

# **ATRIUM ELMHURST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP**

This Atrium Elmhurst Amended and Restated Declaration of Condominium Ownership (hereinafter referred to as "Declaration") is made and entered into by the Board of Managers of the Atrium Elmhurst Condominium Association in accordance with the provisions of Section 27(b) of the Illinois Condominium Property Act (765 ILCS 605/27(b)), which provides that the Association may correct errors or omissions in the Declaration as may be required to conform to the Act, and any other applicable statute by vote of two-thirds (2/3) of the members of the Board of Managers.

## **RECITALS**

**WHEREAS, the Atrium Elmhurst Declaration of Condominium Ownership was** made and entered into the 9th day of September, 1974, by NATIONAL BOULEVARD BANK OF CHICAGO, as Trustee under Trust Agreement dated May 26, 1969 and known as Trust No. 3133 (hereinafter referred to as the "Trustee"), and recorded with the DuPage County Recorder of Deeds on September 10, 1974 as document number R74-47114;

**WHEREAS,** the Amendment to the Atrium Elmhurst Declaration of Condominium Ownership was recorded with the DuPage County Recorder of Deeds on January 19, 2007 as document number R2007-012792;

**WHEREAS,** the Amendment to the Atrium of Elmhurst Condominium Association By-Laws was recorded with the DuPage County Recorder of Deeds on January 5, 2006 as document number R2006-002894;

**WHEREAS,** the Amendment to the Atrium Elmhurst Declaration of Condominium Ownership was recorded with the DuPage County Recorder of Deeds on March 23, 2009 as document number R2009-042272;

**WHEREAS,** the Board desires to record this Declaration for purposes of correcting certain scrivener's errors contained in the Atrium Elmhurst Declaration of Condominium Ownership and for purposes of incorporating the amendments to the Declaration and By-Laws into one document;

**WHEREAS,** the Trustee was the record owner of a certain parcel of real estate in the County of DuPage, State of Illinois, legally described as follows:

A part of Lot 1 of Walter Swanson's Assessment Plat of a part of the Southeast Quarter of Section 14, Township 39 North, Range 11 East of the Third Principal Meridian and a part of the Southeast Quarter of Section 14, Township 39 North, Range 11 East of the Third Principal Meridian in the City of Elmhurst, DuPage County, Illinois, and more particularly described as follows:

Commencing at the Southwest corner of the Southeast Quarter of said Section 14, thence due East along the South line of the Southeast Quarter of said Section 14, a distance of 416.56 feet to the West line of a Private Road which has been recorded but not dedicated; thence along a foresaid West line North 30 degrees East 28.87 feet to a point in a curve; thence continuing along aforesaid West line on a curve to the right having a radius of 698.00 feet a distance of 77.38 feet; thence continuing along aforesaid West line and not tangent to the last described curve. North 12 degrees 34 minutes 01 second East 63.41 feet to a point in a curve; thence continuing along aforesaid West line on a curve to the right having a radius of 131.50 feet a distance of 67.98 feet to a point, being the point of beginning; thence leaving aforesaid West line on a line parallel, to and 20 feet Southwesterly of the face of the building, North 48 degrees 48 minutes 02 seconds West 95.40 feet; thence continuing parallel to the face of said building and 20 feet Northwesterly, North 41

degrees 11 minutes 58 seconds East 131.31 feet; thence continuing parallel to the face of said building and 20 feet Northwesterly, North 21 degrees 01 minutes 05 seconds East 111.37 feet; thence continuing parallel to the face of said building and 20 feet Westerly. North 1 degree 07 minutes 44 seconds East 55.53 feet; thence along the North face of said building. South 88 degrees 52 minutes 16 seconds East 120.54 feet to a point in the West line of aforesaid Private Road; thence along aforesaid West line on a curve to the right having a radius of 424.46 feet a distance of 111.47 feet to a point of compound curves; thence continuing along aforesaid West line on a curve to the right having a radius of 295.13 feet a distance of 220.50 feet to a point of reverse curve; thence continuing along aforesaid West line on a curve to the left having a radius of 131.50 feet a distance of 37.17 feet to the point of beginning (hereinafter referred to as Parcel 1”), commonly known as **ATRIUM**, Building No. 1;

**WHEREAS**, Trustee intended to submit Parcel 1 together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anywise pertaining thereto, to the provisions of the Condominium Property Act of the State of Illinois;

**WHEREAS**, Trustee desired to provide for the later addition to the Property (as hereinafter defined) of certain additional Parcels of real estate;

**WHEREAS**, Trustee desired to establish for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, certain easements and rights in, over and upon Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

**WHEREAS**, Trustee desired and intended that the several owners, mortgagees, occupants and any other persons hereafter acquiring any interest in the Property shall, at all times, enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of such property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness thereof.

**NOW, THEREFORE**, the Board of Managers of the Atrium Elmhurst Condominium Association hereby declares and restates the Declaration as follows:

1. **Definitions.** As used herein, unless the context otherwise requires:
  - (a) “Act” means the Condominium Property Act of the State of Illinois.
  - (b) “Declaration” means this instrument by which Parcel 1 is submitted to the provisions of the Act, as hereinafter provided, and such Declaration as from time to time amended.
  - (c) “Developer” means Atrium Venture, an Illinois joint venture, the beneficiary of the Trust created by Trust Agreement dated May 26, 1969, of which National Boulevard Bank of Chicago is Trustee under its Trust No. 3133.
  - (d) “Parcel 1” means the parcel or tract of real estate, described above in this Declaration.
  - (e) “Additional Parcel” means each additional parcel or tract of real estate described in an amendment to this declaration executed and recorded pursuant to section 18 hereof.
  - (f) “Property” means all the land, property and space comprising Parcel 1 and each Additional Parcel, and all improvements and structures erected, constructed or contained therein or thereon, including buildings and all easements, rights and appurtenances belonging thereto, and all fixtures, equipment and furnishings intended for the mutual use, benefit or enjoyment of the Unit Owners.
  - (g) “Unit” means a part of the Property, including one or more rooms and occupying one or more floors or a part or parts thereof, designed or intended for independent use as a one-family dwelling or such other incidental uses permitted by this Declaration, as set forth on the Plat. Each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes constituting the boundaries of such Unit as shown on the Plat; provided, however, that no structural components of a Building, and no pipes, wires, conduits, ducts,

flues, shafts, or public utility lines situated within a Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of said Unit.

- (h) "Plat" means the plat or plats of survey of Parcel 1 and of any Additional Parcels, and of all Units herein, submitted to the Act, consisting of a three dimensional horizontal and vertical delineation of all such Units, a Plat of all or a portion of Parcel 1 being attached hereto as Exhibit "A" and by this reference made a part hereof and recorded simultaneously with the recording of this Declaration. In the event the multi-family structure located on any Parcel is not completed, and the structural components of the multi-family structure constituting all the Unit boundaries are not in place on the date of recording of this Declaration or any Amendment to this Declaration, the Trustee reserves the right to and shall cause to be recorded from time to time until all of said structural components are in place an amended plat or plats of survey showing the actual locations and dimensions of the boundaries of those units in said multi-family structure that are completed after the date of said recording. Whenever in this Declaration or any Amendment to this Declaration the term "plat" or "survey", or "plat attached as Exhibit "A" appears, it shall be deemed to include such amended plat or plats of survey as shall be hereafter recorded pursuant to this paragraph.
- (i) "Common Elements" means all of the Property, except the Units, and shall include, but shall not be limited to, the land, foundations, hallways, stairways, entrances and exits, common parking areas, storage areas, basement, roof, incinerator, pipes, ducts, electrical wiring and conduits (except pipes, ducts, electrical wiring and conduits situated entirely within a Unit and serving only said Unit), central heating and air-conditioning system, public utility lines, floors ceilings and perimeter walls of Units (other than such portions thereof included within Unit boundaries as shown on the Plat), structural components of the Building, outside walks and driveways, landscaping and all other portions of the Property except the individual Units. Structural components located within the boundaries of a Unit shall be part of the Common Elements.
- (j) "Limited Common Elements" means that portion of the Common Elements contiguous to or serving exclusively a single Unit or adjoining Units as an inseparable appurtenance thereto, including specifically, but not by way of limitation, balconies, individual heating, air-conditioning and plumbing fixtures and related pipes, ducts and wiring and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows and entryways and of all associated fixtures and structures therein as lie outside the Unit boundaries. The Board as hereinafter defined may from time to time designate other portions of the Common Elements as Limited Common Elements including, but not limited to, automobile parking spaces and storage lockers.
- (k) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- (l) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.
- (m) "Majority" or "Majority of the Unit Owners" means the owners of more than Fifty (50%) Percent in the aggregate in interest of the undivided ownership of the Common Elements. Any specified percentage of the Units Owners means such percentage in the aggregate in interest of such undivided ownership of the Common Elements.
- (n) "Unit Ownership" means a part of the Property consisting of one Unit and the undivided interest in the Common Elements appurtenant thereto.
- (o) "Building" means the building or buildings located on the Property and containing the Units, as shown by the Plat.

2. **Submission of Property to the Act.** The Trustee, as the owner in fee simple of Parcel 1 hereby submits Parcel 1 and the Property to the provisions of the Act.

3. **Plat.** The measurements, elevations, locations and other data required by the Act showing Parcel 1 and the Additional Parcels, the Building and each floor thereof, and each Unit, shall be as shown in the Plat. The plat relating to the Building on Parcel 1 is attached hereto as Exhibit "A".
4. **Unit Identification.** Each Unit is identified on the Plat by a distinguishing number or other symbol. The legal description of each Unit shall refer to such identifying number or symbol.
5. **Ownership of the Common Elements.** Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in the schedule attached hereto as Exhibit "B". The aforesaid percentages of ownership interest have been computed and determined in accordance with the Act, and shall remain constant unless hereafter changed (i) by recorded Amendment to this Declaration pursuant to Section 18 hereof, or (ii) by recorded Amendment to this Declaration consented to in writing by all Unit Owners. Said ownership interests in the Common Elements shall be undivided interests, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership as set forth in Exhibit "B". The ownership of each Unit and of the Unit Owner's corresponding percentage of ownership in the Common Elements shall not be separated.
6. **Use of the Common Elements.** Each Unit Owner shall have the right to use the Common Elements (except the Limited Common Elements) in common with all other Unit Owners, as may be required for the purposes of access and ingress and egress to and use and occupancy and enjoyment of the respective Unit owned by such Unit Owner. Such right to use the Common Elements shall extend to each Unit Owner, and the agents, servants, tenants, family members and invitees of each Unit Owner. Each Unit Owner shall have the right to the exclusive use and possession of the Limited Common Elements serving exclusively his Unit. Such rights to use and possess the Common Elements, including the Limited Common Elements, shall be subject to and governed by the provisions of the Act and of this Declaration and the By-Laws herein and the rules and regulations of the Board. The Board shall have the exclusive authority from time to time to adopt or amend administrative rules and regulations governing the use, occupancy and control of the Common Elements as more particularly provided in the By-Laws. The Board shall have the authority to lease or to grant licenses or concessions with respect to parts of the Common Elements, subject to the provisions of the Declaration and By-laws, including specifically, but not by way of limitation, common parking areas, laundry areas, storage areas, and commercial and recreational areas.
7. **Administration and Operation of the Property.** The governing body for the administration and operation of the Property shall be the Board of Managers who shall be elected in the manner provided in the By-laws. The Board of Managers, when authorized by a majority of the Unit Owners, shall cause to be incorporated a not-for-profit corporation as provided by the Act, and in each such event, or in the event Developer has heretofore caused such corporation to be organized, then such corporation (hereinafter referred to as the "Condominium Association") shall be the governing body for the administration and operation of the Property, in which event the Board of Directors of such Condominium Association shall constitute the Board of Managers provided for in the Act, and all rights, titles, powers, privileges and obligations vested in or imposed upon the Board of Managers in the Act and in this Declaration and in the By-Laws shall be held or performed by the Condominium Association or by the duly elected members of the Board of Directors thereof and their successors in office. The By-Laws for the governing body shall be the By-Laws appended hereto as Exhibit "C" and made a part hereof.

Whenever the word "Board" is used in this Declaration or in the By-Laws, it shall mean and refer to the Board of Managers if there is no Condominium Association, or if there is a Condominium Association, it shall mean and refer to said Condominium Association acting through its Board of Directors. The Board shall be elected by the Unit Owners in accordance with the By-Laws. Neither the Board, the Condominium Association nor the Unit Owners shall be deemed to be conducting a business of any kind. All funds collected by the Board shall be held and expended for the purposes designated in the Declaration and By-laws and (except for such adjustments as the Board may require to reflect delinquent, prepaid and special assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in the percentages set forth in Exhibit "B", and shall be administered in accordance with the provisions of the Declaration and By-Laws. Each Unit Owner shall be a member of the Condominium Association so long as he shall be a Unit Owner, and such membership shall automatically terminate when he ceases to be a Unit Owner, and upon transfer of his ownership interest, the new Unit Owner succeeding to such ownership interest shall likewise succeed to such membership in the Condominium Association.

Until the time established for the election of the initial Board of Managers, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed on the Board of Managers shall be held and performed by the Developer.

8. **Indemnity.** The members of the Board and the officers thereof or of the Condominium Association shall not be liable to the Unit Owners for any mistake of judgment, or any acts or omissions made in good faith as such members or officers. The Unit Owners shall indemnify and hold harmless each of such members or officers against all contractual liability to others arising out of contracts made by such members or officers on behalf of the Unit Owners or the Condominium Association unless any such contract shall have been made in bad faith or contrary to the provisions of this Declaration. The liability of any Unit Owner arising out of any contract made by such members or officers or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as his percentage interests in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements. Each Agreement made by such members or officers or by the managing agent on behalf of the Unit Owners or the Condominium Association shall be executed by such members or officers or the managing agent, as the case may be, as agents for the Unit Owners or for the Association.
9. **Board's Determination Binding.** In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all of such Unit Owners.
10. **Common Expenses.** Each Unit Owner shall pay his proportionate share of the expenses of administration, maintenance, operation, repair and replacement of the Common Elements and of any other expenses incurred in conformance with the Declaration and By-Laws or otherwise lawfully agreed upon (which expenses are herein sometimes referred to as "Common Expenses"). Such proportionate share of the Common Expenses for each Unit Owner shall be in the same ratio as his percentage of ownership in the Common Elements. Payment thereof shall be in such amounts and at such times as provided in the By-Laws. If any Unit Owner shall fail or refuse to make any such payment of his proportionate share of the Common Expenses when due, the amount thereof shall constitute a lien on the interest of such Unit Owner in the Property as provided in the Act; provided, however, that such lien shall be subordinate to the lien of any prior recorded first mortgage on the interest of such Unit Owner held by any bank, savings and loan association or insurance company with respect to such Unit Owner's proportionate share of Common Expenses which accrue prior to

the date the holder of such first mortgage either takes possession of the Unit, accepts a conveyance thereof (other than as security) or files a suit to foreclose its mortgage.

11. **Separate Mortgages.** Each Unit Owner shall have the right, subject to the provisions hereof, to make a separate mortgage or encumbrance on his respective Unit together with his respective ownership interest in the Common Elements. No Unit Owner shall have the right or authority to make or create or cause to be made or created any mortgage or encumbrance or other lien on or affecting the Property or any part thereof, except only to the extent of his Unit and his respective ownership interest in the Common Elements.
12. **Separate Real Estate Taxes.** It is understood that real estate taxes are to be separately taxed to each Unit Owner for his Unit and his corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, but are taxed on the Property as a whole, then each Unit Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Elements.
13. **Insurance.**
  - (a) The Board shall have the authority to and shall obtain insurance for the Property against loss or damage by fire and such other hazards as the Board may deem desirable, for the full insurable replacement cost of the Common Elements and the Units. Premiums for such insurance shall be Common Expenses.

Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Board as trustee for each of the Unit Owners in their respective percentages of ownership interest in the Common Elements.

The Board may engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and this Declaration. The fees of such corporate trustee shall be Common Expenses. In the event of any loss in excess of Fifty Thousand (\$50,000.00) Dollars in the aggregate, the Board shall engage a corporate trustee as aforesaid, or in the event of any loss resulting in the destruction of the major portion of one or more Units, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or owner of any Unit so destroyed.

The proceeds of such insurance shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of the Building, or shall be otherwise disposed of, in accordance with the provisions of this Declaration and the Act; and the rights of the mortgagee of any Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act with respect to the application of insurance proceeds to reconstruction of the Building.

Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of release from the Board of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company

shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

- (b) The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Unit Owner, the Condominium Association, its officers, members of the Board, the Trustee, the Developer, the manager and managing agent of the Building, if any, and their respective employees and agents, from liability in connection with the Common Elements and the streets and sidewalks adjoining the Property, and insuring the officers of the Condominium Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be Common Expenses.
- (c) Each Unit Owner shall be responsible for his own insurance on the contents of his own Unit and furnishings and personal property therein, and his personal property stored elsewhere on the Property, and his personal liability to the extent not covered by the liability insurance for all of the Unit Owners obtained as part of the Common Expenses as above provided.

The Board shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Unit Owner to his Unit unless and until such Unit Owner shall request the Board in writing to do so, and shall make arrangements satisfactory to the Board to reimburse the Board for any additional premiums attributable thereto; and upon the failure of such Unit Owner so to do, and the Board shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

- (d) Each Unit Owner hereby waives and releases any and all claims which he may have against any other Unit Owner, the Association, its officers, members of the Board, the Trustee, the Developer, the manager and managing agent of the Building, if any, and their respective employees and agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

14. **Maintenance, Repairs and Replacements.** Each Unit Owner shall provide and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit. Maintenance, repairs and replacements of the Common Elements shall be provided by the Board as part of the Common Expenses, subject to the rules and regulations of the Board; provided, that at the discretion of the Board, maintenance, repairs and replacements of the Limited Common Elements may be assessed in whole or in part to Unit Owners benefited thereby and further, at the discretion of the Board, it may direct such Unit Owners in the name and for the account of such Unit Owners to arrange for such maintenance, repairs and replacements, to pay the cost thereof, and to procure and deliver to the Board such lien waivers and contractor's and sub-contractors sworn statements as may be required to protect the Property from all mechanic's or materialmen's lien claims that may arise therefrom.

The Board may cause to be discharged any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Property, or Common Elements, rather than

against a particular Unit and its corresponding percentage of ownership in the Common Elements. 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 attorney's fees) incurred by reason of such lien.

Whenever the Board shall determine, in its discretion, that any maintenance or repair of any Unit is necessary to protect the Common Elements or any other portion of the Building, the Board may cause a written notice of the necessity for such maintenance or repair to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to any occupant of such Unit, or by mailing the same by certified or registered mail addressed to the Owner at the Unit. If such Unit Owner fails or refuses to perform any such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair to be performed at the expense of such Unit Owner.

If, due to the act or neglect of a Unit Owner, or of a member of his family or household pet or of a guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance.

The Board shall have exclusive authority to take, or refrain from taking, any action pursuant to this Paragraph 14. All expenses which, pursuant to this Paragraph 14, are chargeable to any Unit Owner, may be specifically assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board.

15. **Alterations, Additions or Improvements.** No alterations of any Common Elements, or any additions or improvements thereto, shall be made by any Unit Owner without the prior written approval of the Board. The Board may authorize and charge as Common Expenses (or in the case of Limited Common Elements may charge to the Unit Owner benefited thereby) alterations and improvements of, and additions to, the Common Elements; provided, however, that in the event the costs thereof are to be charged as Common Expenses the Board shall not approve such alterations, improvements or additions requiring an expenditure in excess of Five Thousand (\$5,000.00) Dollars without the approval of Unit Owners owning not less than Sixty-six and 2/3rds (66-2/3%) Percent in the aggregate in interest of the undivided ownership of the Common Elements. Any Unit Owner may make alterations, additions or improvements within his Unit without the prior written approval of the Board, but in any event such Unit Owner shall be responsible for any damage to other Units, the Common Elements, or the Property as a result of such alterations, additions or improvements.
  
16. **Decorating.** Each Unit Owner shall furnish and be responsible for, at his own expense, all of the decorating within his own Unit from time to time, including painting, wall papering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lamps and other furnishings and interior decorating. In the event the boundaries of any Unit, as shown on the Plat, are the finished undecorated interior surfaces of the perimeter walls, floors and ceilings thereof, the owner of such Unit shall be entitled to the exclusive use of such surfaces, and such Unit Owner shall maintain such surfaces in good condition at his sole expense as may be required from time to time, which said maintenance and use shall be subject to the rules and regulations of the Board, and each such Unit Owner shall have the right to decorate such surfaces from time to time in such manner as he may see fit and at his sole expense. The use of and the covering of the interior surfaces of windows, whether by draperies, shades or other items visible on the exterior of the Building, shall



be subject to the rules and regulation of the Board. Decorating of the Common Elements (other than interior surfaces within the Units as above provided), and any re-decorating of Units to the extent made necessary by any damage to existing decorating of such Units caused by maintenance, repair or replacement work on the Common Elements by the Board, shall be furnished by the Board as part of the Common Expenses.

17. **Encroachments.** If any portions of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portions of the Common Elements or any other Units, as the Common Elements and Units are shown by the surveys comprising the Plat, there shall be deemed to be mutual easements in favor of the owners of the Common Elements and the respective Unit Owners involved to the extent of such encroachments so long as the same shall exist.

18. **Addition of Parcels.**

(a) The Trustee reserves the right from time to time, within five (5) years of the date of the recording of this Declaration, by executing and recording an Amendment to this Declaration ("Amendment"), to annex to the Property and thereby add to the condominium created by this Declaration, all or any portion of the following described real property:

That part of Lot 1 of Walter Swanson's Assessment Plat of a part of the Southeast Quarter of Section 14 and a part of the Southeast Quarter of Section 14 all in Township 39 North, Range 11 East of the Third Principal Meridian in the City of Elmhurst, DuPage County, Illinois and more particularly described as follows:

Beginning at a point on the South line of the Southeast Quarter, being 113.37 feet Easterly of the Southwest corner of said Section 14; thence along a line in Salt Creek, North 2 degrees 06 minutes East 481.96 feet thence continuing along a line in Salt Creek, North 43 degrees 25 minutes East 124.28 feet; thence continuing along a line in Salt Creek, North 39 degrees 52 minutes East 167.07 feet; thence continuing along a line in Salt Creek, North 21 degrees 41 minutes West 214.84 feet; thence due East 217.59 feet to the Northwest Right of Way line of a Private Road recorded but not dedicated; thence along aforesaid Right of Way line on a curve to the left having a radius of 259.90 feet a distance of 110.29 feet to a point of tangency; thence continuing along aforesaid Right of Way line tangent to the last described curve, South 37 degrees 44 minutes 05 seconds East 29.89 feet to a point of curve; thence continuing along aforesaid Right of Way line on a curve to the right having a radius of 296.85 feet a distance of 141.44 feet to a point of continuing curve; thence continuing along aforesaid Right of Way line on a curve to the right having a radius of 424.46 feet a distance of 141.72 feet to the Northeast corner of "Parcel 1, ATRIUM BUILDING NO. 1"; thence along the boundary of said "Parcel 1", North 88 degrees 52 minutes 16 seconds West 120.54 feet, South 1 degree 07 minutes 44 seconds West 55.53 feet, South 21 degrees 01 minutes 05 seconds West 111.37 feet South 41 degrees 11 minutes 58 seconds West 131.31 feet and South 48 degrees 48 minutes 02 seconds East 95.40 feet to the Northwest Right of Way line of said Private Road; thence continuing along aforesaid Right of Way line on a curve to the left having a

radius of 131.50 feet a distance of 105.15 feet to a point of tangency; thence continuing along aforesaid Right of Way line tangent to the last described curve, South 12 degrees 34 minutes 01 seconds West 63.64 feet to a point; thence continuing along aforesaid Right of Way line on a curve to the left having a radius of 698.00 feet a distance of 77.38 feet to a point; thence continuing along aforesaid Right of Way line, South 30 degrees West 28.87 feet to a point in the South line of the Southeast Quarter of said Section 14; being also the North Right of Way line of Roosevelt Road; thence along said South line and said North Right of Way line, due West 303.19 feet to the point of beginning.

which real property is hereinafter referred to as the "Reserved Property". No rights of any character whatever within the Reserved Property attach to any Owner except as to that portion described in a recorded Amendment annexing and adding such portion to this Declaration as part of the condominium created by this Declaration.

- (b) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Trustee, the Developer, Ernest Greenberger and Lee J. Vickman, and each of them singly, as attorney-in-fact, to shift the percentages of ownership in the Common Elements appurtenant to each Unit to the percentages set forth in each Amendment recorded pursuant to this Section 18. Each deed, mortgage or other instrument with respect to a Unit and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power to each of said attorneys-in-fact and shall be deemed to reserve to each of them the power to shift and reallocate from time to time the percentages of ownership in the Common Elements appurtenant to each Unit to the percentages set forth in each such recorded Amendment.
- (c) Each Owner of a Unit by acceptance of a deed thereto, further acknowledges, consents and agrees as to each such Amendment that is recorded, as follows:
  - i. The portion of the Reserved Property described in each such Amendment shall be governed in all respects by the provisions of this Declaration.
  - ii. The percentage of ownership in the Common Elements appurtenant to each Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded Amendment and upon the recording of each such Amendment, the amount by which such percentage appurtenant to a Unit is reduced, as set forth in each such recorded Amendment, shall thereby be released and divested from such Unit Owner and reconveyed and reallocated among the other Unit Owners as set forth in each such recorded Amendment.
  - iii. Each deed, mortgage or other instrument affecting a Unit shall be deemed given subject to the conditional limitation that the percentage of ownership in the Common Elements appurtenant to each Unit shall, upon the recording of each Amendment, be divested pro tanto to the reduced percentage set forth in such Amended Declaration and vested among the other Owners, mortgagees and others owning an interest in the other units in accordance with the terms and percentages of each such recorded Amendment.

- iv. A right of revocation is hereby reserved by the grantor in each such deed, mortgage or other instrument of a Unit to so amend and reallocate the percentages of ownership in the Common Elements appurtenant to each Unit.
- v. The percentage of ownership in the Common Elements appurtenant to each Unit shall include and be deemed to include any additional Common Elements annexed hereto by a recorded Amendment and each deed, mortgage or other instrument affecting a Unit shall be deemed to include such additional Common Elements and the ownership of any such Unit and lien of any such mortgage shall automatically include and attach to such additional Common Elements as such Amendments are recorded.
- vi. Each owner shall have a perpetual easement, appurtenant to his Unit, for the use of any additional Common Elements annexed thereto by and described in any recorded Amendment, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners of specific Units as may be provided in any such Amendment.
- vii. The recording of each such Amendment shall not alter the amount of the lien for expenses assessed to a Unit prior to such recording.
- viii. Each Owner by acceptance of the deed conveying his Unit, agrees for himself and all those who claim under him, including mortgagees, that this Declaration and each Amendment is in accordance with the Act and for purposes of this Declaration and the Act, any changes in the respective percentages of ownership in the Common Elements as set forth in each such Amendment shall be deemed to be made by agreement of all Unit Owners.
- ix. The Trustee reserves the right to amend this Declaration in such manner and each Owner agrees to execute and deliver such documents, as may be necessary or desirable to cause the provisions of this Section 18 to comply with the Act as it may be amended from time to time.
- x. The foregoing provisions of this Declaration and in deeds and mortgages of the Units and Common Elements contain and will contain clauses designed to accomplish a shifting of the Common Elements. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Elements can be accomplished.

19. **Use and Occupancy Restrictions.** No Unit shall be used for other than residential purposes. Each Unit shall be used as a residence for a single family, and for no other purpose, by the Unit Owner and his family, or by a person or single family to whom the Unit Owner shall have leased his Unit, subject to the provisions with respect to leasing contained in the Declaration.

The Common Elements shall be used only for access, ingress and egress to and from the respective Units by the respective families residing therein and their respective guests, household help and other authorized visitors, and for such other purposes which are incidental to the residential use of the respective Units; provided, however, the common parking areas, storage areas, laundry room, management office, and other special areas, shall be used for the purposes approved by the Board.

20. **Parking Spaces.** The indoor and outdoor parking spaces shall be a part of the Common Elements.

The Board shall assign one individual indoor parking space to each Unit Owner. Additional indoor parking spaces may be sold and assigned by the Developer and those spaces not sold and assigned shall be turned over to the Board for sale and assignment. The Board shall have the right to establish reasonable rules and regulations governing the use of parking spaces, including limitations on the use of unassigned parking spaces.

21. **Utilities.** Each Unit Owner shall pay the cost of all utilities separately metered for his Unit, including the cost of electricity for heating and air conditioning of his Unit.
  
22. **Remedies.** In the event of any default by any Unit Owner under the provisions of the Act, Declaration, By-Laws or rules and regulations of the Board, the Board or its agents shall have each and all of the rights and remedies which may be provided for in the Act, Declaration, By-Laws or said Rules and Regulations or which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Unit Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Unit Owner, or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as hereinafter in this paragraph provided, or for any combination of remedies, or for any other relief. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of seven (7%) percent per annum until paid, shall be charged to and assessed against such defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same, as well as for as non-payment of his respective share of the Common Expenses, upon the Unit and ownership interest in the Common Elements of such defaulting Unit Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. In the event of any such default by any Unit Owner, the Board and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Unit Owner. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

If any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the regulations adopted by the Board, and such violation shall not be cured within thirty (30) days after notice in writing from the Board, or shall re-occur more than once thereafter, then the Board shall have the power to issue to said defaulting Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit, and thereupon an action in equity may be filed by the Board against said defaulting owner for a decree of mandatory injunction against said defaulting Owner or occupant or (subject to the prior consent in writing of any mortgagee having a security interest in the Unit Ownership of said defaulting Owner, which consent shall not be unreasonably withheld), in the alternative, for a decree declaring the termination of said defaulting Owner's right to occupy, use or control the Unit owned by him on account of said violation, and ordering that all the right, title and interest of said defaulting Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall determine, except that the court shall enjoin and restrain the said defaulting Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against said defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to said

defaulting Owner. Upon the confirmation of such sale, the purchaser shall thereupon be entitled to a deed to the Unit and the Unit Owner's corresponding percentage of ownership in the Common Elements, and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit Ownership sold subject to this Declaration.

23. **Amendment.** The provisions of this Declaration may be modified by an instrument in writing setting forth such modification signed by Unit Owners having at least three-fourths (3/4ths) of the total vote, and certified by the secretary of the Board; provided, however, that all lien holders of record have been notified by certified mail of such modification, and an affidavit by said secretary certifying to such mailing is a part of such instrument; provided further, however, that no provisions in this Declaration may be modified so as to conflict with the provisions of the Condominium Property Act

Notwithstanding the provisions of the foregoing paragraph; if the Act, or this Declaration or the By-Laws, requires the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument modifying any provision of this Declaration with respect to such action shall be signed by all the Unit Owners or all lien holders or both as required by the Act or this Declaration.

Any such modification shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of DuPage County, Illinois.

24. **Notices.** Notices provided for in the Act, Declaration or By-Laws shall be in writing, and shall be addressed to the Board at 21 Oak Tree Court, Elmhurst, Illinois, or to any Unit Owner at his Unit, or at such other address as hereinafter provided. The Board may designate a different address for notices to it by giving written notice of such change of address to all Unit Owners at such time. Any Unit Owner may also designate a different address or addresses for notices to him by giving written notice of his change of address to the Board. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment of the receipt thereof.

Upon written request to the Board, the holder of any recorded mortgage or trust deed encumbering any Unit shall be given a copy of all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit is subject to such mortgage or trust deed.

25. **Severability.** If any provision of the Declaration or By-Laws or any section, sentence, clause, phrase or work, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Declaration and By-Laws and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be effected thereby.
26. **Perpetuities and Other Rules of Property.** If any of the options, privileges, covenants or rights created by this Declaration would otherwise violate (a) the rule against perpetuities or some analogous statutory provision, or (b) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Mayor of the City of Chicago and the incumbent President of the United States.
27. **Rights and Obligations.** Each grantee of Trustee by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, accepts the same subject to all

restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the rights described in this Paragraph or described in any other part of this Declaration or by By-Laws shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Unit Ownerships as fully and completely as though such rights were recited fully and set forth in their entirety in such documents.

28. **General Provisions.**

- (a) No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- (b) The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class condominium.
- (c) In the event title to any Unit Ownership is conveyed to a titleholding trust, under the terms of which all powers of management, operation and control of the Unit Ownership remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Unit Ownership. No Claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Unit Ownership.

29. Upon a judicial decree of foreclosure or a deed in lieu of foreclosure under the mortgage from Trustee to Heitman Mortgage Company, an Illinois corporation, dated July 26, 1971, and recorded in the Office of DuPage County Recorder of Deeds as Document No. R71-41452, Heitman Mortgage Company shall succeed to all of the rights of the Trustee and the Developer hereunder and to all of the rights of the Developer under the By-Laws attached hereto as Exhibit C. This subparagraph 29 cannot be modified or amended without the written consent of Heitman Mortgage Company, or its successors and assigns.

30. **Restrictions Upon Leasing of Units**

- (a) **Prohibition against Leasing.** Each Unit Owner shall occupy and use his/her Unit as a private dwelling. Rental, leasing or use of the Units is prohibited, except as hereafter provided in this Article 30. Rentals or leasing to a member of the Unit Owner's immediate family members, including, children, grandchildren, siblings or parents shall not be prohibited or restricted by the Association.

- (b) **Hardship Provisions.** In the event that a Unit Owner, due to medical or health reasons or other justifiable cause constituting a hardship, in the sole discretion of the Board, shall be unable to occupy the Unit for a period in excess of four (4) months and based on said hardship desires to lease said Unit, the Unit Owner shall make application to the Board which may, by majority vote and review of the application, grant to the Unit Owner an exception to the above leasing restrictions, upon such conditions as the Board may establish and uniformly apply.
  - (c) **Grandfathered Existing Leases.** Paragraphs (a) and (b) of this Article 30 shall not apply to any leases, including renewals, or tenancies now in force, as to the rental or leasing of a Unit by Unit Owners who own the Unit on or before the effective date of this Amendment. However, paragraphs (a) and (b) shall apply to Unit Owners, currently leasing units, upon the expiration of the existing tenancy, including renewal, with current tenants, upon the sale, transfer or hypothecation of an interest in the Unit, or the Unit Owner retaking possession of the Unit peaceably, forcibly or through law.
  - (d) **Association Leases.** The Association shall be exempt from any lease restrictions provided in Paragraphs (a), (b) and (c) of this Article 30, pursuant to the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. Seq.) for the purposes of collecting delinquent assessments, costs, fees and other property assessed expenses to the Unit.
  - (e) **General Provisions.** Additionally, the Unit Owner leasing his/her Unit under such “hardship” exception or pursuant to Paragraph (c), shall deliver a copy of the signed lease to the Board, or if the lease is oral, a memorandum of lease, no later than the date of occupancy or ten (10) days after the lease is signed, whichever comes first. In the event the Owner fails to comply with such leasing requirements, the Association may seek to evict a tenant from the Unit under Article IX of the Code of Civil Procedure. Furthermore, all provisions of the Declaration, By-Laws and Rules and Regulations shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease executed or renewed. The Unit Owner making any such lease shall not be relieved thereby from any of his/her obligations. The Board may proceed directly against a tenant, at law or in equity under the provisions of Article IX of the Code of Civil Procedure, for any other breach by tenant or any covenants, rules, regulations, or By-Laws.
31. **Costs and Expenses Incurred by the Board.** All costs and expenses of the Board, including the fees of agents and others retained by the Board and the fees of counsel incurred by the Board in any litigation, negotiation, or transaction in which a Unit Owner causes the Board to become involved or concerned, shall be charged to and assessed against such Unit Owner, and shall be added to and deemed part of his respective share of the common expenses, and the Board shall be entitled to such additional remedies as set forth in Section 22 of this Declaration.

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF DUPAGE        )

The undersigned being the President of the Board of Managers of Atrium Elmhurst Condominium Association, established by the aforesaid Declaration, and by his/her signature below, do hereby certify that the foregoing Atrium Elmhurst Amended and Restated Declaration of Condominium Ownership has been approved by at least two-thirds (2/3) of the members of the Board of Managers for the Association.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Being the President of the Board of Directors of  
Atrium Elmhurst Condominium Association

I, \_\_\_\_\_, a Notary Public, hereby certify that on the above date, the above member of the Board of Managers of Atrium Elmhurst Condominium Association, which Board member is personally known to me, appeared before me and acknowledged that, as such Board member, he/she signed this instrument as his/her free and voluntary act of said Board for the uses and purposes therein set forth.

BY: \_\_\_\_\_