

**UNOFFICIAL COPY**



0314027030

Eugene "Gene" Moore Fee: \$126.00  
Cook County Recorder of Deeds  
Date: 05/20/2003 11:12 AM Pg: 0

# **EXHIBIT**

**ATTACHED TO**



**DOCUMENT**

**SEE PLAT INDEX**

*Property of Cook County Clerk's Office*

# UNOFFICIAL COPY

## DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE WINNEMAC MANOR TOWNHOMES

WHEREAS, Fox Partners, L.P., an Illinois Limited Partnership, hereinafter referred to as "Declarant", is the holder of the legal title to all parcels of real estate hereinafter described within a certain parcel of real estate, located in Cook County; and legally described as follows:

(NOTE: THE FOLLOWING IS THE UNDERLYING LEGAL ):

PARCEL 1: LOT 10 AND THE NORTH HALF OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOTS 6 AND 7 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 14-07-400-002-0000; 4-07-400-003-0000

Property Address: 5115-5127 N. DAMEN, CHICAGO, IL 60640

WHEREAS, such parcel constitutes the Development Site which Declarant intends to divide into twenty one (21) Dwelling Sites, said Sites so intended being hereinafter referred to as "Dwelling Parcels", upon which there is now constructed or will be constructed so-called "townhouses" each townhouse being a single family private residence erected on a separate Dwelling Parcel. Said townhouses are constructed in three groups of seven (7) Dwelling Parcels with each of the groups constituting a more or less continuous structure with party walls straddling the boundaries between parcels, all as depicted on the Tax Division Map, a copy of same is attached hereto and made part hereof as "Exhibit A" hereof; and

WHEREAS, each of the Dwelling Parcels of said real estate hereinafter described solely for convenience and identification thereof in the present instrument, are, at times herein, referred to or identified as follows:

### 5115 BUILDING

- 5115-A
- 5115-B
- 5115-C
- 5115-D
- 5115-E
- 5115-F
- 5115-G

F		A
P		P
T		V
I		

RECORDING FEE \_\_\_\_\_  
 DATE 5/20/03 COPIES 5  
 OK BY [Signature]

[Handwritten mark]

# UNOFFICIAL COPY

5121 BUILDING

- 5121-A
- 5121-B
- 5121-C
- 5121-D
- 5121-E
- 5121-F
- 5121-G

5127 BUILDING

- 5127-A
- 5127-B
- 5127-C
- 5127-D
- 5127-E
- 5127-F
- 5127-G

WHEREAS, each of the above Dwelling Parcels is legally described as follows:

DWELLING PARCEL 5115-A: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE WEST 32.17 FEET EXCEPT THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5115-B: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 52.50 FEET EXCEPT THE NORTH 118.34 FEET IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5115-C: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 72.83 FEET EXCEPT THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5115-D: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 93.16 FEET EXCEPT THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5115-E: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 113.49 FEET EXCEPT THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

DWELLING PARCEL 5115-F: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 133.82 FEET EXCEPT THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5115-G: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE NORTH 118.34 FEET AND THE WEST 133.82 FEET THEREOF, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5121-A: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE WEST 32.20 FEET OF THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5121-B: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 52.53 FEET OF THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5121-C: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 72.86 FEET OF THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5121-D: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 93.19 FEET OF THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5121-E: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 113.52 FEET OF THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5121-F: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 133.85 FEET OF THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

DWELLING PARCEL 5121-G: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE SOUTH 58.67 FEET OF THE NORTH 118.34 FEET EXCEPT THE WEST 133.85 FEET THEREOF, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-A: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE WEST 32.30 FEET OF THE NORTH 59.67 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-B: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 52.63 FEET OF THE NORTH 59.67 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-C: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 72.96 FEET OF THE NORTH 59.67 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-D: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 93.29 FEET OF THE NORTH 59.67 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-E: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 113.62 FEET OF THE NORTH 59.67 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-F: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE EAST 20.33 FEET OF THE WEST 133.95 FEET OF THE NORTH 59.67 FEET, IN COOK COUNTY, ILLINOIS.

DWELLING PARCEL 5127-G: THAT PART OF LOTS 6, 7, 10, AND THE NORTH 1/2 OF LOT 11 IN BLOCK 3 IN CLYBOURN'S ADDITION TO RAVENSWOOD, A SUBDIVISION OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE NORTH 59.67 FEET EXCEPT THE WEST 133.95 FEET, IN COOK COUNTY, ILLINOIS.

WHEREAS, Fox Partners, L.P. intends to and will convey some or all of the Dwelling Parcels so improved and desires and intends that the several owners, future mortgagees thereof, and all persons acquiring any interest therein now or hereafter shall at all times enjoy the benefits of and shall hold their said individual Dwelling Parcels subject to the rights, easements, burdens, uses and privileges hereinafter set forth;

# UNOFFICIAL COPY

NOW, THEREFORE, the said Declarant does hereby declare that all the rights, easements, covenants, burdens, uses and privileges hereinafter set forth shall and do exist at all times hereinafter among the several owners, purchasers or mortgagees of the said parcels of real estate in this instrument described, in the manner and to the extent herein set forth, and that the declarations contained herein shall be binding upon and inure to the benefit of each and every such parcel in this instrument described.

## ARTICLE I DEFINITIONS

As used herein (unless the context shall prohibit), the following words shall have the following meanings:

1.1 "Association" shall mean and refer to WINNEMAC MANOR TOWNHOMES ASSOCIATION, INC., or such other name, as the Declarant shall select, an Illinois not-for-profit corporation, its successors and assigns.

1.2 "Board" shall mean and refer to The Board of Directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article III.

1.3 "Common Areas" shall mean and refer to all areas, if any, designated on the Tax Division Map and/or Plat of Easements, attached to this Declaration as "Exhibit A" and "Exhibit B", respectively, which are not part of the land being transferred to each of the individual townhome owners to be held by the Association for the benefit of all Dwelling Parcels.

1.4 "Common Area Lots", if any, shall mean the lots depicted on Exhibit A which are not occupied by a Dwelling Structure.

1.5 "Declarant" and/or "Developer" shall mean and refer to Fox Partners, L.P., an Illinois Limited Partnership.

1.6 "Dwelling Parcel" shall mean and refer to, for the purposes of this Declaration, any plot of land shown upon any plat of the properties and upon which one individual townhouse dwelling unit is constructed or to be constructed.

1.7 "Dwelling Structure" (Townhouse) shall mean and refer to the townhome building and any appurtenances, including, but not limited to, decks and balconies. "Dwelling Structure," "Townhouse" or "Townhome" may be used interchangeably.

1.8 "Member" shall mean and refer to each person who holds membership in the Association.

1.9 "Occupant" shall mean and refer to a person or persons in lawful possession of a Dwelling Parcel.

1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any dwelling parcel which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.11 "Party Wall" shall mean and refer to the demising wall which exists between two (2) Dwelling Parcels.

1.12 "Plat" shall mean and refer to the Tax Division Map for WINNEMAC MANOR TOWNHOMES, as from time to time amended, survey attached as "Exhibit A".

1.13 "Private Yard" shall mean and refer to area within a Dwelling Parcel designated as such on plat attached to this declaration as "Exhibit A" which is contiguous to the building.

# UNOFFICIAL COPY

1.14 "Townhouse" shall mean and refer to the building within each Dwelling Parcel designated as such on plat attached to this declaration as "Exhibit A" aforesaid. "Dwelling Structure," "Townhouse" or "Townhome" may be used interchangeably.

## ARTICLE II EASEMENTS

2.1 Easement for Unintentional Encroachments: In the event that by reason of construction, settlement or shifting any Townhouse encroaches or shall hereafter encroach upon any portion of any other Dwelling Parcel which is not owned by the Owner of the Townhouse so encroaching, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of the Owner of the Dwelling Parcel so encroaching; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or materially interferes with the reasonable use and enjoyment of the Dwelling Parcel burdened thereby or such encroachment results from the willful conduct of the Owner of the Dwelling Parcel so encroaching.

2.2 Utility Easements: The City of Chicago, SBC Ameritech, a/k/a Illinois Bell Telephone Company, Peoples Gas Company, Commonwealth Edison Company and all other public utilities serving the Development Site (including any utility company providing cable, microwave or other satellite television service) are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, sanitary and storm sewers and services, drainage ways and swales, ducts, wires, street lights and other equipment into and through the areas of the Development Site designated on the Easement Agreements recorded in the public record, as noted on the Tax Division Map (Exhibit A) or Plat of Easements (Exhibit B) or on any other plat of survey which Declarant or Developer may from time to time cause to be recorded in the office of the Recorder of Deeds for Cook County, Illinois, for the purpose of providing the Dwelling Parcels with such utilities. Said easements include, but are not limited to, the following:

- (a) Commonwealth Edison Company and Ameritech Illinois a.k.a. Illinois Bell Telephone Company, its successors and/or assigns, are hereby granted the rights stated in the Plat of Survey recorded December 5, 2002 as document 0021342414.
- (b) The Peoples Gas Light and Coke Company: An easement is hereby reserved for and granted to THE PEOPLES GAS LIGHT AND COKE COMPANY, its successors and assigns, to install, construct, operate, maintain, inspect, repair, renew, replace, remove or abandon in place gas mains and service pipes, together with the necessary valves, valve boxes, regulators and other attachments, connections and fixtures for distributing gas to properties within and without the subdivision, upon, under, across and within all roads, streets, alleys and common areas, (if any) within the subdivision provided however, that such facilities, equipment and appurtenances, when installed, will not interfere with the movement of traffic upon such roads, streets, alleys or common areas.

2.3 Common Walk/Private Driveway Easements: Declarant hereby creates easements for pedestrian and vehicle ingress and egress and fire escape purposes for the use of the Dwelling Parcels. Said easements are designated on the Plat of Easements attached hereto as "Exhibit B." The Association shall be charged with the responsibility of the maintenance of said easements and any common areas as the need may arise as provided herein. Said easements shall be used in common by the present and future owners and occupants and future mortgages of and all persons now or hereinafter acquiring any interest in the respective parcels hereinbefore described.

2.4 (a) Easement for Refuse: Easements for ingress and egress and access to the refuse for pickup for the use of all of the dwelling parcels are hereby created over and across the property as needed. Refuse containers shall be kept in each owner's garage and then placed outside for collection at the designated time and date, all in accordance with codes and ordinances. Said easements shall be used in common by the

# UNOFFICIAL COPY

present and future owners and occupants and future mortgages of and all persons now or hereinafter acquiring any interest in the respective parcels hereinbefore described.

2.4 (b) Any and all other facilities of any kind presently existing or hereinafter installed, designed for the common use of any two or more dwelling parcels, or the areas designated on the plat as "Common Area" shall be perpetually used in common by such dwelling parcels owners or occupants.

2.5 General Easement. Each Owner shall have a non-exclusive, reciprocal easement over all portions of all Dwelling Parcels not occupied by the Dwelling Structures for ingress and egress, refuse or any other necessary use, i.e. "Common Easement." In accordance therewith, no Owner may install a fence or any other structure on their Dwelling Parcel that would prohibit the use of the easement.

2.6 Construction Easement: Declarant reserves for itself and each Owner an easement and right to overhang and encroach upon, over and on any portion of adjacent Dwelling Parcels with a roof, portico, retaining wall or other projection, appurtenance or fixture to any building situated on a lot as the same exists on the date of the recording hereof, but not otherwise, together with the right to go upon each such portion of an adjacent Dwelling Parcel for the purpose of reconstructing, repairing, maintaining, inspecting or replacing such roof, portico, retaining wall or other projection, appurtenance or fixture to any such building.

## 2.7 General Provisions

- (a) The easements hereinabove granted shall benefit the Owners and other occupants, from time to time, of the Dwelling Parcels therein described and their respective guests and invitees. The Association, through its Board of Directors, shall have the right to establish, and thereafter amend and modify, rules and regulations in respect to the exercise of the easement rights granted in this Section by the persons benefited thereby, including, by way of example and not limitation, rules and regulations pertaining to the use and locking of security gates and security equipment, parking restrictions and towing of illegally parked vehicles.
- (b) All easements and rights herein described are easements appurtenant, running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all its grantees and their respective heirs, successors, personal representatives or assigns, any Owner, purchaser, or mortgagee and other person having an interest in said land, or any part or portion thereof, perpetually in full force and effect.
- (c) Additional easements, if needed, shall be added at a future date by way of amendment by either the Developer or the Board of Directors pursuant to Article VIII of this document.

## ARTICLE III ADMINISTRATION

3.1 Association: The Association has been or will be formed as a not-for-profit Illinois corporation under the General Not-For-Profit Corporation Act of the State of Illinois having the name "WINNEMAC MANOR TOWNHOMES ASSOCIATION, INC." (or one similar thereto) and shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body of the exterior maintenance and repair of the Dwelling Parcels and Townhouse thereon to the extent provided in Article VII.

3.2 Membership: Every Owner of a Dwelling Parcel shall be a Member of the Association and such membership shall automatically terminate when he ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Dwelling Parcel. Each Owner by acceptance of a deed or other conveyance of a Dwelling Parcel thereby becomes a Member, whether or not this declaration of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. There



# UNOFFICIAL COPY

shall be one person with respect to every Dwelling Parcel who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "Voting Member". Such Voting Member may be the Owner or one of the group composed of all the Owners of a Dwelling Parcel or may be some person designated by such Owner or Owners to act as proxy on his or her behalf and who need not be an Owner. Such designation shall be made in writing and shall be revocable at any time by actual notice to the members of the Board by the Owner or owners.

3.3 Voting Rights: The Association shall have two classes of Voting Members:

Class A: Class A Members shall be all Owners with the exception of the Developer and each Class A member shall be entitled to one vote for each Dwelling Parcel owned by him;

Class B: The Class B Member shall be the Developer who shall at any given time be entitled to three (3) times the number of votes to which the Class A Members shall be entitled at such time. The Developer shall cease to be a Class B Member and shall become a Class A Member upon the first to occur of any of the following dates: (a) The date upon which the Developer and Declarant shall have sold and conveyed title to eighteen (18) Dwelling Parcels; or (b) on December 31, 2005; or (c) the date upon which the Developer elects to convert its Class B membership to Class A membership by written notice of such election to the Association.

3.4 Qualification of Board: For a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Voting Members, the Developer shall have the right to designate and select the persons who shall serve as members of each Board or exercise the powers of the Board as provided herein. Except for directors so designated by Developer, each member of the Board shall be one of the Owners and shall reside on a Dwelling Parcel; provided, however, that in the event an Owner is a corporation, partnership, trust, or other legal entity, shall be eligible to serve as a member of the Board, so long as any such agent (other than a person designated by Developer) resides on a Dwelling Parcel.

3.5 Election of Directors:

- (a) The initial Board of Directors designated by the Developer shall consist of three directors who shall serve without compensation. Such initial Board shall serve for a period commencing on the date the Association is formed by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Illinois and ending upon the qualification of the Directors elected at the initial meeting of Voting Members held as provided in Section 3.6 hereof. At the initial meeting held as provided in Section 3.6 hereof, the Voting Members shall elect three (3) Board members who shall serve until the first annual meeting. In all elections for members of the Board, each Voting Member shall be entitled to vote on a noncumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Each Voting Member shall be entitled to cast the number of votes specified in Section 3.3 hereof. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting three (3) Board members shall be elected. The two (2) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years, and the person receiving the next highest number of votes, shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. The Voting Members having at least three-quarters (3/4) of the total votes may from time to time increase or decrease the term of the office of Board members at any annual or special meeting, provided that such number shall not be less than three (3) and that the terms of at least one-third (1/3) of the persons on the Board shall expire annually. Vacancies in the Board,

# UNOFFICIAL COPY

including vacancies due to any increase in the number of persons on the Board shall be filled by the majority vote of all remaining Board members. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum.

- (b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members and who shall be the chief executive officer of the Board and Association, a Vice President, a Secretary who shall keep minutes of all meetings, a Treasurer and such other officers as the Board shall see fit. Except for Directors designated by the Developer any Board member may be removed from office by the affirmative vote of Voting Members holding three quarters (3/4) of the total votes.

### 3.6 Meetings of Voting Members:

- (a) Meetings of the Voting Members shall be held at such places and times as shall be designated in any notice of a meeting by the Board. The presence in person or by proxy at any meeting of the Voting Members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meeting. In the event that a quorum is not present at any meeting of the Voting Members, another meeting may be called by notice from the Board and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- (b) The initial meeting of Voting Members shall be held upon not less than ten (10) days written notice from the Developer. Such notice must be given no later than the earlier of (i) thirty (30) days after the sale and conveyance of title to one hundred percent (100%) of the Dwelling Parcels which may be constructed by Developer on the Development Site, and (ii) December 31, 20045, but such notice may, at the discretion of the Developer, be given earlier. Thereafter, there shall be an annual meeting of the Voting Members on or about the 1st of November following such initial meeting and at the same time thereafter in each succeeding year, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board.
- (c) Special meetings of the Voting Members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the voting members holding one-half (1/2) of the total votes.
- (d) Notices of meetings may be delivered personally or by mail to the Voting Members, addressed to each such Voting Member at the address given by him to the Board, or if no address shall be given, addressed to such Voting Member to the address of his Dwelling Parcel.

### 3.7 General Powers of the Board: The Board shall have the following powers:

- (a) To adopt rules and regulations governing the maintenance and administration of the Dwelling Parcels for the health, comfort, safety and general welfare of the Owners and occupants thereof.
- (b) To provide for maintenance, repair and replacement with respect to the driveways, sidewalks, landscaped areas, lighting, landscaping and snow removal as provided for herein in Article VII.
- (c) To enter into contracts on behalf of, and to purchase or secure in the name of, the Association any

# UNOFFICIAL COPY

materials, supplies, insurance (including directors and offices liability insurance), equipment, fixtures, labor, services (including the services of accountants and attorneys) required by the terms of this Declaration or the bylaws of the Association, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its members and for the enforcement of the provisions of this Declaration.

- (d) To enter upon, and to have its contractors, subcontractors and agents enter upon, any Dwelling Parcel and the exterior of any Townhouse as may be required to exercise all of the rights and obligations granted to or imposed upon it pursuant to this Declaration or to correct any condition that in the Board's Judgment is a nuisance or is damaging to any Owner or occupant.
- (e) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.
- (f) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the appropriate Members in proportionate amounts to cover the deficiency.
- (g) To take such action as may be required to enforce the provisions of the Declaration and the rules and regulations made hereunder.
- (h) To enter into a contract for the management of the Development Site with a professional manager or management company on such reasonable terms as the Board shall determine.
- (i) To exercise any and all powers, rights and authorities provided in the Illinois General Not-For-Profit Corporation Act, as amended from time to time.

**3.8 Liability of the Board of Directors:** Neither the members of the Board nor the officers of the Association shall be liable to the owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer.

**3.9 Books and Records:** The books and records of the Association may be examined by any Owner and any holder of a first mortgage on a Dwelling Parcel at the office where such books and records are maintained, during normal business hours for any proper purpose upon prior, written notice to the Board.

# UNOFFICIAL COPY

## ARTICLE IV COVENANTS AND RESTRICTIONS

4.1 Use & Maintenance: Each Townhouse is and shall be for the exclusive use and enjoyment of the respective unit Owner(s). The Owner(s) of each Townhouse shall have the responsibility for and duty to maintain the unit in good condition and repair.

4.2 Exterior: Declarant has taken great care and expended substantial sums to create an architectural design and style reflecting continuity of the Townhouses with each other and the neighborhood in general. Accordingly, any cosmetic, structural or physical alterations or modifications to the exterior or structure of the Townhouses is expressly prohibited. This prohibition includes, but is not limited to, the masonry and wooden portions, exterior materials, doors, windows and roof line and the installation of fences.

4.3 Additions: Declarant has caused the design of the Townhouses to provide for a maximum amount of living space in proportion to the size of the lot upon which the Townhouse is constructed. Accordingly, no additions or structures or other enclosures may be constructed on the Townhouses, or the Dwelling Parcels which they occupy.

4.4 Painting, Decorating & Landscaping: All outside painting, decorating and landscaping (excepting landscaping to the extent it is within a Private Yard, if any) of the Townhouses and Dwelling Parcels shall conform in color and quality to the outside painting and decorating of all other Townhouses and Dwelling Parcels, said color, quality and material to be determined by the Association as provided for herein.

### 4.5 Insurance

- (a) Each Owner shall maintain in full force and effect, with a company licensed to conduct business in the State of Illinois, a policy of insurance covering his Townhouse against loss or damage by fire and against loss or damage by occurrences now or hereafter embraced by standard extended coverage and vandalism and malicious mischief in one hundred percent (100%) of the full insurable replacement cost of such Townhouse. In addition thereto, each unit Owner(s) shall be required to maintain public liability insurance in an amount not less than \$250,000.00 per injury \$500,000.00 per occurrence; unless otherwise decided by the Association. Each Owner shall deliver to the Board a certificate of insurance confirming that such insurance is in effect and a certificate for all renewals thereof. In the event of the failure of an Owner to maintain the insurance required herein, the Association shall have the right, but not the obligation, to obtain such insurance in the name of such Owner and to add the cost thereof to the assessments due from such Owner. In the event of any damage to a Townhouse by fire or other casualty, the Owner of such Townhouse shall repair, restore and rebuild the portion of such Townhouse so damaged or destroyed to its condition as near as possible, immediately preceding such fire or other casualty as rapidly as possible but in all instances within 120 days after the occurrence of such damage, unless prevented by inclement weather or other causes beyond such Owner's reasonable control, in which event reconstruction shall be completed within 180 days after the occurrence of such damage. Should such Owner fail to reconstruct such Townhouse as aforesaid, the Association may undertake to do such construction as it deems necessary, and to charge such Owner the costs thereof. Any amounts so charged to an Owner shall bear interest and constitute a lien in the same manner as provided in Article VI herein.
- (b) No Owner shall permit anything to be done or kept in his Townhouse which will result in the increase in the rate charged or in the cancellation of any insurance carried by any other Owner, or which would be in violation of any law.

# UNOFFICIAL COPY

- (c) The Association shall obtain and maintain a policy or policies of comprehensive general liability insurance insuring on an occurrence basis the Association, its Directors, officers, the members, and the agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in connection with any act or omission of or in behalf of the Association, its Board of Directors, agents or employees within the Properties. Such policies shall be in the amount of \$1 Million for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that they may not be canceled without at least a thirty (30) day prior notice to the Association, the owners, and the first Mortgagees of the Lots.
- (d) The Association shall obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage:
- (i) Worker's Compensation and employer's liability insurance in such form and in such amounts as may be necessary to comply with applicable laws;
  - (ii) Fidelity insurance or bonds in reasonable amounts for all officers and employees having fiscal responsibilities, naming the Association as obligee; and
  - (iii) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.
- (e) To the extent feasible, all policies of insurance obtained by the Association shall contain provisions that no act or omission of any named insured shall affect or limit the obligation of the insurance company to pay the amounts of any loss sustained. So long as the policies of insurance provided for herein shall provide that a mutual release as provided for in this Section shall not affect the right of recovery thereunder, and further provide coverage for the matters for which the release herein is given, all named insureds and all parties claiming under them shall, and do by these presents mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard or source covered by any insurance procured by the Association, regardless of the cause of damage or loss.
- (f) The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

4.6 Noxious Use: Nothing shall be done on any Dwelling Parcel or within any Townhouse of a noxious or offensive nature, nor shall any outside lighting or loudspeakers or other sound producing devices be used which will interfere with the quiet use and enjoyment of other adjacent Owners. Owners shall be prohibited from using the rooftop areas of the Townhouses for open fires, or other flammable uses, not otherwise approved. Waste shall be kept in sanitary containers. The interior and exterior of the Townhouse shall be maintained by the Owner in a clean, sanitary and attractive condition. Owners shall also maintain, cultivate and keep in good condition all trees, grass, shrubs and other landscaping not otherwise maintained by the Board pursuant to the terms hereunder.

4.7 Smoke/Fire Detectors: Each Owner shall be required to install and maintain, in good operating condition, smoke/fire detectors for each floor of his/her Townhouse.

4.8 Ordinance Compliance: Each Owner shall maintain his/her unit in compliance with the City of Chicago Housing Code and other pertinent ordinances existing at date hereof or hereafter adopted.

# UNOFFICIAL COPY

## 4.9 Dividing Walls

- (a) In the event of damage by fire or other casualty to any structure upon any Dwelling Parcel, the Owner of the structure damaged shall be entitled to place floor joists and other supports in the dividing wall or walls.
- (b) The Owner or Owners of each Dwelling Parcel shall be entitled to break through the dividing walls of such Dwelling Parcel for the purpose of necessary repairs to sewerages, water and utility facilities. The cost of restoration of the dividing wall to its previous condition, in such case, shall be borne solely by the Owner making such repairs.

4.10 Aerials: No aerial for radio or television reception or transmission shall be constructed or maintained upon the exterior of any structure herein described other than within the building or upon such parcel roof directly above the Townhouse so served.

4.11 Common Area: Common areas shall consist of all portions of the property (excepting only those areas occupied by the dwelling structures and deeded to the townhome owners) including, but not limited to, exterior lawn/landscaped areas, the courtyard, walks between buildings, driveway, and sewer drainage connections to the City system(s), if any. All common areas shall be maintained and owned by the Association.

## ARTICLE V PARTY WALLS

5.1 Description: Each Townhouse has either one (1) or two (2) party walls comprising the side demising walls of the Townhouse and running in a generally North - South direction. Said party walls are constructed of either masonry or of wood frame and plaster board materials. The wall separating one Townhouse from another is herewith declared as a party wall. The Declarant herewith sets forth the rights, duties and obligations in connection with said party walls.

### 5.2 Declaration:

- (a) The party wall separating two (2) Townhouses shall be for the exclusive use and benefit of the Townhouses which share said wall, their respective Owners, heirs, legal representatives, successors and assigns subject to the terms of this Declaration.
- (b) Each Owner sharing a party wall may use said party wall in any manner which shall not materially interfere with the use and enjoyment thereof by the other Owner.
- (c) Any and all costs and expenses necessary for the maintenance and preservation of the party wall in good condition and repair shall be borne equally between the Owners who share said party wall; provided, however, that if at any time, the Townhouse on one side of the party wall has been removed, the Owner of the Townhouse that shared said wall which remains shall bear the sole cost of so maintaining and preserving the party wall after the Owner of the Townhouse which was removed has performed the necessary construction to allow said remaining wall to be a proper exterior wall in accordance with requirements of the City of Chicago then in effect.
- (d) Declarant hereby sets forth that if it shall hereafter become necessary or desirable to repair or replace the whole or any portion of a party wall, the expense of such repairing or rebuilding shall be shared equally by the Owners who share said party wall, and whenever the party wall or such portion thereof shall be rebuilt, it shall be erected in the same location and on the same line, and be of the same size, and the same or similar material, and of like quality with the present party wall, except

# UNOFFICIAL COPY

where said party wall shall no longer be a shared party wall, but become an exterior wall, then in that case, the material and quality shall be similar to the material and design of other exterior walls on the Townhouses.

Notwithstanding anything herein contained to the contrary, it is further agreed that in the event of damage or destruction of a party wall from any cause, other than the negligence of either of the Owners sharing said party wall, and other than on account of fire or other casualty to one of the Townhouses sharing said party wall, either of the parties sharing said party wall shall have the right to repair or rebuild the party wall, and (i) the expense thereof shall be apportioned as hereinabove provided, and (ii) each Owner shall have the full use of the party wall so repaired or rebuilt. If damage to or destruction of the party wall shall have been caused by loss by fire or other casualty to the property of, or by the negligence of one party sharing said party wall, such party shall bear the entire cost of repair or rebuilding. If either party sharing said party wall shall neglect or refuse to pay his share as aforesaid, the other party may have the party wall repaired or rebuilt and, in addition to any other remedy available to him by law, shall be entitled to have a mechanic's lien on the premises of the party so failing to pay in the amount of such defaulting party's share of the repair or rebuilding cost. Any repairing or rebuilding done hereunder shall be performed timely and in a good and workmanlike manner, and to the extent possible, accomplished without interruption to the normal usages of the Townhouses which share said party wall.

- (e) Each Owner sharing a party wall is licensed by the other Owner who shares said wall, upon reasonable notice and proof of need, to enter upon the other party's premises for the limited and express purpose of erecting, repairing or rebuilding the party wall as hereinabove provided; provided, however, that no such erecting, repairing or rebuilding shall impair or diminish the then existing structural integrity of the other's Townhouse.
- (f) All references to party walls contained herein shall also apply to the gutters, scuppers and downspouts which run along, upon or within said party walls, and the portion of the Declaration relating to party walls shall also relate to said gutters, scuppers and downspouts as well.
- (g) In the event the Townhouse of one party is no longer connected to the party wall, the other Owner, at such time as it removes and disconnects its Townhouse from the party wall, shall demolish and remove the party wall at its sole cost and expense, leaving said wall in a suitable condition to remain as an exterior wall, and then and thereafter this party wall agreement shall terminate and neither party shall have any right, duty or obligation hereunder (except to fulfill his obligations hereunder which shall have accrued up to and including the date of such termination).
- (h) The benefits and burdens of the covenants herein contained shall annex to and be construed as covenants running with the aforesaid parcels or Lots herein described and shall bind the respective parties hereto and their respective heirs, legal representatives, successors and assigns. Nothing herein contained, however, shall be construed to be a conveyance by either party of his respective rights in the fee of the real estate on which the party wall shall stand.
- (i) To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to neglect or willful acts or omissions, shall apply thereto.

5.3 Fences: The installation of fences is hereby prohibited.

# UNOFFICIAL COPY

## ARTICLE VI ASSESSMENTS

6.1 Personal Obligation: Each Owner (except for the Developer) by acceptance of a deed for a Dwelling Parcel, whether or not it shall be so expressed in any such deed, or other conveyance for such Dwelling Parcel, hereby covenants and agrees to pay to the Association such assessments and fees as are levied pursuant to the provisions of this Declaration and the bylaws of the Association. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon at the rate of ten percent (10%) per annum, late fees of \$25.00 per month (or such other amount as the Board shall from time to time determine) and costs of collection, including attorneys' fees incurred in respect thereto whether or not suit shall be instituted, shall be a charge and a continuing lien upon the Dwelling Parcel against which such assessment is made. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of the person who was the Owner of such Dwelling Parcel on the date upon which such assessment became due. Personal liability for such assessments shall not pass to a bona fide purchaser of a Dwelling Parcel unless expressly assumed by such purchaser. The Developer, to the extent that it shall be an Owner of a Dwelling Parcel which is leased to any person, shall, as to each such leased Dwelling Parcel, be subject to the provisions of this Article from and after the first day of the month in which the Developer first receives rent for such Dwelling Parcel. Except as provided in the preceding sentence, the Developer shall not be liable for the payment of assessments hereunder and portions of the Development Site owned by the Developer or Declarant shall not be subject to liens hereunder; provided, however, that the Developer shall pay the actual costs incurred by the Association attributable to the maintenance and repair of those portions of the Development Site owned by the Developer or Declarant.

6.2 Purpose of Assessments: The assessments and fees levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Members of the Association and, in particular, for (a) paying the cost of maintenance and repair of: (i) sidewalks, parkways, driveways (including repair and replacement of all driveway lighting and payment of electrical bills therefor) and landscaping (not within private yards); (ii) maintenance and repair of Townhouse to the extent an Owner has failed to do so (in which case said assessments or fees shall be levied entirely against the Dwelling Parcel upon which such repairs or maintenance were necessitated by the Owner's failure to do so); (iii) services that the Association may elect to provide; all including the cost of labor, equipment, services (including utilities and security services, accountants', attorneys' and other professional fees, licenses and permits) and the materials in connection therewith; (b) Association insurance; (c) the establishment of such reasonable reserves, if any, as the Board deems appropriate, (d) the performance of the duties of the Board as set forth in this Declaration and the bylaws of the Association, including the enforcement of the provisions thereof; and (e) in general, carrying out the purposes of the Association as stated herein and in the Articles of Incorporation of the Association.

6.3 Annual Assessments: Each year on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to provide the materials and services which will be required for the ensuing calendar year in the operation of the Association (which estimate shall include a reasonable amount considered by the Board to be desirable for contingencies) and shall notify each Owner in writing as to the amount of the Aggregate Annual Assessment with a reasonable itemization thereof and of the amount thereof allocable to such Owner. Each Owner (with the exception of the Developer except as otherwise hereunder provided) shall be allocated that portion of the Aggregate Annual Assessment as shall be determined by dividing the Aggregate Annual Assessment by the total number of occupied Dwelling Parcels on the Development Site. On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each Owner, jointly and severally shall be personally liable for and obligated to pay one twelfth (1/12) of the portion of the Aggregate Annual Assessment allocated to such Owner. On or before April 1 of each calendar year following the initial meeting of Voting Members, the Board shall furnish each Owner with an itemized accounting of the expenses for the preceding calendar year and the amounts collected from the Owners.



# UNOFFICIAL COPY

6.4 Special Assessments: In addition to the annual assessments authorized pursuant to Paragraph 6.3, the Board may at any time or from time to time levy special assessments. Special assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, service, labor or materials not provided for in the Aggregate Annual Assessment for the then current calendar year. Except for special assessments which shall not exceed in any one twelve month period the sum of \$200 per assessed Dwelling Parcel, any such special assessment shall first be approved by the affirmative votes of not less than one-half (1/2) of the votes cast at the annual or a special meeting of the Members called and held in accordance with the provisions of Paragraph 6.5 hereof. Special assessments shall be allocated to each Owner in the same manner as such Owner's respective share of the Aggregate Annual Assessment. The Developer shall be liable for the payment of special assessments on only those Dwelling Parcels for which the Developer is obligated to pay a regular assessment.

6.5 Notice and Quorum: Written notice of any meeting called for the purpose of authorizing any special assessment requiring approval pursuant to Paragraph 6.4 hereof shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence in person or by proxy of Members entitled to cast one-half (1/2) of all the votes shall constitute a quorum.

6.6 Proof of Payment: Upon written demand of an Owner or mortgagee at any time, the Association shall furnish such Owner or mortgagee a written certificate signed by an officer of the Association setting forth whether there are any unpaid annual or special assessments levied against such Owner's Dwelling Parcel. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

6.7 Nonpayment of Assessments: Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the delinquency date, such assessment shall bear interest at the rate provided in Section 6.1 from the delinquency date and the Board may impose a late fee as provided in Section 6.1. In the event of the failure of any Owner to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection, when due, the amount thereof shall constitute a lien on the Dwelling Parcel of such Owner. In the event such Owner fails to pay such assessment within thirty (30) days after notice from the Board of such default, the Board may accelerate the maturity of the remainder of the installments of assessments due from such Owner for the balance of the calendar year and may enforce collection thereof. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses shall be charged to and assessed against such Owner (and shall constitute a personal liability of such Owner) and shall be added to and deemed part of his assessments and the Association shall have a lien for all of the same upon the Dwelling Parcel of such Owner.

6.8 Subordination of Lien to Mortgage: The lien of the assessments provided for herein shall be subordinate to the lien of any prior, recorded first mortgage or trust deed on a Dwelling Parcel made to any bank, savings and loan association or other institutional lender except for the amount of any assessments which becomes due and payable from and after the date such lender obtains title to such Dwelling Parcel pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such transfer of title shall not relieve such Dwelling Parcel from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

6.9 Exemption from Assessment on Lots Owned by Developer: In order that those Dwelling Parcels which are improved with Townhouses and conveyed or leased by Developer or its Agents may, with reasonable promptness, receive the benefits of maintenance by the Association for the enjoyment of the residents of the Development Site, and also be subject to assessments therefor, and so as not to discourage the Developer

# UNOFFICIAL COPY

from voting for such assessments at such times as the Developer may still own a substantial number of unoccupied Dwelling Parcels and inasmuch as assessments levied against such Dwelling Parcels impose a burden on the Developer without the Developer desiring, or receiving the benefits of maintenance upon such Dwelling Parcels as may from time to time be provided by the Association, it is therefore expressly provided that no Dwelling Parcel owned by the Developer, shall be subject to the assessments, charges and liens provided for herein until the date upon which such Dwelling Parcel shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rental therefor or sold pursuant to installment contract or articles of agreement for deed; provided, however, that each year, until the initial meeting of the Board of Directors pursuant to Section 3.5, the Developer shall contribute to the Association the amount, if any, by which the operating expenses of the Association incurred or paid during such year (exclusive of any amounts allocated to reserves) exceed the gross revenues of the Association during such year.

Upon the conveyance or leasing by Developer of a Dwelling Parcel which was theretofore entitled to the foregoing exemption from assessments, such Dwelling Parcel and the Owner thereof shall immediately become subject to the payment of all assessments and other charges and the liens provided for herein.

6.10 Initial Assessments: The Developer shall collect from each purchaser of a Dwelling Parcel, at the time of closing of the purchase thereof, an amount equal to two (2) times the monthly assessment allocable to such Dwelling Parcel. The amounts so collected shall be utilized to fund an operating reserve for the Association.

## ARTICLE VII EXTERIOR MAINTENANCE

The Association shall be responsible for providing and paying the cost of maintenance and repair of: (i) sewer drainage system(s) to the City system(s), sidewalks (not within the dwelling parcels as identified on plat attached as "Exhibit A"), the courtyard, parkways, lighting and electric costs covering common areas and landscaping (not within Private Yards); (ii) maintenance and repair of Townhouses to the extent a unit Owner has failed to do so; (iii) services that the Association may elect to provide; and (iv) driveway, if any.

Nothing herein contained shall impose upon the Association any greater duty with respect to snow removal than is otherwise imposed by law.

## ARTICLE VIII GENERAL PROVISIONS

8.1 Amendment by Declarant: Until the initial meeting of Voting Members the Declarant or its successors and assigns shall have the right to change or modify this Declaration, provided, however, that the provisions of Section 6.8 shall not be amended or modified without the consent of one hundred percent (100%) of the mortgagees holding first mortgages on Townhome Lots; and provided that except as provided in Section 8.3, such amendment shall be executed only to (i) comply with the requirements of the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal National Mortgage Association, the Federal Housing Authority or any similar entity, (ii) comply with any statutes, laws or ordinances, (iii) correct clerical or typographical errors, or (iv) the adding on of additional phases, covenants or easements. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make any change or modification as authorized hereunder on behalf of each Owner as attorney-in-fact for such Owner. Each deed, mortgage, trust deed, or other evidence of obligation affecting a Dwelling Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a covenant and reservation of the power of the Declarant as aforesaid. Such amendment shall become effective upon recording in the office of the Recorder of Deeds for Cook County, Illinois.

# UNOFFICIAL COPY

8.2 Severability: Invalidation of all or any portion of any of the covenants, restrictions, easements, conditions, reservations, liens and charges imposed by this Declaration, by legislation, Judgment or court order shall in no way affect any other provisions of this Declaration, all of which shall remain in full force and effect.

8.3 Amendment: The provisions of this Declaration may be amended by an instrument executed and acknowledged by the Board and approved by the Owners of not less than three-fourths (3/4) of the Dwelling Parcels which are subject to the provisions of the Declaration, and containing an affidavit by an officer of the Board certifying that a copy of the amendment has been mailed by certified mail to all mortgagees having bona fide liens of record against any Dwelling Parcel, no less than five (5) days prior to the date of such affidavit. No amendment affecting the right of the holder of any first mortgage or trust deed on a Dwelling Parcel shall be made without the consent of such mortgagee or holder. No amendment shall be effective unless recorded in the office of the Recorder of Deeds of Cook County, Illinois. Those provisions of this Declaration relating to the rights, privileges or obligations of the Declarant or the Developer may only be amended upon the prior written consent of the Declarant or Developer. This Declaration may be amended by Declarant in any manner prior to the conveyance by Developer of all units in the project.

8.4 Enforcement: Enforcement by the Association or any Owner of the covenants and restrictions contained in this Declaration shall be had by any proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

8.5 Notices: Any notice required to be sent to any Member of the Association or to an Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member or Owner as it appears on the records of the Association at the time of such mailing.

8.6 Titleholding Land Trust: In the event title to any Dwelling Parcel is conveyed to a titleholding trust, under the terms of which all power of management, operation and control of such Dwelling Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Dwelling Parcel. No claim shall be made against any such titleholding trustee personally for payment of any lien or obligations hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon such Dwelling Parcel and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Dwelling Parcel.

8.7 Duration: The covenants, restrictions, conditions, reservations, liens and charges imposed or established by or created under this Declaration shall run with and bind the land for a period of forty (40) years from the date of the recording of this Declaration and may be enforced by the Association or any Owner through any proceeding in law or in equity. Failure by the Association or any Owner to so enforce shall in no event be deemed a waiver of the right to do so thereafter. After the expiration of said forty (40) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by an instrument in writing which is executed by the Owners of not less than two-thirds of the Dwelling Parcels and recorded in the office of the Recorder of Deeds for Cook County, Illinois. Except in case of condemnation or destruction of a substantial portion of the Dwelling Units, the legal status of the Association shall not be terminated without the affirmative vote of not less than 75% of the holders of first mortgages on the Dwelling Units.

# UNOFFICIAL COPY

8.8 Captions: The Article and Paragraph headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

8.9 Successors and Assigns: Each grantee of the Declarant, and each subsequent grantee, by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, accepts said deed or contract subject to all restrictions, conditions, covenants, easements, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration and shall be deemed to have agreed to perform all undertakings and to be bound by all agreements and covenants imposed on him by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the property, and shall inure to the benefit of such grantee or purchaser in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance. All rights granted specifically to Declarant under this Declaration shall be binding upon the successors and assigns of Declarant, provided, however, that the Owners shall not be deemed to be the successors and assigns of Declarant for purposes of this paragraph.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Company hereto has caused these presents to be signed by its proper member(s) and its seal to be hereunto affixed this 16<sup>TH</sup> day of April, 2003.

FOX PARTNERS, L.P.  
By R.P. Fox Associates, Inc., General Partner

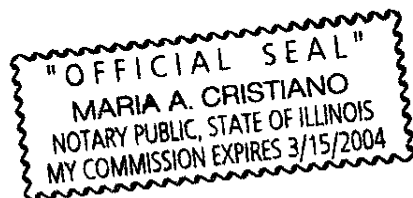
By: [Signature]  
Michael Fox, Vice President

State of Illinois  
County of Cook (ss)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael Fox, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal  
this 16<sup>TH</sup> day of April, 2003.

Commission expires 3-15-04  
[Signature]  
Notary Public



This document was prepared by:  
Pellegrini & Cristiano  
Attorneys at Law  
6817 West North Avenue  
Oak Park, IL 60302

F:\DATA\WPWIN\DOCS\RE\RES\WINNEMAC.DEC