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CONDOMINIUM DECLARATION  
OF  
WEST TOWNE CONDOMINIUM

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# CONDOMINIUM DECLARATION

OF

000615

## WEST TOWNE CONDOMINIUM

**THIS DECLARATION** is made pursuant to the Condominium Ownership Act of the State of Wisconsin, Chapter 703 of the Wisconsin Statutes (hereinafter sometimes referred to as the "Act") this 8<sup>th</sup> day of July, 2004, by Kirsten Madison Ventures LLC (hereinafter referred to as "**Declarant**").

### 1. STATEMENT OF DECLARATION.

The purpose of this Declaration is to submit the lands hereinafter described and the improvements constructed or to be constructed thereon to the condominium form of ownership in the manner provided by the Act and this Declaration.

Declarant hereby declares that it is the sole owner of the real property described in Section 3 hereof, together with all buildings and improvements thereon or to be constructed thereon (hereinafter referred to as the "**Property**"). The Property is hereby submitted to the condominium form of ownership as provided in the Act and this Declaration. All provisions hereof shall be deemed to run with the land and shall constitute benefits and burdens to the Declarant, its successors and assigns, and to all parties hereafter having any interest in the Property.

### 2. NAME AND ADDRESS.

The real estate described in Section 3 and all buildings and improvements thereon and thereto shall be known as WEST TOWNE CONDOMINIUM (the "**Condominium**"). The address of the Condominium is 509-549 D'Onofrio Drive Drive, Madison, Dane County, Wisconsin 53719.

### 3. LEGAL DESCRIPTION.

The following described real estate, also described in the Condominium Plat attached hereto, is hereby subjected to the provisions of this Declaration:

Lot Two (2) of Certified Survey Map No. 11110, recorded in the Dane County Register of Deeds Office in Volume 67 of Certified Survey Maps, pages 19 through 22, as Document No. 3933232, in the City of Madison, Dane County, Wisconsin.

Tax Parcel No.: Pt. 60-0708-262-0103-3

#### 4. DEFINITION AND DESCRIPTION OF UNITS.

**4.1 Number.** Eighty (80) residential Units are hereby declared in WEST TOWNE CONDOMINIUM.

**4.2 Definition.** A Unit is that separate area within a building intended for independent, private use, as a residential dwelling, comprised of one or more cubicles of air at one or more levels of space, having outer boundaries formed by the interior surfaces of the perimeter walls, floors, and ceilings, including the windows, window frames, doors and door frames of the Units, as said boundaries are shown in the Condominium Plat attached hereto, together with all fixtures and improvements therein contained.

**4.3 Identification.** The Units are designated by a combination of street address and Unit numbers as set forth in the Condominium Plat attached hereto. The post office address of each Unit is also shown in the attached Condominium Plat. There are four (4) distinct unit types within and comprising the Condominium, as described in Section 5 below. The Unit designations and locations, as well as floor plans for the Units, are as set forth in the Condominium Plat attached hereto. The approximate dimensions and floor area of each Unit, number of rooms, immediately adjacent Common Elements to which the Units have access and further details identifying and describing the Units are as set forth in the Condominium Plat.

#### 5. DESCRIPTION AND LOCATION OF BUILDINGS.

There shall be twelve (12) buildings on the real estate described in Section 3 above, ten (10) of which shall contain residential condominium Units, and the remaining two (2) buildings shall be part of the Common Elements of the Condominium. The buildings are located on the real estate as indicated in the Condominium Plat. All of the said buildings were constructed during 1985 to 1986, and have been refurbished by the Declarant during the prior operation of the Property as an extended stay hotel and/or as a part of the development plan of WEST TOWNE CONDOMINIUM. The roofs of the buildings have not been replaced or refurbished, and have an estimated remaining useful life of at least two (2) years. The identity and estimated ages (where known) of the furnaces, water heaters and air conditioners serving the Units are described in the attached Schedule 1.

The two-story Gatehouse Building will be a Common Element of the Condominium managed, along with the other Common and Limited Common Elements, for the benefit of the Unit owners by the Condominium Association (the "**Association**") described in Section 9 herein, in accordance with this Declaration, the Association's Articles and Bylaws, and rules and regulations to be adopted by the Association's Board of Directors. The Gatehouse Building will contain meeting and gathering spaces, office space, and a laundry. A fitness room may also be included at the discretion and expense of the Association. The site also contains a small service building, also to be managed by the Association to be used to store equipment and for maintenance purposes.

Each of the remaining ten (10) buildings will contain eight (8) residential Units, all as shown in the Condominium Plat attached hereto. Each residential building is two (2) stories in height and is constructed principally as a wood frame building, with brick veneer on the lower exterior and wood siding above, and with composition roofing shingles, built on slab foundations. Sample floor plans of the buildings and Units are attached hereto as a part of the Condominium Plat.

Each of the ten residential buildings contains four ground floor Units, and four second floor Units. All of the Units are accessed through separate, outside entrances. All of the ground floor Units are efficiency Units containing a living/sleeping area, a kitchen/dining area, and a full bathroom. Two of the ground floor Units contain 427 square feet each (Unit Types 12 and 14), and two contain 496 square feet each (Unit Types 11 and 13). Two of the second floor Units are efficiency Units containing 583 square feet each (including the stairwell) (Unit Types 22 and 24). Two of the second floor Units also contain sleeping lofts, including another full bath, and total 778 square feet each (Unit Types 21 and 23). Every Unit contains a separate furnace and a wood-burning fireplace.

Each residential building includes four mechanical/storage rooms described in greater detail in Section 7.2 herein, accessed off of the stairwells leading to the second floor Units. One room contains two water heaters serving all of the Units in that building; one room contains two water softeners and fire suppression equipment serving all of the Units in that building; one room contains electrical, telephone and cable television panels serving all of the Units in that building; and one room is used for the storage of maintenance and cleaning supplies. These rooms and the utilities and facilities contained within the rooms will be Limited Common Elements of the Condominium as described in Section 7 below) for the benefit of the Units in the building in which they are located. Each Unit is also served with external air conditioning unit, which will be a Limited Common Element for the benefit of the Unit it serves. All of the mechanical/storage rooms described in this paragraph, and all utilities and facilities contained therein, which serve only the respective Units and the buildings in which they are located are referred to in this Declaration as **"Shared Utilities Limited Common Elements"**.

## **6. COMMON ELEMENTS AND FACILITIES.**

**6.1 Description.** The Common Elements and facilities ("Common Elements") shall consist of all of WEST TOWNE CONDOMINIUM, improvements and appurtenances, except the individual Units and fixtures therein, as defined hereunder. The Common Elements shall include, without limitation, the land on which the buildings are located; the Gatehouse Building and the service building, outdoor parking areas; private drives; landscaped green spaces, common sidewalks and walkways; building structures and exteriors; patios; exterior walls; building roofs; foundations; pipes; ducts; electrical wiring and conduits; utility services; public utility lines; water services, lines and valves; master communication/television cable or antenna and lines, including Shared Utilities Limited Common Elements. Common Elements may be subject to certain restrictions on use contained herein or in the Bylaws or Rules and Regulations of the Association (as herein defined).

**6.2 Parking Spaces.** There are a total of 85 parking spaces within WEST TOWNE CONDOMINIUM. The Association shall assign one parking space for the exclusive use of each Unit as a Limited Common Element of such Unit. The remaining parking spaces shall be Common Elements reserved for exclusive use by visitors and guests of Unit owners and for others having legitimate business within the Condominium Property, in accordance with rules and regulations adopted by the Association through its Board of Directors from time to time. Any Unit owner may permanently assign or exchange his rights to use an assigned Limited Common Element parking space to any other Unit owner in WEST TOWNE CONDOMINIUM, provided, however, that in all circumstances, each Unit shall at all times have one parking space assigned thereto as a Limited Common Element. The use of the Limited Common Element so assigned or exchanged shall thereupon become appurtenant to the Unit owned by the assignee. Such assignment shall be upon a form approved for use by the Association and shall be recorded with the Register of Deeds for Dane County. The assignment shall be subject to the rights of any existing mortgagee with respect to the Limited Common Element so assigned unless released by said mortgagee. After such an assignment, the assigning Unit owner shall have no further right to use the Limited Common Element so assigned, and the Limited Common Element shall thereafter be appurtenant to the Unit owned by the assignee, as specified in the assignment form, until further assignment. The use of Limited Common Elements may be assigned only to owners of Units in WEST TOWNE CONDOMINIUM. Unit owners who do not wish to use the parking space assigned to their Unit may offer to rent their parking space, but only to the Association or to another Unit owner through the Association in accordance with rules and regulations adopted by the Association through its Board of Directors from time to time. The Association may charge a fee of up to 5% of rental charges in connection with such rentals for administrative expenses. If a Unit owner chooses to rent his or her assigned parking space as described herein, such Unit owner may not, during the time his or her space is so rented, use one of the unassigned parking spaces.

**6.3 Owner Easements.** Each Unit owner shall have an easement to the space between the interior and exterior walls or common walls of his or her Unit for purposes of adding additional utility outlets, wall hangings, and the like, where space between the walls may be necessary for such uses, provided that the Unit owner shall do nothing to impair the structural integrity of the building, and provided further that the Common Elements and facilities be restored to their former condition by the Unit owner at such owner's sole expense upon completion or termination of the use requiring the easement.

**6.4 Association Easements.** Easements are hereby granted and declared to the Association, for the benefit of the Unit owners for the installation, maintenance and repair of common utility services in and on any part of the Common Elements or Units. In addition, the Association is specifically granted access to, through and across any and all Units and Common Elements, including without limitation Limited Common Elements, of WEST TOWNE CONDOMINIUM, as necessary or reasonable in connection with any maintenance, construction or repair for which the Association is responsible.

## 7. LIMITED COMMON ELEMENTS.

**7.1 Description.** A portion of the Common Elements and facilities are designated as “**Limited Common Elements**,” as shown in the Condominium Plat. Such Limited Common Elements are assigned to and reserved for the exclusive use of the owner or occupant of the Unit(s) to which they are appurtenant, to the exclusion of all other Units in the Condominium. Such Limited Common Elements consist of the parking spaces described in Section 6.2 above, exterior balconies (where applicable), exterior lawn patios and front entryways appurtenant to residential Units as shown in the Condominium Plat, the storage closets in each building containing utility installations serving that building (access to which may be limited to the Association, where appropriate, by Association Rules and Regulations), the external air conditioners serving each Unit, and such other Limited Common Elements as may be identified in the Condominium Plat.

**7.2 Shared Utilities Limited Common Elements.** The four mechanical/storage rooms contained in each of the ten residential buildings in the Condominium are accessed from the stairwells leading to the second floor Units. One room contains two water heaters serving all of the Units in that building; one room contains two water softeners and fire suppression equipment serving all of the Units in that building; one room contains electrical, telephone and cable television panels serving all of the Units in that building; and one room is used for the storage of maintenance and cleaning supplies. These rooms and the utilities and facilities contained within the rooms will be Limited Common Elements of the Condominium, for the benefit of the Units in the building in which they are located. Each Unit is also served by an external air conditioning unit, which will be a Limited Common Element for the benefit of the Unit it serves. All of the mechanical/storage rooms described in this paragraph, and all utilities and facilities contained therein, which serve only the respective Units and the buildings in which they are located, are referred to in this Declaration as “Shared Utilities Limited Common Elements”. Expenses and maintenance of the Shared Utilities Limited Common Elements shall be common expenses of the Association, but shall be allocated among the Units within the residential building to which the Shared Utilities Limited Common Elements are appurtenant, as described in Section 11.3 herein.

**7.3 Use.** The manner of use of the Limited Common Elements shall be governed by the Bylaws of, and such rules and regulations as may be established by, the Association of Unit Owners, and no Unit owner shall alter, remove, repair, paint, decorate, landscape or adorn any Limited Common Element, or permit such, in any manner contrary to such Bylaws and rules and regulations. No major or structural changes or alterations shall be made by any Unit owner to any of the Limited Common Elements without the prior written approval of the Association, which approval may be given upon such terms and conditions as the Association deems appropriate.

**8. OWNERSHIP OF UNIT AND PERCENTAGE OF OWNERSHIP IN COMMON ELEMENTS AND FACILITIES AND LIMITED COMMON ELEMENTS.**

Each Unit owner shall own a fee simple interest in his or her condominium Unit. Each Unit owner shall also own an undivided interest in the Common Elements and facilities and Limited Common Elements in WEST TOWNE CONDOMINIUM as a tenant in common with all other Unit owners and, except as otherwise limited in this Declaration, shall have the right to use and occupy the Common Elements and facilities and Limited Common Elements for all purposes incident to the use and occupancy of his or her Unit as a place of residence, and such other incidental uses permitted by this Declaration, which rights shall be appurtenant to and run with his or her Unit.

The percentage of such undivided ownership interest in the Common Elements and facilities and Limited Common Elements relating to each Unit and its owner for purposes of ownership and proportionate payment of common expenses, shall be based upon the relative square footage of each Unit in the Condominium in uniform relationship to the aggregate square footage of all Units in the Condominium. The relative square footage of all Units for purposes of the foregoing formula shall be determined by Declarant, in its sole discretion, and the ownership percentages of all Units shall similarly be determined by Declarant in its sole discretion. Some percentages so determined may be rounded in order to achieve a total of one hundred percent (100%), and all determinations of Declarant as to such percentages shall be final. Such percentages are shown in the Condominium Plat and in Exhibit A attached hereto.

**9. ASSOCIATION OF UNIT OWNERS.**

**9.1 Membership, Duties and Obligations.** All Unit owners shall be entitled and required to be a member of an association of Unit owners to be known as WEST TOWNE CONDOMINIUM OWNERS ASSOCIATION, INC. (herein "**Association**") which shall be responsible for carrying out the purposes of this Declaration, including the exclusive management and control of the Common Elements and facilities and Limited Common Elements. Such Association shall be incorporated as a non-stock, non-profit corporation under the laws of the State of Wisconsin, and shall have all of the powers and authority of a condominium association set forth in the Act. Each Unit owner and the occupants of the Units shall abide by and be subject to all of the rules, regulations, duties and obligations of this Declaration and the Articles, Bylaws and Rules and Regulations of the Association.

**9.2 Voting Rights.** Each Unit shall be entitled to one (1) vote at meetings of the Association. Only one membership and one vote shall exist for each Unit. If title to a Unit is held by more than one person, the membership and vote related to that Unit shall be shared by such owners in the same proportionate interests and by the same type of tenancy in which title to the Unit is held. Voting rights may not be divided for purposes of casting votes, however, and shared membership interests must be voted pursuant to the designation contained in the Membership List maintained pursuant to the Bylaws. The Declarant shall be entitled to cast the votes pertaining to any Unit or Units declared as a

part of the Condominium but not sold until such time as the respective Units are sold by Declarant or its successors or assigns. The respective rights, qualifications and obligations of the members shall be as set forth in the Bylaws of the Association.

**9.3 Declarant Control.** Notwithstanding any other provisions herein contained, Declarant, its successors and assigns, shall have the right at its option to appoint and remove the members of the Board of Directors and officers of the Association and to amend the Bylaws or rules and regulations of the Association, until the earlier of: (a) three (3) years from the date of first sale of a Unit by Declarant; (b) thirty (30) days after the conveyance of seventy-five percent (75%) of the Common Element interest to purchasers by Declarant; or (c) until such earlier time as may be determined by Declarant, subject in each case to provisions of the Act. Each owner of a condominium Unit in WEST TOWNE CONDOMINIUM shall be deemed by acceptance of any deed to any Unit to agree, approve, and consent to the right of Declarant to so control the Association. Notwithstanding the foregoing: (i) prior to the conveyance of 25% of the Common Element interest to purchasers, the Association shall hold a meeting and the Unit owners other than the Declarant shall elect at least 25% of the Directors of the Association; and (ii) prior to the conveyance of 50% of the Common Element interest to purchasers, the Association shall hold a meeting and the Unit owners other than the Declarant shall elect at least 33-1/3% of the Directors of the Association.

**9.4 Association Personnel.** The Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable, and may hire such other personnel as it shall determine to be necessary or advisable for the proper operation of the Condominium. The Association may contract for common services or utilities as may be required for each Unit.

**9.5 Association Records.** The Association shall have current copies of this Declaration, the Articles of Incorporation and the Bylaws of the Association, the Condominium Plat, any rules or regulations affecting WEST TOWNE CONDOMINIUM, and the Association's books, records and financial statements, available for inspection during normal business hours by Unit owners or by holders, insurers or guarantors of first mortgages secured by one or more of the Condominium Units in WEST TOWNE CONDOMINIUM. Upon written request, the Association shall provide a written financial statement for the preceding fiscal year to any such holder, insurer or guarantor.

## **10. RESIDENTIAL/SHORT-TERM RENTAL PURPOSE.**

**10.1 Residential Use.** The Condominium buildings and the Units therein contained are intended for and restricted exclusively to residential uses as governed by the terms and conditions contained herein and the Bylaws of the Association including uses permitted by local zoning codes. Notwithstanding the foregoing, the Declarant reserves the right, at its option and in its sole discretion, to use and occupy various Units, selected by the Declarant, as "model" Units and sales office, until such time as all Units have been sold, or until such earlier time as may be determined by Declarant. In addition, and notwithstanding anything in this Declaration to the contrary, while the



condominium Units are being marketed, the Property will continue to be managed and operated by the Declarant as a Marriott Residence Inn, unsold Units may be rented by Declarant for that purpose, and other Unit owners shall have limited or restricted rights to certain of the Common Elements, including the Gatehouse and the swimming pool.

**10.2 Rental of Units.** Notwithstanding the preceding Section 10.1., after Units have been sold to the first non-Declarant owner, such Units may be rented with prior written notice to the Association, but only under the following limited conditions (it being the express intent of the Declarant that West Towne Condominium be an owner-occupied condominium:

(a) No Unit may be leased or rented for a period of less than thirty (30) consecutive days. No Unit may be leased or rented for a period in excess of six (6) continuous months without the prior written approval of the Association, except Units leased or rented by any mortgagee who acquires a Unit through foreclosure or deed in lieu of foreclosure, and under such circumstances no longer than a continuous term of twelve (12) consecutive months.

(b) All rental agreements (hereinafter the “Leases”) affecting Units shall be in writing on a lease form approved by the Association, and shall expressly state that the tenant’s occupancy of the Unit is subject in all respects to the provisions of this Declaration, the Association’s Bylaws, and the Association’s rules and regulations, and shall expressly provide that any failure by the tenant to comply with the terms of these documents shall be a default under the Lease, enforceable by the Unit owner and/or the Association.

(c) Each Lease shall be registered with the Association on such lease registration forms as may be required by the Association.

(d) Any Unit owner who leases a Unit hereunder shall deliver copies of the rules and regulations of the Association to the tenant prior to the commencement of the tenancy, and shall deliver to the Association within ten (10) days after the commencement of any tenancy a copy of the fully executed Lease and copies of the rules and regulations of the Association signed by the tenant in acknowledgment of receipt thereof.

(e) Any Unit owner who leases a Unit shall be responsible for assuring compliance by the tenant with this Declaration, the Association’s Bylaws, and the Association’s rules and regulations.

(f) Only entire Units may be rented or leased.

## **11. REPAIRS AND MAINTENANCE.**

**11.1 Individual Units.** Each Unit owner shall be responsible for keeping the interior of his/her Unit and all of its equipment, fixtures and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall be responsible for interior decorating, painting and varnishing which may at any time be necessary to

maintain the good appearance and condition of the Unit, all as may be more fully set forth in the Bylaws and Rules and Regulations of the Association. Each Unit owner must perform properly or cause to be performed all maintenance and repair work within his/her own Unit and upon his/her Limited Common Elements which, if omitted, would affect West Towne Condominium in its entirety or any portion thereof belonging to other owners, as the case may be, and each Unit owner will be liable for any damages caused by his/her failure to do so. The Association may enter the Unit pursuant to Section 11.6 herein to accomplish needed repairs or maintenance for which the Unit owner is responsible; the determination of the necessity of such repairs by the Association shall be final and binding. Without in any way limiting the foregoing, in addition to decorating and keeping the interior of the Unit in good repair, each Unit owner shall be responsible for the maintenance, repair or replacement of any doors and windows (including replacement of any screens and screening or broken glass), patio doors, lighting fixtures, appliances, refrigerators, ranges, heating and air conditioning equipment, including appurtenant compressor and equipment, plumbing lines and fixtures, dishwashers, disposals, laundry equipment such as washers and dryers, individual water heaters, interior electrical wiring and fixtures, door bells, or other equipment which may be in, or connect with, the Unit or the Limited Common Elements appurtenant to the Unit. Unit owners shall be responsible for utility services that are separately metered and delivered to the respective Units, such as electricity, telephone, cable services, to the extent not provided in common through the Association, and any other services metered or charged individually to the respective Units. For purposes of uniformity of external appearance and quality, the Association may specify the type, color and quality of materials to be used in replacing, repairing, painting or maintaining external fixtures such as entry doors, lighting fixtures and other items which may be determined from time to time by the Board of Directors of the Association.

**11.2 Common Elements and Facilities.** The Association shall be responsible for the management and control of the Common Elements and Shared Utilities Limited Common Elements, and any structural portions of the other Limited Common Elements, and shall cause the same to be kept in good, clean, attractive and sanitary condition, order, and repair. Without in any way limiting the foregoing, this shall include all structural repairs, routine painting, repair, and maintenance of building exteriors, including walls and roof, exterior entry doors, and repair and maintenance of utility lines and installations, including water and sewer lines and common water heaters and water softeners, roads, parking areas, walkways and driveways, lawns and landscaping, and, where necessary, the replacement of any of the above, all as may be more fully set forth in the Bylaws. All expenses of maintenance, repair and replacement of the foregoing Common Elements shall be a common expense of the Association. In the event any repair or maintenance of the Common Elements is necessitated by reason of the negligence or misuse of a Unit owner or the guest or agent of a Unit owner, such expense shall be charged and specifically assessed against the responsible Unit owner and his/her Unit.

**11.3 Limited Common Elements and Shared Utilities Limited Common Elements.** Except as set forth in Section 11.2 above, each Unit owner, at his/her sole expense, shall keep the Limited Common Elements appurtenant to his/her Unit, as

defined in Section 7 hereof, and as described in the Condominium Plat, in a good, clean, sanitary and attractive condition. All expenses of maintenance, repair and replacement of the Shared Utilities Limited Common Elements shall be a common expense chargeable only among the Unit(s) served by such Shared Utilities Limited Common Elements and, to the extent shared by more than one Unit, chargeable in proportion to the square foot area of each Unit in the building so served in relation to the square foot area of all Units in the building so served. In the event any repair or maintenance of a Limited Common Element is necessitated by reason of the negligence or misuse of a Unit owner or the guest or agent of a Unit owner, such expense shall be charged and specially assessed against the responsible Unit owner and his/her Unit.

**11.4 Alterations.** The Association shall have control over all additions, improvements and alterations to Common Elements and Limited Common Elements. In the event of any proposal to add or construct new capital improvements to the Property (as opposed to repair, restoration or maintenance of existing Condominium property) or other discretionary capital improvements to the Property which would result in a substantial increase in common expenses or a special assessment for such expenses, the approval of two thirds (2/3) of the voting interest in the Association shall be required, as set forth in the Bylaws. Individual Unit owners may make alterations or additions to common or Limited Common Elements, including patio landscaping, only upon application to and prior approval by the Association. Individual Unit owners shall be responsible at their sole expense for maintenance, repair and upkeep of all such approved individual additions, improvements, alterations and changes made to the common or Limited Common Elements.

**11.5 Prohibition Against Structural Changes by Owner.** A Unit owner shall not, without first obtaining the written consent of the Association, make or permit to be made any structural alterations, changes or improvements to his/her Unit, or in or to the exterior of any building or any common or Limited Common Elements and facilities, or make or install any improvements or equipment which may affect other Units or the owners of other Units. A Unit owner shall not perform, or allow to be performed, any act or work which will impair the structural soundness or integrity of the buildings or Units, or the safety of the Property, or impair any easement or property right, without the prior written consent of the Association.

**11.6 Entry for Repairs.** The Association may enter any Unit at reasonable times and under reasonable conditions when necessary in connection with any maintenance, construction, repair, or replacement, or for any other matters for which the Association is responsible, or to accomplish maintenance for which the Unit owner is responsible hereunder. Such entry shall be made with prior notice to the owners, except in the case of an emergency when personal injury or property damage may result from delayed entry, and with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Association and treated as a common expense except as allocable to an individual Unit or Units in the discretion of the Board of Directors. Repairs or maintenance for which the Unit owner is responsible shall be individually assessed against such Unit owner.

**11.7 Decorating.** Each Unit owner shall have the exclusive right to carpet, paint, repaint, tile, panel, paper or otherwise refurbish and decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his/her Unit and all walls, ceilings, floors and doors within such boundaries, and to erect partition walls of a non-structural nature within the Unit.

**11.8 Combining of Units.** If ownership of adjoining Units in a building is acquired by the same individual or individuals, such owners, with the approval of the Association, may combine such Units into a single Unit. Any interior or exterior alterations to the building and/or the Units shall be designed by a professional architect, and the plans and specifications for such alterations shall be subject to the approval of the Association, which shall not be unreasonably withheld. Once such approved work is complete, this Declaration, and the Plat, shall be amended, at the sole cost of the owner of the combined Units, and subject to the advance approval of the Association, to show the combined Units as a single Unit. Thereafter, such combined Unit shall be subject to the prohibition against subdivision contained in this Declaration.

## **12. RELOCATION OF BOUNDARIES/SUBDIVISION/TIME-SHARING.**

**12.1 Relocation of Boundaries.** Except as set forth in Section 11.8 above, Unit owners in WEST TOWNE CONDOMINIUM may not relocate Unit boundaries between adjoining Units, or other Unit boundaries.

**12.2 No Subdivision.** No Unit in WEST TOWNE CONDOMINIUM may be subdivided or separated.

**12.3 Time-Sharing.** There shall be no time-sharing, nor any time-share interest created, in any Units or Common Elements, or any interest therein, in WEST TOWNE CONDOMINIUM.

## **13. DESTRUCTION AND RECONSTRUCTION.**

In the event of a partial or total damage or destruction of a building or buildings or any other part of the Common Elements, such shall be repaired and rebuilt by the Association as soon as practicable and substantially to the same design, plan and specifications as originally built, so as to be compatible with the remainder of the Condominium. The proceeds of any insurance provided by the Association and collected for such damage or destruction shall be available to the Association for the purpose of repair or reconstruction, as provided in Section 14 hereof.

However, if the repair or reconstruction of the damage or destruction would exceed available insurance proceeds, within 90 days of the date of the damage or destruction, the Association may determine not to rebuild or repair by written consent of at least 75% of the votes in the Association (such written consent is not effective unless approved by the mortgagee of the Unit, if any). In such event, the Property shall be subject to an action for partition and shall be partitioned pursuant to §703.18 of the Wisconsin Statutes, providing for distribution of net proceeds of sale of the Property and net proceeds of insurance in proportion to the undivided

percentage ownership interests in the Common Elements and in accordance with the priority of interests in each Unit.

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 buildings and Units shall be substantially the same as prior to damage or destruction. If it is determined to repair and rebuild, all costs of repair or reconstruction in excess of available insurance proceeds shall be a common expense, and the Association shall have the right to levy assessments as a common expense against all Unit owners to the extent that the proceeds of any insurance collected are insufficient to pay the estimated or actual costs of repair or reconstruction.

#### **14. INSURANCE.**

**14.1 Units.** Individual Unit owners shall provide insurance for the interior of their respective Units and all fixtures, improvements and personal property contained therein. Premiums for such insurance shall be an individual expense of the respective Unit owners.

**14.2 Common Elements.** The Association shall provide and maintain fire and broad form extended coverage insurance on the buildings, improvements, and any other Common Elements and Limited Common Elements and any portion thereof which are a part of the Property, in an amount not less than the full replacement value thereof from time to time. Such insurance shall be obtained in the name of the Association as trustee for each of the Unit owners and their respective mortgagees in the percentages established in this Declaration, as their interests may appear. Premiums shall be a common expense.

In the event of partial or total destruction of a building or buildings and the repair or reconstruction of such building or buildings in accordance with Section 13 hereof, the proceeds of such insurance shall be paid to the Association as trustee to be applied to the cost thereof. If it is determined not to reconstruct or repair, then the insurance proceeds together with the net proceeds of sale, shall be distributed to the Unit owners and their mortgagees, if any, as their respective interests may appear, in the manner provided by the Act.

**14.3 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 of insurance which he/she directs the Board of Directors to include in such policies for his/her 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/her own expense, to provide any additional insurance coverage on his/her improvements or on his/her Unit which will not duplicate any insurance provided by the Association of Unit Owners.

**14.4 Liability Insurance.** The Board of Directors shall also provide public liability insurance covering the Common Elements and facilities and the Limited Common Elements with respect to all claims commonly insured against in such amounts as may be determined at the discretion of the Board of Directors from time to time. The Board of Directors shall also provide workman's compensation insurance, directors' and officers' liability insurance and fidelity bonds on such officers and employees in such amounts and with such coverage as is determined by the Board of Directors to be necessary or advisable from time to time.

**14.5 Terms of Insurance.** To the extent possible, the insurance shall provide that the insurer waives its rights of subrogation as to any claim against Unit owners, the Association, and their respective agents, invitees and guests, and that the insurance cannot be cancelled, invalidated nor suspended on account of conduct of any one or more Unit owners, or the Association, or their agents, invitees or guests, without thirty (30) days prior written notice to the Association giving it opportunity to cure the defect within that time. The amount of protection and the types of hazards to be covered shall be reviewed by the Board of Directors at least annually and the amount of coverage may be increased or decreased at any time it is deemed necessary as determined by the Board of Directors to conform to the requirements of full insurable value.

## **15. LIABILITY FOR COMMON EXPENSES.**

The costs of administration of the Association, insurance, maintenance, repair, replacement, and other expenses of the buildings, improvements, the Common Elements and facilities, the Shared Utilities Limited Common Elements, and any portions of the other Limited Common Elements the maintenance and repair of which is the responsibility of the Association hereunder, including without limitation, common services provided to the Unit owners such as professional management services, utility services to Common Elements, all water and sewer services to the buildings and Units, all equipment and facilities serving more than one Unit in a building (such as the water heaters and water softeners, and so on), snow removal, and maintenance, repair and replacement of landscaping, walkways, driveways, and parking areas, shall be paid for by the Association. The Association shall make assessments against the Unit owners and the Units for such common expenses in accordance with the percentage of the undivided interest in the common and Limited Common Elements and facilities relating to each Unit, in the manner provided in the Bylaws of the Association. Notwithstanding the foregoing, the common expenses associated with any Shared Utilities Limited Common Elements serving only one Unit or one building shall be allocated only to that Unit or among the Units in the subject building as set forth in Section 11.3 above.

No Unit owner may exempt himself or herself, or his/her Unit ownership, from liability for his/her contribution toward the common expenses by waiver of the use or enjoyment of any of the common or Limited Common Elements and facilities or services or by abandonment of his/her Unit. No conveyance shall relieve the Unit owner-grantor or his/her Unit of such liability, and he/she shall be jointly, severally and personally liable along with his/her grantee in any such conveyance for the common expenses incurred up to the date of sale, until all expenses charged to his/her Unit have been paid.

All assessments, when due, and all charges, fines or assessments against specific Units or Unit owners for damages to the Condominium or for violation of this Declaration, the Bylaws of the Association, or the Rules and Regulations of the Association, shall immediately become a personal debt of the Unit owner and also a lien, until paid, against the Unit to which charged, as provided in the Act. Assessments shall be made against the Unit owners and the Units at the beginning of each fiscal year of the Association to meet estimated common expenses of the Association for the ensuing year; however, if prorated and paid in installments, the assessments shall not be considered due until the respective installment payment dates. In the event of delinquency in payment, the Association may assess penalties and interest, and may accelerate annual assessments remaining unpaid with respect to such delinquent Unit for purposes of collection or foreclosure action by the Association.

#### **16. PARTITION OF COMMON ELEMENTS PROHIBITED.**

There shall be no partition of the Common Elements and facilities and Limited Common Elements through judicial proceedings or otherwise, except as otherwise provided in this Declaration, until this Declaration is terminated and the Property is withdrawn from its terms or from the terms of the applicable statutes regarding Unit ownership or condominium ownership. Provided, however, that if any Unit shall be owned by two or more co-owners as tenants in common or as joint tenants, nothing contained herein shall be deemed to prohibit a voluntary or judicial non-physical partition of said single Unit as between such co-owners. No Unit may be subdivided or separated.

#### **17. CONVEYANCE TO INCLUDE INTERESTS IN COMMON ELEMENTS AND FACILITIES AND LIMITED COMMON ELEMENTS.**

The percentage of undivided interest in the common and Limited Common Elements and facilities shall not be separated from the Unit to which it appertains. No Unit owner shall execute any deed, mortgage, lease or other instrument affecting title to such Unit ownership without including therein both the owner's interest in the Unit and his or her corresponding percentage of ownership in the common and Limited Common Elements and facilities, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

#### **18. EASEMENTS, RESERVATIONS AND ENCROACHMENTS.**

**18.1 Utilities and Municipal Services.** Easements are hereby declared and granted for the benefit of the Unit owners and the Association and reserved for the benefit of the Declarant for utility purposes, including the right to install, lay, maintain, repair and replace water lines and pipes, sewer lines, gas mains, telephone wires and equipment, master communication/television antenna system or cable wires and equipment, and electrical conduits and wires and equipment, including power transformers, over, under, along and on any part of the Common Elements and facilities, to serve the Condominium Property.

**18.2 Encroachments.** In the event that by reason of the construction, reconstruction, settlement, or shifting of any building, or the design or construction of any Unit, any part of the Common Elements and facilities, or Limited Common Elements, encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements and facilities, or Limited Common Elements, or any portion of any Unit encroaches upon any part of any other Unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit so long as all or any part of the building containing such Unit shall remain standing, and Unit and Common Element boundaries shall be as provided in the Act, provided, however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any Unit or in favor of the owner or owners of the Common Elements or facilities, or Limited Common Elements, if such encroachment occurred due to the willful and knowing conduct of said owner or owners.

**18.3 Rights of Ingress and Egress.** Each Unit owner shall have an unrestricted right of ingress and egress to and from his or her Unit that shall be perpetual and pass with the Unit upon transfers of ownership.

**18.4 Binding Effect.** All easements and rights described in this Section 18 are easements appurtenant, running with the land, and are subject to the reasonable control of the Association. All easements and rights described herein are granted and reserved to, and shall inure to the benefit of and be binding on, the undersigned, its successors and assigns, and on all Unit owners, purchasers and mortgagees and their heirs, personal representatives, successors and assigns. The Association or the Declarant shall have the authority to execute and record all documents necessary to carry out the intent of this Section 18.

## **19. RIGHTS OF ACTION; FAILURE OF ASSOCIATION TO INSIST ON STRICT PERFORMANCE NOT WAIVER.**

**19.1 Rights of Action.** If any Unit owner fails to comply with this Declaration or the Bylaws or decisions made by the Association, the Association or any other Unit owner may sue such Unit owner for damages caused by the failure or for injunctive relief. In addition, the Association shall have the enforcement authority contained in the Bylaws of the Association.

**19.2 No Waiver.** The failure of the Association to insist, in any one or more instances, 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 hereof, 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.



## **20. AMENDMENTS TO DECLARATION.**

Except as otherwise provided by the Act with respect to termination of the condominium form of ownership, this Declaration may be amended only with the written consent of Unit owners with not less than two-thirds (2/3) of the votes in the Association. A Unit owner's written consent is not effective unless it is approved by the mortgagee of the Unit, if any. Prior to the initial sale of all declared condominium Units by Declarant, the consent in writing of the Declarant, its successors or assigns, shall also be required. No amendment shall alter or abrogate the rights of Declarant as contained in this Declaration. Copies of amendments shall be certified by the President and Secretary of the Association in a form suitable for recording. A copy of the amendment shall be recorded with the Register of Deeds for Dane County, and a copy of the amendment shall also be mailed or personally delivered to each Unit owner at his address on file with the Association.

## **21. NOTICES.**

All notices and other documents required to be given by this Declaration or the Bylaws of the Association shall be sufficient if given to one (1) 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 shall be given to the Agent specified for receipt of process herein. All owners shall provide the Secretary of the Association with an 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 the giving of notice by mailing it or having it delivered personally to such address as is on file with such Secretary.

## **22. RESIDENT AGENT.**

The initial Resident Agent for the Condominium shall be Julie Isley, 501 D'Onofrio Drive, Madison, Wisconsin 53719, or such other person or entity, and/or at such other address, as may be designated from time to time by the Board of Directors of the Association, which designation shall be filed with the Department of Financial Institutions of the State of Wisconsin. A designation of a Resident Agent in replacement of said Agent shall be filed by the Association within thirty (30) days after the date Declarant has sold all Units in the Condominium, or at such earlier time as may be requested by said Agent. The Association may designate successors to the Resident Agent by affirmative vote of the Unit owners with a majority of the votes present or represented by proxy at a meeting of the Association at which a quorum is in attendance.

## **23. MORTGAGEE RIGHTS.**

**23.1** The holder, insurer or guarantor of any first mortgage or land contract upon a Unit in WEST TOWNE CONDOMINIUM ("Mortgagee"), upon the submission of a request to the Association in writing delivered to the Resident Agent, shall be entitled to receive notice from the Association of the following matters:

**23.1.1** Written notice as to any default or delinquency in the performance by the individual Unit owner who is the Mortgagee's mortgagor as to any obligation under condominium documents, which default or delinquency is not

cured within thirty (30) days after written notice of said default or delinquency by the Association to the said mortgagor;

**23.1.2** Written notice of the call of any meeting of the membership or the Board of Directors of the Association to be held for the purpose of considering any proposed amendment to the Declaration, the Articles of Incorporation of the Association, or the Bylaws of the Association in any material respect. A change to any of the following is considered material hereunder:

- (a) voting rights;
- (b) assessments, assessment liens, or the priority of assessment liens;
- (c) reserves for maintenance and repairs;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the common or Limited Common Elements;
- (f) redefinition of any Unit boundaries;
- (g) expansion or contraction of WEST TOWNE CONDOMINIUM, or the addition, annexation, or withdrawal of property to or from WEST TOWNE CONDOMINIUM;
- (h) insurance or fidelity bond;
- (i) leasing of Units;
- (j) imposition of any restrictions on a Unit owner's right to sell or transfer his or her Unit;
- (k) a decision by the Association to establish self-management;
- (l) restoration or repair of WEST TOWNE CONDOMINIUM after a hazard damage or partial condemnation in a manner other than that specified in the Declaration;
- (m) any action to terminate the legal status of WEST TOWNE CONDOMINIUM after substantial destruction or condemnation occurs; or
- (n) any provisions contained in the Declaration that expressly benefit mortgage holders, insurers or guarantors.

**23.1.3** Written notice of any damage or destruction to the Common Elements of the Condominium, including building structure, fixtures and equipment which are a part of the Common Elements, which is in an aggregate

amount exceeding \$50,000, at such time as such damage or destruction is known to the Board of Directors.

**23.1.4** Written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association

**23.1.5** Written notice of any proposed action that requires the consent of a specified percentage of mortgagees.

**23.2** Except as provided by the Act in the case of damage to or destruction of all or any part of the Property, the Association shall not, unless the Mortgagees of at least two-thirds (2/3) of the Units (including therein any Units which are not mortgaged) have given their prior written consent:

**23.2.1** Change the undivided percentage interest in the Common Elements of the Condominium appurtenant to any Unit, or the manner of making assessments for common expenses based upon such percentage;

**23.2.2** Partition or subdivide any Unit or Common Elements of the Condominium; or

**23.2.3** By act or omission seek to abandon or terminate the Condominium or encumber or convey any part of the Common Elements of the Condominium.

**23.3** To be entitled to receive notification as provided for herein, the Mortgagee must send a written request to the Resident Agent of Association, stating its name, address and the Unit number or address on which it has a mortgage, insurance policy or guaranty.

## **24. 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.

## **25. CAPTIONS.**


The captions and section headings herein are inserted only as matters of convenience and for reference, and in no way define nor limit the scope or intent of the various provisions hereof.

## **26. SEVERABILITY.**

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of the remaining portion of said provision or of any other provision hereof.


IN WITNESS WHEREOF, the said **Kirsten Madison Ventures LLC**, Declarant, has caused this document to be executed at Madison, Wisconsin, as of the date first set forth above.

KIRSTEN MADISON VENTURES LLC

By:   
 Name: Julie Isley  
 Title: General Manager

### AUTHENTICATION

Signature of Julie Isley authenticated as of the 8<sup>th</sup> day  
 of July, 2004.

  
 Printed Name: Kevin A. Delorey  
 Title: Member, State Bar of Wisconsin  
 (If not, \_\_\_\_\_  
 authorized by §706.06, Wis. Stats.)

This instrument was drafted by:

Kevin A. Delorey  
 Quarles & Brady LLP  
 1 S. Pinckney Street, Suite 600  
 Madison, WI 53703

**EXHIBIT A  
TO  
DECLARATION OF CONDOMINIUM**

000634

**UNIT PERCENTAGES**

<b><u>Unit Number</u></b>	<b><u>Unit Type</u></b>	<b><u>Address</u></b>	<b><u>Square Footage/Unit Percentage</u></b>
509-1		509 D'Onofrio Drive, Unit 1 Madison, WI 53719	496 sq. ft./1.09%
509-2		509 D'Onofrio Drive, Unit 2 Madison, WI 53719	427 sq. ft./0.93%
509-3		509 D'Onofrio Drive, Unit 3 Madison, WI 53719	496 sq. ft./1.09%
509-4		509 D'Onofrio Drive, Unit 4 Madison, WI 53719	427 sq. ft./0.93%
509-5		509 D'Onofrio Drive, Unit 5 Madison, WI 53719	778 sq. ft./1.70%
509-6		509 D'Onofrio Drive, Unit 6 Madison, WI 53719	583 sq. ft./1.28%
509-7		509 D'Onofrio Drive, Unit 7 Madison, WI 53719	778 sq. ft./1.70%
509-8		509 D'Onofrio Drive, Unit 8 Madison, WI 53719	583 sq. ft./1.28%
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**Totals: 45,680 sq. ft./ 100.00%**

Building or Unit	Age of Water Heater	Age of Water Softner	Age of Furnace	Age of A/C	Building or Unit	Age of Water Heater	Age of Water Softner	Age of Furnace	Age of A/C
<b>Bldg. 549</b>	Original	Original			<b>Bldg. 527</b>	Original	Original		
Unit 549-1			Original	Original	Unit 527-1			Original	Original
Unit 549-2			Original	Original	Unit 527-2			Original	4-10 years
Unit 549-3			Original	1-3 years	Unit 527-3			Original	Original
Unit 549-4			Original	Original	Unit 527-4			Original	1-3 years
Unit 549-5			Original	Original	Unit 527-5			Original	Original
Unit 549-6			Original	Original	Unit 527-6			Original	Original
Unit 549-7			Original	Original	Unit 527-7			Original	Original
Unit 549-8			Original	Original	Unit 527-8			Original	Original
<b>Bldg. 545</b>	Original	Original			<b>Bldg. 523</b>	Original	Original		
Unit 545-1			Original	Original	Unit 523-1			Original	Original
Unit 545-2			Original	4-10 years	Unit 523-2			Original	Original
Unit 545-3			Original	1-3 years	Unit 523-3			Original	Original
Unit 545-4			Original	Original	Unit 523-4			Original	Original
Unit 545-5			Original	Original	Unit 523-5			Original	Original
Unit 545-6			Original	Original	Unit 523-6			Original	Original
Unit 545-7			Original	Original	Unit 523-7			Original	Original
Unit 545-8			Original	Original	Unit 523-8			Original	1-3 years
<b>Bldg. 539</b>	Original	Original			<b>Bldg. 519</b>	Original	Original		
Unit 539-1			Original	4-10 years	Unit 519-1			Original	Original
Unit 539-2			Original	Original	Unit 519-2			Original	1-3 years
Unit 539-3			Original	Original	Unit 519-3			Original	Original
Unit 539-4			Original	Original	Unit 519-4			Original	Original
Unit 539-5			Original	Original	Unit 519-5			Original	Original
Unit 539-6			Original	Original	Unit 519-6			Original	4-10 years
Unit 539-7			Original	Original	Unit 519-7			Original	Original
Unit 539-8			Original	Original	Unit 519-8			Original	Original
<b>Bldg. 535</b>	Original	Original			<b>Bldg. 515</b>	One Original, One 1 Year Old	Original		
Unit 535-1			Original	Original	Unit 515-1			Original	Original
Unit 535-2			Original	1-3 years	Unit 515-2			Original	Original
Unit 535-3			Original	4-10 years	Unit 515-3			Original	Original
Unit 535-4			Original	Original	Unit 515-4			Original	Original
Unit 535-5			Original	Original	Unit 515-6			Original	4-10 years
Unit 535-6			Original	1-3 years	Unit 515-7			Original	Original
Unit 535-7			Original	1-3 years	Unit 515-7			Original	Original
Unit 535-8			Original	1-3 years	Unit 515-8			Original	Original
<b>Bldg. 531</b>	Original	Original			<b>Bldg. 509</b>	Original	Original		
Unit 531-1			Original	Original	Unit 509-1			Original	1-3 years
Unit 531-2			Original	Original	Unit 509-2			Original	Original
Unit 531-3			Original	1-3 years	Unit 509-3			Original	Original
Unit 531-4			Original	Original	Unit 509-4			Original	Original
Unit 531-5			Original	Original	Unit 509-5			Original	Original
Unit 531-6			Original	Original	Unit 509-6			Original	1-3 years
Unit 531-7			Original	Original	Unit 509-7			Original	Original
Unit 531-8			Original	Original	Unit 509-8			Original	4-10 years

\*Original dates are from 4 to 18 years old. No records exist before this time.

\*All original A/Cs are Carrier heat pumps. A/Cs ranging from 4-10 years are Bryant units. A/Cs ranging from 1-3 years are Ruud condensing units.

\*Water Softners are serviced by Hellenbrand Water. Original dates exist due to lack of records.

\*All furnaces are original Carrier electric heat furnaces.

#### SCHEDULE 1