit Owner.

D. Each Unit Owner hereby expressly acknowledges that he, she, it or they take their Sublease subject to the provisions of the Lakeshore Lease.

ARTICLE 11

GENERAL PROVISIONS

11.1 Enforcement of this Declaration.

A. The Homeowners Association, any Unit Owner, City (only with respect to its specific rights hereunder), and at all times prior to the Class B Member Termination Date, Declarant (in its capacity as such), shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, rights, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Unit Owner found by a court of competent jurisdiction to be in violation of any of the foregoing shall also be liable for reasonable attorneys' fees and court costs incurred by the prevailing party in prosecuting such action. The amount of such attorneys' fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Unit Owner's Unit, enforceable as other liens herein established. Failure by the Homeowners Association, any Unit Owner, the City (with respect to its rights hereunder) or Declarant to enforce any covenant, restriction, easement, condition, reservation, lien or charge herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. In amplification of and in addition to the provisions contained in the other provisions of this Declaration, in the event that any Unit Owner shall be in violation of any provision of this Declaration, the Homeowners Association may and shall have each and every right and remedy as shall otherwise be provided or permitted by law, including

the right to take possession of such Unit Owner's Unit for the benefit of all other Unit Owners by an action for possession in the manner prescribed in Article IX of the Code of Civil Procedure.

11.2 **Partial Invalidity.** Invalidation by judgment or court order, of any one of the covenants, conditions, restrictions, terms, reservations, rights, liens, charges or other provisions in this Declaration or of the application thereof to any particular person or circumstance shall in no way affect any other covenant, condition, restriction, term, easement, reservation, right, lien, charge or other provision, or the application of such covenant, condition, restriction, term, easement, reservation, right, lien, charge or other provision, to other persons or circumstances and this Declaration in all such other respects shall remain in full force and effect.

11.3 **Term of this Declaration and Amendment of this Declaration by Unit Owners.** The covenants, conditions, easements, rights, reservations and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, Declarant (prior to the Class B Termination Date), the Homeowners Association, City and each Unit Owner subject to this Declaration, their respective legal representatives, heirs, successors, sublessees and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions, easements, rights, reservations and restrictions shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants, conditions, easements, rights, reservations and restrictions of this Declaration may be amended during the first sixty (60) year period or within any successive ten (10) year period by an instrument signed by those Members entitled to cast eighty percent (80%) or more of the total votes of the Homeowners Association and, before the Class B Termination Date, the affirmative vote of the Declarant, and joined by City, which executed instrument is then properly recorded. Notwithstanding the foregoing sentence to the contrary, (i) no such amendment whose purpose or effect is to reclassify the Limited Common Area appurtenant to a Unit or is to limit, diminish or otherwise alter the rights of any Unit Owner in and to the Limited Common Area appurtenant to such Unit Owner's Unit, shall be of any force or effect without the express prior written consent of each Unit Owner whose appurtenant Limited Common Area is proposed to be effected thereby; and (ii) no such amendment whose purpose or effect is to modify a Required Provision shall be of any force or effect without the prior written consent of City. Further, no amendment of City's rights herein contained shall be effective without having first obtained the prior written approval thereof by the corporate authorities of City. Any request by the Homeowners Association for an amendment to the Large Scale Ordinance of the City (Ordinance No. 503-09-04) must be signed by those Members entitled to cast seventy-five percent (75%) or more of the votes of the Homeowners Association and before the Class B Termination Date, the affirmative vote of the Declarant and joined by City. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of the Recorder of Deeds of Sangamon County, Illinois and a true, complete copy of such instrument shall be transmitted to each Unit Owner and City promptly. Notwithstanding the foregoing, Declarant shall have the right, without having to obtain the signature or consent of any other party, to amend this Declaration in the

manner herein expressly provided; provided however, that any amendment by Declarant to this Declaration whose purpose or effect is (i) to reclassify any Limited Common Area appurtenant to a Unit or is to limit, diminish or otherwise alter the right of a Unit Owner in and to the Limited Common Area appurtenant to such Unit shall require the written consent of such Unit Owner to such amendment; and (ii) to modify or amend a Required Provision shall require the express prior written consent of City. Notwithstanding any of the foregoing to the contrary, this Declaration shall automatically terminate and be of no further force or effect upon the Termination Date (as defined under Section 2.01 of the Lakeshore Lease), unless the lease is extended pursuant to the provisions of Section 3.02 of the Lakeshore Lease.

11.4 **Rule Against Perpetuities.** If and to the extent that any of the covenants, conditions, restrictions, terms, easements, reservations, rights, liens, charges or other provisions contained in this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants, conditions, restrictions, terms, easements, reservations, rights, liens, charges or other provisions may be valid, then the covenant, condition, restriction, term, easement, reservation, right, lien, charge or other provision concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants who are living at the date of this Declaration of Tim Davlin, current Mayor of Springfield, Illinois.

11.5 **Notices.** Any notices required or desired to be sent to any Member of the Homeowners Association, a Unit Owner, or City under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of the City, such Member of the Homeowners Association or Unit Owner (as the case may be), as such address appears on the records of the Homeowners Association at the time of such mailing. All notices so mailed shall be deemed received three (3) business days after mailing.

11.6 **Covenants, Conditions, Restrictions, Rights, Reservations, Easements, Agreements and other Provisions to Run with Land.** All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Premises and their respective grantees, heirs, successors, personal representatives, sublessees, and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Premises or any part thereof. Reference in the respective sublease of an undivided interest under the Lakeshore Lease, or in any mortgage or trust deed or other evidence of obligation with respect to any part of the Premises, to the easements, rights, covenants, agreements, reservations, restrictions and conditions herein described shall be sufficient to create and reserve such easements, rights, covenants, agreements, reservations, restrictions and conditions to the respective grantees, mortgagees or trustees of such parts of the Premises as fully and completely as though said easements, rights,

covenants, agreements, reservations, restrictions and conditions were fully recited and set forth in their entirety in such document.

11.7 **Interpretation of this Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a quality residential development.

11.8 **Rights of Unit Mortgagees, Insurers and Guarantors.** The following provisions are intended for the benefit of each Unit Mortgagee and to the extent, if at all, that any other provision of this Declaration conflicts with the following provisions, the following provisions of this Section shall, in all instances, control:

A. Upon request in writing to the Homeowners Association identifying the name and address of the Unit Mortgagee or the insurer or guarantor of a recorded mortgage or trust deed on a Unit ("Insurer or Guarantor") and the Unit number, the Homeowners Association shall furnish each Unit Mortgagee, Insurer or Guarantor a written notice of the default of any Unit Owner's obligations under this Declaration which is not cured within thirty (30) days. Any Unit Mortgagee of a Unit who comes into possession of the said Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or assignment in lieu of foreclosure shall, to the extent permitted by law, take said Unit subject to any claims for unpaid assessments or charges in favor of the Homeowners Association against said Unit which became due prior to the first to occur of (i) the date on which the Unit Mortgagee or its successor or assigns comes into possession of said Unit and (ii) the date on which the aforesaid interest to said Unit was transferred to the Unit Mortgagee or its successor or assigns. In general a Unit Mortgagee shall have thirty (30) days from the date of notice of default to cure a Unit Owner's default before Master Lessee may assert its rights and remedies under the Declaration, By-Laws and Sublease Agreement; however, a Unit Mortgagee shall not have a right to cure a Unit Owner's default under Sections 7.3 and 8.12 of this Declaration.

B. Upon request in writing, each Unit Mortgagee, Insurer or Guarantor shall have the right:

(a) to examine current copies of this Declaration, and the By-Laws, rules and regulations and the books and records of the Homeowners Association during normal business hours;

(b) to receive, without charge and within a reasonable time after such request, a copy of the then most current set of such financial statements as are prepared by the Homeowners Association at the end of each of their respective fiscal years;

(c) to receive written notices of all meetings of the Homeowners Association and the Board and to designate a representative to attend all such meetings;

(d) to receive written notices of any decision by the Homeowners Association to make a material amendment to this Declaration or to the By-Laws or the articles of incorporation of the Homeowners Association;

~~(e) to receive written notice of any proposed action which would require the consent of a specified percentage of Unit Mortgagees; and~~

(f) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Premises or the Unit on which it holds, insures or guarantees the mortgage.

C. No provisions of this Declaration, the By-Laws or the articles of incorporation of the Homeowners Association or any similar instrument pertaining to the Premises or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the Unit Mortgagees pursuant to their mortgages in the case of distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of either or both the Units and the Common Area, or any portion thereof or interest therein. In such event, the Unit Mortgagee, Insurers or Guarantors of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

D. Upon specific written request to the Homeowners Association, each Unit Mortgagee, Insurer or Guarantor of a Unit shall be furnished notice in writing by the Homeowners Association of any damage to or destruction or taking of the Common Area if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or of any damages to the Unit in excess of One Thousand Dollars (\$1,000.00).

E. If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Unit Mortgagee, Insurer or Guarantor of said Unit will be entitled to timely written notice, upon specific written request, of any such proceedings or proposed acquisition and no provisions of this Declaration, the articles of incorporation or By-Laws of the Homeowners Association or any other instrument pertaining to the Premises or the Units will entitle the Unit Owner of a Unit or other party to priority over such Unit Mortgagee with respect to the distribution of the proceeds of any award or settlement with respect to such Unit.

F. No amendment to, change or modification of either Section 6.8 (dealing with the priority of assessment liens) or Section 11.3 (dealing with the method of amending this Declaration) shall be effective unless, in addition to the terms and conditions set forth in Sections 6.8 and 11.3, such change or amendment shall be first consented to in writing by not less than seventy-five percent (75%) of the Unit Owners and their respective Unit Mortgagees.

11.9 **Condemnation.** If all or any portion of the Premises shall be taken pursuant to a condemnation proceeding, the provisions of Article 9 of the Lakeshore Lease shall control. Any allocation of any award in a Condemnation Proceeding to the Unit Owners shall be distributed equally to all affected Unit Owners.

~~11.10 **Dissolution of the Homeowners Association.** Upon any dissolution of the Homeowners Association its assets shall be transferred to another homeowners association or homeowners associations having similar purposes.~~

11.11 Declarant's Rights with Respect to Amending the Plat of the Premises and this Declaration.

A. Declarant hereby reserves to itself the right, subject to the approval of the City and the joinder of City, to re-record the Plat to correct any inaccuracies, errors or mistakes contained therein.

B. Declarant hereby reserves to itself the right and power to record a special amendment ("Special Amendment") to this Declaration or to the Plat of Subdivision at any time and from time to time, which right and power may be exercised without the consent of any Unit Owner or such Unit Owner's Unit Mortgagee, but with the joinder of City (which, by joining in this Declaration, City agrees to execute, provided such Special Amendment does not materially adversely affect any rights or interest of the Lessor under this Declaration or the Lakeshore Lease), for any of the following purposes:

(a) To cause this Declaration or the Plat to comply with the requirements of the Federal National Mortgage Homeowners Association, the Government National Mortgage Homeowners Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Homeowners Association, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those current performed by such entities;

(b) To induce any of the aforesaid agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering a Unit;

(c) To correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto;

(d) To change, amend or modify any of the terms or conditions of this Declaration or of the Plat based upon Declarant's determination, made in good faith, that such change or modification is in the best interests of the Premises and is consistent with the intent and purposes of this Declaration; provided, however, that any Special Amendment changing, amending or modifying any Required

Provision shall require the prior written consent of City to the extent, but only to the extent, of the minimal requirement of a Required Provision.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each Unit Lease or other partial assignment of the Lakeshore Lease, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of Declarant to vote in favor of, make, execute and record Special Amendments. The right of Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as Declarant no longer holds or controls the leasehold interest in and to any Unit.

11.12 **Interpretation with Lakeshore Lease.** In the event of any contradiction, conflict or ambiguity between the terms and provisions of this Declaration and the terms and provisions of the Lakeshore Lease, the terms and provisions of the Lakeshore Lease shall, in all instances, control and prevail, except in those instances involving or affecting rights, easements, obligations of, or terms or provisions regarding, the City.

11.13 **Easement Interpretation Provisions.** The Plat grants and reserves certain easements relative to use, access, maintenance, repair and operation of all or parts of the Common Area for utility and other purposes. In the event of any conflict or ambiguity between the terms and conditions of the easements granted and reserved in the Plat with respect to the Common Area and the terms and conditions of the easements granted and reserved in this Declaration with respect to the Common Area, those terms and conditions which are more restrictive or more specific and consistent with the intent and purposes of this Declaration and the Plat (whether set forth herein or therein) shall, in all instances, control and prevail over the less restrictive or less specific terms and conditions.

11.14 **Assignments by Declarant.** All rights which are specified in this Declaration to be rights of Declarant are mortgageable, pledgeable, assignable or transferable. Subject to and in accordance with the provisions of the Lakeshore Lease, any successor to, sublessee or assignee of the right of Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

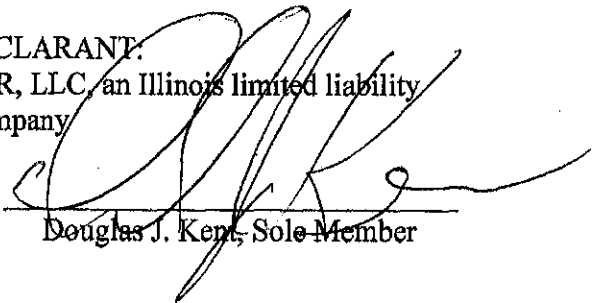
11.15 **Severability.** In case any provisions of the Declaration shall be held by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein, so long as the remaining provisions shall be

sufficient, as determined by such court, to carry out the overall intent of the parties as expressed herein.

11.16 **Binding Effect.** The Declaration shall be binding upon and shall inure to the benefit of City, the Homeowners Association, Unit Mortgagees, Leasehold Mortgagees, Declarant, and Master Lessee and their respective heirs, personal representatives, beneficiaries, successors and permitted sublessees and assigns.

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Harbor Point to be executed as of the date first above written.

DECLARANT:
DCR, LLC, an Illinois limited liability
Company

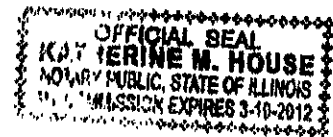
By: 
Douglas J. Kent, Sole Member

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that **DOUGLAS J. KENT**, personally known to me to be the sole Member of **DCR, LLC**, an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the forgoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of March, 2009.


Katherine M. House
Notary Public



BOUNDARY DESCRIPTION LOT BD#1 OF THE
CITY OF SPRINGFIELD LAKE LANDS

Part of Section 19 and part of Section 30, Township 15 North, Range 4 West of the Third Principal Meridian, Sangamon County, Illinois, more particularly described as follows:

Commencing at the Southeast Corner of the Northwest Quarter of the Southeast Quarter of said Section 19; thence South 45 degrees 56 minutes 00 seconds West 1880.9 feet to the point of beginning; thence South 89 degrees 52 minutes 00 seconds West 398.54 feet; thence South 44 degrees 08 minutes 11 seconds West 87.04 feet; thence South 56 degrees 50 minutes 48 seconds West 219.96 feet; thence North 25 degrees 10 minutes 13 seconds West 432.02 feet; thence along a meander of the shore water line of Lake Springfield the following eleven courses: North 63 degrees 37 minutes 26 seconds East 431.88 feet; South 79 degrees 00 minutes 48 seconds East 107.38 feet; South 85 degrees 16 minutes 20 seconds East 56.60 feet; North 56 degrees 56 minutes 26 seconds East 36.03 feet; South 87 degrees 37 minutes 07 seconds East 45.88 feet; South 84 degrees 41 minutes 28 seconds East 123.03 feet; South 12 degrees 15 minutes 40 seconds West 137.69 feet; South 10 degrees 31 minutes 05 seconds West 110.57 feet; North 89 degrees 28 minutes 46 seconds East 81.32 feet; North 10 degrees 43 minutes 13 seconds East 144.23 feet; North 41 degrees 26 minutes 48 seconds East 62.97 feet; thence South 03 degrees 36 minutes 44 seconds West 327.46 feet to the point of beginning, containing 6.71 acres, more or less.