

DECLARATION OF CONDOMINIUM

This document is the lawful creation and definition of Forum West Section I, according to the statutes of the State of Missouri. It also sets out various definitions of all the elements of this Condominium Association. It is our legal governing document.

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FORUM WEST CONDOMINIUM SECTION I

RESTATEMENT OF DECLARATION OF CONDOMINIUM

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RESTATEMENT OF DECLARATION OF CONDOMINIUM

**FORUM WEST CONDOMINIUM SECTION I
RESTATEMENT OF DECLARATION OF CONDOMINIUM**

THIS RESTATEMENT is made this 22nd day of August 2000 by the unit owners of Forum West Condominium Section I and shall be effective upon the date of recording in the official records of the Recorder of Deeds of St. Louis County, Missouri.

WITNESSETH THAT:

WHEREAS, Forum West Condominium Section I was created and exists subject to the Missouri Condominium Property Act, Sections 448.005 to 448.210 (Mo. Rev. Stat.) ("CPA") by virtue of the "Forum West Condominium Section I Declaration of Condominium, By-Laws and Indenture," as recorded on October 31, 1968 in Book 6359, Page 2371, as amended by instrument recorded on March 16, 2000 in Book 12476, Page 985, of the official records of the Office of Recorder of Deeds of St. Louis County, Missouri, ("Original Declaration"), the Condominium is situated on property more particularly described in Exhibit "A" to the Original Declaration, attached hereto; and

WHEREAS, the property described in Exhibit "A" was subdivided into units and common elements by virtue of the condominium plat recorded at Plat Book 126, Pages 90-94, of the official records of the Office of the Recorder of Deeds of St. Louis County, Missouri ("Plat"); and

WHEREAS, the Uniform Condominium Act of Missouri, Sections 448.1-101 to 448.4-120 Mo.Rev.Stat. ("Act"), authorizes amendment of the Original Declaration by adoption of any of Sections 448.1-101 to 448.4-120; provided, however, that such amendment shall be adopted in conformity with the procedures and requirements specified in the Original Declaration and the CPA of Missouri; and

WHEREAS, the unit owners of the Condominium, in compliance with Section Sixteen of the Original Declaration, as amended, desire to amend the Original Declaration for the purpose of preserving the purposes and intent of the Original Declaration, restating and modifying certain provisions thereof, complying with governmental agencies insuring mortgage loans, releasing the Condominium from the CPA and subjecting it to the Act, all for the general health and welfare of the Owners and in the best interests of this community as a whole, as hereinafter set forth:

NOW THEREFORE, the unit owners of the Condominium, pursuant to said authority and procedure, do hereby restate and amend the Original Declaration as follows:

The Forum West Condominium Section I Declaration of Condominium, By-Laws and Indenture is hereby deleted in its entirety, and the Forum West Condominium Section I Restatement

of Declaration is substituted in lieu thereof, to read as follows:

ARTICLE I
DEFINITIONS

1.1 "Act" means the Uniform Condominium Act of Missouri, Sections 448.1-101 to 448.4-120, Mo.Rev.Stat., as may be amended.

1.2 "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability, and the votes in the Association allocated to each Unit.

1.3 "Association" means the Forum West Condominium Section I Association, organized under Section 448.3-101 of the Act and Article Eight herein.

1.4 "Board of Directors" or "Board" means the body designated in this Declaration to act on behalf of the Association.

1.5 "By-Laws" means the By-Laws of the Association, and any amendments thereto.

1.6 "Common Elements" means all portions of the Condominium other than the Units.

1.7 "Common Expenses" means the expenses and financial liabilities of the Association, including:

(a) Expenses of governance and administration of the Association and implementation of this Declaration;

(b) Expenses of maintenance, repair and replacement of the Common Elements, except those portions of the Limited Common Elements designated as the financial responsibility of the Unit Owners;

(c) Expenses declared to be Common Expenses by the Act or the Documents;

(d) Expenses agreed upon as Common Expenses by the Association; and

(e) Such reasonable reserves as shall be established by the Association for contingencies and for repair or replacement of the Common Elements or any other real or personal property acquired or held by the Association.

1.8 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to Section 448.2-107 of the Act and Section 4.2 of this Declaration.

- 1.9 **"Condominium"** means Forum West Condominium Section I, comprising the real property described in Exhibit "A" of the Original Declaration portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of the Units; said Exhibit "A" is attached hereto and incorporated herein by reference.
- 1.10 **"Declaration" or "Restatement"** means this instrument, as may be amended.
- 1.11 **"Governing Documents" or "Documents"** means the Declaration, recorded Plat and Plans, Articles of Incorporation, By-Laws, and Board Rules, as they be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.
- 1.12 **"Identifying Number"** means a symbol or address that identifies only one Unit in the Condominium.
- 1.13 **"Limited Common Elements"** means the portions of the Common Elements allocated for the exclusive use of one or more but fewer than all of the units by the Declaration or by operation of Subsections (2) and (4) of Section 448.2-102 of the Act. The Limited Common Elements in the Condominium are described in Section 3.5 of this Declaration.
- 1.14 **"Nonprofit Corporation Act" or "NPCA"** means the Nonprofit Corporation Act of the State of Missouri, Chapter 355, Mo. Rev. Stat., as may be amended.
- 1.15 **"Original Declaration"** means the Forum West Condominium Section I Declaration of Condominium, By-Laws and Indenture as recorded at Book 6359, Page 2371, as amended by instrument recorded at Book 12476, Page 985 of the official records of the Office of Recorder of Deeds of St. Louis County, Missouri.
- 1.16 **"Person"** means a natural person, corporation, business trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity; provided, however, that in the case of a land trust, "person" means the beneficiary of the trust rather than the trust or the trustee.
- 1.17 **"Plat"** means the plat of the Condominium, as recorded in Plat Book 126, Pages 90-94 of the official records of the Recorder of Deeds, St. Louis County, Missouri, as may be amended. The Plat is Exhibit "B" of the Original Declaration, and is incorporated by reference herein.
- 1.18 **"Rules"** means rules, regulations and policies adopted by the Board pursuant to the Act and Documents, as may be amended.
- 1.19 **"Security Interest"** means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents and any other consensual lien or title

retention contract intended as security for an obligation.

1.20 "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to the Plat.

1.21 "Unit Owner or "Owner" means any Person who owns a Unit, but does not include a person having an interest in a unit solely as security for an obligation.

ARTICLE II

NAME OF CONDOMINIUM AND OF ASSOCIATION; LOCATION

2.1 **Condominium.** The name of the Condominium is Forum West Condominium Section I.

2.2 **Association.** The name of the Association is Forum West Condominium Section I Association.

2.3 **Location.** The entire Condominium is situated in the County of St. Louis, State of Missouri, and is located on land described in Exhibit "A" of this Declaration.

ARTICLE III

UNITS, COMMON ELEMENTS, LIMITED COMMON ELEMENTS, MAINTENANCE, ALTERATIONS

3.1 **Division of Property Into Separately Owned Units.** The Original Declaration and Plat established a plan of condominium ownership whereby the Units are owned separately by the Owners in fee simple absolute, together with an undivided ownership interest in the Common Elements. Said plan of condominium ownership is continued under this Declaration.

3.2 **Identification of Units.** The Condominium consists of sixty-nine (69) Units. The location and dimensions of each building and Unit are depicted in the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its Identification Number as shown on the Plat and as set forth in the Declaration, and every such description shall be deemed good and sufficient for the purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the owner's corresponding Allocated Interest, even though the same is not expressly mentioned or described therein. The description of each Unit shall include all rights and privileges of said Unit. Each Owner shall be entitled to the Allocated Interest appertaining to his Unit as set forth in Article IV of this Declaration.

3.3 **Subdivision, Conversion, and Relocation of Boundaries of Units.** The subdivision of a Unit is expressly prohibited. Adjacent Units may be combined, and the boundaries between adjacent Units relocated, subject to other provisions of law and Article VIII herein.

3.4 **Separate Parcels.** Each Unit which has been created, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of real estate, and shall be separately assessed and taxed. The Common Elements shall not be separately assessed or taxed.

3.5 **Unit Boundaries: Common Elements; Limited Common Elements.**

(a) The boundaries of each Unit are shown on the Plat and are described as its walls, floor, and ceiling, and including the finished interior surfaces and the exterior doors and windows of the perimeter walls and the utilities, appliances, and fixtures within the Units.

(b) The Common Elements include all portions of the Condominium other than the Units.

(c) The Limited Common Elements include those portions of the Common Elements allocated by this Declaration.

(d) Subject to paragraphs (a), (b) and (c) of this Section,

(1) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, carpeting, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions, including structural members, of the walls, floors, or ceilings are a part of the Common Elements.

(2) If any flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements; by way of example and not of limitation, the preceding sentence includes plumbing, wastewater, electrical, natural gas, and heating and air conditioning systems.

(3) Subject to the provisions of subdivision (2) of this subsection (d), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(4) Any utility closet, storage closet, air conditioning unit and pad, water heater, furnace, mailbox, and any light or other fixture designed to serve a single Unit, but located outside the Unit's boundaries, is a Limited Common Element allocated exclusively to that Unit.

(5) Any deck, balcony, terrace, patio or lanai designated or designed for the exclusive use of a Unit is a Limited Common Element of that Unit.

(6) Any garage parking space (including the floor of the garage space, garage door, keys, opening mechanism and remote control device) is a Limited Common Element as to each Owner who enjoys the right to park in such garage space as provided in Section 6.3(b).

(e) If the definition contained in this Section 3.5 is inconsistent with the Plat, then this definition shall control.

3.6 Maintenance. The responsibilities for maintenance, repair and replacement are allocated as follows:

(a) **Common Elements.** The Association, as a Common Expense, shall be responsible for the Common Elements. The Association shall be responsible for prevention and treatment of termites, and other pests (in the Board's discretion), but shall not be responsible for any damage occurring in a Unit or Limited Common Element due to such termites or other pests. The Association shall not be responsible to repair foundation leaks not caused by structural conditions, or for radon detection or mitigation. The Association may be responsible for damage to Units caused by a failure of the Common Elements only to the extent that such damage was caused by a negligent act or omission of the Board.

(b) **Units.** Each Owner, at his own expense, shall be responsible for his Unit and Limited Common Elements as defined in Section 3.5, except for any Limited Common Elements that are expressly made the Association's responsibility under Section 3.6(a) or are assumed by the Association. Said Limited Common Elements that are the Owner's responsibility include, by way of example and not limitation, the decks located at the townhouse Units, the balconies and patios located at the garden Units, and the garage door and related door opening mechanisms and devices of the garden Units. Notwithstanding any provision in this Declaration to the contrary, the Association is authorized to pay or reimburse any Owner a portion of the actual cost of deck, balcony or patio replacement incurred by said Owner in such amount or percentage as the Board may establish by Rules provided, however, that said Owner shall obtain prior written consent of the Board and that the work shall be satisfactorily completed in accordance with plans and specifications approved by the Board. In the event an Owner fails to carry out any said maintenance responsibility, the Board, in its discretion and after notice and opportunity to be heard, may correct any deficient condition, and allocate the cost thereof to that Unit as provided in Section 9.2.

3.7 Alterations. No Owner shall make any alteration to the Common Elements or the exterior of his Unit or Limited Common Elements without first obtaining written consent of the Board. Each Owner shall maintain, repair and replace, at his own expense, any alteration, decoration, addition, removal or change made by the Owner outside his Unit, whether or not approval was properly obtained. In the event any such alteration, decoration, addition, removal or change becomes deteriorated or unsightly in the discretion of the Board, the Board may, after notice and opportunity to be heard, require the Owner to repair or replace it at the Owner's expense or exercise the Board's authority under Section 7.1. An Owner may make any additions, alterations, modifications or

improvements to the interior of his Unit that do not impair the structural integrity or mechanical systems of lessen the support of any portion of his Unit or building in which the Unit is located.

ARTICLE IV ALLOCATED INTERESTS

The Allocated Interests are as follows:

4.1 Common Element Ownership is allocated on the basis of the floor area of each Unit as a percentage of the floor area of all the Units in the aggregate, as set forth in Exhibit "C" attached hereto and incorporated by reference herein.

4.2 Common Expense Liability for Common Expenses of the Association is allocated to each Owner on the same basis as set forth in Section 4.1. Notwithstanding the foregoing, this Section shall not prohibit the apportionment of certain Common Expenses to particular Units pursuant to Section 9.2 of this Declaration.

4.3 Votes in the Association, for all purposes, are allocated on the same basis as set forth in Section 4.1.

ARTICLE V EASEMENTS

5.1 Encroachments. Through construction, settlement or shifting of the Building, should any part of a Common Element or a Unit encroach upon any Common Element or upon any other Unit, perpetual easements for the maintenance of any such encroachment and for the use of the space acquired thereby are hereby established and shall exist for the benefit of the Owner or the Common Element, as the case may be; provided, however, that no easement shall be created in the event the encroachment is due to the willful conduct of the Owner.

5.2 Easements Appurtenant to Unit. Perpetual easements are hereby established, appurtenant to all Units, for the nonexclusive use of the Common Elements and for the exclusive use of any Limited Common Element allocated to the Unit. Said easements are for the benefit of the Owners, their families and guests, lessees and invitees.

5.3 Parking Spaces. Each Owner is granted an exclusive easement to park vehicles in the garages and carports as follows:

(a) **Garden Units.** Each Owner of a garden Units may park a vehicle(s) in the garage of the building comprising his garden Unit, as follows: Building 13579, Units A through H, are provided two (2) parking spaces for each Unit; for each of Buildings 13527, 13545 and 13555, Units A, C, D, E, G and H (two bedroom Units) are provided one (1) parking space for each said Unit, and Units B and F are provided two (2) parking spaces for said Unit.

(b) **Townhouse Units.** Each Owner of a townhouse Unit may park vehicles in the carport assigned to the spaces located directly below their decks. Each such Unit is provided two (2) parking spaces except for the following Units which are provided three (3) parking spaces for each Unit: 13567, 13577, 13581, 13583 and 13585.

(c) **Drives.** Each Owner is granted a nonexclusive easement to park a vehicle on the drives and turnaround aprons located within the Condominium, to the extent available and subject to such reasonable Rules as may be adopted by the Board.

5.4 Utility and Storage Closets. Each Owner of a garden Unit is granted an exclusive easement for the use of any utility closet and storage closet, located outside his Unit and assigned to his Unit.

5.5 Easements in Gross. The Condominium shall be subject to a perpetual easement in gross to the Association for ingress and egress, to perform its obligations and duties as required by the Documents.

5.6 Driveway Walkway and Utility Easement. Easements, as shown on the Plat, have been established and dedicated for driveways, walkways, sewers, electricity, gas, water and telephones and for all other public utility purposes, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, drainage, gas mains, cable, television and telephone wires and equipment and electrical conduits and wires over, under, along and on the Common Elements.

5.7 Effect of Easements. All easements and rights herein established shall run with the land and inure to the benefit of and be binding on any Owner, tenant, purchaser, holder of a Security Interest or other person having an interest in any portion of the Condominium property herein described, whether or not such easements are mentioned or described in any deed of conveyance.

ARTICLE VI

UNIT OWNERS' ASSOCIATION, BOARD OF DIRECTORS

6.1 Creation. There shall be a unit owners' association known as the "Forum West Condominium Section I Association," which shall be organized as a Missouri nonprofit corporation under the NPCA.

6.2 Membership. The membership of the Association at all times shall consist exclusively of all of the Owners or, following termination of the Condominium under Section 15.7, of all former Owners entitled to proceeds under Section 448.2-118 of the Act, or their heirs, successors or assigns. A member must be in good standing with the Association to exercise the privileges of membership. A "Member in Good Standing" is one who is current in the payment of all assessments and has no unresolved violation of the Governing Documents.

6.3 **Management.** The operation of the Condominium shall be vested in the Association.

6.4 **Authority.** No Owner, except an officer of the Association, shall have any authority to act for or on behalf of the Association, unless authorized in writing by the Board.

6.5 **Board of Directors.** There shall be a Board of Directors ("Board") which shall act on behalf of the Association except as expressly limited in the Declaration or By-Laws. The Board shall be deemed to be the "executive board" as said term is used in Section 448.1-103(14) of the Act and the "board of directors" under Section 355.015(2) of the NPCA. The number of Directors shall be set in the By-Laws, provided that the number shall not be less than three (3).

(a) **Qualifications of Directors.** The Board shall consist of resident Owners. For the purpose of serving as a Director, an Owner shall be a Member in Good Standing.

(b) **Election of Directors.** The Directors shall be elected by the Owners at the annual meeting of the Association. Any vacancy on the Board shall be filled by Board appointment of a successor to serve until the next annual meeting.

(c) **Removal of Directors.** The Association may remove any Director as provided in the By-Laws.

6.6 **Indemnification.** Except as may be otherwise provided in the Act, NPCA, or this Declaration, and except for their intentional acts or gross negligence, the members of the Association and Directors and officers of the Board, acting within their authority, shall not be individually or personally liable for the debts, liabilities or obligations of the Association, except to the extent of their Common Expense Liability as members of the Association and not to exceed the value of their respective Units.

ARTICLE VII

POWERS AND DUTIES OF THE ASSOCIATION

The Association shall be the entity responsible for governance and administration of the Condominium community, for performance of certain maintenance responsibilities, enforcement of restrictions, and otherwise for implementation of the Governing Documents. The powers and duties of the Association, acting by and through the Board except for such matters reserved exclusively for the Owners, shall include those set forth in the Act and the Governing Documents. In addition, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Governing Documents.

The Association shall have the following powers:

7.1 Access. The Board shall have the irrevocable right of access to each Unit and any Limited Common Element, at reasonable hours except in emergency, as may be necessary for the maintenance, repair or replacement of the Unit or any Common Element or Limited Common Element therein or accessible therefrom or another Unit, or for making emergency repairs necessary to prevent damage to the Common Elements or to Limited Common Elements or to another Unit, to enter a Unit or upon land without constituting a trespass, to prevent, abate or terminate any infringement of the Act or Governing Documents, at the expense of the offending party pursuant, which shall be collectable as an assessment under Article IX.

7.2 Budgets. The power to adopt and amend budgets for the income and Common Expenses of the Association, and to levy and collect general and special assessments to provide for the Common Expenses.

7.3 Utility Easements. The power to establish, grant and dedicate easements for public utilities and telecommunications systems in addition to any shown on the Plat, and leases, licenses and concessions in, over and, through the Common Elements.

7.4 Contracting. The power to employ and terminate a managing agent and employees, to retain professional services, and to enter into contracts with others to carry out the responsibilities of the Association.

7.5 Rulemaking. The power to adopt and amend reasonable Rules to implement and enforce the Use Restrictions contained in this Declaration, after notice and opportunity to comment, and to require permits for particular use of the Common Elements, and to revoke same, all in the best interests of the community as a whole. The Board may adopt reasonable guidelines, policies and procedures for maintenance of the Condominium and administration of the Association without such prior notice and opportunity to comment. All Owners, their families, tenants, mortgagees, occupants, guests and invitees shall be subject to such Rules, guidelines, policies and procedures.

7.6 Standing. The power to institute, defend or intervene in arbitration, litigation or administrative proceedings in its own name and on behalf of itself or two (2) or more Owners on matters affecting the Condominium, Association or the community as a whole.

7.7 Penalties. The power (a) to impose interest and charges for late payment of assessments and (b) after notice and opportunity to be heard at a regularly scheduled Board meeting, to levy reasonable fines and/or penalties, including withdrawing the right to use the recreation facilities and/or the right to vote and to serve on the Board, for violations of the Governing Documents.

7.8 Administrative Charges. The power to impose reasonable charges upon an Owner for the preparation and recordation of amendments to the Declaration, resale information as may be requested, statements of unpaid assessments, changes in occupancy of a Unit, and such other matters as may be requested or required of the Association. In the event any professional services are

required by the Association in connection with a request by an Owner, the fees incurred for such services shall be recoverable from the Owner making the request.

7.9 Insurance. The power to purchase and maintain in force such insurance as deemed appropriate by the Board and to the extent reasonably available, including but not limited to, property insurance; workers compensation; liability insurance protecting the Association, its officers, directors, and the Owners; directors' and officers' liability insurance; and, such other insurance coverage and other provisions as required by Section 448.3-113 of the Act and as set forth in the By-Laws, and the power to provide for the indemnification of the Board and its officers and the members of the Association.

7.10 Borrowing. The power to borrow funds in furtherance of Association purposes, including to encumber Association assets and to assign its rights to future income (including the right to receive assessments), provided that a majority of all the Owners, by written ballot or at a meeting called for said purposes, approve such borrowing.

7.11 Conveyance of Common Elements. Property owned by the Association, or portions of the Common Elements, may be conveyed or subjected to a Security Interest by the Association only as provided in Section 448.3-112 of the Act.

7.12 Use Restrictions. The power to enforce the Use Restrictions, Architectural Covenants and any other restrictions contained in this Declaration or adopted by the Association.

7.13 Compliance with Governmental Regulations. The power to take such actions as may be reasonable and necessary to comply with applicable Ordinances, and other federal, state and local laws, statutes, ordinances and regulations.

7.14 Interpretation. The power and authority to interpret and construe the Declaration and By-Laws, and to implement and to carry out the purposes and intentions of the Governing Documents for the benefit of the community as a whole.

7.15 Limitations. The Board shall not have any power to amend the Declaration except as expressly provided in Section 14.6, to terminate the Condominium, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of Directors, but the Board may fill vacancies in its membership until the next annual election.

7.16 General. The power to exercise such other powers as may be provided in the Act, its Articles of Incorporation or By-Laws, or the NPCA, and to exercise all other powers that may be exercised in Missouri by legal entities of the same type as the Association and any other powers necessary and proper for the governance and operation of the Condominium and the Association in the best interests of the community as a whole.

ARTICLE VIII
COMBINING UNITS, RELOCATING BOUNDARIES

No Units shall be combined, or Unit boundaries relocated, except as provided in this Article:

8.1 Combining Adjoining Units, Relocating Boundaries. Two (2) adjoining Units may be combined into a single Unit pursuant to Section 448.2-111 of the Act, and the boundaries between adjoining Units may be relocated pursuant to Section 448.2-112 of the Act. Thereafter, such new Unit or Units may be re-subdivided or re-configured only into the original Units as depicted on the Plat. The Owner(s) of the affected Units (the "Applicant") shall apply for prior written consent of the Board as provided in this Article. Notwithstanding the foregoing, however, any such action shall comply with all applicable local governmental ordinances and codes.

8.2 Plans. Prior to the commencement of any work to do anything provided in Section 8.1, the Applicant shall submit three (3) copies of the plans to the Board, prepared by a licensed architect or engineer and in compliance with applicable local governmental building codes. Any plans affecting structural members of the Units or building wherein the Units are located shall be sealed by a licensed engineer. Any space occupied by any original boundary walls shall be removed from the Common Elements and shall be treated as part of the new Unit. The Allocated Interests of the new Unit shall be the same as those of the original Units.

8.3 Board Approval. Following receipt of a complete application, together with plans, the Board shall approve or reject said application within sixty (60) days, and shall give written notice to the Applicant accordingly. In the event the Board fails to act within the allotted time, as may be reasonably extended for good cause, the application shall be deemed approved. The Board may impose such conditions on approval as it deems reasonable and necessary, including by way of example and not of limitation, evidence of insurance by contractors, review by an independent architect or engineer, an escrow to secure completion and repair of any damages to Common Elements or other Units, a schedule for completion, and evidence of prior approval by local government.

8.4 Amendment. Upon completion of the work in substantial compliance with the Plans, the Board shall prepare and record the following:

(a) an amendment to the Declaration that identifies the Units involved and evidences the Association's consent. The amendment shall be executed by the Owner(s) of the affected Units and contain words of conveyance between them, and include approval by all holders of Security Interests in the affected Units. On recordation, the amendment shall be indexed in the name of the grantor and the grantee and the grantee's index in the name of the Association.

(b) an amendment to the plat that shows the altered boundaries between the adjoining Units, and their dimensions and Identification Numbers.

8.5 Costs. All costs incurred by the Association in implementing this Article VIII, including by way of example and not of limitation, all professional fees and recording costs, shall be the responsibility of the Applicant. No work shall be commenced until all such costs are paid in full. Any failure by the Applicant to pay such costs shall be enforced and collected in the same manner as assessments under Article IX.

ARTICLE IX
ASSESSMENTS: LIABILITY AND COLLECTIONS

9.1 Authority. The Association shall determine the amount of assessments and Common Expenses of the Association. An Owner, while he is Owner of a Unit, regardless of the manner in which he acquired title to his Unit, including without limit, purchase at a judicial sale, shall be liable for all assessments coming due that are imposed by the Association on the basis of the Owner's Common Expense Liability.

9.2 Common Expense Assessments Which May be Apportioned to Fewer Than All the Units. Notwithstanding the allocation of Common Expense Liability set forth in Section 4.2:

- (a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element may, in the Board's discretion, be assessed against the Unit(s) which is benefitted by that Limited Common Element, equally or on any other basis deemed equitable by the Board under the circumstances.
- (b) Any Common Expense, the benefits of which accrue to less than all the Units may, in the Board's discretion, be assessed to each Unit or to the Units in the group benefitting therefrom equally or on any other basis deemed equitable by the Board under the circumstances.
- (c) Any Common Expense for services provided by the Association to an individual Unit or group of Units at the request of such Owner(s) shall be assessed against the Unit(s) which benefits from such service.
- (d) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.
- (e) Fees, charges, late charges, fines, collection costs, interest and attorney's fees charged against an Owner pursuant to the Act and the Governing Documents are enforceable as Common Expense assessments.
- (f) A judgment against the Association shall be subject solely to the assets of the Association; no Owner shall be individually liable for such a judgment. Assessments to pay such a judgment, if imposed by the Association, shall be made only against the Owners of the Association at the time the judgment was entered, in proportion to their Common Expense Liability, limited to

the value of their Unit.

(g) Any Owner, following notice and opportunity to be heard at a regularly scheduled Board meeting, shall be liable for any damages to any person, any other Unit or Limited Common Element or to the Common Elements caused by intentional or negligent acts by him or his tenants, occupants, or employees, or by his failure or the failure of his tenants, occupants, or employees to properly maintain, repair or make replacements to his Unit or Limited Common Elements.

(h) If Common Expense Liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liabilities.

9.3 Preparation and Adoption of Budget.

(a) The Board shall prepare a proposed annual budget, including an estimate of the Common Expenses of the Association and each Owner's assessment to provide for the Common Expenses for the forthcoming year. The budget shall include a statement of late fees and interest to be charged on delinquent accounts under Section 9.10. The Board shall deliver the proposed budget to the Owners and set a date for a meeting of the Owners to consider ratification. Unless at the meeting a majority of all the Owners entitled to vote reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(b) In the event that, at any time during the year, the Board shall determine that its estimate is insufficient to meet current operating expenses, or that a special assessment is required, the Board shall notify each Owner, in writing, as to the amount of the revised budget or special assessment, which shall then become effective as follows:

(1) In the event said revision or special assessment constitutes an increase in assessments of less than fifteen percent (15%), it shall be effective on the date stated in said notice. Two or more revisions or special assessments concurrently in effect shall be treated in the aggregate.

(2) In the event said revision or special assessment constitutes an increase in assessments of fifteen percent (15%) or more, it shall be effective subject to approval as provided in Section 9.3(a) above. Two or more revisions or special assessments concurrently in effect shall be treated in the aggregate.

(c) Repayment of any borrowing pursuant to Section 7.10 shall be provided for in the budget by a separate line item for "debt service."

9.4 Certificate of Payment of Common Expense Assessments. The Association, upon written request, shall furnish to an Owner a statement in recordable form setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and each Owner.

9.5 Monthly Payment of Assessments. The annual assessment allocated to each Unit under Section 9.1 shall be an annual obligation of the Owner, which may be paid in equal monthly installments due on the first (1st) day of each month; other assessments shall be due as may be determined by the Board.

9.6 Acceleration of Assessments. In the event of default for a period of sixty (60) days by any Owner in the payment of any assessment levied against his Unit, the Board shall have the right to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

9.7 Accounting and Shortages. Following the end of each fiscal year, the Board shall furnish to all Owners an itemized accounting of all income and expenses of the preceding calendar year. Any surplus funds of the Association remaining after payment of or provision for Common Expenses, shall be paid or credited to the Owners in proportion to their Common Expense Liability. The Board, in its discretion, may transfer any or all surplus funds to reserves.

9.8 Personal Liability of Unit Owners. The Owner of a Unit at the time any assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

9.9 No Waiver of Liability. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Element, services or recreation facilities, or by abandonment of the Unit against which the assessment was made, or by reliance upon assertion of any claim against the Board, Association, another Owner, or any third party.

9.10 Interest and Late Fees. Assessments and installments thereof shall bear interest from the due date until paid, at the rate of twelve percent (12%) per annum, or any other legal rate (not exceeding 18%) adopted by resolution of the Board. If any Owner fails to pay his monthly installment within the time specified by the Board, the Board shall charge a late fee of Ten Dollars (\$10.00), or any other fee (not exceeding \$25.00) adopted by resolution of the Board. The Board may adopt and enforce such other reasonable charges as appropriate for the efficient and effective collection of assessments.

9.11 Priority of Mortgage Lenders. Nothing contained herein shall abridge or limit the rights or responsibilities of mortgage lenders of Units as set forth in the Act or the Governing Documents.

9.12 Lien for Assessments.

(a) In addition to each Owner's personal liability for assessments under Section 9.8, the Association has a lien against a Unit for any assessment imposed against an Owner under this Declaration. If any assessment is payable in installments, the full amount of the assessment shall be included in the lien from the time the first installment thereof becomes due as provided under Section 9.6.

(b) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanics' or material men's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to Section 513.475, Mo.Rev.Stat (homestead exemption).

(c) Pursuant to Section 448.3-116 of the Act, recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this Section is not required, but may be done in the Board's discretion.

(d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided, that if an owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for this Section 9.12 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) The Association's lien may be foreclosed in like manner as a power of sale under Chapter 443, Mo.Rev.Stat., in which event the Association shall designate a trustee to conduct said foreclosure and give reasonable notice of its action to each lien holder of a Unit whose interest would be affected.

9.13 Fees and Charges. Fees, charges, late charges, fines and interest, court costs and attorney's fees, charged pursuant to the Act and the Governing Documents, are enforceable as assessments under this Article.

9.14 Costs and Attorney's Fees. The Association, if it prevails in a judgment or decree in any action brought under this Article, shall be entitled to recover its costs and reasonable attorney's fees incurred in the action.

9.15 Enforcement. A judgment or decree in any action brought under this Article is enforceable by execution of the judgment.

9.16 Other Liens. The operation of other liens shall be governed by Section 448.3-117 of the Act.

ARTICLE X **MORTGAGEE PROVISIONS**

The provisions of this Article are for the benefit of holders, insurers and guarantors of first Security Interests on Units in the Condominium, and shall apply to the Governing Documents, notwithstanding any other provisions contained herein. As used herein, the term "Eligible Mortgagee" means any institutional holder, insurer, or guarantor of a first Security Interest in a Unit which provides a written request to the Association, stating the name and address of such holder, insurer or guarantor and the Identifying Number of the Unit to which its Security Interest relates.

10.1 Right to Grant Security Interest. Each Owner shall have the right to grant one or more Security Interests against his Unit.

10.2 Notice of Actions. The Association shall give timely written notice to each Eligible Mortgagee of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first Security Interest held, insured or guaranteed by such Eligible Mortgagee;

(b) Any delinquency in the payment of assessments or charges owed by an Owner whose Unit is subject to a Security Interest held, insured or guaranteed by such Eligible Mortgagee, which remains unsecured for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(d) Such other notices as permitted or required by the Governing Documents.

10.3 No Priority. No provision of the Governing Documents gives or shall be construed to give any Owner or other party priority over any rights of a holder, insurer or guarantor of a first Security Interest of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Elements.

10.4 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder, insurer or guarantor of any first Security Interest encumbering such Owner's Unit.

10.5 Right to Cure Default. If any Owner fails to pay any amount required to be paid under the provisions of any Security Interest against such Owner's interest, the Association shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have all rights to recover same in the same manner as assessments under Article IX. The holder of a Security Interest against any Unit shall give notice of default under such Security Interest to the Association at the same time as such notice is given to the defaulting Owner. The foregoing shall not be construed to require the holder of a Security Interest to receive permission from the Association to foreclose the lien of such Security Interest.

ARTICLE XI **RESTRICTIONS**

This Article contains certain restrictions on the use of properties Units, Common Elements and Limited Common Elements within the Condominium that are deemed reasonable for the preservation of an attractive residential community over time. These restrictions are applicable upon the effective date of this Declaration. Existing uses on said effective date shall not be deemed to be in violation of this Declaration, but violations existing under the Original Declaration may be prosecuted pursuant to said document after the effective date of this Declaration. The use of Units shall comply with all applicable local governmental Ordinances to the extent such are more restrictive.

11.1 Use and Occupancy. Each Unit shall be used solely for single-family residential purposes, including unmarried persons living together as a single family unit. The number of occupants shall comply with the occupancy limitations of applicable local government ordinances and codes.

11.2 Obstructions. There shall be no obstructions or storage on any portions of the Common Elements without the prior written consent of the Board. No clothes, laundry or other articles shall be placed or exposed in any portion of the Common Elements, except as may be provided by the Board.

11.3 Signs. No signs, advertisements, billboards, or advertising structures of any kind may be created or maintained on the Common Elements or displayed to public view from within any Unit or Exclusive Use Area. The Board shall have the right to erect reasonable and appropriate signs on the Common Ground and streets.

11.4 Pets. No animals of any kind, other than household pets, shall be maintained in any Unit or in any other portion of the Condominium. The term "household pets" shall mean no more than a total of one (1) dog weighing forty (40) pounds or less, or two (2) cats (except for any dog or cat with vicious propensities), kept or maintained in any Unit. "Helper" pets required for a disabled resident shall be exempt from the size limitation. Each Owner shall clean up after his household pet, shall only allow the pet outside the Unit if it is securely leashed and accompanied by the Owner, shall be responsible for any damage done by the pet, and shall not keep any structure for

a pet outside the Unit. An Owner may also keep household fish and birds in appropriate enclosures within the Unit. Any Owner who maintains any household pet on the Effective Date of this Declaration that fails to comply with this Section 11.4 may, in the Owner's discretion, continue to maintain said pet for the duration of its life or until its removal from the Condominium, subject to Section 11.5 and other applicable provisions of this Declaration; thereafter, however, such Owner shall comply with this Section.

11.5 Nuisances. No noxious or offensive activity shall be carried on in any Unit or in the Common Elements or Limited Common Elements, nor shall anything be done which will become an annoyance or a nuisance (including but not limited to excessive noise from television, radios, and such) to other Owners or occupants. No Owner shall permit or suffer anything to be done or kept in his Unit which will increase the insurance rates for the Association, or which will obstruct or interfere with the rights of other Owners or disturb them by unreasonable noises or otherwise, or permit any nuisance or illegal act in his Unit or upon the Common Elements or Limited Common Elements.

11.6 Commercial Use. Except as may be incidental to residential use (such as home office and telecommuting) and not create a nuisance or in any way impair the rights of any Owner and be in strict compliance with applicable ordinances, no industry, commercial activity, business, trade, occupation or profession of any kind, shall be conducted, maintained or permitted on any part of the Condominium without the prior written consent of the Board.

11.7 Vehicles and Parking. Except as expressly provided herein, no derelict, abandoned or unlicensed vehicle, or truck over one-half ($\frac{1}{2}$) ton, trailer, camper, mobile home, recreation vehicle, boat or boat trailer, or commercial vehicle (except commercial vehicles that are passenger vehicles, trucks less than one ton, jeeps and similar utility vehicles), shall be kept on any portion of the Condominium. No tools and car maintenance or repair equipment may be left in any carport or garage spaces except during actual work with the Owner present. No repair or maintenance shall be allowed on any of the Common Elements, including but not limited to drives and surface parking areas and street parking spaces on Coliseum Drive. Any vehicle in violation of this Section, including any vehicle that is parked illegally, may be removed at the Owner's expense, after notice and opportunity to be heard, unless the Board determines that an emergency exists.

11.8 Satellite Dishes, Antennas: Satellite dishes, antennas, and other video signal receiving devices may be installed by the Owners only in accordance with such reasonable rules, relating to location, installation, maintenance, damages, repair and related matters, as may be adopted from time to time by the Board in accordance with rules issued by the Federal Communications Commission. Other video signal receiving antennas and other devices, and video and audio signal transmitting antennas (including commercial, amateur and ham radio antennas) and other devices, not regulated by said FCC rules, may not be installed without prior written consent of the Board.

11.9 Multiple Family Residential Use. No portion of the Condominium shall be used as a boarding house or rooming house, or for any purpose other than that of a multiple family residential development, nor shall any part of the Condominium be used for any purpose prohibited by law or

ordinance.

11.10 Restrictions Committee. The Board may appoint a Restrictions Committee comprised of at least three (3) Owners to assist in preparing rules to implement, and to enforce, the restrictions contained in this Article. In the event such a Restrictions Committee is established, any aggrieved Owner shall have the right to appeal any adverse decision or act of said Committee to the Board, which may uphold, overturn, or modify the Committee's decision or act. The Board shall adopt rules to govern said Committee, the appeal procedure, and such other matters as may be reasonable and necessary to implement this Section.

ARTICLE XII

REGULATION OF LEASED UNITS

The Association deems it to be in the best interests of the entire community as a whole to preserve the Condominium as a community that is predominantly owned by Owner-occupants. Accordingly, this Article is intended to foster Owner-occupancy by prohibiting future sales of units to investor-Owners after the Effective Date of this Article. Any Owner who owns his Unit on the Effective Date will have the right to lease his Unit, subject to certain reasonable regulations on leasing.

12.1 Leasing of Units. The provisions of this Section shall be effective on the date ninety (90) days after the recording date of this amendment (the "Effective Date").

(a) As of the Effective Date of this Section 12.1, no Person who acquires title to a Unit, regardless of the manner in which title may be acquired (excluding a mortgage holder by foreclosure or deed in lieu), shall lease his Unit except as provided in this Section. For the purposes of this Section, a Unit shall not be deemed as leased if the Unit is occupied by siblings, parents or children of the record Owner or by the beneficiary of a family trust if the Unit is owned by such trust.

(b) Any contract for the purchase of a Unit shall be exempt from this Section if the acceptance date of said contract is prior to the Effective Date of this Section.

(c) Nothing in this Section shall be construed to impair the right of any Owner who owned a Unit on the Effective Date of this Section to lease his Unit, so long as he is the Owner of said Unit, subject to the following:

(1) Each lease agreement shall be in writing.

(2) Each lease agreement, whether or not expressly set forth in the agreement, shall be deemed to include the following provisions: (i) the lease and lessee shall be subject to the provisions of the Act, this Declaration, the By-Laws, and any rules and regulations promulgated by the Board (the "Documents"); (ii) any violation of the Act or the Documents by the lessee shall be deemed a default of the lease; (iii) the lease shall have a minimum initial term of at least

six (6) months; (iv) the Owner appoints the Association as his/her attorney-in-fact to enforce any violation by the lessee (except non-payment of rent); and (v) the Owner shall furnish a copy of the lease and the names of all occupants to the Board at least five (5) days prior to the commencement date.

(d) The Board may waive any provision of this Section 12.1 for a reasonable period of time in the event of unforeseen circumstances, hardship, or other good cause shown by the Owner. Any such waiver shall be set forth in writing and signed by the Owner and the Board.

12.2 No Time-Sharing. No Unit may be conveyed pursuant to a time-sharing plan.

12.3 Remedies. In the event of any violation of this Section, the Association shall be entitled to any appropriate relief and remedies under the Act, Missouri law and the Documents, against the Owner and/or lessee. The prevailing party shall be entitled to recover his/her/its reasonable attorney's fees and court costs.

ARTICLE XIII **RELIEF AND REMEDIES**

13.1 Board Discretion. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (a) The Association's position lacks sufficient strength to justify taking any or further action; or
- (b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- (c) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) That it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or Rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances, and permit the County of St. Louis to enforce ordinances within the Condominium for the benefit of the Association and its Members.

13.2 Relief, Attorney's Fees. If any person subject to the Act or the Governing Documents fails to comply with any provision of the Act or of the Governing Documents, any persons or class of persons adversely affected by such failure to comply has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful, wanton and malicious failure to comply with any provision of the Act or Governing Documents. In addition to any other remedy provided in this Declaration, the Association may record a notice of violation against the Unit of any Owner in violation of the Governing Documents. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in enforcing the Act or Governing Documents, whether or not the matter is finally adjudicated.

13.3 Alternative Dispute Resolution. The Association and its officers, Directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Section (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium or the Association without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit with respect to any claim described in Section 13.2 unless and until it has first submitted such claim to the alternative dispute resolution procedures as follows: except as may be preempted by state or federal law, and except for collection of any delinquent assessment owed by an Owner, the parties to a dispute, claim, or failure to comply under Section 13.2 shall submit such matter to mediation by a disinterested mediator in accordance with the rules of the American Arbitration Association ("AAA") or of any other organization mutually agreed upon by the parties. Any such dispute that is unresolved by mediation within sixty (60) days may be resolved as follows:

(a) by mutual agreement, the parties may submit to binding arbitration in the County of St. Louis, Missouri, in accordance with Chapter 435, Mo. Rev. Stat., and with the rules of the AAA or of any other organization mutually agreed upon by the parties. The cost of arbitration shall be borne by the losing party and the arbitrator may award attorney's fees as provided in Section 13.2. In the event arbitration as provided herein is elected, the result shall be binding and shall be enforceable in a court of competent jurisdiction; or

(b) either party may seek judicial relief.

ARTICLE XIV

AMENDMENTS TO DECLARATION

14.1 General: The amendment procedures contained in Section 448.2-117 of the Act are hereby adopted, as follows: Except in cases of amendments that may be executed by the Association under Section 448.1-107 of the Act, or by certain Owners under Section 448.2-112 of the Act, this

Declaration, including the Plat, may be amended only by vote or agreement of the Owners of Units to which at least sixty-seven percent (67%) of the votes are allocated.

14.2 Limitation of Challenges: No action to challenge the procedural validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded; otherwise, such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Declaration.

14.3 Recordation of Amendments: Each amendment to the Declaration shall be recorded in St. Louis County and the amendment is effective only upon recording, unless otherwise expressly provided in the amendment. An amendment, except an amendment pursuant to Section 448.2-112 of the Act, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

14.4 Except to the extent expressly permitted or required by other provisions of the Act, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a Unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the Owners.

14.5 Execution of Amendments: An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, shall be executed on behalf of the Association by the President and certified by the Secretary, or by such other officers as may be designated by Board resolution.

14.6 Board Amendments: Notwithstanding anything to the contrary in this Article, the Board is authorized to amend this Declaration to correct drafting or technical errors or to bring the Condominium into compliance with conditions imposed by lenders providing government insured loans.

ARTICLE XV

GENERAL PROVISIONS

15.1 Validity.

(a) **Severability.** Invalidation of any one of the provisions of this Declaration or By-Laws, by judgment, order or decree shall in no way affect any other provision of said documents, each of which shall remain in full force and effect.

(b) **Rule Against Perpetuities.** The rule against perpetuities shall not be applied to defeat any provision of this Declaration of the By-Laws.

(c) **Compliance With Statutes.** This Declaration and the By-Laws are intended to comply with the requirements of the Act and NPCA. In the event of any conflict between said documents and the provisions of the statutes, the provisions of the Act shall control.

(d) **Marketable Title.** Title to a Unit (or, in the case of the Association, title to the Common Elements) is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the Declaration to comply with the Act. Whether or not a substantial failure impairs marketability shall not be affected by the Act.

15.2 Covenant Against Partition. So long as the Condominium is subject to the Act, except as provided in the Act, the Common Elements shall remain undivided and no Owner shall bring any action for partition or division thereof. The ownership of each Unit and the Allocated Interest of such Unit shall not be separated. Any deed, lease, mortgage or other instrument purporting to separate any Unit from its Allocated Interest shall be void. Except for boundary adjustment permitted in Article VIII herein, no Owner shall by deed, plat or otherwise, subdivide or attempt to cause his Unit to be separated into tracts or parcels smaller than the whole Unit as shown on the Plat. The foregoing notwithstanding, nothing contained herein shall prevent partition of a Unit between co-Owners, if a co-Owner has legal right thereto, except that any such partition shall be in kind.

15.3 Compliance with Documents. All Owners, tenants, Mortgagees and occupants of Units shall comply with the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of said documents are accepted and ratified by such Owner, tenant, Mortgagee or occupant, and all such provisions recorded in the Office of Recorder of the County of St. Louis, State of Missouri are covenants running with the land and shall bind any Persons having at any time any interest or estate in such Unit.

15.4 Limitation of Liability. The liability of each Owner for Common Expenses shall be limited to his Common Expense Liability in accordance with the Governing Documents. An Owner may be personally liable for the acts or omissions of the Association in relation to the use of the Common Elements but only to the extent of his Common Expense Liability, and shall not exceed the value of his Unit. Each Owner shall be liable for injuries or damages resulting from an accident in his own Unit to the same extent and degree that the owner of a house could be liable for such an occurrence.

15.5 By-Laws. The administration and operation of the Association shall be governed by the By-Laws, which shall at all times contain the minimum requirements specified in Section 448.3-106 of the Act unless provided for in this Declaration, and which need not be recorded.

(a) **Amendment Procedure.** The By-Laws may be amended as follows:

(1) **By the Members.** The By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding at least a majority of the total votes in the Association. In the event an Association meeting is held to consider an amendment to the By-Laws, notice of such meeting shall state that fact and the subject matter of the proposed amendment; or

(2) **By the Board.** The By-Laws may be amended at any time by the Board, and ratified by the Owners at a meeting called for such purpose, with notice of the meeting to include a copy of the proposed amendment. Unless at that meeting the proposed amendment is rejected by a majority of all the Owners, the amendment is ratified, whether or not a quorum is present.

(b) **Validity and Effective Date of Amendments.** Amendments to the By-Laws shall become effective upon recordation (if the By-Laws are recorded), or upon execution by the designated officers (if the By-Laws are not recorded), or, in either case, upon a later date if so specified therein. Any procedural challenge to an amendment must be made within six (6) months after the effective date; otherwise, such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of the By-Laws.

15.6 Condemnation. If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable only in accordance with Section 448.1-107 of the Act.

15.7 Sale or Termination. Except in the case of taking all of the Units by eminent domain, the Condominium may be sold or terminated only by agreement of Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated and pursuant to Section 448.2-118 of the Act.

15.8 Merger and Consolidation. This Condominium may be merged or consolidated with one or more condominiums, and the "Community Club" provided in Section 15.9, into a single condominium in accordance with Section 448.2-121 of the Act.

15.9 Community Club. A clubhouse, swimming pool, and related amenities have been established and exist for the exclusive and mutual benefit of the Owners of Sections I and II of Forum West Condominium. The property and improvements shall be owned and operated by the Forum West Community Club ("Community Club") for the benefit of the Owners, as follows:

(a) The Community Club shall be organized as a Missouri nonprofit corporation, and governed by a board of directors consisting of six (6) directors. Each of the Boards of Directors of Sections I and II of Forum West Condominium shall designate three (3) directors to serve as the board of directors of the Community Club. The directors shall hold office for terms of two (2) years each, which terms shall be staggered, and shall serve without compensation.

(b) The Community Club shall maintain, repair and replace all property and improvements thereon, of the Community Club.

(c) The board shall adopt an annual budget itemizing the common expenses of the Community Club and the amount of assessments allocated equally among all the Owners of Sections I and II of Forum West Condominium. The board shall, not later than November 1 of each year, submit the budget to the Board of Directors of Sections I and II of Forum West Condominium, and each such Board of Directors shall be responsible for collecting all assessments on behalf of, and shall remit same to the Community Club, in the same manner and with the same authority as provided in Article IX of this Declaration.

(d) The board shall have all powers and duties as provided under the Act and NPCA reasonable and necessary to carry out its purposes and objectives. The board shall adopt By-Laws for the internal administration of the Community Club, and may adopt such rules and regulations as it deems reasonable for the governance, use and maintenance of the Community Club.


1510 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for a first-class residential condominium community and for the effective operation of the Association. Whenever the context so requires, the use of any gender shall be deemed to include all genders, the use of plural shall include the singular shall include the plural.

1511 Captions. The captions contained in this Declaration and the By-Laws are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of said documents nor the intent of any provision thereof.

15.12 Waiver. No provision contained in this Declaration or the By-Laws is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

IN WITNESS WHEREOF, the Board of Managers, by its duly authorized officers, hereby certifies that this Restatement of Declaration has been approved pursuant to Article Sixteen of the Original Declaration, and hereby executes this instrument on the day and year first above written.

BOARD OF MANAGERS
FORUM WEST CONDOMINIUM SECTION I,

By: 
President DENNIS H. NETTLER

LEGAL DESCRIPTION
FORUM WEST SECTION ONE

Part 1 of Lot 1, Share 1 of Partition of Missouri Stevens Estate in U. S. Survey 207 Township 46 North, Range 5 East and being more particularly described as: Beginning at a point in the North line of Olive Street Road, 60 feet wide, at its intersection with the East line of U. S. Survey 207; thence Westwardly along said North line, South 81 degrees 48 minutes 40 seconds West 17.23 feet, South 81 degrees 30 minutes 40 seconds West 329.68 feet and along a curve to the right whose radius point bears North 8 degrees 51 minutes 20 seconds West from the last mentioned point a distance of 304.89 feet to a point on said curve to the point of beginning, or the East line of COLISEUM DRIVE, of the herein after described tract; thence along aforementioned curve to the right a distance of 26.36 feet to a point; thence North 8 degrees 15 minutes 20 seconds West 94.52 feet to a point; thence South 81 degrees 44 minutes 40 seconds West 60.94 feet; thence North 26 degrees 58 minutes 30 seconds West 253.15 feet; thence North 50 degrees 22 minutes 50 seconds East 24.86 feet; thence North 21 degrees 45 minutes 10 seconds East 59.27 feet; thence North 64 degrees 48 minutes 40 seconds East 70.93 feet; thence North 56 degrees 39 minutes 38 seconds East 84.71 feet; thence North 32 degrees 58 minutes 50 seconds East 130.86 feet; thence North 52 degrees 50 minutes 10 seconds East 184.90 feet; thence North 52 degrees 55 minutes 40 seconds East 168.46 feet; thence South 26 degrees 58 minutes 30 seconds East 272.49 feet; thence South 63 degrees 01 minutes 30 seconds West 136.64 feet; thence South 26 degrees 58 minutes 30 seconds East 137.67 feet; thence South 63 degrees 01 minutes 30 seconds West 381.54 feet; thence South 50 degrees 42 minutes 20 seconds West 47.95 feet along the South line of COLISEUM DRIVE, and along a curve to the left whose radius is 47.00 feet a distance of 48.36 feet; thence South 8 degrees 15 minutes 20 seconds East 108.68 feet to the point of beginning.

Containing 4.94 acres.

Exhibit A

PERCENTAGE OWNERSHIP OF COMMON ELEMENTS
FORUM WEST CONDOMINIUM SECTION I

UNIT NO.	BLDG	PERCENTAGE OWNERSHIP	UNIT NO.	BLDG	PERCENTAGE OWNERSHIP
1	One	1.77258	22	Five	1.53619
2	"	1.75607	23	"	1.56368
3	"	1.75607	24	Four	1.75607
4	"	1.75607	25	"	1.75607
5A	"	1.13491	26A	"	1.13491
5B	"	1.31631	26B	"	1.31631
5C	"	1.15140	26C	"	1.15140
5D	"	1.13491	26D	"	1.13491
5E	"	1.13491	26E	"	1.13491
5F	"	1.31631	26F	"	1.31631
5G	"	1.15140	26G	"	1.15140
5H	"	1.13491	26H	"	1.13491
6	"	1.75607	27	"	1.75607
7	"	1.53619	28	"	1.75607
8	"	1.53619	29	Six	1.56368
9	"	1.56368	30	"	1.53619
10	Two	1.75607	31	"	1.75607
11	"	1.53619	32	"	1.75607
12	"	1.53619	37	Seven	1.56368
13	"	1.53619	38	"	1.77258
14	"	1.77258	39	"	1.75607
15A	"	1.13491	40	"	1.75607
15B	"	1.31631	41A	"	1.13491
15C	"	1.15140	41B	"	1.31631
15D	"	1.13491	41C	"	1.15140
15E	"	1.13491	41D	"	1.13491
15F	"	1.31631	41E	"	1.13491
15G	"	1.15140	41F	"	1.31631
15H	"	1.13491	41G	"	1.15140
16	Three	1.53619	41H	"	1.13491
17	"	1.53619	42	"	1.75607
18	"	1.75607	43	"	1.75607
19	"	1.75607	44	"	1.77258
20	Five	1.75607	45	"	1.56368
21	"	1.75607			
					100.00000%

**FIRST AMENDMENT TO
FORUM WEST CONDOMINIUM SECTION I
RESTATEMENT OF DECLARATION OF CONDOMINIUM**

THIS AMENDMENT is made by the Forum West Condominium Section I Association this 15 day of MARCH, 2002.

WITNESSETH:

WHEREAS, Forum West Condominium Section I ("Condominium") was created under the Missouri Condominium Property Act by virtue of the "Forum West Condominium Section I Declaration of Condominium, By-Laws and Indenture," as recorded in Book 6359, Page 2371, of the records of the Recorder of Deeds, St. Louis County, Missouri, as amended ("Original Declaration"); and

WHEREAS, the Condominium is located on a certain parcel of real property more particularly described in Exhibit "A" attached to the Original Declaration, a copy of which is attached hereto as Exhibit "A;" and

WHEREAS, the Original Declaration was restated by virtue of the "Forum West Condominium Section I Restatement of Declaration of Condominium," as recorded in Book 12680, Page 0513 of the records of the Recorder of Deeds, St. Louis County, Missouri ("Declaration"); and

WHEREAS, the Unit Owners of the Condominium are members of the Forum West Condominium Section I Association, a Missouri nonprofit corporation ("Association"); and

WHEREAS, the State of Missouri adopted "Megan's Law" in 1997 to address the danger of recidivism posed by persons who have committed acts classified as persistent and predatory sexual offenses, and to require public notification to identify the whereabouts of such persons so that members of the public could exercise appropriate precautions for their own safety, and to provide law enforcement officials with additional information critical to preventing and promptly resolving situations involving sexual offenses; and

WHEREAS, the Association, acting pursuant to the authority to amend the Declaration by vote or agreement of the Owners of Units to which at least sixty-seven percent (67%) of the votes are allocated, as contained in Article XIV of the Declaration, desires and intends to amend the Declaration for the purpose of restricting persons who are required to register under Missouri's Megan's Law from permanently or temporarily residing in a Unit of the Condominium, as more particularly set forth herein below.

NOW THEREFORE, the "Forum West Condominium Section I Restatement of Declaration of Condominium" ("Declaration") is amended as follows:

A. *A New Section 11.11 of the Declaration is hereby created, to read as follows:*

"11.11. Megan's Law Registration. Effective upon the date thirty (30) days after the recordation of this Amendment ("Effective Date"):

"(a) No person required to register with law enforcement officials of St. Louis County, Missouri, pursuant to Sections 589.400 to 589.425, Mo. Rev. Stat., as may be amended ("Megan's Law Registrant"), may permanently or temporarily reside in a Unit. As used in this Section 11.11, the term "resides" or "residing" means living in or possessing any portion of a Unit for more than fourteen (14) days out of any thirty (30) consecutive day period. This Section 11.11 shall not apply to any person who, prior to the Effective Date, is a Megan's Law Registrant and resides in the Condominium.

"(b) Any tenancy, leasehold or other possessory interest, whether or not in writing, shall be subject to this Section 11.11. In the event, following the Effective Date, a Megan's Law Registrant resides in a Unit as a tenant, or under any other possessory interest, the Association shall notify the Owner of such Unit, and the Owner shall immediately cause the person to vacate the Unit. If said Registrant does not vacate the Unit within thirty (30) days after the date the Owner was notified by the Association, then the Owner shall immediately commence eviction proceedings. If the Owner fails to commence the eviction proceeding within thirty (30) days following the date the Owner is required to do so and fails to diligently prosecute the eviction to conclusion, then the Association may act as attorney-in-fact for the Owner and pursue the eviction action at the Owner's cost and expense, including reasonable attorney's fees incurred by the Association.

Each Owner shall be deemed to appoint the Association as the Owner's attorney-in-fact for the purpose of commencing eviction proceedings, executing any and all documents pertaining to the proceedings or performing any or all responsibilities as may be required or necessary to be performed pursuant to this Section 11.11. This power of attorney is expressly declared and acknowledged to run with the title of any and all Units and shall be binding upon the heirs, personal representatives, successors and assigns of the Owner.

“(c) Any Owner, who by virtue of residing in a Unit, has been notified by the Association that he/she is in violation of this Section 11.11, shall vacate the Unit within ninety (90) days after receipt of the Association’s notice. If such Owner fails to vacate the Unit within said ninety (90) days, the Association may, in addition to all other remedies available under the Declaration, purchase the Unit at a purchase price equal to the average of two independent appraisals to be obtained by the Association, less the Association’s anticipated costs of selling the Unit, including without limitation, realtor’s commission not to exceed seven percent (7%) of the appraisal value, the cost of the appraisal, and other customary and incidental costs not to exceed one percent (1%) of the appraisal value.

“(d) The provisions of Section 13.3 relating to alternative dispute resolution shall not apply to this Section 11.11.

“(e) The Association shall not be liable to any Owner or to anyone occupying or visiting the Condominium, as the result of any failure of the Association to dispossess a Megan’s Law Registrant.”

B. The President and Secretary of the Association are authorized to execute and record this Amendment upon its adoption by the Owners and, by their signatures below, do certify that this Amendment has been duly approved by the Owners as provided in Article XIV of the Declaration.

IN WITNESS WHEREOF, the Forum West Condominium Section I Association, acting by and through its duly authorized officers, has executed this Amendment on the day and year first above written.

FORUM WEST CONDOMINIUM
SECTION I ASSOCIATION,
a Missouri nonprofit corporation,

By: Joseph A. Maloney *JAM*
President

Attest:
Janice D. Retha
Secretary

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 15th day of MARCH, 2002, before me appeared JOSEPH A. MALONEY III, to me personally known, who, being by me duly sworn, did say that he ~~she~~ is the President of Forum West Condominium Section I Association, a Missouri nonprofit corporation, that said instrument was signed on behalf of said corporation, that said person acknowledged said instrument to be his ~~her~~ free act and deed, and that said corporation has no seal.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Victoria L. Anderson
Notary Public

My Commission Expires:
3/4/05

VICTORIA L. ANDERSON
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Mar. 4, 2005

LEGAL DESCRIPTION
FORUM WEST SECTION ONE

Part 1 of Lot 1, Share 1 of Partition of Missouri Stevens Estate in U. S. Survey 207 Township 46 North, Range 5 East and being more particularly described as: Beginning at a point in the North line of Olive Street Road, 60 feet wide, at its intersection with the East line of U. S. Survey 207; thence Westwardly along said North line, South 81 degrees 48 minutes 40 seconds West 17.23 feet, South 81 degrees 30 minutes 40 seconds West 329.68 feet and along a curve to the right whose radius point bears North 8 degrees 51 minutes 20 seconds West from the last mentioned point a distance of 304.89 feet to a point on said curve to the point of beginning, or the East line of COLISEUM DRIVE, of the herein after described tract; thence along aforementioned curve to the right a distance of 26.36 feet to a point; thence North 8 degrees 15 minutes 20 seconds West 94.52 feet to a point; thence South 81 degrees 44 minutes 40 seconds West 60.94 feet; thence North 26 degrees 58 minutes 30 seconds West 253.15 feet; thence North 50 degrees 22 minutes 50 seconds East 24.86 feet; thence North 21 degrees 45 minutes 10 seconds East 59.27 feet; thence North 64 degrees 48 minutes 40 seconds East 70.93 feet; thence North 56 degrees 39 minutes 38 seconds East 84.71 feet; thence North 32 degrees 58 minutes 50 seconds East 130.86 feet; thence North 52 degrees 50 minutes 10 seconds East 184.90 feet; thence North 52 degrees 55 minutes 40 seconds East 168.46 feet; thence South 26 degrees 58 minutes 30 seconds East 272.49 feet; thence South 63 degrees 01 minutes 30 seconds West 136.64 feet; thence South 26 degrees 58 minutes 30 seconds East 137.67 feet; thence South 63 degrees 01 minutes 30 seconds West 381.54 feet; thence South 50 degrees 42 minutes 20 seconds West 47.95 feet along the South line of COLISEUM DRIVE, and along a curve to the left whose radius is 47.00 feet a distance of 48.36 feet; thence South 8 degrees 15 minutes 20 seconds East 108.68 feet to the point of beginning.

Containing 4.94 acres.

Exhibit A