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Eugene "Gene" Moore Fee: \$132.00
Cook County Recorder of Deeds
Date: 06/24/2003 03:43 PM Pg: 1 of 55

DECLARATION OF THE
PRAIRE CORNERS, TOWNHOMES
ASSOCIATION

This document prepared by:
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Park Ridge, IL 60068

After recording mail to:
Dan R. Pontarelli
7001 W. Higgins Rd.
Chicago, IL 60656

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P	132	P
T	(Signature)	V
I		(Signature)

THIS DECLARATION (The "Declaration") made and entered into by
MIDWEST BANK AND TRUST COMPANY, a corporation of Illinois, not individually
but solely as trustee, under trust agreement dated June 20, 2002 and a/k/a trust no. 02-1-
8033, for convenience hereinafter referred to as the "Developer."

ARTICLE I: RECITALS.

Developer is the record title holder of the real estate legally described on Exhibit
A and made a part hereof, and Lee-Des Plaines Corporation, a _____ corporation, is
the record title holder of the real estate legally described on Exhibit A- _____ and made a part
hereof;

The Real Estate, as hereinafter defined, is to be developed under a special permit
as a Planned Unit Development of 25 townhomes to be called "Prairie Corners
Townhomes;"

Prairie Corners Townhomes (hereinafter sometimes referred to as the
"Development") will include, without limitation, green space, guest parking areas,
driveways, walkways, street lights, signage and areas for storm water detention. That
portion of the Development utilized in such fashion will be designated by the Developer
as the "Community Area," as more specifically defined below.

All owners and occupants of the Townhomes, hereinafter defined, will benefit
from the creation of a Homeowner's Association which will assume all maintenance

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obligations relative to the exterior of the Townhomes. The Developer has elected to declare that the real Estate is and shall be transferred, held, sold conveyed and accepted subject to this Declaration. The Developer does hereby further declare that the following easements, covenants, restrictions, conditions, and burdens, uses, privileges, charges, and liens contained in this Declaration shall: (1) exist at all times hereinafter amongst the several Owners (as hereinafter defined), mortgagees, occupants, and all other parties having or acquired right, title or interest in any portions of the Real Estate; (2) be binding on and inure to the benefit of each Owner; and (3) run with the land subject to this Declaration, to be held sold and conveyed subject thereto.

The development of, construction upon and use of the Real Estate shall comply with the CITY OF DES PLAINES, ILLINOIS Ordinance No. Z-11-01 granting a special permit for a planned unit development on the Real Estate, subject to such modification, provisions or alterations as the City of Des Plaines, Illinois, in its sole discretion, may approve from time to time.

In consideration of any adoption by the CITY OF DES PLAINES, ILLINOIS of the planned development for the Real Estate, the Developer agrees to execute and record this Declaration of Covenants, Easements, and Restrictions to run with and be binding on all of the Real Estate.

During the construction and marketing of the Development, the Developer shall retain certain rights set forth in this Declaration, which rights shall include without limitation the right prior to the Turnover Date to appoint all members of the board and the right to enter upon the Development in connection with Developer's efforts to complete construction thereof and sell Townhomes.

ARTICLE II: DEFINITIONS.

For purposes of brevity certain terms and words used in this Declaration are defined as follows:

2.01. Adjoining Parcel. The additional real estate legally described in Exhibit A-1 attached hereto and by this reference made a part hereof, which Developer intends to include in this Development and said land shall be subject to this Declaration upon the owner of same, Lee-Des Plaines Corporation, a _____ corporation, consenting to this Declaration.

2.02. The Association. The Prairie Corners Townhomes Association, an Illinois not-for-profit corporation, its successors and assigns.

2.03. Board. 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 IV.

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2.04. By-Laws. The By-Laws of the Association attached hereto and incorporated herein as Exhibit C.

2.05. Capital Reserve. The funds segregated by the Association in a special reserve account the use of which is limited to the making of capital expenditures in connection with the Townhome exteriors as more fully set forth in Section 7.07.

2.06. Charges. The Maintenance Assessment, any special assessment levied by the Association and/or any special charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration and the By-Laws.

2.07. Community Area. The real property to be conveyed to and owned by the Association is legally described in Exhibit D attached hereto and by this reference made a part hereof and such additions thereto as may hereafter be brought within the jurisdiction of, or conveyed to, the Association. In addition, the Community Area shall include the improvements located on the real property described in Exhibit D, including, but not limited to, green space, guest parking areas, driveways, walkways, street lights, signage, parkways and storm water detention areas. The Community Area shall also include all easement rights granted to the Association pursuant to the Prairie Corners Townhome Plat and this Declaration and any sanitary and storm water mains and water mains that are not publicly dedicated and that are located within said easement area.

2.08. Community Assessment. The amounts which the Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article VII.

2.09. Community Expenses. The expenses of administration (including management and professional services), operation, maintenance repair, replacement, landscaping, snow removal of the Community Area (including the storm water retention area); the cost of any water, waste removal, scavenger services, electricity, telephone and other necessary utility expenses for the Community Area; the cost of general and special real estate taxes and assessment levied or assessed against the Community Area; the cost and expense incurred for the maintenance, repair and replacement of personal property acquired and used by the Association in connection with its operation and maintenance of the Community Area; any expenses specifically designated as Community Expenses by this Declaration; and any other expenses lawfully incurred by the Association for the common benefit of all the Owners.

2.10. Prairie Corners Townhomes. The Plat of Subdivision of Prairie Corners Townhomes recorded in the Office of the Cook County, Illinois Recorder of Deeds as Document No. _____.

2.11. Declaration. This instrument, with all exhibits hereto, as amended or supplemented from time to time.

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2.12. Dwelling Units. Any of the twenty-five (25) legally described parcels of real estate upon which a Townhome is constructed or to be constructed. Each parcel of real estate, whether or not improved, is a Dwelling Unit hereunder. The precise legal description of the real estate which makes up each Dwelling Unit shall be set forth in the deed which conveys the Dwelling Unit from the Developer to the first purchaser of such Dwelling Unit.

2.13. Eligible Mortgage Holder. Each holder of a first mortgage on a Townhome that has requested in writing that the Association notify it of a proposed action that requires consent of a specified percentage of mortgage holders.

2.14. Family. One or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than two (2) persons not all so related, together with his or their domestic servants, maintaining a common household in a Townhome.

2.15. Reserved.

2.16. Initial Development Period. The period commencing with the filing of this Declaration and ending on the Turnover Date, as more fully set forth in Section 4.13.

2.17. Material Amendment. Any amendment to the Declaration, By-Laws, or the Association's Articles of Incorporation that would change any of the following in a manner other than as expressly provided herein; voting rights in the Association; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of the Community Area; responsibility for the maintenance and repair of the Community Area; allocation of interests in the Community Area, or rights to use the Community Area; boundaries of any Dwelling Unit; convertibility of Dwelling Unit into Community Area, or vice versa; expansion or contraction of the Real Estate subject to Developer's rights in Article VIII, or the addition, annexation or withdrawal of real estate from the Real Estate subject to Developer's rights in Article VIII, or the addition, annexation or withdrawal of real estate from the Real Estate subject to Developer's rights in Article VIII; insurance or fidelity bonds; leasing of Dwelling Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling Unit; a decision by the Association to establish self-management when professional management had previously been required by an Eligible Mortgage Holder; requirements for the restoration or repair of the Real Estate; termination of the legal status of the Association or Real Estate following substantial destruction or condemnation; or any provisions that expressly benefit holders, insurers or guarantors of mortgages secured by portions of the Real Estate.

2.18. Mortgagee. The holder of a bona fide first mortgage, first trust deed, or equivalent security interest in a Dwelling Unit.

2.19. Owner. The person or persons whose estates or interests individually or collectively aggregate fee simple absolute ownership of the Dwelling Unit. The word

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“Owner” shall also include any beneficiary of a trust, shareholder, or corporation or partner of a partnership holding legal title to a Dwelling Unit.

2.20. Person. A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real estate.

2.21. Real Estate. The certain real estate described in Exhibit A and Exhibit A-1 and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.22. Townhome. A residential housing unit consisting of a group of rooms which may be attached to one or more other Townhomes by common party walls and which is designated or intended for the exclusive use as living quarters of one family, as herein defined, as constructed by the Developer upon the Real Estate.

2.23. Turnover Date. The date on which the rights of the Developer to designate the members of the Board are terminated under Section 4.13.

2.24. Voting Member. The individual who shall be entitled to vote in person or by proxy in meetings of the Owners as more fully set forth in Section 4.03.

ARTICLE III, SCOPE OF DECLARATION.

3.01. Property Subject to Declaration. Developer, as the owner of fee simple title to the Real Estate, (Exhibit A), and Lee-Des Plaines Corporation, a _____ corporation, as the owner of fee simple title to the real estate described in Exhibit A-1, expressly intends to and by the recording of this declaration does hereby subject the Real Estate to the provisions of this Declaration.

3.02. Declaration to Run with Real Estate. All of the rights, benefits and privileges, and all of the restrictions, conditions, easements, reservations, covenants, liens and charges granted, created, reserved, or declared by this Declaration, shall be deemed to be covenants appurtenant running with the land, and, so long as the Real Estate is subject to the provisions of this Declaration, shall remain in full force and effect, and inure to the benefit of and be binding upon the undersigned, its successors and assigns and upon any person having an interest or estate in the Real Estate or any Dwelling Unit.

3.03. Conveyance Subject to Declaration. Deeds of conveyance, trust deeds and other instruments that create or memorialize an interest or estate in the Real Estate or any Dwelling Unit, including (without limitation) those that create or record mortgage or lien interests shall, irrespective of whether such instruments make reference to this Declaration, be subject thereto as fully and completely as would be the case were this Declaration set forth in its entirety in such instrument.

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3.04. Dwelling Unit Conveyance. Once a Dwelling Unit has been conveyed by the Developer to a bona fide purchaser for value, any subsequent conveyance or transfer of ownership of such Dwelling Unit shall be of the entire Dwelling Unit and there shall be no conveyance or transfer of a portion of a Dwelling Unit without the prior written consent of the Board.

ARTICLE IV, ADMINISTRATION.

4.01. Association. Developer shall, prior to the sale of the first Dwelling Unit, cause to be incorporated a not-for-profit corporation under the General Not For Profit Corporation Act of the State of Illinois, to be called, "The Prairie Corners, Townhomes Association," which corporation (the "Association") shall be the governing body for all the Owners as provided herein. Every Owner shall, without exception, be a member of the Association. There will be one membership per Dwelling Unit. Membership shall be appurtenant to and may not be separated from ownership of a Dwelling Unit. Ownership of a Dwelling Unit shall be the sole qualification for membership. Membership shall automatically terminate upon the sale, transfer, or other disposition by such member of his or her Dwelling Unit, at which time the new Owner shall automatically become a member therein.

Association shall be given written notice of the change of Ownership of a Dwelling Unit within ten (10) days after such change. Developer will convey fee title ownership of the Community Area to the Association on or before the Turnover Date. The Community Area will be at the time of such conveyance to the Association by the Developer be free and clear of any mortgage or trust deed.

4.02. Board of Directors. The direction and administration of the Association shall be vested in its Board of Directors (the "Board"). The Board shall consist of five (5) persons who shall be designated or elected in the manner hereinafter provided. Subject to the right of the Developer to designate Board members prior to the Turnover Date, each member of the Board shall be one of the Owners or a spouse of an Owner; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director, or other designated agent of such corporation, any partner or other designated agent of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board.

4.03. Voting Rights. There shall be one person (and only one person) with respect to each Dwelling Unit who shall be entitled to vote at any meeting of the Owners. Such person shall be known and hereinafter referred to as a "Voting Member." Such Voting Member may be the Owner or one of the group comprising all the Owners of a Dwelling Unit, or may be some person designated by such Owner or Owners to act as proxy on his, her or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by

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the Owner or Owners. Any or all of such Owners may be present at any meeting of the Voting Members and (those constituting a group, when acting unanimously) may vote or take any other action as a Voting member either in person or by proxy. Developer shall be the Voting Member with respect to any and all Dwelling Units owned by the Developer.

4.04. Meetings.

(a) Meetings of the Voting Members shall be held at the Real Estate or such other place in Cook County, Illinois as may be designated in any notice of a meeting. At any meeting of the Voting Members, the presence in person or proxy of the Voting Members for at least thirty (30%) percent of the Dwelling Units shall constitute a quorum. Except as otherwise required by the terms of this Declaration, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of a majority of the Voting Members present in person or by proxy.

(b) The initial meeting of the Voting Members shall be held upon at least ten (10) days' prior written notice given by the Developer. Such written notice must be given not later than ten (10) days prior to the Turnover Date. Thereafter, there shall be an annual meeting of the Voting Members on the first Tuesday of December following such initial meeting, and on the first Tuesday of December of each succeeding year thereafter, at 7:30 p.m., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the Voting Members not less than ten (10) days prior to the date fixed for said meeting.

(c) Special meetings of the Voting Members may be called at any time for the purpose of considering matters which, by terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice authorized by a majority of the Board or by one-fifth (1/5th) of the Voting Members and delivered not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

4.05. Notice of Meetings. Notices of meetings required to be given herein may be delivered after personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him or her to the Board for purpose of service of such notice, or to the Dwelling Unit of the Owner with respect to which such voting right appertains, if no address has been given to the Board.

4.06. Election of the Board Members.

(a) At their initial meeting, the Voting Members shall elect a full five-member board. A Voting Member shall be entitled to cast the number of votes equal to the number of Board Members to be elected. Cumulative voting will not be permitted. The candidates receiving the highest number of votes for the number of Board positions available shall be deemed to be elected. Members of the Board elected at the initial

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meeting shall serve until the first annual meeting. At the first annual meeting, five (5) board members shall be elected pursuant to the procedure set forth above. All Elected Board Members must be owner-occupants of their respective units. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Voting Members for at least two-thirds (2/3) of the number of Dwelling Units. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the next annual meeting or at a special meeting of the Voting Members called for such purpose. Except as otherwise provided in this Declaration, the Association shall be managed by the Board and the Board shall act by a majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such resolutions as the Board may adopt. A majority of the total members of 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 Association; a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members and who shall, in general, perform all the duties incident to the office of Secretary; a Treasurer to keep the financial records and books of account and how shall, in general, perform all the duties incident to the office of Treasurer; and such additional officers as the Board shall see fit to elect.

(c) Any Board Member elected by the Voting Members may be removed from office by affirmative vote of the Voting Members for at least two-thirds (2/3) of the number of Dwelling Units at any special meeting called for that purpose. A successor to fill the unexpired term of a Board Member removed may be elected by the Voting Members at the same meeting or any subsequent meeting called for that purpose.

4.07. General Powers of the Board. The Board shall have such power as shall be necessary and appropriate to authorize, supervise, and direct the performance by or on behalf of the Association of the various duties and obligations imposed on the Association in this Declaration. Without limiting the generality of the foregoing, the Board shall be responsible for and have the power and authority to purchase and pay for such materials, supplies, labor, service, and the like, as it deems necessary in order to fulfill its obligations under this Declaration or to meet requirements imposed by the City of Des Plaines, Illinois or other agencies or units of government with jurisdiction, or which are in its opinion necessary or proper for the maintenance and operation of the Community Area including the maintenance of the parkways as requested by the Village of Des Plaines.

4.08. Execution of Instruments. All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the Association and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such

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determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President.

4.09. Adoption of Rules and Regulations. The Board may adopt such reasonable rules and regulations as it may deem advisable for the use, maintenance, conservation, and beautification of the Community Area, and for the health, comfort, safety, and general welfare of the Owners. Written notice of such rules and regulations shall be given to all Owners.

4.10. Board Member and Officer Liability. Board Members and officers of the Association shall not be personally liable to the Owners for any mistake of judgment or any acts or omissions of any nature which such Board Members or officers take or fail to take as Board Members and/or officers, except with respect to acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Developer and each Board Member and Association officer, along with their respective heirs, executors or administrators, against all contractual and other liability to others, arising out of contracts made by or other acts taken by them on behalf of the Owners or the Association, or arising out of their status as Board Members or officers, unless in each case such contract or other act shall have been entered into or taken criminally, fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, without limitation, attorneys' fees, judgments paid and settlements paid) actually and reasonably incurred in connection with defense of any claim, action, suit, or proceeding, whether civil or criminal, administrative or other; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been adjudged in such action, suit, or proceeding to be liable to criminal conduct, gross negligence, or fraud in the performance of his or her duties as such Board Member or officer, or (ii) any matter settled or comprised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is no reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such Board Member or officer. It is intended that the foregoing indemnification shall be coextensive with broadest indemnification permitted under the Illinois General Not-For-Profit Corporation Act of 1986, as from time to time amended.

Agreements made by the Association or the Developer on behalf of the Owners may provide the officers of the Association, members of the Board, or the Developer, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners) and that each Owner's liability shall be limited to such proportion of the total liability as the member of Dwelling Units owned by such Owner bears to the aggregate numbers of Dwelling Units.

4.11. Managing Agent. The Association may engage a managing agent and pay such agent a reasonable fee for its services. Any such agency shall be reflected in a written agreement between the Association and the agent and be for a term of not more than one year and be terminable by the Association on thirty (30) days' written notice, or

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by either party without cause or payment of any termination fee on ninety (90) days' written notice.

4.12. **Dissolution.** To the extent permissible under applicable law, in the event of the dissolution of the Association, the Community Area shall be conveyed to the Owners as tenants in common; provided, however, that any such conveyance is approved in advance by the City of Des Plaines, Illinois by resolution duly adopted.

4.13. **Developer Control of the Association.** Notwithstanding anything contained herein to the contrary, the first and all subsequent Boards shall (until the Turnover Date) consist solely of three (3) persons designated from time to time by the Developer, which persons may, but need not be Owners. Developer's rights under this Section to designate the members of the Board shall terminate on the Turnover Date. For purposes of this Declaration, the Turnover Date shall be the first to occur of (i) the giving of written notice by Developer to each Owner of Developer's election to terminate its rights; (ii) ninety (90) days following consummation of the sale of seventy-five percent (75%) of the Dwelling Units; or (iii) five (5) years from the date of recording of this Declaration. From and after the Turnover Date, the Board shall be constituted and elected as provided in Sections 4.02 through 4.06. Prior to the Turnover Date, as it relates to the voting rights at each meeting of the Owners, Developer shall be entitled to three (3) votes for each Dwelling Unit owned and all other Owners shall be entitled to one (1) vote for each Dwelling Unit owned.

4.14. **Developer's Reserved Rights During Initial Development Period.**

(a) In connection with the sale of Dwelling Units, the Developer shall have the right and power to construct such temporary improvements as the Developer may deem necessary or advisable, including (without limitation) the construction of a sales pavilion, model Dwelling Units or other promotional facility as determined by Developer; provided that all such facilities and advertising and other promotional devices shall at all times be in conformity with the applicable ordinances of the City of Des Plaines, Illinois.

(b) In connection with the construction of the Development, the Developer, its agents and contractors shall have the right to store construction equipment and materials on the Real Estate and otherwise engage in such activities as are necessary and appropriate and that are in conformity with the applicable laws and ordinance of the City of Des Plaines, Illinois.

(c) The Developer shall have the right and power to execute all necessary documents and perform all acts which in the Developer's opinion are necessary in connection with the exercise of its rights under this Declaration.

(d) All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable, or transferable. Any successor to or assignee of the rights of the Developer (whether as the result of voluntary assignment,

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foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of the Developer hereunder.

ARTICLE V, DUTIES, OBLIGATIONS AND RESTRICTIONS.

5.01. Maintenance, Repair, and Replacement of the Community Area. The Association shall be responsible for the maintenance, repair, and replacement of the Community Area. Such responsibility shall include, without limitation, the specific responsibilities set forth with particularity in Sections 5.02 through 5.10 inclusive. Except as specifically provided for in Section 5.11, the cost of maintenance, repairs and replacement of the Community Area shall be provided for herein is formed pursuant to this Declaration, the Developer shall be responsible therefore.

5.02. Maintenance of Detention Area. That portion of the Community Area designed or intended for the proper drainage or detention of storm water (as depicted on the Prairie Corners Townhomes Plat, site plan, landscape plan and engineering plan for the Real Estate approved by the City of Des Plaines, Illinois) shall be kept unobstructed and shall be maintained regularly by the Association, such maintenance shall include but not be limited to keeping the detention area clear of debris and other accumulations and insuring that the flow of storm water is not blocked or hindered. Each Owner acknowledges, by acceptance of a deed to a Dwelling Unit, that the portion of the Community Area designed for storm water detention is for the benefit of the entire Real Estate, and that consequently the Developer, the City or the Association shall have the right to enter upon the Community Area and the Real Estate to maintain drainage and detention in consonance with the aforesaid plans approved by the City of Des Plaines, Illinois, provided, however, that the City shall be under no obligation to maintain the portion of the Community Area designated for drainage or storm water detention at any time.

5.03. Maintenance of Lighting. The lighting located in the Community Area shall be maintained in good condition and repair at all times.

5.04. Maintenance of Green Space. All Community Area green space shall be landscaped and maintained at all times in such a manner as to insure the beauty and overall first rate appearance of such areas. In particular, such maintenance shall include the mowing of the grass on the Community Area and the upkeep of all parkways and any other such areas of green space as the Village of Des Plaines deems necessary and appropriate for the Association to maintain and all other landscaping materials placed or planted in such green space and the prevention of accumulation of any litter thereon or development of any other condition that would detrimentally affect the beauty and overall first rate appearance of such areas.

5.05. Maintenance of Signage. The signage in the Development shall be maintained in like new condition.

5.06. Reserved.

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5.07. **Community Area Utility Charges.** All utility expense associated with the ownership and operation of the Community Area shall be Community Expenses, including but not limited to the following: electricity utilized in connection with all Community Area lighting; electricity and water utilized in connection with any water pumps, aerators, or fountains or landscape maintenance.

5.08. **Water.** The Association shall have the right to draw water from individual Dwelling Units as required for the efficient performance of its duties hereunder. In addition, each Dwelling Unit shall be subject to the non-exclusive perpetual easement for access to, and use of hose bibs for the benefit of the Association. The Association shall pay for all water bills used in connection with the maintenance of the Community Area and shall reimburse Owners to the extent of the cost of water used by the Association and billed by the water utility to said Owner.

5.09. **Community Area Insurance.**

(a) The Association shall have the authority to and shall obtain fire and all risk insurance covering the improvements to the Community Area (based on current replacement cost) for the full insurable value of such Improvements.

(b) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons and property damage, in such amounts as it shall deem desirable but not for less than \$1,000,000 per occurrence, and Workers Compensation Insurance and other liability insurance as it may deem desirable, insuring (as their interest may appear) the Association, its Board Members and officers, and each Owner, the City of Des Plaines, Illinois and its elected and appointed officials, officers, employees, and agents, the Developer, the managing agent, if any, and their respective employees and agents from liability resulting from an occurrence on or in connection with the Community Area. The Board may, in its discretion, obtain any other insurance which it deems desirable including, without limitation, insurance covering the Board members and officers from liability from good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 4.10. Such insurance coverage shall include cross-liability claims of one or more insured parties.

(c) Fidelity bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or any other person handling funds of the Association shall be obtained by the Association in such amounts as the Board shall deem desirable.

(d) The premiums for any insurance obtained under this Section shall be Community Expenses.

5.10. **Alterations, Additions or Improvements to the Community Area.** The Association may cause alterations or improvements to be made to the Community Area

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(which do not increase the impervious area of the Development) and the cost thereof shall be paid from a special assessment as more fully described in Section 7.06, except that any such alteration, addition or improvement which shall cost more than \$10,000.00 shall require advance approval at a special meeting of the Owners. No alteration, addition, or improvement shall, however, in any case be made to the Community Area without the prior approval of the Board and the City of Des Plaines, Illinois as its ordinances may require.

5.11. **Damage Caused by an Owner.** If, due to the act or omission of the Owner of a Dwelling Unit, or the household pet, guest, or other occupant or invitee of an Owner, damage shall be caused to the Community Area, and as a result thereof, maintenance, repairs or replacements shall be required, that would otherwise be a Community Expense, then the Owner of the Dwelling Unit shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by insurance carried by the Association. In the event such damage is covered by insurance carried by the Association, then, unless a resolution to the contrary is adopted by the affirmative vote of at least seventy-five percent (75%) of the Voting Members, the damaged improvements shall be repaired, replaced, or reconstructed and the insurance proceeds used, first, to pay the cost thereof, and any excess thereafter used to pay the Community Expenses. Any deficiency shall remain the responsibility of the Owner whose act or omission, pet, guest, or other occupant or invitee caused the damage.

5.12. **Waiver of Subrogation.** The Association and each Owner hereby waive and release any and all claims which it, he or she may have against any Owner, including relatives of the Owner, the Association, its Board members and officers, the Developer, the managing agent, if any, and their respective employees and agents for damage to the Dwelling Unit, the Community Area, or any personal property located in the Dwelling Unit or the Community Area caused by fire or other casualty to the extent that such damage is covered by fire or other forms of casualty insurance and the extent that this release is permitted under policies for such insurance. To the extent possible, all policies purchased by the Board under Section 5.09(a) and (b) shall contain waivers of the insurer's rights to subrogation against any Owner, relatives of the Owner, the Association, its directors and officers, the Developer, the managing agent, if any, and their respective employees and agents.

5.13. **Condemnation.** In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds awarded in such condemnation shall be paid to the Association, and together with any portion of the Capital Reserve specifically earmarked for the Community Area, in the discretion of the Board, (a) applied to pay Community Expenses or (b) distributed to the Owners and their respective mortgagees as their interest may appear, in equal shares.

5.14. **Use Restriction.**

(a) No industry, business, trade, occupation or profession of any kind shall be conducted, maintained, or permitted on any part of the Community Area nor

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shall any "For Sale" or "For Rent" signs or other advertising be maintained or permitted on any part of the Community, except as permitted by the Board or as permitted by Section 4.14.

(b) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Townhome exterior or the Community Area. The Community Area shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

(c) Each Townhome shall be used only as a residence, provided that no Owner shall be precluded, with respect to his Townhome, from (i) Maintaining a personal professional library, (ii) keeping his personal business records or accounts therein or (iii) handling his personal business or professional calls or correspondence therefrom.

(d) No trucks, buses, boats, snowmobiles, recreational vehicles or trailers or any other types of vehicles as determined by the Board shall be parked except within the individual garage which forms a part of each Dwelling Unit. Nor shall any such trucks, buses, boats, snowmobiles, recreational vehicles or trailers be parked in the Community Area.

(e) No window unit air conditioners shall be allowed.

5.15. Pets. No animal of any kind shall be raised, bred or kept in the Community Area. All pets shall be walked by leash and shall not be tied up outside unattended. Owners shall clean up after their pets. The Board may from time to time adopt rules and regulations governing the keeping of pets in Townhomes, which may include prohibiting certain species of pets from being kept in the Townhomes and requiring an Owner to clean up after his or her pet. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Development, upon three (3) days' notice from the Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final. The breeding or keeping of dogs or cats for sale or profit is expressly prohibited.

5.16. Structural Improvements. Nothing shall be done in, on or to any part of any Townhome that would impair its structural integrity. Nor shall anything be done in, on or to any part of the Community Area which would interfere with the appearance or impair the utilization thereof for the purposes for which the same is designed.

5.17. Proscribed Activities. No noxious or offensive activity shall be carried on in the Development nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the residents.

5.18. No Dedication to Public Use. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Community Area to or for any public use or purpose whatsoever.

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5.19. Obstructions. Except as permitted under Section 4.14 there shall be no obstruction of the Community Area, and nothing shall be stored in the Community Area without the prior written consent of the Board.

5.20. Lease of Dwelling Unit. Any Owner shall have the right to lease all (and not less than all) of his Dwelling Unit subject to the following: No Dwelling Unit shall be leased for transient or hotel purposes, which are hereby defined as being for a period of less than six (6) months or for a period of more than six (6) months where hotel services normally furnished by a hotel (such as room service or mail service) are furnished.

Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration.

5.21. Association's Access. The Association shall have the right and power to come onto any Dwelling Unit for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder.

ARTICLE VI, EASEMENTS.

6.01. Easement for Ingress and Egress. Each Owner shall have a non-exclusive perpetual easement over and across the Community Area for ingress to and egress from his or her Dwelling Unit to the public streets and roads, which easement shall run with the land, be appurtenant to and pass with the title to his or her Dwelling Unit. Such easement rights shall extend to and authorize utilization of such easement for ingress and egress purposes by any duly authorized occupants of such Owner's Dwelling Unit and by guests, agents, invitees, and licensees of the Owner. The City of Des Plaines Illinois shall have a non-exclusive easement of access over, across, and through the Community Area for governmental purposes. The Developer and its successors and assigns (including employees, agents, and contractors) shall have a non-exclusive easement for ingress and egress over, across and through the Community Area for purposes of completing construction of the Development. The Association, its employees, agents and contractors shall have a non-exclusive easement of access over, across, and through the Community Area and the Real Estate for the purposes related to the carrying out of its responsibilities as set forth in this Declaration, including the right to store equipment on the Community Area in connection therewith.

6.02. Storm Water Detention Easements. Perpetual easements for ingress and egress over and across the Real Estate for maintenance of the storm water detention area is hereby granted to the Developer and its successors and assigns, the Association and for emergency, utility, enforcements, engineering, development, and other governmental service purposes, to the City of Des Plaines, Illinois.

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6.03. Easement with Respect to Green Space. Each Owner shall have a non-exclusive easement to use and enjoy the Community Area for recreational purposes, consistent with the preservation of natural vegetation and trees. In no event shall snowmobiles, motorbikes or other similar motorized vehicles be used in the Community Area. Such easement shall run with the land and be conveyed with the title to each Dwelling unit. Enjoyment of the Community Area shall be for any and all purposes not inconsistent with the provisions of this Declaration and allowed by the Association for the exclusive benefit of all Owners.

6.04. Easements for Utilities. Easements for serving the Real Estate and other properties with public utilities and municipal services are granted on the Prairie Corner Townhomes Plat.

6.05. Easements – Municipal Authorities. Police, fire, water, health, engineering, development, and other authorized officials, employees and vehicles of the City of Des Plaines, Illinois shall have the right of and are hereby granted ingress and egress to the Real Estate and the Community Area, and any part thereof, for performance of official duties and for the purpose of enforcing all City ordinances and statutes of the State of Illinois. In addition, duly designated officials and employees of the City of Des Plaines, Illinois and of other governmental bodies having jurisdiction over the Real Estate and Community Area shall have and are hereby granted an easement to enter upon, on and over the Real Estate and Community Area for the purposes of maintaining the storm water detention areas, drainage systems, and enforcing the applicable ordinances, rules, and regulations of the said City and governmental bodies, and to correct or eliminate nuisances or violations resulting from the failure to exercise maintenance responsibilities by the Developer or its successors and assigns, an Owner or the Association.

6.06. Easements to Run with the Land. All easements and rights on or with respect to the Real Estate and Community Area are easements appurtenant to and running with the land, perpetually in and be binding on the Developer and its successors and assigns, every Owner and his or her heirs, grantees, successors and assigns, the Association, and the City of Des Plaines, Illinois.

6.07. Creation of Easements. Reference to the easements and rights described in any part of this Declaration shall be sufficient to create such easements and rights and any subsequent conveyance of any Dwelling Unit shall be deemed to include such easements and rights as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such conveyance.

6.08. Non-Interference with Easement. The Association shall not interfere with or allow the interference with any easement as hereinabove set forth in this Article. Obstructions shall not be placed over any of said easements. The grade of the property over said easements shall not be altered in any manner so as to interfere with the proper operation and maintenance of the easement, but the same may be used for gardens,

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shrubs, landscaping, and such other purposes that then and later do not unreasonably interfere with the use and right therein granted.

6.09. Easement Rights. The Developer, its successors and assigns, and any party for whose benefit easements are granted pursuant to the terms hereof, shall have the right to do whatever may be required for the enjoyment of the easement rights herein granted, including the right to clear said easement area of trees, shrubs, or any building, fence, structure, or paving erected on or installed within the easement areas, and no charge, claim or demand may be made against such parties for any such activities in the exercise of such rights.

6.10. Additional Easements – Association Authority. The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with respect to any portions or all of the Community Area for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities and similar and related purposes. Any and all proceeds from leases, easements, licenses, or concessions with respect to the Community Area shall be used to pay the Community Expenses. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Dwelling unit, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed pursuant to the power granted herein shall be executed by the President and attested by the Secretary of the Association and duly recorded.

6.11. Easement for Encroachment. In the event that by reason of construction, repair, reconstruction, settlement, or shifting of a Dwelling Unit, any portion of such Dwelling Unit shall encroach upon any other Dwelling Unit or the Community Area, or in the event that for the reasons indicated any improvements to the Community Area shall encroach upon any Dwelling Unit, then in any such case there should be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof, provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or such Owner's agent.

ARTICLE VII, ASSESSMENTS, RESERVE FUND, REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.

7.01. Purpose of Assessments. The assessments levied shall be exclusively for the purpose of defraying Community Expenses and accumulating reserves to defray any extraordinary Community Expenses.

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7.02. Community Assessment. Each year on or before December 1 the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year. Such budget shall show the following with reasonable explanations and itemizations:

- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, required to maintain adequate reserves for extraordinary Community Expenses, including without limitation amounts required to maintain the Capital Reserve;
- (c) The estimated net excess funds, if any, from the current year's assessments;
- (d) The amount of the Community Assessment payable with respect to the ensuing year by the Owners, which amount is defined as the amount determined in (a) above plus the amount determined in (b) above minus the amount determined in (c) above;
- (e) That portion of the Community Assessment which shall be payable each month by the Owner of each Dwelling Unit which is subject to assessment hereunder.

Anything in this Section to the contrary notwithstanding, during the Initial Development Period the assessment procedure set forth in Section 7.09 shall apply and the budget provided for in this Section need not disclose the information called for in Subsection (e) above. The budget shall, however, indicate the portion of each Owner's share of the Community Assessment which is intended to be added to the Capital Reserve.

7.03. Payment of Community Assessment. On or before the first day of January of the ensuing calendar year, and on or before the first day of each and every month until the effective date of the next annual or revised Community Assessment, each Owner of a Dwelling Unit shall pay to the Association, or as the Board may direct, that portion of the Community Assessment which is payable by an Owner of a Dwelling Unit under Section 7.02(e).

7.04. Report of Expenditures. On or before April first of each calendar year the Board shall supply to all Owners an itemized accounting of the Community Expenses actually incurred and paid with respect to the preceding calendar year together with a tabulation of the amounts collected by way of Community Assessments. Such accounting shall set forth overages or shortages as well as the amount of any reserves. The status of the Capital Reserve (with an itemization and explanation of all receipts and disbursements) shall be simultaneously reported to the Owners.

7.05. Revised Assessment. If the Community Assessment proves inadequate for any reason (including the non-payment of any Owner's assessment) or proves to exceed funds reasonably needed, the Board may increase or decrease the assessment payable under Section 7.02(e) by giving written notice thereof (together with a revised budget and

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explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

7.06. **Special Assessment.** The Board may levy a special assessment as hereinafter provided (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions, or improvements to the Community Area, or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of the Owners, share and share alike. No special assessment shall be adopted without the affirmative vote of at least a majority of the Voting Members who cast their votes on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

7.07. **Capital Reserve.** The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Community Area (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Area and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Community Area and the purchase of other property to be used by the Association in connection with its duties hereunder. Each budget shall disclose the portion of the Community Assessment which is to be added to the Capital Reserve.

7.08. **Initial Capital Contribution.** Upon the closing of the first sale of a Dwelling Unit by the Developer to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to three (3) months' Community Assessment at the rate in effect with respect to the Dwelling Unit as of the closing. Said amount shall be held and used by the Association for its working capital needs.

7.09. **Assessments During Initial Development Period.** Anything herein to the contrary notwithstanding, until the Turnover Date (the "Initial Development Period"), the assessment procedure set forth in this Section shall apply.

(a) **The Basic Assessment.** The basic assessment ("Basic Assessment") shall be \$ _____ per Townhome Unit per month.

(b) **Cost of Living Increases.** If, as of the first day of any month after this Declaration is Recorded, the level of the most recently published cost of living index for all urban consumers – all items, U.S. city average (1967=100) as published from time to

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time by the Bureau of Labor Statistics (the "Index") is greater than the level of the most recently published Index as of the date of the Recording of this Declaration which is (the "Index Base Level"), then, at the option of the Board, the Basic Assessment until next adjusted, shall be equal to the Basic Assessment until next adjusted, shall be equal to the Basic Assessment then in effect multiplied by a fraction, the numerator of which shall be the level of the most recently published Index and the denominator of which shall be the Index Base Level. If the Index shall cease being published, such other standard or index selected by the Developer, in its discretion, as shall most nearly approximate the measurements theretofore made by the Index shall be used as the Index hereunder, and the Index Base Level shall be adjusted accordingly.

(c) Application of Assessments. Each month each Owner (other than the Developer) shall pay as his monthly Community Assessment the amount determined under (a) and (b) above. The Association shall specify the portion, if any, of each such payment that is to be earmarked as a capital contribution under Section 7.02 to the Capital Reserve. The balance of each such payment shall be used by the Association to pay the Community Expenses.

(d) Developer's Obligation. With regard to any Dwelling Unit for which title has not been conveyed by Developer, the assessment respecting any such Dwelling Unit shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Dwelling Unit; provided, however, that in the event Developer enters into a lease or installment contract for any Dwelling Unit, then Developer shall be responsible for the payment of assessments on those Dwelling Units on the same basis as any other Owner. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Real Estate and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, repair items or inventory items to the extent attributable to subsequent periods. The Developer hereby agrees to satisfy any deficit or shortage in the Association's operating budget for any period in which the Developer has paid reduced assessments pursuant to this Section 7.09, provided, however, that the Developer's liability hereunder shall not exceed the amount by which the Developer's assessments have been reduced below the assessments of each other Owner by reason of this Section 7.09. The assessments charged to the Developer and the amount of the Developer's liability hereunder to satisfy any deficit or shortage in the Association's operating budget shall be the personal obligations of the Developer and shall be a continuing lien upon the Dwelling Units held by the Developer, subject to all the provisions of this Declaration regarding assessment liens. Until such time as the Turnover Date has occurred, the assessments covering the Dwelling Units which have not been sold by the Developer may be paid on a Monthly basis, or, at its option, paid to the Association at the close of each calendar year without interest.

7.10. Payment of Assessments. Assessment levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Dwelling Unit and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Sections 7.12, 7.13, and 7.14.

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7.11. Maintenance of Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenses for which it is responsible, specifying and itemizing the maintenance and repair expenses as well as any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times, during normal business hours, as may be requested by the Owner. The Board will cause each Owner to be notified of any expenditures of the Association with respect to which such Owner shall be entitled to take a deduction for income tax purposes and the amount of the deduction to which such Owner is entitled. The Board shall also advise each Owner of the amount of any Capital Expenditures which affect the Owner's tax basis. Upon ten (10) days' notice to the Board and payment of a reasonable fee any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

7.12. Creation of Lien and Personal Obligation. The Developer hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefore (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner on the Owner's Dwelling Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit at the time when the charge becomes due. Developer hereby agrees that during the Initial Development Period, any amounts which become payable from the Developer to the Association under Section 7.09 shall be a continuing lien against the Dwelling Units owned by the Developer at the time that the payment becomes due. The lien or personal obligation created under this Section shall be in favor and shall be enforceable by the Association.

7.13. Collection of Charges. The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

7.14. Non-Payment of Charges. Any charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the maximum legal general interest rate permitted by Illinois law from due date to the date when paid provided, however, said minimum penalty from any Charge which is delinquent for thirty (30) days or more shall not be less than \$25.00. The Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs, and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and/or (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by non-use of the Community Area or by abandonment or transfer of his Dwelling Unit.

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7.15. Lien for Charges Subordinated to Mortgages. The lien for Charges, provided for in Section 7.12, shall be subordinate to the Mortgagee's mortgage on the Dwelling unit if such mortgage was recorded prior to the date that any such charge become due. Except as hereinafter provided, the lien for charges, provided for in Section 7.12, shall not be affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage, such transfer to title shall extinguish the lien for unpaid charges which became due prior to the date of the transfer of title. However, the transferee of the Dwelling Unit shall be personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence where such charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Community Assessment or special assessment and non-payment thereof shall result in a lie against the transferee's Dwelling Unit, as provided in this Article.

7.16. Self-Help by Board. In the event of a violation or breach by an Owner of the provisions, covenants, or restrictions of this Declaration, the ByLaws, or rules or regulations of the Board, whenever such violation or breach may be cured or abated by affirmative action, the board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Real Estate with respect to which the violation or breach exists to remove or rectify the violation or breach.

7.17. Other Remedies of the Board. In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Declaration or any rules or regulations adopted hereunder may be by proceeding at law or in equity by the Association against any person or persons violation or attempting to violate any such provision either to restrain such violation, require performance, recover sums due or payable, or recover damages, and/or against the land to enforce any lien created hereunder; and failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

7.18. Costs and Expenses. All costs and expenses incurred by the Board in connection with any action, proceedings or self-help in connection with the exercise of its rights and remedies under this Article, including, without limitation, court costs, attorney's fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum legal general rate permitted by Illinois law until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a lien for same upon his or her Dwelling Unit as provided in Section 7.12.

7.19. Enforcement by Owners. Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by an aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Dwelling Unit to enforce any lien created hereunder.

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ARTICLE VIII, Reserved.

ARTICLE IX, General Provisions.

9.01. Developer Responsibility Prior to Association. Until such time as the Association is formed, the Developer may exercise any of the powers, rights, and duties and functions of the Association and shall be responsible for all obligations and responsibilities of the Board hereunder.

9.02. Mortgage Entitlement to Notices. Upon written request to the Board, any Mortgagee shall be entitled to be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Dwelling Unit is subject to such mortgage or trust deed.

9.03. References to Declaration in Conveyances; Rights of the City of Des Plaines, Illinois. Each Owner of a Dwelling Unit, by acceptance of a deed therefore or conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms, conditions, and obligations contained herein, including, but not limited to the imposition and foreclosure of liens, and that the City of Des Plaines, Illinois, acting through its authorized officials and agents, shall be entitled to enforce the covenants or other terms of this Declaration; and that said City or its duly authorized agents or representatives shall also have the right, in the event the Developer or Association shall fail to do so, and after giving ten (10) days' notice to the Developer or Association, as the case may be, to enter upon the Real Estate, Community Area, or any part thereof to perform or cause to be performed such maintenance and rehabilitation work as may be necessary to the proper maintenance and operation of the Community Area; and that said City shall have a lien for the costs of such enforcement action or work if such costs are not paid as hereinafter provided. If such work has not been performed and the City of Des Plaines determines that an emergency exists, such Notice is not required. In the event that the said City shall undertake any enforcement action or perform or cause to be performed any work pursuant to this Section 9.03, it shall have the right without further consent of the Developer, the Association, the Owners, or any individual Owner to charge against the Real Estate an amount sufficient to defray the entire cost of such action or work. If the amount so charged is not paid within thirty (30) days following a demand in writing by the City for such payment, such charge, together with interest and costs of collection, shall become a lien upon the Real Estate and the City shall have the right to collect such charge, interest and costs and to enforce such lien in the same manner as provided herein for assessments and liens resulting from unpaid Charges. The City of Des Plaines, Illinois shall be under no obligation to exercise the rights granted in this Section except as it shall determine to be in its best interests. No failure to exercise any right herein granted to the City shall be construed as a waiver of that or any other rights. Nothing in this Section or this Declaration shall be construed to constitute a dedication of any

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portion of the Real Estate to, or an acceptance thereof, by the City of Des Plaines, Illinois.

9.04. Notice Requirements. Notices provided for in this Declaration shall be in writing, and shall be addressed to the Board in care of the President of the Association, or to any Owner, as the case may be, at such person's last known address as it then appears on the records of the Association or to the City of Des Plaines, Illinois, the City Manager, 1420 Miner Street, Des Plaines, IL 60016. The Association or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all owners. The City of Des Plaines, Illinois may designate a different address for notices to it by giving written notice of such change to the Association. Any Owner may also designate a different address to notice to him or her by giving written notice of his or her change of address to the Board. Notices addressed as above shall be deemed delivered when mailed by the United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof, or, if addressed to any Owner, when deposited in his or her mailbox or at the door of his or her Dwelling Unit.

9.05. Delivery of Notices. Notices required to be given any devisee or personal representative of a deceased Owner may be delivered with personally or by mail to such party at his, her or its address appearing in the records of the courts wherein the estate of such deceased Owner is being administered.

9.06. Appurtenancy of Covenants. All restrictions, conditions, covenants, easements, reservations, liens and Charges, as well as the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby created, reserved, or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants appurtenant, running with the land, and shall at all time be binding on and inure to the benefit of any person having at any time an interest or estate in the Real Estate or any Dwelling Unit. The foregoing shall be binding whether or not the deed of conveyance or other instrument (such as, by way of example, Articles of Agreement for Deed) through which such person claims an interest or estate, makes reference to this Declaration, in like manner as though the provisions of the Declaration were recited and stipulated in full on each such deed of conveyance or other instrument.

9.07. Non-Enforcement of Covenants Not a Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

9.08. Modification of Declaration. The covenants and restrictions of this Declaration may be amended by an instrument signed by those Owners entitled to cast fifty-one percent (51%) of the total votes, provided, however, that no Material Amendment to this Declaration, the By-Laws, or the Association's articles of incorporation shall be effective unless approval thereof is obtained from Eligible

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Mortgage Holders representing at least 66 2/3% of the Dwelling Units that are subject to mortgages held by Eligible Mortgage Holders, as well as the City of Des Plaines, Illinois by written resolution duly adopted.

Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, or to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee mortgages covering Dwelling Units, or (ii) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Developer to vote in favor of, make, execute and record Special Amendments.

9.09. **Invalidity of Covenant.** The invalidity of any covenant, restriction, condition, limitation, or any other provision of this Declaration, or any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of this Declaration.

9.10. **Unlawful Covenants.** If any of the options, privileges or covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Governor of the State of Illinois, and the incumbent President of the United States.

9.11. **Mortgages.** The following provisions are intended for the benefit of each Mortgagee and to the extent if at all, that any other provisions of this Declaration conflict with the following provisions, the provisions of this Section 9.12 shall control:

(a) Upon receipt in writing to the Association indemnifying the name and address of the mortgagee or the insurer or guarantor of a recorded mortgage or trust deed on a Dwelling Unit ("Insurer or Guarantor") and the unit number, the Association shall furnish each Mortgagee, Insurer, or Guarantor a written notice of the default of any

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Owner's obligations under this Declaration which is not cured within thirty (30) days. Any Mortgagee of a Dwelling Unit who comes into possession of the said Dwelling Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Dwelling Unit which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Dwelling Unit, whichever occurs first.

(b) Upon request in writing, each Mortgagee, Insurer, or Guarantor shall have the right:

(i) to examine current copies of this Declaration, the By-Laws, rules and regulations and the books and records of the Association during normal business hours;

(ii) to receive, without charge and within a reasonable time after such request, an audited financial statement prepared by the Association at the end of each of its respective fiscal years;

(iii) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(iv) to receive written notice of any decision by the Association or Owners to make a Material Amendment to the Declaration, By-Laws, or the articles of incorporation of the Association;

(v) to receive written notice of any lapse, cancellation, or material modification of the insurance policy or fidelity bond maintained by the Association;

(vi) to receive written notice of any proposed action which would require the consent of a specified percentage of Mortgagees; and

(vii) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Real Estate or the Dwelling Unit on which it holds, insures, or guarantees the mortgage;

(c) No provision of this Declaration, the By-Laws or the articles of incorporation of the Association or any similar instrument pertaining to the Real Estate or the Dwelling Units therein shall be deemed to give an Owner or any other party priority over the rights of the Mortgagees pursuant to their mortgages in the case of distribution to Owners of Insurance proceeds or condemnation awards for losses to or a taking of the Dwelling Units, and/or the Community Area, or any portion thereof or interest therein. In such event, the Mortgagees, Insurers, or Guarantors of the Dwelling Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

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(d) Upon specific written request to the Association, each Mortgagee, Insurer or Guarantor of a Dwelling Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Community Area if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00) or if damages shall occur to a Dwelling Unit in excess of One Thousand Dollars (\$1,000.00), notice of such event shall also be given.

9.12. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose or creating any appropriate plan for the ownership, operation, and maintenance of the Community Area.

9.13. Responsibility of Trust Beneficiaries. In the event title to any Dwelling Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the Dwelling Unit under such trust and 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 Unit. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Dwelling Unit and the beneficiaries of such Trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Dwelling Unit.

9.14. Interpretation of Declaration. In the event of any dispute or disagreements between any Owners relating to the Community Area, or any question of interpretation or application of the provisions of this Declaration, the determination thereof by the Board shall be binding and final as to each of said Owners. In the event of any dispute or disagreement between the Board and the City of Des Plaines, Illinois relating to the Community Area, or any question of interpretation of or application of the provisions of this Declaration, the determination thereof by the City of Des Plaines Illinois shall be binding and final as to the Board.

9.15. Enforcement of Declaration. This Declaration and the various covenants and restrictions therein contained may be enforced by the Developer, the Association, by any Owner, and by another person, including the City of Des Plaines, Illinois specifically authorized herein to enforce them or for whose benefit they are created. Enforcement of this Declaration and the various covenants and restrictions therein contained may be sought by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation, to compel affirmative action or to recover damages, and against the land to enforce any lien created by this Declaration. All expenses incurred by any part so enforcing this Declaration, including court costs and attorney fees, shall be borne by the party against whom the enforcement proceedings are maintained.

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9.16. Recordation of Declaration. This Declaration shall be recorded with the Recorder of Deeds of Cook County, Illinois, and all contracts and deeds of conveyance relating to the Real Estate or any part thereof shall be subject to the provisions of this Declaration.

9.17. Assignment. All rights which are hereby reserved to the Developer are mortgageable, pledgeable, assignable or transferable. Upon any exercise of rights by the holder of said mortgage, pledge, assignment or transfer, any successor assignee by foreclosure or otherwise shall from time to time hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein/

IN WITNESS WHEREOF, the said Developer has caused its corporate seal to be affixed hereunder and has caused its name to be signed to these presents by its President and attested to by its Secretary this ____ day of January, 2003.

This instrument is executed by MIDWEST BANK AND TRUST COMPANY, a corporation of Illinois, not individually but solely as Trustee under Trust Agreement dated June 20, 2002 and known as Trust No. 02-1-8033, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by Midwest Bank and Trust Company are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against MIDWEST BANK AND TRUST COMPANY by reason of any of the terms, provisions, stipulations, covenants, and/or statements contained in this instrument.

MIDWEST BANK AND TRUST COMPANY
A Corporation of Illinois, not individually but
solely as Trustee under Trust Agreement
Dated June 20, 2002 and also known as Trust
No. 02-1-8033

By: 

Its: **JUANITA CHANDLER**
Land Trust Officer

Attest:

By: 

Its: **Trust Officer**

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STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Juanita Chandler, Trust Officer of Midwest Bank and Trust Company and Linda Lanza, Trust Admin of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Trust Admin respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Trust Officer and Trust Admin then and there acknowledge that _____, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his/her own free and voluntary act of said Bank as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 9th day of January, 2003.

My Commission Expires _____



Elisabeth Granata
Notary Public

Consent to the foregoing Declaration by Record Owner of the Real Estate Described in Exhibit A-1:

Lee-Des Plaines Corporation, an Illinois corporation, hereby consents to foregoing Declaration, and the terms and conditions therein contained, as record owner of the parcel of land described in Exhibit A-1. Said parcel of land shall be bound by and subject to the terms and conditions contained in this Declaration.

Lee-Des Plaines Corporation
An ILLINOIS Corporation

By: Daniel Dool

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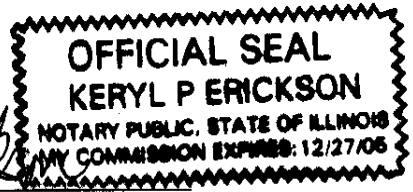
Its: Asst. Secretary &
Agent in Fact

STATE OF ILLINOIS
COUNTY OF COOK

I the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel J. Dowd, Asst. Secretary of Lee-Des Plaines Corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Asst. Secretary & Agent in Fact, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of January, 2003.

My Commission Expires: 12-27-06



Keryl P. Erickson
Notary Public

Mortgagee's Consent:

The undersigned as a holder of a mortgage encompassing the property described in Exhibit A hereto, hereby consents and subordinates its interest to the within Declaration.

LABE BANK

By: William D. Solser
Its: Vice President

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STATE OF ILLINOIS

COUNTY OF COOK

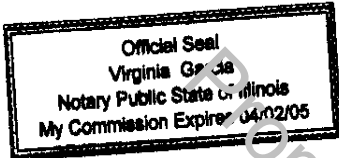
} SS

I, Virginia Garcia, a Notary Public in and for said County, the State aforesaid, DO HEREBY CERTIFY that William D. Bolsen Jr., personally known to me to be the Vice President of LABC BANK, whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President he signed and delivered the said instrument as Vice President of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this date 5/9/2003.

Virginia Garcia

NOTARY PUBLIC



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EXHIBIT A

LOTS 1 AND 16 IN BLOCK 24 OF DES PLAINES MANOR TRACT NUMBER 2, BEING A SUBDIVISION OF PART OF THE WEST ½ OF SECTION 17, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: 09 17 318 032 0000
09 17 318 033 0000
09 17 318 025 0000
09 17 318 026 0000

Common Address: 1117 E. Walter, 650 First Avenue, and 1120 Prairie Avenue, Des Plaines IL 60016.

LOT 1 IN BLOCK 29 OF DES PLAINES MANOR TRACT NUMBER 2, BEING A SUBDIVISION OF PART OF THE WEST ½ OF SECTION 17, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 09 17 321 011

Common Address: 1121 E. Prairie Ave. and 724 First Ave., Des Plaines, IL 60016.

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EXHIBIT A-1

LOTS 1 AND 2 IN BLOCK 30 IN DES PLAINES MANOR TRACT NO. 2, BEING A SUBDIVISION IN THE WEST ½ OF SECTION 17, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: 09 17 322 001 0000
09 17 322 002 0000.

Common Address: 1133 Prairie Ave., Des Plaines, IL 60016.

Property of Cook County Clerk's Office

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BYLAWS
OF
PRAIRIE CORNERS TOWNHOMES ASSOCIATION

ARTICLE I: General Provisions

The Association is responsible for the overall administration of the Property through its duly elected Board. Whether or not incorporated, the Association shall have such powers, not inconsistent with the Act, as are now or may hereafter be granted by the General Not for Profit Corporation Act of the State of Illinois. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with law that may be appropriate to promote and attain the purposes set forth in the Act or the Townhome Instruments.

ARTICLE II: Members

Section 1. Classes of Members, Membership, and Termination Thereof. The Association shall have one class of members. The designation of such class and the qualifications of the members of such class shall be as follows:

Each Unit Owner shall be a member of the Association, which membership shall terminate upon the sale or other disposition of such member's Unit, at which time the new Unit Owner shall automatically become a member of the Association. Such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred under or in any way connected with the townhome or the Association during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies that the Board or others may have against such former Unit Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

Section 2. Votes and Voting Rights.

- a. Until the date of the first annual meeting of the members, as provided in Article III, Section 1 hereof, no member of the Association shall have the right to elect the Board of Managers. All such members of the Board of Managers shall be appointed and

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- shall hold office as provided in Article IV, Section 2 of these ByLaws, unless otherwise required by the Act.
- b. Commencing with the date of the first annual meeting of the members, the total number of votes of all members shall be 100. Each member shall be entitled to the numbers of votes equal to his percentage ownership interest in the Community Area (as defined in the Declaration) times 100 at the time any matter is submitted to a vote of the members.
 - c. If a Unit is owned by more than one person, the voting rights with respect to such Unit shall not be divided, but shall be exercised as if the Unit Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. Any proxy must be executed in writing by the Unit Owner or his duly authorized attorney in fact, must bear the date of execution, and shall be invalid eleven (11) months from the date of its execution. If only one of the persons constituting such Unit Owner is present, the votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of such persons. Agreement by a majority in interest of such persons shall be deemed to exist if any of the persons casts the votes allocated to such Unit without protest being made promptly to the person presiding over the meeting by any such persons constituting the Unit Owner.
 - d. Any specified percentage of the members, whether majority or otherwise, for purposes of voting or for any other purpose, wherever provided in these ByLaws, shall mean such percentage of the total number of votes hereinabove set forth. Such percentage shall be computed in the same manner as is a specified percentage of the Unit Owners of the Townhome as provided in the Declaration, provided, however, that when 30% or fewer of the Units, by number, possess over 50% in the aggregate of the votes as provided herein, any percentage vote of the members specified herein or in the Declaration shall require the specified percentage by number of Units rather than be percentage of interest in the Community Area allocated to Units that would otherwise be applicable.

Section 3. Transfer of Membership. Membership in this Association is not transferable or assignable, except as provided in Article II, Section 1 hereof.

Section 4. Installment Contracts. Anything herein to the contrary notwithstanding, in the event of a sale of a Unit, the purchaser of such Unit pursuant to an installment contract for purchase from a seller other than the Trustee or Developer shall, during such times as he resides in the Unit, be counted toward a quorum for purpose of election of members of the Board at any meeting of the Unit Owners called for the purpose of electing members of the Board, shall have the right to vote for the election of members of the Board, and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights. In no event may both the seller and purchaser be counted toward a quorum, be permitted to vote for a particular office or be elected to serve on the Board. Satisfactory evidence of the existence and terms of the installment contract as they relate to the subject matter of this Section shall be made available to the Association or its agents. "Installment Contract" shall have the same meaning as set forth in Section 1(e) of

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the Dwelling Unit Installment Contract Act, 765 ILCS 75/0.01, et. seq., approved August 11, 1967, as amended.

ARTICLE III: Meetings of Members

Section 1. Annual Meeting. The first annual meeting of the members shall be held on such date as is fixed by the Developer, which date shall in no event be later than the earlier of (a) three years from the date the Declaration is recorded in the Office of the Recorder of Cook County, Illinois, (b) sixty days (60) from the date when 75% of the Units have been conveyed by the Owner, or (c) such earlier time as selected by the Developer. Thereafter, an annual meeting of the members for the purpose of electing Board members and for the transaction of such other business as may come before the meeting shall be held on the third Tuesday of September, provided, however, that no such meeting need be held less than one year after the first annual meeting of the members. If the election of the members of the Board shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members called as soon thereafter as it conveniently may be held. In the event the Developer fails to call the first annual meeting of members by the latest date set forth above, 20% of the members filing the petition may call the first annual meeting by filing a petition to such effect with the Developer, setting forth a date for such meeting. After the filing of such petition, the members may send notice of the first annual meeting of members as provided herein and may hold such meeting pursuant to the notice.

The Board may disseminate to members biographical and background information about candidates for election to the Board if reasonable efforts are made to identify all candidates and all candidates are given an opportunity to include biographical information and background material in the information to be disseminated and the Board does not express a preference in favor of any one candidate. A Unit Owner shall be entitled to receive from the Board or the Developer acting as the Board as provided herein and in the Act, within three (3) working days after the request therefore, the names, addresses, and weighted vote of each Unit Owner entitled to vote at the next annual meeting of members.

Section 2. Special Meetings. Special Meetings of the members may be called by the Board, the President, or not less than 20% of the members. All matters to be considered at special meetings of the members called by not less than 20% of the members shall first be submitted in writing to the Board not less than ten (10) days before the date of the special meeting of the members called to consider such matters.

Section 3. Place and Time of Meeting. All meetings of the members shall take place at 8:00 p.m., in some section of the Property designated by the person or persons calling the meeting, or at such other reasonable place or time designated by the Board or the person or persons calling the meeting.

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Section 4. Notice of Meetings. Written or printed notice stating the purpose, place, day, and hour of any meeting of members shall be mailed or delivered to each member entitled to vote at such meeting not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, except that notice of the first annual meeting of the members shall be given to the members at least twenty-one (21) days prior thereto. The notice of a meeting shall be deemed mailed when deposited in the U.S. Mail addressed to the member at his address as it appears on the records of the Association, with proper postage thereon prepaid.

Section 5. Quorum. The members present at a meeting in person or by proxy, holding 20% of the votes that may be cast at any meeting, shall constitute a quorum at such meeting. If a quorum is not present at the commencement of any meeting of members, the meeting shall be adjourned and may be called again only in accordance with the provisions of these ByLaws.

Section 6. Proxies. At any meeting of members, a member entitled to vote may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution. Any proxy distributed by the Board for election of members of the Board shall give Unit Owners the opportunity to designate any person as the proxy holder and shall give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

Section 7. Manner of Acting. Except as set forth below, and except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the members at which a quorum is present shall be upon the affirmative vote of more than 50% of the members represented at such meeting. The following matters shall require the affirmative vote of 67% or more of all the Unit Owners at a meeting duly called for that purpose:

- a. Merger or consolidation of the Association;
- b. Sale, lease, exchange or other disposition of all, or substantially all, of the property and assets of the Association; or
- c. The purchase and sale of land or Units on behalf of the Unit Owners.

ARTICLE IV: Board

Section 1. In General. The affairs of the Association shall be managed by its Board of Managers, which shall act as the Board of Managers of the Townhome as provided in the Act and the Declaration.

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Section 2. Number, Tenure, and Qualifications. The number of members of the Board shall initially be three (3). Until the date of the first annual meeting of the members as hereinabove provided, members of the Board shall be the directors named in the Articles of Incorporation of the Association if the Association is incorporated; otherwise the members of the Board shall be as appointed by the Developer. Such members of the Board shall hold office until the first annual meeting of the members. Commencing with the date of the first annual meeting of the members, the members of the Board shall be elected solely, by, from and among the members for a term of one year and until their respective successors have been elected and qualified. All members of the Board shall be elected at large. The Board elected at such first annual meeting shall be the initial Board of Managers as provided in the Act. Each member of the Board shall hold office without compensation. In the event that a member of the Association is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any shareholder, officer, or director of such corporation, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity may be eligible to serve as a member of the Board at any one time. A member of the Board may succeed himself in office.

Section 3. Election. At each annual meeting of the members, the members shall be entitled to vote on a cumulative 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. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if (a) no preference is expressed in favor of any candidate and (b) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.

Section 4. Regular Meetings. A regular annual meeting of the Board shall be held immediately after and at the same place as the annual meeting of members. The Board shall, by regulations that the Board may from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four times per year.

Section 5. Special Meetings. Special meetings of the Board may be called by or at the request of the President or 25% of the members of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

Section 6. Notice. Written notice of any special meeting of the Board shall be mailed or delivered to all members of the Association and all members of the Board not calling the meeting at least 48 hours before the date of such special meeting. Written notice of regular meetings of the Board shall be mailed or delivered to all members of the Association at least 48 hours before the date of such meeting. All notices shall be deemed to be mailed when deposited in the U.S. Mail addressed to each member at his address as it appears on the records of the Association, with proper postage thereon

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prepaid. The business to be transacted at or the purpose of any regular or special meeting of the Board shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. However, copies of notices of meetings of the Board shall be posted in entranceways or other conspicuous places in the townhomes designated by the Board at least 48 hours before the meeting.

Section 7. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of the meeting, the meeting shall be adjourned and may be called again only in accordance with the provisions of these ByLaws.

Section 8. Manner of Acting. The act of a majority of the members of the Board present at the meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except when otherwise provided by law or in the Townhome Instruments.

Section 9. Vacancies. Any vacancy occurring in the Board by reason of death, removal, or resignation of a member of the Board shall be filled by the two-thirds vote of the remaining members of the Board. A member elected by the Board to fill a vacancy shall serve until the next meeting of the members; provided that if a petition is filed with the Board signed by members holding 20% of the votes of the Association requesting a meeting of the members to fill the vacancy for the balance of the unexpired term of office his predecessor, the term of the member so elected by the Board shall terminate thirty (30) days after the filing of the petition, and a meeting of the members for the purpose of filling such vacancy for such unexpired term shall be called no later than thirty (30) days following the filing of such petition. Members of the Board, including those appointed by the Developer, may resign at any time by written resignation delivered to or mailed to any officer of the Association, which resignation shall be effective upon receipt of said resignation. If, as a result of the death, removal, or resignation of a member of the Board, no member of the Board remains in office, a special meeting of members may be called to fill all vacancies for the unexpired terms of the members of the Board.

Section 10. Removal. From and after the date of the first annual meeting of the members, any member of the Board may be removed from office by the affirmative vote of 66 2/3% of all members of the Association at a special meeting called for such purpose.

Section 11. Adoption of Rules and Regulations. All rules and regulations, or amendments thereto, shall be adopted by the Board after a meeting of the members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations, which rules and regulations conform to the requirements of the Act and the Declaration and these ByLaws. No quorum is required at such meeting of the members. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution. Such rules and regulations shall be

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effective sixty (60) days after their adoption, provided that the members may veto the rule or regulation at a special meeting of members called for such purpose and held before the effective date of the rule or regulation by a vote of 66 2/3% of all members of the Association.

Section 12. Open Meetings. All meetings of the Board, whether regular or special, shall be open to the members of the Association, except for meetings

- a. to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;
- b. to consider information regarding appointment, employment, or dismissal of an employee; or
- c. to discuss violations of rules and regulations of the Association or a Member's unpaid share of Community Area.

Any vote on the above matters shall be taken at a meeting, or portion thereof, open to any member. Any member may record the proceedings at meetings required to be open by the Act or these ByLaws by tape, film or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

Section 13. Contracts. The Board may not enter into a contract with a current Board member or with a corporation or partnership in which a Board member or a Board member's family has a 25% or more interest unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and the Unit Owners are afforded an opportunity by filing a petition, signed by 20% of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice, and such election shall be held within thirty (30) days after filing the petition. For purposes of this Section 13, a board member's immediate family means the board member's spouse, parents, and children.

Section 14. Powers and Duties. The powers and duties of the Board shall include, but not be limited to, the operation, care, upkeep, maintenance, replacement, and improvement of the Community Area. However, nothing in the foregoing sentence shall be deemed to invalidate any provision in the Townhome Instruments placing limits on expenditures for capital additions or capital improvements to the Community Area (other than for purposes of repairing, replacing, or restoring portions of the Community Area) by the Board without the prior approval of the Unit Owners.

Section 15. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any question of interpretation or application of the provisions of the Declaration, the rules and regulations, or the ByLaws, the determination thereof by the Board shall, absent manifest error, be final and binding on each and all such Unit Owners.

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ARTICLE V: Officers

Section 1. Officers. The officers of the Association shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board), a Treasurer, and a Secretary.

Section 2. Election and Term of Office. The President, Secretary and Treasurer of the Association shall be elected annually by the Board at the regular annual meeting of the Board from among the members of the Association, provided the President must also be a member of the Board. The Vice President or Vice Presidents may be elected annually from among the membership of the Association. If the election of officers shall not be held at this meeting, the election shall be held as soon thereafter as conveniently may be possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until the officer's successor shall have been duly elected and shall have qualified. An officer may succeed himself in office. Officers shall serve without compensation.

Section 3. Removal. Any officer elected by the Board may be removed by a majority vote of the members of the Board.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the members and of the Board. The President may sign, with the Secretary or any other proper officer of the Association authorized by the Board, any deeds, mortgages, contracts or other instruments the Board has authorized to be executed and any amendment to the Declaration or Plat as provided in the Act, and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice President. In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents, in order of their election) shall perform the duties of the President and, when so acting, shall have all the powers of and be subject to all the restrictions on the President. Any Vice President shall perform such other duties as from time to time may be assigned by the President or the Board.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for money due and payable to the Association from any source whatsoever, and deposit all such money

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in the name of the Association in those banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VII of these ByLaws; and in general perform all the duties incident to the office of the Treasurer and such other duties as from time to time may be assigned to the Treasurer by the President or by the Board.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these ByLaws or as required by law; receive all notices on behalf of the Association; together with the President, execute on behalf of the Association amendments to Townhome Instruments and other documents as required or permitted by the Declaration, these ByLaws, or the Act; be custodian of the records and, if the Association is incorporated, see that the seal of the Association is affixed to all documents, the execution of which on behalf of the Association is under its seal is duly authorized in accordance with the provisions of these ByLaws; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or by the Board.

ARTICLE VI: Powers and Duties of the Association and the Board

Section 1. General Duties, Powers, etc. of the Board. The Board shall exercise for the Association all powers, duties, and authority vested in the Association by the Act and the Townhome Instruments, including but not limited to the following:

- a. Operation, care, upkeep, maintenance, replacement, and improvement of the Community Area.
- b. Preparation, adoption and distribution of the annual budget for the Property.
- c. Levying and expending of Assessments.
- d. Collection of assessments from Unit Owners.
- e. Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements.
- f. Obtaining adequate and appropriate kinds of insurance.
- g. Owning, conveying, encumbering, leasing and otherwise dealing with the Units and land conveyed to or purchased by it.
- h. Adoption and amendment of rules and regulations covering the details of the operation and use of the Property.
- i. Keeping of detailed accurate records of the receipts and expenditures affecting the use and operation of the Property.
- j. Having access to each Unit, from time to time, as may be necessary for the maintenance, repair or replacement of any Community Area therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Community Area or to another Unit or Units.
- k. Borrowing money at such rates of interest as it may determine, issuing its notes, bonds, and other obligations to evidence such borrowing, and securing

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any of its obligations by making a mortgage or giving a security interest in all or any of its property or income.

- l. Paying real estate property taxes, special assessments and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, that are authorized by law to be assessed and levied on the real property of the condominium (other than assessments on Units not owned by the Association).
- m. Imposing charges for late payments of a Unit Owner's proportionate share of the Common Expense, or any other expenses lawfully agreed on, and after notice and an opportunity to be heard, levying reasonable fines for violation of the Declaration, ByLaws, and rules and regulations of the Association.
- n. Assigning its rights to future income, including the right to receive Community Area assessments.
- o. Recording the dedication of a portion of a portion of the Community Area to a public body for use, as, or in connection with, a street or utility, when authorized by the members under the provisions of Section 5c of the Declaration.
- p. Recording the grant of an easement for construction, maintenance or repair of a project for protection against water damage or erosion.
- q. Recording the granting of an easement for the laying of cable television cable when authorized by the members under the provisions of Section 5c of the Declaration.
- r. Making reasonable accommodation of the needs of handicapped Unit Owners, as required by the Human Rights Act, in the exercise of its powers with respect to the use of the Community Area or approval of modification of an individual Unit.

In performance of their duties, the officers and members of the Board shall exercise, whether appointed by the Developer or elected by the members, the care required of a fiduciary of the members.

Section 2. Specific Powers and Duties. Anything herein contained to the contrary notwithstanding, the Association shall have the following powers:

- a. To engage the services of a manager or a managing agent, who may be any person, firm, or corporation, on such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than three years and must be terminable by either party to such agreement without cause and without payment of a termination fee, upon ninety (90) days' prior written notice.
- b. To engage the services of any person (including, but not limited to accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance, and management of the Property, or in connection with

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- any duty, responsibility, or right of the Association, and to remove, at any time, any such personnel.
- c. To establish or maintain one or more bank accounts for the deposit of funds paid to or received by the Association.
 - d. To invest any funds of the Association in certificates of deposit, money market funds, or comparable investments.
 - e. Upon authorization of a two-thirds vote of the members of the Board or by affirmative vote of not less than a majority of the Unit Owners at a meeting duly called for such purpose, the Board, acting on behalf of the all Unit Owners, shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments, or charges of the State of Illinois or any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as Common Expenses.

Nothing herein shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Unit Owners or any of them. The granting of concessions as provided in Paragraph 4 of the Declaration shall not be considered conduction an active business for profit.

Section 3. Authorized Expenditures The Association shall acquire and make arrangements for, and pay for out of the Maintenance Fund, in addition to the manager, managing agent, or other personnel above provided for, the following:

- a. Water, waste removal, heating, electricity, telephone, or other necessary utility service for the Community Area and such services to the Units as are not separately metered or charged to the owners thereof.
- b. Such insurance as the Association is required or permitted to obtain as provided in this Declaration.
- c. Landscaping, gardening, snow removal, painting, cleaning, tuck pointing, maintenance, repair, and replacement of the Community Area (but not including the Limited Community Area, which the Unit Owner enjoying the use thereof shall paint, clean, decorate, maintain, and repair) and such furnishings and equipment for the Community Area as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Community Area. Anything in the foregoing to the contrary notwithstanding, and except when the need for repair or replacement is due to the act or omission of a Unit Owner, guest, occupant, family member, or pet, the Association shall be responsible for the repair and replacement (and cleaning of the exterior surfaces) of all windows.
- d. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments that the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein.

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- e. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof that may in the opinion of the Association constitute a lien against the Property or against the Community Area, rather than merely against the interest therein of particular Unit Owners. When one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Unit Owners and shall, until paid by such Unit Owners, constitute a lien on the interest of such Unit Owners in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses.
- f. Maintenance and repair of any Unit or any other portion of the Property that a Unit Owner is obligated to repair or maintain under the terms hereof, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Community Area or any other portion of the Property, and the owner of said Unit has failed or refused to perform the maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair is delivered by the Association to the Unit Owner; provided that the Association shall levy a special assessment against such Unit Owner for the cost of the maintenance or repair, and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses.
- g. Maintenance and repair (including payment of real estate taxes and common expenses) with respect to any Unit owned by the Association.
- h. If, due to the act or neglect of a Unit Owner or of a member of its family or household pet or of a guest or other authorized Occupant or visitor of such Unit Owner, damage shall be caused to the Community Area or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required that would otherwise be a Common Expense, the assessment against such Unit Owner of a charge for such damage and such maintenance, repairs, and replacements as may be determined by the Board, to the extent not covered by insurance, and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 9 of the Act with respect to liens for failure to pay a share of the Common Expenses.

All expenses, charges, and costs of the maintenance, repair, or replacement of the Community Area, and any other expenses, charges, or costs that the Association may incur or expend pursuant hereto, shall be approved by the Association and a written memorandum thereof prepared and signed by the Treasurer. There shall be no structural alterations to, capital additions to, or capital improvements on the Community Area or property owned by the Association (other than for purposes of repairing, replacing, and restoring portions of the Common Elements) requiring an expenditure in excess of

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\$5,000.00 without the prior approval of 67 percent of the Unit Owners. Separate or special assessments for additions or alterations to the Community Area or to Association owned property not included in an Annual Budget (defined in Article VI, Section 4 of the ByLaws) are subject to the approval of 67% of the Unit Owners.

As used herein, the term "repairing, replacing, and restoring" means to repair, replace, or restore deteriorated or damaged portions of the then existing decorating, facilities, structural or mechanical components, interior or exterior surfaces, or energy systems and equipment to their functional equivalent prior to the deterioration or damage. In the event the replacement of a Community Area may result in an improvement over the quality of such Community Area as originally designed, the Board may provide for such improvement provided that if the improvement over and above the functional equivalency of what existed before results in a proposed expenditure in excess of 5% of the annual budget, the Board, upon receipt of a written petition by Unit Owners with 20% of the votes of the association, within fourteen (14) days after the Board's action to approve such expenditure, shall call a special meeting of Unit Owners within thirty (30) days after its receipt of such petition. Unless a majority of the total votes of the Unit Owners are cast at this special meeting to reject the expenditure, the Board's decision to make the expenditure is ratified.

Section 4. Annual Budget.

- a. Each year on or before November 1st, the Board shall estimate the annual budget of Common Expenses (Annual Budget), including the total amount required for the cost of wages, materials, insurance, services, and supplies that will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements (as hereinafter specified) and each Unit Owner's proposed Common Expense assessment, together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs or payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Unit Owner at least thirty (30) days before the adoption thereof. The Association shall give Unit Owners notice as provided in Article III, Section 4 of the ByLaws of the meeting of the Board at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted.
- b. If said Annual Budget proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, or any nonrecurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, the Board may at any time levy a further assessment, which shall be separately assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Community Area, and which may be payable in one lump sum or such installments as the Board may determine. The Board shall serve notice of such further assessment on all Unit Owners (as provided in Article III, Section 4, of the ByLaws) by a statement in writing, giving the

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amount and reasons therefore, and such further assessment shall become effective and shall be payable at such time or times as determined by the Board. All Unit Owners shall be obligated to pay the further assessment.

- c. If an adopted Annual Budget or any special assessment requires assessment against Unit Owners in any year exceeding 115% of the assessments (both regular and special, if any) for the preceding year, the Board, upon written petition by Unit Owners representing 20% of the votes of the Association delivered to the Board within fourteen (14) days of the Board action, shall call a meeting of the Unit Owners within thirty (30) days of the date of delivery of the petition to consider the budget or special assessment. Unless a majority of the votes of the Unit Owners are cast at a meeting to reject the budget or special assessment, it is ratified. In determining whether special assessments, together with regular assessments, exceed 115% of similar assessments in the preceding year, any separate assessment for expenditures relating to emergencies or mandated by law shall not be included in the computation, and the Board may approve such assessment without the right of Unit Owner to veto set forth in this paragraph. As used herein, "emergencies" mean an immediate danger to the structural integrity of the Community Area or to the life, health, safety, or property of the Unit Owners.
- d. The Annual Budget shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Community Area. Each Unit Owner shall be obligated to pay to the Association, or as it may direct, the portion of the Annual Budget assessed to such owner in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1st of the ensuing year, and the 1st day of each and every month of said year. Notwithstanding the foregoing, assessments will not begin until such time as the Developer elects to stop paying all Association expenses; provided, however, that the Board of Managers will begin assessing all Unit Owners if and when a request is made therefor by FHLMC, FNMA, HUD, FHA or VA.
- e. The failure or delay of the Association to prepare or serve the Annual Budget on the Unit Owners shall not constitute a waiver or release in any manner of the Unit Owners' obligation to pay the maintenance or other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual or adjusted budget, the Unit Owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the monthly assessment payment that is due more than 10 days after such new Annual Budget shall have been mailed.
- f. Anything herein or in the Declaration to the contrary notwithstanding, the Board may charge to fewer than all Unit Owners such portion of the insurance premium for insurance the Association is required or permitted to obtain that reflects increased charges for coverage on the Units owned by such Unit Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a common expense with respect to the Units owned by such Unit Owners for all purposes herein and under the Declaration.

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- g. All funds collected hereunder shall be held and expended solely of the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special assessments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in their relative percentages of ownership interest in the Community Area.

Section 5. Annual Accounting.

- a. On or before the 1st day of April of each calendar year commencing 2004, the Association shall supply to all Unit Owners an itemized accounting of the Community Expenses for the preceding calendar year actually incurred and paid, together with an indication of which portions of the Annual Budget were for capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus Reserves. Any amount accumulated in excess of the amount required for actual expenses and Reserves shall be credited according to each Unit Owner's percentage of ownership in the Community Area to the next monthly installments due from Unit Owners under the current year's Annual Budget, until exhausted, and any net shortage shall be added, according to each Unit Owner's percentage of ownership of the Community Area to the installments due in the succeeding 6 months after rendering of the accounting.
- b. The Association shall allow any First Mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association, or at its direction.
- c. The Association shall provide an audited financial statements for the preceding fiscal year within 120 days after the end of such fiscal year upon submission of a written request by any holder, insurer, or guarantor of a first mortgage secured by a Unit.

Section 6. Reserves.

- a. The Association shall build up and maintain a reasonable Reserve for operations, contingencies, and replacement. To establish such Reserve, the Developer shall collect from each Unit Owner, upon conveyance by the Trustee of a Unit to such Unit Owner, an amount equal to one sixth of the Annual Budget as initially established by the Developer for the first year following the first annual meeting of the members and allocable to such Unit and shall remit such amount to the Association. Extraordinary expenditures not originally included in the Annual Budget that may become necessary during the year shall be charged first against such Reserve. In addition, the Association or the Board shall have the right to segregate all or any portion of

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the Reserve for any specific replacement or contingency on such conditions as the Association or the Board deems appropriate. On or before the day of the first annual meeting of members, the Developer shall pay for each Unit then owned by the Trustee such Unit's percentage interest multiplied by one sixth of the Annual Budget as initially established by the Developer for the first year following the first annual meeting of members. When such Units are later sold, the Developer may collect from Purchasers of such units sufficient funds to reimburse itself for the funds paid at the time of the first annual meeting of members. The Developer may not use any of the Reserves to defray any of its expenses or make up any budget deficits while Developer is in control of the Association.

- b. The Annual Budget shall provide for reasonable Reserves for capital expenditures and deferred maintenance for repair or replacement of the Community Area. To determine the amount of Reserves appropriate for the Association, the Board of Managers shall take into consideration the following:
- (1) the repair and replacement cost and the estimated useful life of the property the Association is obligated to maintain, including but not limited to, structural and mechanical components, surfaces of the Building and Common Elements, and energy systems and equipment;
 - (2) the current and anticipated return on investment of Association Funds;
 - (3) any independent professional reserve study the Association may obtain;
 - (4) the financial impact on Unit Owners, and the market value of the Units, of any assessment increase needed to fund Reserves; and
 - (5) the ability of the Association to obtain financing or refinancing.

Anything to the contrary in the foregoing notwithstanding, the Association may elect to waive in whole or in part the Reserve requirements of this Section by a vote of not less than 67% of the total votes of the Association. In the event the Association elects to waive all or part of the Reserve requirements of this section, such fact must be disclosed after the meeting at which such waiver occurs by the Association in the financial statements of the Association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under Section 27.1 of the Act, and no member of the Board or the managing agent of the Association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of Reserve funds in the Annual Budget. If the Association elects to waive all or part of such Reserve requirements, the Association may by a vote of not less than 67% of the total votes of the Association elect to again be governed by the Reserve requirements of this section.

Section 7. Default in Payment.

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- a. If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for 30 days, the Association may assess a service charge of up to 4% of the balance of the aforesaid charges and assessments for each month, or part thereof, that the balance, or any part thereof, remains unpaid. The Association may bring suit for and on behalf of itself and as representative of all Unit Owners, to enforce collection thereof, or to foreclose the lien therefor as provided by law; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. In addition, the Association may also take possession of such defaulting Unit Owner's interest in the Property and maintain an action for possession of the Unit in the manner provided by law. No Unit Owner may waive or otherwise escape liability for the assessment provided for herein by misuse of the Community Area or abandonment of his Unit.
- b. Each such assessment, together with interest, court costs, late charges, and reasonable attorneys' fees and costs of collections or the amount of any unpaid fine shall also be the personal obligation of the person who was the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them or required by applicable law.

Section 8. Books of Account and Statement of Account.

- a. The Association shall keep full and correct books of account, which shall be open for inspection by any Unit Owner or any representative of a Unit Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Unit Owner. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and for such special assessments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use, and account of all the Unit Owners in their relative percentages of ownership interest in the Community Area.
- b. Upon 10 days notice to the Association and the payment of a reasonable fee fixed by the Association not to exceed \$15, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

Section 9. Other Powers and Duties. The Association may number and assign to any Unit Owner the exclusive privilege to use for storage purposes any portion of the Property designated for such purposes; provided, however, that the Association shall have the right of access to all such storage spaces that contain pipes, or other portions of the Community Area, which the Association has the duty or right to maintain, repair, or replace. Any such designation by the Association shall not thereafter be changed except upon the affirmative vote of a majority of the Unit Owners. All property stored in the storage area shall be at the sole risk of the respective Unit Owner who has the privilege to

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sue it, and neither the Association nor any other Unit Owner shall be considered a bailee or otherwise responsible therefor.

ARTICLE VII: CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these ByLaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Association. In the absence of such determination by the Association, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Association.

ARTICLE VIII: BOOKS AND RECORDS

Section 1. Maintaining Books and Records. The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the authority of the Board.

Section 2. Availability for Examination. The manager or Board shall maintain the following records of the association available for examination and copying at convenient hours or weekdays by the Unit Owners or their mortgagees and their duly authorized agents or attorneys:

- a. Copies of the recorded Declaration and ByLaws and any amendments, Articles of Incorporation of the Association, if incorporated, annual reports, if incorporated, and any rules or regulations adopted by the Association or the Board; before the first annual meeting of members of the Association the Developer shall maintain and make available for examination and copying the records set forth in this subsection a.

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- b. Detailed accurate records in chronological order of the receipts and expenditures affecting the Community Area, specifying and itemizing the maintenance and repair expenses of the Community Area and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association.
- c. The minutes of all meetings of the Association and the Board, which shall be maintained for 7 years,
- d. A record giving the names and addresses of the members entitled to vote.
- e. Ballots and proxies related thereto for all elections to the Board and for any other matters voted on by the Unit Owners, which shall be maintained for not less than 1 year; provided, however, that in the event the Association adopts rules for secret ballot election as provided in the act, then, unless directed by court order, only the voting ballot excluding the Unit number shall be subject to inspection and copying.
- f. Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to the General Not For Profit Corporation Act of 1986 of the State of Illinois, as amended.

A reasonable fee covering the direct out of pocket cost of providing such information and copying may be charged by the Association or the Board for the cost of providing such information and copying.

ARTICLE IX: FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the last day of December.

ARTICLE X: SEAL

If the Association is incorporated, the Board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Association and the words, "Corporate Seal, Illinois."

ARTICLE XI: WAIVER OF NOTICE

Whenever any notice whatsoever is required to be given under the provisions of the General Not For Profit Corporation Act of 1986 of the State of Illinois or under the provisions of the articles of incorporation or ByLaws of the Association or the Declaration, a waiver thereof (subject to all the provisions of such instruments) in writing

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signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII: AMENDMENT TO BYLAWS

These ByLaws may be altered, amended, or repealed, and new ByLaws may be adopted upon the affirmative vote of 67% of all of the members at a regular meeting or at any special meeting called for such purpose, by recording an instrument in writing setting forth such alteration, amendment, or repeal, which is signed and acknowledged by an authorized member of the Board and which contains an affidavit by an officer of the Association certifying that the necessary affirmative vote of the members of the Association has been obtained.

ARTICLE XIII: INDEMNIFICATION

The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, investigative (other than an action by or in the right of the Association) by reason of the fact that the indemnitee is or was a member of the Board or officer of the Association, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the indemnitee in connection with such action, suit, or proceeding if the indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the indemnitee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgement in its favor by reason of the fact that the indemnitee is or was a member of the Board or an officer of the Association against expenses (including attorneys' fees) actually and reasonably incurred by the indemnitee in connection with the defense or settlement of such action or suit, if the indemnitee acted in good faith and in a manner the indemnitee reasonably believed to be in, or not opposed to, the best interests of the Association and except that no indemnification shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the

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Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

To the extent that a member of the Board or officer of the Association has been successful, on the merits or otherwise, in the defense of any action, suit, or proceeding referred to in the foregoing two paragraphs, or in defense of any claim, issue, or matter therein, the indemnitee shall be indemnified against expenses, (including attorneys' fees), actually and reasonably incurred by him in connection therewith.

Any indemnification under the first two paragraphs of this Article shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the member of the Board or officer of the Association is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the first two paragraphs of this Article. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of members of the Board who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by a majority of members of the Association.

Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case, upon receipt of an undertaking by or on behalf of the member of the Board or the officer of the Association to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

The sums necessary to discharge the obligations of the Association under this Article shall be Community Area.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any statute, agreement, vote of members of the Association, or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to action in his capacity while holding such office, and shall continue as a person who has ceased to be a member of the Board or an officer of the Association.

ARTICLE XIV: CONSTRUCTION

- a. Nothing hereinabove contained shall in any way be construed as altering, amending, or modifying the Declaration. The Declaration and these ByLaws shall always be construed to further the harmonious, beneficial, cooperative, and proper use and

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- conduct of the Property. If there is any inconsistency or conflict between these ByLaws and the aforesaid Declaration, the provisions of the Declaration shall control.
- b. All words and terms used herein that are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.
 - c. In the event the Association is incorporated, the words "Board of Directors," and "Director," shall be substituted for the words "Board" and "Member of the Board," respectively, wherever they appear.

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