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REGISTERED OFFICE  
WISCONSIN DEPARTMENT OF REVENUE  
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DECLARATION OF CONDOMINIUM OWNERSHIP

OF

KERRY PLACE CONDOMINIUM

1339 Hillwood Boulevard  
Pewaukee, Wisconsin

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DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF EASEMENTS, RESTRICTIONS, COVENANTS AND  
CONDITIONS FOR KERRY PLACE CONDOMINIUM

THIS DECLARATION, made this 1st day of May 1996, by KERRY PLACE, INC., a Wisconsin corporation (hereinafter referred to as the "Developer").

WHEREAS, the Developer is the owner in fee simple of certain real estate hereinafter described, in the Village of Pewaukee, Waukesha County, Wisconsin; and

WHEREAS, the Developer intends to, and does hereby submit and subject such real estate, together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Wisconsin Condominium Ownership Act, Chapter 703, Wisconsin Statutes; and

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

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

NOW, THEREFORE, the Developer, as the title holder of the real estate hereinabove referred to and described at greater length hereinafter, and for the purposes above set forth, DECLARES AS FOLLOWS:

ARTICLE I

DEFINITIONS AND  
LEGAL DESCRIPTION OF PROPERTY

Section 1. LEGAL DESCRIPTION OF PROPERTY: The property which is hereby submitted and subjected to the provisions of the Condominium Ownership Act, Chapter 703, Wisconsin Statutes (the "Act"),

consists of the parcel of land legally described on Exhibit "A" attached hereto and incorporated herein together with an eight unit residential building with attached garages (the "Building") to be constructed on said land.

Section 2. DEFINITIONS: For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

(a) "ASSOCIATION" shall mean and refer to Kerry Place Condominium Association, Inc. a corporation formed under the nonstock corporation statute, Chapter 181. Wisconsin Statutes, its successors and assigns.

(b) "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(c) "UNIT" shall mean and refer to parts of the property subject to the Declaration, consisting of two (2) cubicles of air, one located in the main portion of the Building and one located in the garage portion of the Building, at one or more levels of space or one or more rooms or enclosed spaces located in one or more floors (or parts thereof) in a building and bounded along such boundaries as shown on the building and floor plans attached hereto as Exhibit "B", together with all facilities and improvements therein contained, excluding the land underneath same.

(d) "UNIT NUMBER" shall mean the number, letter or combination thereof identifying a Unit.

(e) "COMMON ELEMENTS" shall mean and refer, unless otherwise provided in this Declaration or amendments thereto, the entire Condominium other than the Units and Limited Common Elements, all as more particularly described in this Declaration.

(f) "LIMITED COMMON ELEMENTS" shall mean those common elements identified herein as reserved for the exclusive use of one or more, but less than all, of the Unit Owners, including patios, balconies and walkways.

(g) "DEVELOPER" shall mean and refer to KERRY PLACE, INC., a Wisconsin corporation, its successors and assigns. The Developer may also be referred to as the Declarant.

(h) "MORTGAGE" shall mean any Mortgage or other security instrument by which a Unit or any part thereof is encumbered.

(i) "MORTGAGEE" shall mean any person named as the Mortgagee under any Mortgage under which the interest of any owner

is encumbered, or any land contract vendor of any Unit, or any successor to the interest of such person under such Mortgage or such land contract.

(j) "MAJORITY" shall mean the Condominium Unit Owners with more than fifty percent (50%) of the votes assigned to the Units in this Declaration.

(k) "PERSON" shall mean an individual, corporation, partnership, association, trust or other legal entity.

## ARTICLE II

### PROPERTY AND UNITS: SUBMISSION TO ACT

Section 1. SUBMISSION OF PROPERTY TO THE ACT: The Developer hereby submits the property described in Article I to the provisions of the Act.

Section 2. CODE IDENTIFICATION: Each Unit shall be specifically designated by its Unit Number as set forth in Exhibit "B" attached hereto and hereby made a part of this Declaration. Such Unit Number shall consist of one letter.

Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number and every such description shall be deemed good and sufficient for all purposes, as provided in the Act.

Section 3. DESCRIPTION OF BUILDING AND UNITS: The Building described in this Declaration contains eight (8) Units and are fully described in the exhibits attached hereto and made a part of this Declaration. The Units also include an attached garage for one or two cars. The Building and Units are located as indicated in Exhibit "B" attached hereto and made a part of this Declaration. Each Unit contains two bedrooms, two bathrooms, a kitchen, a living room, a dining room, a porch on the first floor Units and a loft and balcony on the second floor Units, and a 1 or 2 car garage.

Each Unit will contain central forced air gas heat, center air conditioning, an electric hot water heater, refrigerator, garbage disposal, electric range and oven, dishwasher and clothes washer and clothes dryer.

The Developer reserves the right to change the style, model, size or location of the Building or any Unit prior to completion of construction, regardless of the initial designation of such style, model, size or location on Exhibits or elsewhere in this Declaration, provided all Units are comparable in style and quality.

The location and designation of each Unit and the immediate Common Element and Limited Common Elements to which the Units have access are shown in Exhibit "B" as are the approximate area and number of rooms of each Unit and the Unit Numbers.

Section 4. BOUNDARIES OF UNITS: The following are the boundaries of that portion of the Unit located within the Building and that portion of the Unit located within the garage. The vertical boundaries of each Unit shall be the center line of interior walls bounding a Unit and interior of the outside walls bounding a Unit; the lower horizontal boundary of a Unit shall be the plane of the upper surfaces of the base floor of the lowest level of the Unit, and the upper boundary shall be the plane of the under surface of the ceiling of the highest level of the Unit.

All windows, window frames, and doors, including all glass in all windows and doors, shall be considered a part of the Unit.

All installations for providing power, light, gas, hot and cold water, heating, refrigeration and air conditioning exclusively to one Unit shall be considered a part of that Unit.

Section 5. INTERPRETATION OF PLANS: In interpreting the survey or floor plans or any deed or any other instrument affecting a Building or Unit, the boundaries of the Building or Unit constructed or reconstructed in substantial accordance with the survey and floor plans shall be conclusively presumed to be the actual boundaries rather than the description expressed in the survey or floor plans, regardless of minor variations between boundaries shown on the survey and floor plans and the actual boundaries or the Building or Units as located and erected.

### ARTICLE III

#### COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 1. OWNERSHIP OF COMMON ELEMENTS: Each Unit Owner shall be entitled to and own an undivided interest in the Buildings as a tenant-in-common with all other Unit Owners of the property, and, except as otherwise limited in this Declaration, shall have the right to use the Buildings for all purposes incident to the use and occupancy of such Owner's Unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with such Unit. Each Unit's percentage of ownership in the Buildings shall be 12.5%

Each Unit's percentage of ownership in the Common Elements shall be subject to such easements that have been granted or may be hereinafter granted by the Developer.

Section 2. DESCRIPTION OF COMMON ELEMENTS: The Common Elements

shall consist of the entire Condominium other than the Units and Limited Common Elements, and shall include, without limitation, the following:

1. The Property;
2. All foundations, columns, girders, beams, supports, main walls, and roofs.
3. All exterior walls and facings and all partitions separating Units not included as parts of Units;
4. All surface parking and driveway areas, sidewalks, common walkways, pathways, and private drives, not included as part of the Limited Common Elements; and
5. All pipes, wires, cables, conduits and other apparatus relating to the private water distribution, drainage, power, light, telephone, gas, private sewer, heating and plumbing systems not included as part of Units; and

Section 3. DESCRIPTION OF LIMITED COMMON ELEMENTS: The Limited Common Elements are:

(a) the outdoor parking stalls designated for a specific Unit. Each Unit Owner shall be entitled to the exclusive use and possession of that outdoor parking stall as so designated.

(b) the patios or balconies for each Unit (each Unit has either a patio or balcony). Each Unit Owner shall be entitled to the exclusive use and possession of that patio or balcony, direct access to which is provided to his or her respective Unit and which is located outside of and adjoining his or her respective Unit.

Section 4. NO PARTITION OF COMMON ELEMENTS: There shall be no partition of Common Elements through judicial proceedings or otherwise until this Declaration is terminated and the property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership; provided, however, that if any Unit shall be owned by two or more co-owners as tenants-in-common, joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of said Unit Ownership between such co-owners.

#### ARTICLE IV

##### CONVEYANCE OF UNIT

Section 1. INTERESTS INCLUDED IN CONVEYANCE: No Unit Owner may sell, convey or transfer any legal or equitable interest in his Unit without including the percentage or ownership interest in the

Common Elements and in all assets and liabilities of the Association appurtenant to the Unit; and any deed, mortgage or other instrument purporting to affect one or more of such interests, without including them all, shall be deemed to include all such rights, title, interests and obligations of the Unit Owner.

## ARTICLE V

### OTHER PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

Section 1. OWNER'S RIGHT TO INGRESS AND EGRESS AND SUPPORT: Each Owner shall have the right to ingress and egress over, upon and across the Common Elements necessary for access to his Unit and such rights shall be appurtenant to and pass with the title of each Unit.

#### Section 2. USE OF UNITS:

(a) The Units shall be occupied and used only for private residential dwelling purposes and for no other purposes. No trade or business shall be carried on anywhere within said Units. The Declarant may lease a Unit on such terms and conditions as it desires in its sole discretion, but after a Unit has been conveyed by Declarant to an owner, it may not thereafter be leased except for a term of not less than one (1) year. Any person occupying a Unit with the authority of an Owner shall comply with all of the restrictions, covenants and conditions imposed hereunder on an Owner. If a Unit is leased as aforesaid, the Owner of such Unit shall notify the Association of the tenant's or tenants' name or names and telephone number. If an Owner of a Unit intends to leave such Unit for a period of more than one (1) month, such Owner shall notify the Association prior thereto of his forwarding address and of a telephone number where he can be reached.

(b) Pets shall be allowed in the Units, provided that no Owner shall keep more than one (1) dog and one (1) cat in a Unit. Permitted dogs shall not be larger than 14 inches in height at the shoulder. No animal or pet, whether a permitted animal or permitted pet, may be kept, bred or maintained for commercial purposes. Animals shall not be allowed at large and shall be under control of a person when outside the Unit of its Owner, shall be walked only in designated open areas and all droppings must be picked up and disposed of by the person in control of such animal.

(c) A Unit shall not be rented for transient or hotel purposes, which shall be defined as: (a) any rental for periods of less than one (1) year; or (b) any rental if the occupants of the Unit are provided customary hotel services, such as room service for food and beverage, maid service, bellboy service or laundry service; or (c) any rental where the lessor furnishes linen, cooking utensils, eating utensils, and/or telephone.

### Section 3. USE OF COMMON ELEMENTS:

(a) No trade or business may be carried on in the Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association except as specifically provided herein. Nothing shall be altered on, constructed or removed from the Common Elements except upon the prior written consent of the Association. No garbage or rubbish containers shall be placed or kept in any Common Elements or Limited Common Elements, other than those areas designated by the Association therefor. No clothes line shall be maintained on the Common Elements or Limited Common Elements and same shall not be used for hanging of clothes, rugs or other articles.

(b) An Owner of a Unit shall in no case paint, decorate, or alter the appearance of the Common Elements or exterior of the Buildings without the consent of the Board of Directors of the Association. No owner of a Unit may erect, post or display posters, signs or advertising material on or in the Common Elements; provided, however, that any Owner of a Unit may erect or post a temporary sign of customary and reasonable dimension relating to a Unit for sale.

(c) Parking areas (including driveways on which parking is allowed), whether designated as Common Elements or Limited Common Elements, shall be used only for the parking of private passenger automobiles, pickup trucks, motorcycles and bicycles. Such vehicles shall at all times, be in running condition and bear current license plates. Persons using such parking areas shall, at reasonable times, for a reasonable period and upon reasonable notice, remove their vehicles therefrom to permit the parking areas to be repaired, resurfaced, repainted, striped or to permit cleaning thereof or the removal of snow therefrom or for similar purposes.

Section 4. PROHIBITION OF DAMAGE AND CERTAIN ACTIVITIES: Nothing shall be done or kept in any Unit or in the Common Elements or any part hereof which would increase the rate of insurance on the premises or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would be in violation of any Statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be permitted by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitee, to the Association or their Owners. No noxious, destructive or offensive activity shall be carried on

in any Unit or in the Common Elements as may become an annoyance or nuisance (including the use of HiFis, stereos, musical instruments, televisions or radios at such time or in such volumes of sound as to be objectionable) to any other Owner or to any other person at any time lawfully occupying the Unit.

Section 5. SUBDIVISION OF UNITS: Except as may be provided for herein, no Units may be subdivided.

Section 6. RULES AND REGULATIONS: No Owner shall violate the rules and regulations for the use of the Units and of the Common Elements as adopted from time to time by the Association.

Section 7. DELEGATION OF USE: Any Owner may delegate, in accordance with the By-Laws, or this Declaration, his right of enjoyment of the Common Elements and facilities to the members of his family, to the tenants of his Unit or contract purchasers of his Unit and only to said individuals.

Section 8. CONSTRUCTION: In the event any construction or remodeling work shall be performed in or about a Unit by a Unit Owner, or his contractors, agents, servants, and/or employees, said Unit Owner shall be responsible for maintaining and keeping the Common Elements, and public areas such as hallways, public walks and drives free and clear of debris, dust, and construction materials, and promptly cause the removal of such debris, dust and construction materials as may be placed thereon.

Section 9. SEPARATE MORTGAGES OF UNITS: Each Unit Owner shall have the right to mortgage or encumber his own respective Unit, together with his respective Ownership interest in the Common Elements. No Unit Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the property or any part thereof, except his own Unit and his own respective Ownership interest in the Common Elements.

Section 10. SEPARATE REAL ESTATE TAXES: It is intended and 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 Wisconsin Condominium Ownership 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 shall pay his proportionate share thereof, the allocation in respect to Common Elements to be in accordance with his respective percentage of Ownership interest in the Common Elements. In the latter event, to assure the ability of each Unit Owner to pay his share of the real estate taxes the Association may establish an escrow account and require each Unit Owner to pay into such account a sum equal to one-twelfth (1/12th) of his share of the estimated real estate taxes each month.

Section 11. MAINTENANCE, REPAIRS AND REPLACEMENTS:

(a) All maintenance, repairs, and replacements to the Common Elements and facilities, and the Limited Common Elements and facilities, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be made by the Board of Directors and charged to the Unit Owners as a common expense or when applicable, by the Master Association and charged to the Association as a common expense.

(b) The Owner of each Unit shall furnish, at his own expense, and be responsible for all maintenance, repairs and replacement of interior surfaces of each Unit together with utilities lines, mechanical equipment and fixtures which serve only one Unit, and such fixtures and equipment which are located within one Unit; and glass surfaces, screens, doors, windows, door and window hardware appurtenant to each Unit. The expense of such maintenance, repairs and replacement shall be borne solely by each such Owner.

(c) No Unit Owner, except as otherwise provided herein or in the By-Laws, may do any alteration which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament.

(d) In the event that the need for maintenance, repairs or replacement is caused through the willful or negligent act of an Owner, his family, guests or invitees, the costs of such maintenance, repairs or replacement shall be added to and become a part of the assessment to which such owner's Unit is subject.

Section 12. COMMON SURPLUSES: All common surpluses shall be credited to Unit Owners' assessments for common expense in proportion to their obligation for assessments. The Association may from time to time provide for other common uses of such surpluses.

ARTICLE VI

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP: Every Owner of a Unit shall be entitled and required to be a member of the Association. If title to a Unit is held by more than one person, each such person shall be a member. An owner of more than one Unit shall be entitled to one membership for each such Unit owned by him. Each such membership shall be appurtenant to the Unit upon which it is based and shall be transferred automatically by conveyance of that Unit. No Person or entity other than an Owner of a Unit or Developer may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of title to a

Unit; provided, however, that the rights of voting may be assigned to a Mortgagee as further security for a loan secured by a mortgage on a Unit.

## Section 2. VOTING:

(a) All Owners shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit the vote for such Unit shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Unit. There can be no split vote. Prior to the time of any meeting at which a vote is to be taken, each co-owner shall file the name of the voting co-owner with the Secretary of the Association in order to be entitled to a vote at such meeting, unless such co-owners have filed a general voting authority with the Secretary applicable to all votes until rescinded.

(b) The Developer shall be entitled to one vote for each Unit owned; provided, however, that notwithstanding the foregoing provisions for voting, the Developer shall have sufficient votes to constitute a majority of votes until all his Units are sold; provided, further, that Developer's control shall cease ten (10) years after the first Unit is conveyed to a purchaser other than the Developer, or thirty (30) days after the conveyance of seventy-five percent (75%) of the Units, whichever time is earlier.

Section 3. UNIT VALUE FOR VOTING: The interest for each Unit shall be 12.5% and shall serve as a basis in determining the voting interest of each Unit on matters for determination by Unit Owners and as to other matters described in the Wisconsin Unit Ownership Act.

Section 4. AMPLIFICATION: The provisions of this article may be amplified by the Articles of Incorporation and the By-Laws of the association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owner set forth herein.

## ARTICLE VII

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. THE COMMON ELEMENTS: The Association, subject to the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair.

Section 2. SERVICES: The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Common Elements, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Common Elements or the enforcement of this Declaration. The Association may arrange with others to furnish water, trash collection and other common services to each unit.

Section 3. PERSONAL PROPERTY FOR COMMON USES: The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interest in the Common Elements. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

Section 4. RULES AND REGULATIONS: The Association may make reasonable rules and regulations governing the use of the Units and of the Common Elements, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

Section 5. IMPLIED RIGHTS: The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 6. PERSONAL LIABILITY: No Director or Officer of the Association shall be personally liable to any Unit Owner or to any other party, including the Association, for any loss or damage suffered or claimed on account of any act, omission, error or negligence of such Officer or Director acting in such capacity, provided such person acted in good faith, without willful or intentional misconduct.

## ARTICLE VIII

### COVENANT FOR ASSESSMENTS

Section 1. AGREEMENT TO PAY ASSESSMENT: Developer for each Unit owned by it hereby covenants, and each Owner of any Unit by the

acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association for the purpose provided in this Declaration, annual assessments, special assessments for capital improvements, and assessments for any other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

Section 2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members and for the improvement and maintenance of the Common Elements, and such emergency repairs as the Association may deem necessary.

Section 3. ANNUAL ASSESSMENTS: The Board of Directors of the Association shall from time to time, and at least annually, prepare a budget and fix the annual assessment.

Section 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purposes of (a) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements including fixtures and personal property related thereto; (b) offsetting shortages resulting from noncollection of the annual assessment or underestimation; and (c) unusual or unpredicted costs such as cost of collecting annual assessment or enforcement of the provisions of the Declaration; provided, however, that any such assessment shall have the assent of two-thirds (2/3) of the votes or Members affected who are voting in person or by proxy at a meeting duly called for this purpose. The cost of the initial common element improvements is excluded from the special assessments authorized in this section, such cost to be borne by Developer.

Section 5. SPECIAL ASSESSMENT AGAINST A PARTICULAR UNIT: Special assessments may be made by the board against a particular Unit Owner and his Unit for:

(a) Costs and expenses (anticipated or incurred) for damage to the Common Elements caused by or at the direction of that Unit Owner or guests or tenants of the Unit Owner or other occupants of the Unit;

(b) Costs, expenses and actual attorneys' fees incurred in, or in anticipation of, any suit, action or other proceeding to enforce the Act, the Declaration, the By-Laws, or the Rules or Regulations where there is found to be a violation thereof;

(c) Costs and expenses (anticipated or incurred) for emergency repairs to a Unit;

(d) Liabilities, costs and expenses incurred by the Association as a result of any temporary or permanent condition or defect in the Unit;

(e) Interest due on general and special assessments;

(f) Forfeitures and other penalties levied by the Board for violations of the condominium documents by a Unit Owner or the tenants or guests of the Unit Owner or occupants of a Unit;

(g) All other costs and expenses anticipated or incurred by the Association which are subject to special assessments as provided under this Declaration or the By-Laws.

Section 6. NOTICE OF MEETINGS: Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all affected members and any mortgagee who shall request such notice in writing not less than ten (10) days or more than sixty (60) days in advance of the meeting. The presence, at such meeting, of members or of proxies entitled to cast twenty-five percent (25%) of all the votes affected shall constitute a quorum.

Section 7. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all Units; provided, however, the Association shall assess an individual Unit for all sums due solely from that Unit as provided in Section 5 of this Article.

Section 8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: The annual assessments provided for herein shall be payable in monthly installments and shall commence as to all Units on the first day of the first month following the conveyance of the first Unit by the Developer. The first annual assessment shall be adjusted according to the number of months then remaining in the calendar year. The Board or Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid.

Section 9. LIEN FOR ASSESSMENTS: All sums assessed to any Unit pursuant to the Articles, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for:

(a) Liens of general and special taxes; and

(b) A lien for all sums unpaid on a first mortgage, or on any mortgage to the Developer, duly recorded in the Waukesha County, Wisconsin, real estate records, prior to the making of such assessment, including all unpaid obligatory advances to be made pursuant to such mortgage and all amounts advanced pursuant to such mortgage and secured by the lien thereof in accordance with the terms of such instrument; and

(c) Mechanics liens filed prior to the making of the assessment; and

(d) All sums unpaid on any mortgage loan made pursuant to Section 45.80 Wisconsin Statutes.

All other lienors acquiring liens on any Unit after this Declaration has been recorded shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit, and a description of the Unit. Such a notice shall be signed by the Association and may be recorded in the office of the Clerk of the Circuit Court or Register of Deeds of Waukesha County, Wisconsin. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Wisconsin. In any such foreclosures, the Owner shall be required to pay the costs and expenses of filing the notice or lien, of all proceedings and all reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Unit as the Owner thereof. A release of notice of lien shall be executed by the Association in such form as to be recordable in the Waukesha County, Wisconsin, real estate records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a mortgage or other lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall upon written request report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than thirty (30) days after the same shall have become due and any default in the performance by the individual Unit Borrower of any obligation under the condominium documents which is not cured within thirty (30) days; provided, however, that such encumbrancer first shall have furnished to the Association written notice of such encumbrance.

Section 10. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION: Any assessments which are not paid when due shall be delinquent. Any assessment or installment thereof not paid within ten (10) days after the due date shall bear interest from the due date at a rate of interest which is two percent (2%) higher than the rate prescribed by the Wisconsin Statutes to be collected upon execution upon judgment. (In lieu of charging such interest, the Board may, from time to time, fix a reasonable late fee for each month or fraction thereof that such assessment is not paid). All payments on account shall be first applied to the interest or late charge, if any, and then to the assessment payment first due. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Unit. A suit to recover a money judgment for unpaid assessments hereunder may be maintainable without foreclosing or waiving the lien securing the same. If any installment of any assessment becomes delinquent, the privilege of paying such assessment in installments shall be terminated and, if such delinquent installment be of an annual assessment, the entire annual assessment for the remainder of the fiscal year, or if the delinquent installment be of a special assessment, the entire special assessment, shall be considered at once, without further notice, due and payable and shall be considered delinquent.

Section 11. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the liens described in Section 9 (a), (b), (c) and (d) above. Sale or transfer or any Unit shall not affect the assessment lien. The sale or transfer of any Unit pursuant to a mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer and such unpaid assessment shall be deemed to be common expenses collectible from all of the Owners excluding the acquirer, his successors and assigns. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE IX

INSURANCE

Section 1. OBLIGATION OF ASSOCIATION: The Association, for the benefit of all Unit Owners, shall insure the Building against loss or damage by fire and such other hazards as the Association may deem desirable, for the full insurable replacement cost of the Building, without prejudice to the right of each Unit Owner to also insure his own Unit for his own benefit. The premiums for such insurance on the Building shall be deemed common expenses; provided, however, that in charging the same to the Unit Owners, consideration may be given to the higher premium rates on some Units than on others. Such insurance coverage shall be written in the name of, losses thereunder shall be adjusted by, and the proceeds of such insurance shall be payable to, the Association as trustee for the Unit Owners or Unit Owner. The Association may engage the services of any bank or trust company authorized to do trust business in Wisconsin to act as trustee, agent, or depository on behalf of the Association for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Association shall determine consisted with the provisions of this Declaration. The fees of such corporate trustee shall be common expenses. In the event of any loss in excess of \$50,000.00 in the aggregate, the Association 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 Association shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or owner of any Unit so destroyed.

Section 2. COMBINED INSURANCE: If insurance coverage is available to combine protection for the Association and the Unit Owner's individual Unit, the Board of Directors is hereby given discretionary power to negotiate such combination of insurance protection on an equitable cost sharing basis under which the Unit Owner would be assessed individually for the amount or insurance which he directs the Board of Directors to include in such policies for his additional protection. Copies of all such policies shall be provided to each Mortgagee. Nothing contained in this paragraph shall be deemed to prohibit any Unit Owner, at his own expense, to provide any additional insurance coverage on his improvements or on his Unit which will not duplicate any insurance provided by the Association or Unit Owners.

Section 3. INSURANCE PROCEEDS: The proceeds of such insurance shall be applied by the Association or by the trustee on behalf of the Association for the repair or reconstruction of the Common Elements and Unit or Units; 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 herein with

respect to the application of insurance proceeds to reconstruction of the Unit or Units. Payment by an insurance company to the Association or to such trustee of the proceeds of any policy, and the receipt of the release from the Association 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 such proceeds may be held pursuant thereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any payments of the proceeds of any policy by the Association or the corporate trustee.

Section 4. DESTRUCTION AND RECONSTRUCTION: In the event of a partial or total destruction of one or more Units, such Unit(s) shall be rebuilt and repaired as soon as practicable and substantially to the same design, plan and specifications as originally built, unless within thirty (30) days after such partial or total destruction, all of the Owners of Units and two-thirds (2/3) of the holders of first mortgages subject to this Declaration agree not to repair or rebuild. On reconstruction the design, plan and specifications of any building or Unit may vary from that of the original upon approval of the Association; provided, however that the number of square feet of any Unit may not vary by more than five percent (5%) from the number of square feet for such Unit as originally constructed, and the location of the Unit shall be substantially the same as prior to the damage or destruction.

Section 5. PARTITION: The Association shall have the right to levy assessments against the Units involved in the event that the proceeds of any insurance collected are insufficient to pay the estimated or actual costs of repair or reconstruction; provided, however, that in the event of damage to an extent more than the available insurance, this Condominium shall be subject the an action for partition, upon obtaining the written consent of the Unit Owners having no less than seventy-five percent (75%) of the votes. In the event of partition, the net proceeds of sale, together with any net proceeds of insurance shall be considered as one fund and shall be divided among all Unit Owners in proportion to their liability for assessments and shall be distributed in accordance with the priority interests in each Unit.

Section 6. OTHER INSURANCE: The Association shall maintain, as a common expense, the following insurance coverages:

(a) Public liability insurance covering the Association the Board and members of the Association against liability for damages or personal injuries sustained by any person, firm or corporation arising out of or resulting in whole or in part from the condition, use or operation of any common elements or from any activity or the Association, with limits of not less than \$500,000/person and \$1,000,000/occurrence for bodily injury or

death and not less than \$250,000/occurrence for property damage, including a waiver of subrogation rights against any member, Officer or Director of the Association;

(b) Workmen' s Compensation Insurance to the extent necessary to comply with applicable law;

(c) Indemnity, faithful performance, fidelity and other bonds, as may be required by the Board, to carry out the Association functions and to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with management or possession of Association funds or other property;

(d) Any other insurance coverage or additional protection which the Board may deem necessary or advisable, including without limitation comprehensive liability insurance.

## ARTICLE X

### NOTICES

All notices and other documents required to be given by this Declaration or by the By-Laws of the Association, shall be sufficient if given to one registered owner of a Unit regardless of the number of Owners who have an interest therein. Notices and other documents to be served upon Declarant or the Association shall be personally served on the agent specified for receipt of process herein or mailed by certified mail, return receipt requested to the agent specified for receipt of process herein at the address of that agent as provided herein. All Owners shall provide the Secretary or the Association with the address for the mailing or service of any notice or other documents and the Secretary shall be deemed to have discharged his duty with respect to giving of such notice by mailing it or having it delivered personally to such address as is on file with him. If the Unit Owners fail to provide such address, the Secretary shall be deemed to have discharged his duty with respect to the giving of such notice by mailing it or having it delivered personally to the Unit.

## ARTICLE XI

### EXCULPATION OF ASSOCIATION LIABILITY

In the event any Unit Owner shall suffer damages to the contents, improvements or betterments of his Unit, as a result of water damages caused by the bursting or any plumbing or heating pipes, no liability therefore shall attach to the Association and the cost for such repairs shall accrue to such individual Unit Owner.

## ARTICLE XII

DEVELOPER'S RIGHTS

Until such time as the Developer has sold all of the Units in the condominium, the Developer shall have the right to use any unsold Units and the common areas as may be necessary to expedite the sale of Units, including, but not limited to, the maintaining of a sales office, the holding of open house and the erecting of signs.

## ARTICLE XIII

GENERAL PROVISIONS

Section 1. ENFORCEMENT: The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations, now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. SEVERABILITY: If any provision, or any part thereof, of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, or the application such provisions, or any part thereof, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision or any part thereof, of this Declaration shall be valid, and be enforced to the fullest extent.

Section 3. FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NOT WAIVER: The failure of the Association to insist, in any one instance, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of payment of any assessment from a Unit Owner, with knowledge of the breach of any covenant thereof, shall not be deemed as a waiver of such breach, and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Association.

Section 4. TERMINATION: This Declaration may be terminated only by the unanimous consent of all of the Owners of all Units and all of the parties holding mortgages, liens or other encumbrances against any of said Units, in which event the termination of the Declaration shall be by such plan as may be then adopted by said

Owners and parties holding any mortgages, liens or other encumbrances. The instruments necessary for such termination shall be recorded in Waukesha County, Wisconsin.

Section 5. AMENDMENTS: Except as hereinafter limited, this Declaration may be amended by an instrument signed by the Developer alone at any time prior to the sale of twenty-five (25%) percent of the Units and thereafter signed by not less than seventy-five (75%) percent of the Unit Owners; provided, however, that such amendment shall not substantially alter any of the rights or obligations of the Owners and/or members.

No Amendment to this Declaration shall be adopted which would operate to affect the validity or priority of any mortgage or which would alter, amend or modify, in any manner whatsoever, the rights, powers and privileges granted and reserved herein, in favor of any mortgagee or in favor of the Developer without the consent of all such mortgagees or the Developer, as the case may be.

Any Amendment must be recorded in the office of the Register of Deeds for Waukesha County, Wisconsin.

Section 6. REGISTERED AGENT FOR SERVICE OF PROCESS: The registered agent for service of process and the address for the registered agent, shall be the registered agent and the address of the registered agent of the Kerry Place Condominium Association, Inc. as provided for in the Articles of Incorporation and amendments thereto.

Section 7. NUMBER AND GENDER: Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 8. CAPTIONS: The captions and Article headings herein are intended only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions hereof.

IN WITNESS WHEREOF, the Developer, KERRY PLACE, INC., has executed this Declaration this 1st day of May, 1996.

KERRY PLACE, INC., a Wisconsin corporation

By: 

Kenneth J. Cork, President

AUTHENTICATION

Signature of Kenneth J. Cork authenticated  
this 1st day of May, 1996

A handwritten signature in dark ink, appearing to be 'KJ Cork', written over a horizontal line.

Craig A. Caliendo  
Title: Member State Bar of Wisconsin

This instrument was drafted by and  
after recording should be returned to:

Craig A. Caliendo, Esq.  
Whyte Hirschboeck Dudek S.C.  
111 East Wisconsin Avenue, Suite 2100  
Milwaukee, WI 53202

EXHIBIT A  
LEGAL DESCRIPTION

Lot 24, in Meadow Valley of Pewaukee, being a Subdivision of part of the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 and part of the Northwest 1/4 and Southwest 1/4 of the Northeast 1/4 of Section 10, Town 7 North, Range 19 East and a redivision of Parcel 3 and part of Parcels 2 and 4 of Certified Survey Map No. 7574, Village of Pewaukee, County of Waukesha, State of Wisconsin.

Part of Tax Key No. PWV 0902.993

1339 Hillwood Blvd., Pewaukee, WI

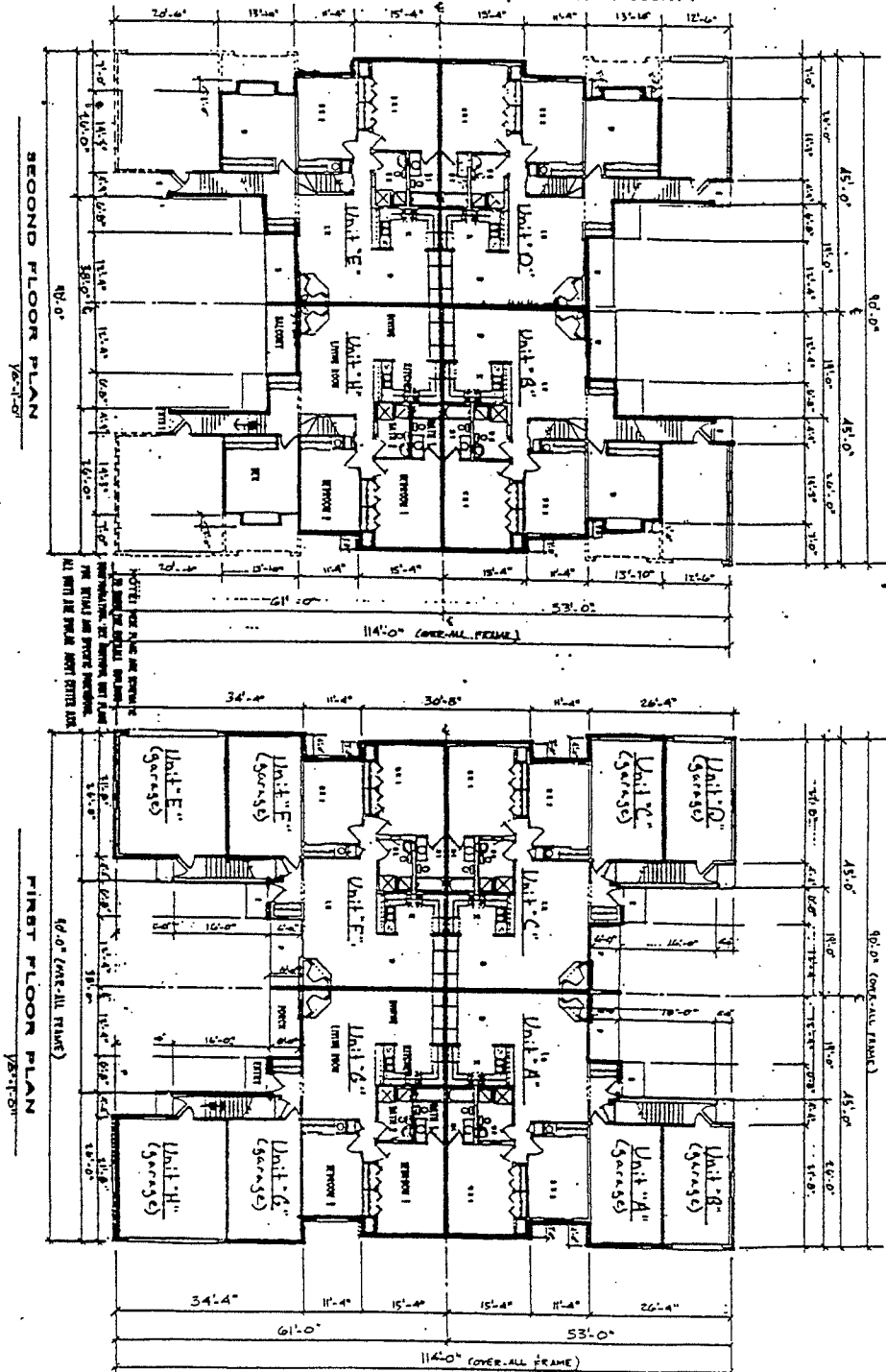
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File No. PEWAUKEE 710  
PAGE 1 OF 2 PAGES

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REEL 2248 IMAGE 1170

# Kerry Place Condominium

VILLAGE OF PEWAUKEE, WAUKESHA COUNTY



Hillwood Blvd.

## CONSENT OF MORTGAGE HOLDER

The undersigned, being the holder of a mortgage on the real estate being subjected to the condominium form of ownership hereunder, hereby consents to the terms and provisions of the above Declaration of Condominium Ownership of Kerry Place Condominium.

Security Bank, S.S.B.

By: Edward W. Roessl  
Edward W. Roessl

Date: \_\_\_\_\_

## ACKNOWLEDGEMENT

STATE OF WISCONSIN)

Milwaukee County )

Personally came before me this 7<sup>th</sup> day of June, 1996, the above named Edward W. Roessl, Asst. Vice President of Security Bank, S.S.B., to me known to be the person who executed the foregoing instrument as such officer, and acknowledged the same.

Maria D. Flores

Maria D. Flores

Print name

Notary Public

Milwaukee

My commission (expires) (is) April 26, 1996

[SEAL]