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**DECLARATION OF COVENANTS  
CONDITIONS, RESTRICTIONS, EASEMENTS AND BY-LAWS  
FOR LINDEN TREE LANE HOMEOWNERS ASSOCIATION**

**An Illinois Not-For-Profit Corporation**

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This instrument prepared by  
and after recording mail to:

Permanent Index Nos.:

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## **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND BY-LAWS FOR LINDEN TREE LANE HOMEOWNERS ASSOCIATION**

This Declaration, made this 7<sup>th</sup> day of July, 2003, by **LINDEN TREE VENTURE CORPORATION**, an Illinois corporation ("Declarant").

### **WITNESSETH:**

WHEREAS, the Declarant is the record owner of certain real estate (the "Development Site") located in unincorporated Cook County, Illinois, the legal description of which is set forth in Exhibit "A" attached hereto and made a part hereof, and desires to create thereon a residential community of attached townhomes; and

WHEREAS, Declarant desires to establish certain covenants, conditions, restrictions and easements for the mutual benefit and enjoyment of the owners from time to time of the Development Site in order to promote, preserve and enhance the value and desirability of the Development Site and the architectural integrity and continuity of the improvements erected thereon and to facilitate the continuing care and maintenance thereof; and in furtherance thereof, intends to submit the Development Site to the provisions of this Declaration.

NOW THEREFORE, the Declarant as the legal title holder of the Development Site, hereby declares that the Development Site legally described in Exhibit "A" attached hereto and made a part hereof is hereby submitted to the provisions of this Declaration and shall be owned, transferred, held, sold, conveyed and accepted subject to this Declaration, all the provisions of which shall be deemed to be covenants running with the Development Site and which shall be binding upon and inure to the benefit of the owners, mortgagees and any other persons, from time to time having or acquiring any right, title or interest in the Development Site or any portion thereof.

### **ARTICLE 1**

#### **DEFINITIONS**

1.1 **Association.** Linden Tree Lane Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

1.2 **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 3.

1.3 **Building.** A structure which is built by the Developer on a Lot containing two (2) or eight (8) Dwelling Units.

1.4 **Common Areas.** Any portion of the Development Site that is not a Dwelling Unit. The Common Areas shall include, without limitation, the Detention Ponds, as defined herein, the Private Roads, as defined herein and the Deep Well Facilities, as defined herein. The Common Areas are shown on the Plat of Subdivision as lot A.

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1.5 Common Area Improvements. All improvements constructed or located on or under the Common Areas including, without limitation, the Deep Well Facilities, the Detention Ponds, the Private Roads, all street lighting, monuments, curbs, gutters and storm sewers..

1.6 Declarant. Linden Tree Venture Corporation, an Illinois corporation.

1.7 Deep Well Facilities. The deep well and pumps and other associated equipment located on the Development Site which provide potable water for the Project.

1.8 Detention Ponds. The wet bottom and dry bottom detention ponds dedicated for the retention of water, as shown on the Plat.

1.9 Developer. Linden Tree Venture Corporation, an Illinois corporation.

1.10 Development Site. The real estate legally described on Exhibit "A" attached hereto.

1.11 Dwelling Unit. A residential housing unit in a Building located on a Lot and intended for use exclusively as residential living quarters as constructed by the Developer upon the Lot. The size and dimension of each Dwelling Unit shall be established by the legal description in the deed conveying such Dwelling Unit. A Dwelling Unit may also be established by Declarant pursuant to the Plat or any plat of subdivision encompassing all or part of the Development Site and duly recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

1.12 Eligible Insured. An insurer or guarantor of a first Security Interest (hereinafter defined) in a Dwelling Unit which has notified the Association in writing of the Eligible Insurer's name and address and that it has insured or guaranteed a first Security Interest in a Dwelling Unit. Such notice will be deemed to include a request that the Eligible Mortgagees be given the notices and other right described in Article 10.

1.13 Eligible Mortgagee. The holder of a first Security Interest in a Dwelling Unit which has notified the Association in writing of the Eligible Mortgagee's name and address and that it holds a mortgage ("Eligible Mortgage") in a Dwelling Unit. Such notice will be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 10.

1.14 Lot. Any individual subdivided parcel of real estate shown upon any recorded plat of subdivision of the Development Site or portion thereof on which a single Building is intended to be constructed.

1.15 Member. Each person who holds membership in the Association.

1.16 Owner. The person or persons whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Dwelling Unit or who have entered into an installment contract or articles of agreement for deed for the purchase of a Dwelling Unit; provided that no contract purchaser shall be a member or having voting rights in the Association. For the purposes hereof, unless otherwise specifically provided herein, the word "Owner" shall

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include any beneficiary of a trust, shareholders of a corporation or partner of a partnership holding title to a Dwelling Unit or purchasing a Dwelling Unit as aforesaid.

1.17 Person. A natural individual, corporation, partnership, trust or other legal entity capable of holding title to real property.

1.18 Private Roads. Any street or road dedicated as private streets and roads on the Plat of Subdivision.

1.19 Plat. The plat of subdivision for the Development Site recorded in the office of the Cook County Recorder of Deeds, as from time to time amended.

## ARTICLE 2

### EASEMENTS

2.1 Easement for Unintentional Encroachments. In the event that, by reason of construction, settlement or shifting any Dwelling Unit (or any water, electric, gas or other utility pipe or conduit or portion of utility system serving a Dwelling Unit and located in the common wall, or floor or ceiling, between the Dwelling Units) encroaches or shall hereafter encroach upon any portion of any other Dwelling Unit which is not owned by the Owner of the Dwelling Unit so encroaching, or upon any portion of the Common Areas, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of the Owner of the Dwelling Unit so encroaching, provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or materially interferes with the reasonable use and enjoyment of the Dwelling Unit burdened thereby or such encroachment results from the willful conduct of the Owner of the Dwelling Unit so encroaching.

2.2 Utility Easements. The County of Cook, Ameritech, NICOR, Commonwealth Edison Company, the Northfield Woods Sanitary District and all other public utilities serving the Development Site (including any utility company providing cable, microwave or other satellite television service) are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, sanitary and storm sewers and services, drainage ways and swales, ducts, wires, street lights and other equipment into and through the areas of the Development Site designated on the Plat or on any other plat of subdivision which Declarant or Developer may from time to time cause to be recorded in the office of the Recorder of Deeds for Cook County, Illinois, for the purpose of providing the Lots and Buildings with such utilities.

2.3 Easements for Support. A non-exclusive easement appurtenant to each Dwelling Unit for structured support in and to all structural members, footings, caissons, foundations, columns, and beams or any other supporting components located in or constituting a part of any other Dwelling Unit or Building is hereby granted, reserved, declared and created for the benefit of the Owner of each Dwelling Unit which may be affected thereby.

2.4 Easement for Access. Each Owner is hereby granted a perpetual, non-exclusive easement for the purpose of reasonable access, ingress and egress to and from such Owner's

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Dwelling Unit to and from all public and private ways which adjoin or abut the Development Site through, over and across the Common Areas.

2.5 Municipal Service Easement. A perpetual, non-exclusive easement is hereby granted to the County of Cook and any other governmental entity having jurisdiction over the Development Site and the County of Cook and such governmental entity's agents over, across and through the Common Areas to enforce all applicable laws, ordinances, rules and regulations and for the purpose of providing police, fire, and other municipal services to the Association.

2.6 General Provisions. All easements described in this Declaration are perpetual non-exclusive easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the undersigned, the Owners and the mortgagees from time to time of any Dwelling Unit or Lot and their respective heirs, administrators, executors, personal representatives, successors and assigns.

## ARTICLE 3

### ADMINISTRATION

3.1 Association. The Association has been or will be formed as a not-for-profit Illinois corporation under the General Not-For-Profit Corporation Act of the State of Illinois having the name "Linden Tree Lane Homeowners Association" (or one similar thereto) and shall, to the extent hereafter provided and subject to the limitations hereafter contained, be the governing body of the use, exterior maintenance and repair of the Common Areas, Common Area Improvements, Dwelling Units and Buildings.

3.2 Membership. Every Owner of a Dwelling Unit, shall be a Member of the Association and such membership shall automatically terminate when he ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Dwelling Unit. Each Owner by acceptance of a deed or other conveyance of a Dwelling Unit thereby becomes a Member, whether or not this declaration of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. There shall be one (1) person with respect to every Dwelling Unit who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "voting member." Such voting member may be the Owner of a Dwelling Unit or may be some person designated by such Owner or Owners to act as proxy on his or her behalf and who need not be an Owner. Such designation shall be made in writing and shall be revocable at any time by the Owner or Owners.

3.3 Voting Rights. The Association shall have two (2) classes of voting members:

Class A. Class A Members shall be all Owners with the exception of the Developer and each Class A member shall be entitled to one (1) vote for each Dwelling Unit owned by him;

Class B. The Class B Member shall be the Developer who shall at any given time be entitled to three (3) times the number of votes to which the Class A Members shall be entitled at such time. The Developer shall cease to be a Class B Member

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and shall become a Class A Member upon the first to occur of any of the following dates:

- (a) The date upon which the Developer and Declarant shall have sold and conveyed title to seventy-five percent (75%) of the Dwelling Units; or
- (b) On December 31, 2006; or
- (c) The date upon which the Developer elects to convert its Class B membership to Class A membership by written notice of such election to the Association.

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

### 3.5 Election of Directors.

(a) The initial Board of Directors designated by the Developer shall consist of three (3) directors (each a "Director") who shall serve without compensation. Such initial Board shall serve for a period commencing on the date the Association is formed by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Illinois and ending upon the qualification of the Directors elected at the initial meeting of voting members held as provided in Section 3.6 hereof. At the initial meeting held as provided in Section 3.6 hereof, the voting members shall elect five (5) Board members who shall serve until the first annual meeting. In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Each voting member shall be entitled to cast the number of votes specified in Section 3.3 hereof. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting five (5) Board members shall be elected. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years, and the two (2) persons receiving the next highest number of votes, shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. The voting members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the term of the office of Board members at any annual or special meeting, provided that such number shall not be less than five (5) and that the terms of at



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least one-third (1/3) of the persons on the Board shall expire annually. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by the majority vote of all remaining Board members. The Board shall act by majority vote of those present at its meeting when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of members on the Board shall constitute a quorum.

(b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting members and who shall be the chief executive officer of the Board and Association, a Vice President, a Secretary who shall keep minutes of all meetings, a Treasurer and such other officers as the Board shall see fit. Except for Directors designated by the Developer any Board member may be removed from office by the affirmative vote of voting members holding two-thirds (2/3) of the total votes.

## 3.6 Meetings of Voting Members.

(a) Meetings of the voting members shall be held at such places and times as shall be designated in any notice of a meeting by the Board. The presence in person or by proxy at any meeting of the voting members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting. In the event that a quorum is not present at any meeting of the voting members, another meeting may be called by notice from the Board and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(b) The initial meeting of voting members shall be held upon not less than ten (10) days prior written notice from the Developer. Such notice must be given no later than the earlier of (i) thirty (30) days after the sale and conveyance of title to seventy-five percent (75%) of the Dwelling Units which may be constructed by Developer on the Development Site or (ii) December 31, 2006, but such notice may, at the discretion of the Developer, be given earlier. Thereafter, there shall be an annual meeting of the voting members on or about each anniversary of such initial meeting, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board.

(c) Special meetings of the voting members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the voting members holding one-fourth (1/4) of the total votes.

(d) Notices of meetings may be delivered personally or by mail to the voting members, addressed to each such voting member at the address given by him to the

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Board, or if no address shall be given, addressed to such voting member to the address of his Dwelling Unit.

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

(a) To adopt rules and regulations governing the use, maintenance and administration of the Common Areas, Common Area Improvements, Buildings and Dwelling Units for the health, comfort, safety and general welfare of the Owners and occupants thereof.

(b) To accept delivery of and hold title to, maintain and otherwise manage the Common Areas and the Common Area Improvements, any facilities, improvements and landscaping thereon, and all other property acquired by the Association or which the Association agrees to maintain. The Association shall accept title to such property free and clear of all liens and encumbrances except (i) general and special real property taxes not yet due and payable, (ii) this Declaration and all amendments thereto, (iii) easements of record, (iv) other restrictions of record at the time the property is conveyed to the Association, and (v) liens and encumbrances created pursuant to acts of or suffered by the Association.

(c) To establish and maintain a working capital and repair and replacement fund in an amount to be determined by the Board (the "Reserves").

(d) To make such improvements to the Common Areas and Common Area Improvements and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members present at the meeting where such vote is taken, or voting by proxy in accordance herewith, and acting in accordance with this Declaration, provided, however, that any such action so authorized shall always be for the express purpose of keeping the Common Areas and Common Area Improvements in good condition and repair or making necessary improvements thereto or replacements thereof.

(e) To levy assessments in accordance with Article 5 of this Declaration.

(f) To provide for maintenance, repair and replacement with respect to the Buildings, Common Areas, Common Area Improvements and Dwelling Units on the terms provided for in Article 9 hereof.

(g) To enter into contracts on behalf of, and to purchase or secure in the name of, the Association any materials, supplies, insurance (including directors and officers liability insurance), equipment, fixtures, labor, services (including the services of accountants and attorneys) required by the terms of this Declaration, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its members and for the enforcement of the provisions of this Declaration.

(h) To enter upon, and to have its contractors, subcontractors and agents enter upon, any Lot and the exterior of any Building and Dwelling Unit as may be required to



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exercise all of the rights and obligations granted to or imposed upon it pursuant to this Declaration or to correct any condition that in the Board's judgment is a nuisance or is damaging to any Owner or occupant.

(i) To maintain one (1) or more bank accounts (granting authority as the Board shall desire to one (1) or more persons to draw upon such accounts), and generally, to have all the powers necessary and incidental to the operation and management of the Association.

(j) To adjust the amount, collect and use any insurance proceeds to repair damaged or replace lost property; and if proceeds are insufficient to repair damaged or replace lost property, to assess the appropriate Members in proportionate amounts to cover the deficiency.

(k) To take such action as may be required to enforce the provisions of this Declaration and the rules and regulations made hereunder.

(l) To borrow money in the name of the Association to provide for the maintenance, repair or replacement of the Common Areas and Common Area Improvements and the exterior areas of the Buildings and Dwelling Units; provided, however, that the Board shall not secure any such borrowings by encumbering the Lots or Dwelling Units. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the assessments due the Association hereunder.

(m) To enter into a contract for the management of the Development Site, with a professional manager or management company on such reasonable terms as the Board shall determine; provided that except as to any contract to provide security services to the Dwelling Units, any such contract shall be cancelable by the Association at the end of two (2) years from the date of recording of this Declaration.

(n) To exercise any and all powers, rights and authorities provided in the Illinois General Not-For-Profit Corporation Act, as amended from time to time.

3.8 Liability of the Board of Directors. Neither the members of the Board nor the officers of the Association shall be liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Owners or arising out of their status as Board members or officers unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the

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Board or officers of the Association may be involved by virtue of such persons being or having been such member or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such member or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such member or officer.

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

## ARTICLE 4

### INSURANCE

4.1 Insurance For the Development Site. The Association shall obtain the following types of insurance coverage which premiums, costs, deductibles and other expenses in connection therewith shall be paid from the annual budget of the Association:

(a) Physical damage insurance with perils to be covered no less than "all risk" or "special form" as to real property and "broad form" named perils on personal property with respect to the Common Area Improvements;

(b) Commercial General Liability and Employer Liability Insurance on a per occurrence basis, insuring against liability for bodily injury, death and property damage with respect to the Common Areas and Common Area Improvements under its ownership. Policy limits shall be reviewed annually and set by the Board acting in its discretion but shall be not less than \$1,000,000 per occurrence.

(c) Umbrella liability insurance in excess of the required insurance under Subsection (a) in an amount deemed desirable by the Board but in no event less than \$2,000,000 per occurrence. Such insurance shall be not less than "following form" coverage of the primary liability policies.

(d) Workers' Compensation and Employer Liability insurance to the extent necessary to comply with applicable law;

(e) A fidelity bond covering all the directors and officers and the employees of the Association in an amount to be determined by the Board;

(f) Such other insurance, including indemnity and other bonds, as the Board, in its sole discretion, deems necessary or expedient or carry out the Association's functions; and

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(g) Directors' and officers' liability insurance in such amounts as the Board shall deem to be reasonable.

4.2 Loss Payee. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Association. The Developer, the directors, the officers and the Association, the Association's managing agent and their representatives, agents and employees shall be named as additional insureds on the policies described in Subsection (c) above. The insurance coverage shall, if possible, provide that the insurance as to the interest of the Association shall not be invalidated by any act or neglect of any subsequent owner. The insurance policies shall also contain an express waiver, if available, of all rights of subrogation against Developer, its agents and representatives, any person, firm or corporation affiliated with Developer in the development of the Development Site, the Board, the directors and officers of the Association and the Board's representatives and employees.

4.3 Waiver of Subrogation. The insurance policies shall contain waivers of subrogation with respect to the Board, its employees and agents, subsequent owners and mortgagees.

4.4 Insurance Carriers. All insurance provided for in Sections 4.1 and 4.7 shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A-VII according to Best's Insurance Reports or a substantially equivalent rating from a nationally-recognized insurance rating service. All such policies shall provide a minimum of thirty (30) days advance notice of cancellation in writing to the insureds thereunder unless such cancellation is for non-payment of premium in which case ten-day (10) advance written notice shall be sufficient.

4.5 Insureds.

(a) All policies of insurance of the character described in Subsections (a) and (b) of Section 4.1: (i) shall name as insureds the Declarant, the Board, as trustees for the Owners, and the Insurance Trustee described in Section 4.6 hereof, (ii) shall be without contribution as respects other such policies of insurance carried individually by the Owners whether such other insurance covers their respective Dwelling Units and/or the additions and improvements made by such Owners to their respective Dwelling Units; and (iii) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to the Eligible Mortgagee of each Dwelling Unit. Policies of insurance of the character described in Subsection (a) of Section 4.1 may contain an endorsement extending coverage so as to include the payment of Association Expenses (as hereinafter defined) with respect to damaged Dwelling Units during the period of reconstruction thereof. Notwithstanding the issuance of standard mortgage clause endorsements under the policies of insurance of the character described in Subsection (a) of Section 4.1, any losses under such policies shall be payable, and all insurance proceeds recovered thereunder shall be applied and disbursed, in accordance with the provisions of this Declaration.

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(b) All policies of insurance of the character described in Subsections (b), (c), (d), (e), and (f) of Section 4.1 shall name as insureds Developer, the Association, the Board, their officers and directors, the managing agent, and the other agents and employees of such Association, Board and managing agent and the Developer in his or its capacity as an Owner and Board member and shall also provide coverage for each person.

4.6 Losses. Loss, if any, under any policies of insurance of the character described in Subsection (a) of Section 4.1 shall be adjusted with the Board, and the insurance proceeds on account of any such loss shall be paid and applied as follows:

(a) To the Board, as trustee for each of the Dwelling Owners in the case of any one loss of Fifty Thousand Dollars (\$50,000.00) or less in the aggregate, which insurance proceeds, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, shall be applied to the payment of the cost of restoring the Common Area Improvements to substantially the same condition in which they existed immediately prior to such damage or destruction; or

(b) In the case of any one loss exceeding Fifty Thousand Dollars (\$50,000.00) in the aggregate, then the insurance proceeds shall be paid to Cole Taylor Bank, which is hereby designated by the Developer to act as trustee for the Board (the "Insurance Trustee") pursuant to the Act for the purpose of collecting and disbursing the insurance proceeds described in this Subsection (b). If such entity (or its successor appointed pursuant hereto) shall fail or cease for any reason to act as the Insurance Trustee, then the Board shall, pursuant to the Act, appoint as successor Insurance Trustee a corporation qualified to accept and execute trusts in the State of Illinois and having capital of not less than Five Million Dollars (\$5,000,000.00). Such proceeds, less the actual cost, fees, and expenses, if any, incurred in connection with the adjustment of the loss, and the fees of the Insurance Trustee, shall be applied by the Insurance Trustee to the payment of the cost of restoring the Common Area Improvements to substantially the same condition in which it or they existed immediately prior to such damage or destruction. Such proceeds shall be paid by the Insurance Trustee to or for the account of the Association, from time to time as work progresses, in such manner as shall be required to facilitate the restoration of the Common Area Improvements. The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter into an insurance trust agreement further implementing the provisions of this Declaration with respect to the collection and disbursement of proceeds of insurance by the Insurance Trustee.

4.7 Unit Owner Responsibility. Each Owner of a Dwelling Unit shall be responsible for and shall procure fire and all risk coverage insurance upon such Owner's Dwelling Unit for not less than the full insurable replacement value thereof under a policy or policies of insurance, with such company or companies, in such form and for such premiums and periods, as such Owner may determine to be appropriate. Each Owner shall also be responsible for his own property therein. Each Owner shall be responsible for and shall procure (i) physical damage insurance on the personal property in his Dwelling Unit and anywhere on the Development Site, his automobiles, and any additions, alterations and improvements to his Dwelling Unit (whether installed by such Owner or any prior Owner or whether originally in his Dwelling Unit) and (ii)



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commercial general liability insurance covering liability for bodily injury, death and property damage. All policies of casualty insurance carried by each Owner shall be without contribution with respect to the policies of casualty insurance obtained by the Board for the benefit of all of the Owners as above provided. For the purposes of this Section 4.7, "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Dwelling Unit) attached to the Dwelling Unit, including, without limitation, flooring, carpeting, wall covering, paint and paneling, toilets, fixtures and cabinetry, appliances and all other furnishings. The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations and improvements to a Dwelling Unit or any personal property of an Owner or any other insurance for which an Owner is responsible pursuant to this Section 4.7.

4.8 The policy or policies of insurance on each Owner's Dwelling Unit shall name the Association as a co-insured, as its interest may appear. Each Owner shall deliver to the Board a certificate of insurance certifying that a policy of insurance covering such Owner's Dwelling Unit, as required under this Section, is in effect and that said policy shall not be cancelled or materially changed except upon thirty (30) days' prior written notice thereof to the Board. In the event an Owner fails to procure or keep in effect the insurance required under this Section and provide proof thereof to the Board, then the Board may act on behalf of and as agent for such Owner and procure such insurance on the Owner's Dwelling Unit with a company, in a form, and for a premium and period as determined by the Board to be appropriate, and the cost thereof shall be charged to the Owner.

4.9 Owner Releases. Each Owner hereby waives and releases any and all claims which he may have against the Association, its officers, members of the Board, the Developer, the manager and managing agent of the Association, if any, and their respective employees and agents, for any damage to the Buildings, the Dwelling Units, or to any personal property located in the Buildings, Dwelling Units or on the Common Areas caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance or would be covered by insurance for which such Owner is responsible pursuant to Section 4.7.

4.10 Special Endorsement. Insurance required by Section 4.1 shall be endorsed to include substantially the following clause:

"This insurance shall not be prejudiced (i) by any act or neglect of any Owner or occupant of the Buildings when such act or neglect is not within the control of the named insured (or Owners collectively), or (ii) by failure of the named insured (or Owners collectively) to comply with any warranty or condition with regard to any portion of the Buildings over which the named insured (or Owners collectively) has no control."

4.11 Deductibles. The Board shall have the right and obligation to select substantial deductibles to the insurance coverages required or permitted under Section 4.1 if the economic savings justifies the additional risk and if permitted by law. The deductibles shall be on a per occurrence basis irrespective of the number of insureds suffering injury or damage. Expenses included within the deductible amount arising from insurable loss or damage shall be treated as Association Expenses.



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## ARTICLE 5

### ASSESSMENTS

5.1 Personal Obligation. Each Owner (except for the Developer) by acceptance of a deed for a Dwelling Unit, whether or not it shall be so expressed in any such deed, or other conveyance for such Dwelling Unit, hereby covenants and agrees to pay to the Association such assessments and fees as are levied pursuant to the provisions of this Declaration. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon at the rate of the prime rate announced by Cole Taylor Bank or such Chicago bank as the Board may designate, plus seven percent (7%) per annum, late fees of \$25.00 per month (or such other amount as the Board shall from time to time determine) and costs of collection, including attorneys' fees incurred in respect thereto whether or not suit shall be instituted, shall be a charge and a continuing lien upon the Dwelling Unit against which such assessment is made. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of the person who was the Owner of such Dwelling Unit on the date upon which such assessment became due. Personal liability for such assessments shall not pass to a bona fide purchaser of a Dwelling Unit unless expressly assumed by such purchaser.

5.2 Purpose of Assessments. The assessments and fees levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Members of the Association and, in particular, for (a) maintenance, repairs and replacements for which the Association is responsible pursuant to Section 8.1 or any applicable Section hereof, including the cost of labor, equipment, utilities and security services, accountants', attorneys' and other professional fees, licenses and permits and the materials in connection therewith; (b) the establishment of such reasonable reserves, as the Board deems appropriate, (c) the performance of the duties of the Board as set forth in this Declaration, including the enforcement of the provisions thereof, (d) paying the cost of insurance required or permitted to be maintained by the Association, (e) paying real estate taxes for the Common Areas and (f) in general, carrying out the purposes of the Association as stated herein and in the Articles of Incorporation of the Association (collectively, the "Association Expenses"). The Board may, but shall not be obligated, to separately assess the Members for water usage and expenses related to the Deep Well Facilities. In such event, assessments with respect to the Deep Well Facilities shall be treated in the same manner as all other assessments hereunder.

5.3 Annual Assessments. Each year on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to pay the Association Expenses for the ensuing calendar year (which estimate shall include a reasonable amount considered by the Board to be desirable for the Reserves as defined in Section 5.10) and shall notify each Owner in writing as to the amount of the Aggregate Annual Assessment with a reasonable itemization thereof and of the amount thereof allocable to such Owner. Each Owner (with the exception of the Developer except as otherwise hereunder provided) shall be allocated that portion of the Aggregate Annual Assessment as shall be determined by dividing the Aggregate Annual Assessment by sixty six (66). On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each owner, jointly and severally, shall be personally liable for and obligated to pay one twelfth (1/12) of the portion of the Aggregate Annual Assessment allocated to such Owner. On or before April 1 of each calendar year

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following the initial meeting of voting members, the Board shall furnish each Owner with an itemized accounting of the expenses for the preceding calendar year and the amounts collected from the Owners.

5.4 Special Assessments. In addition to the annual assessments authorized pursuant to Section 5.3, the Board may at any time or from time to time levy special assessments. Special assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, service, labor or materials not provided for in the Aggregate Annual Assessment for the then current calendar year. Except for special assessments which shall not exceed in any one twelve month period the sum of \$300.00 per assessed Dwelling Unit, any such special assessment shall first be approved by the affirmative votes of not less than one-half ( $\frac{1}{2}$ ) of the votes cast at the annual or a special meeting of the Members called and held in accordance with the provisions of Section 5.5 hereof. Special assessments shall be allocated to each Owner in the same manner as such Owner's respective share of the Aggregate Annual Assessment. The Developer shall be liable for the payment of special assessments on only those Dwelling Units for which the Developer is obligated to pay a regular assessment.

5.5 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing any special assessment requiring approval pursuant to Section 5.4 hereof shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence in person or by proxy of Members entitled to cast one-half ( $\frac{1}{2}$ ) of all the votes shall constitute a quorum.

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

5.7 Nonpayment of Assessments. Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the delinquency date, such assessment shall bear interest at the rate provided in Section 5.1 from the delinquency date and the Board may impose a late fee as provided in Section 5.1. In the event of the failure of any Owner to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection, when due, the amount thereof shall constitute a lien on the Dwelling Unit of such Owner. In the event such Owner fails to pay such assessment within thirty (30) days after notice from the Board of such default, the Board may accelerate the maturity of the remainder of the installments of assessments due from such Owner for the balance of the calendar year and may enforce collection thereof. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses shall be charged to and assessed against such Owner (and shall constitute a personal liability of such Owner) and shall be added to and deemed part of his assessments and the Association shall have a lien for all of the same upon the Dwelling Unit of

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such Owner. If the Board has separately assessed the Members for water usage and expenses related to the Deep Well Facilities and a Member fails to pay any such assessment, the Board, in addition to any other remedies for non-payment of assessments, may cut off water service until such payments are made.

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

5.9 Exemption from Assessment on Lots Owned by Developer. In order that those Dwelling Units which are improved with Buildings containing Dwelling Units and conveyed or leased by Developer or its Agents may, with reasonable promptness, receive the benefits of maintenance by the Association for the enjoyment of the residents of the Development Site, and also be subject to assessments therefor, and so as not to discourage the Developer from voting for such assessments at such times as the Developer may still own a substantial number of unoccupied Dwelling Units, and inasmuch as assessments levied against such Dwelling Units impose a burden on the Developer without the Developer desiring, or receiving the benefits of maintenance upon such Dwelling Units as may from time to time be provided by the Association, it is therefore expressly provided that no Lot or Dwelling Unit owned by the Developer, shall be subject to the assessments, charges and liens provided for herein until the date upon which such Lot or Dwelling Unit shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced to pay rental therefor or sold pursuant to installment contract or articles of agreement for deed; provided, however, that each year, until the initial meeting of the Board of Directors pursuant to Section 3.5, the Developer shall contribute to the Association the amount, if any, by which the actual operating expenses of the Association incurred or paid during such year (exclusive of any amounts allocated to Reserves) exceed the gross revenues of the Association during such year.

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

5.10 Initial Assessments. The Developer shall collect from each purchaser of a Dwelling Unit, at the time of closing of the purchase thereof, an amount equal to two (2) times the monthly assessment allocable to such Dwelling Unit. The amounts so collected shall be utilized to fund a contingency, repair, replacement and operating reserve for the Association (the "Reserves").

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## ARTICLE 6

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

6.1 Residential Use. Each Dwelling Unit shall be used for private, residential purposes and no other purposes. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, conducted for profit, altruism or otherwise shall be conducted, maintained or permitted in a Dwelling Unit or Building or on a Lot.

6.2 Leasing. No Dwelling Unit may be leased for "transient purposes." For purposes of this Section 6.2, "transient purposes" shall mean for a term of less than twelve (12) months. All leases shall be in writing and shall require the lessee to observe and comply with the provisions of this Declaration and any rules and regulations from time to time enacted by the Board. Any Owner who leases his Dwelling Unit shall provide the Association prior to occupancy by a tenant, with (a) a copy of such lease; (b) the names of all persons who will occupy his Dwelling Unit, and (c) the lessee's telephone number at the Dwelling Unit. The Board may enact reasonable rules and regulations in connection with the leasing of Dwelling Units.

6.3 Restrictions. The Development Site and the Owners shall be subject to and comply with the following:

(a) No animals of any kind shall be raised, bred or kept in or about any Dwelling Unit or Lot except that dogs, cats or other usual household pets, not to exceed two (2) per Dwelling Unit (or such greater number as the Board shall approve in writing) may be kept in a Dwelling Unit, subject to rules and regulations from time to time adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose; and further provided that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Development Site upon three (3) days' written notice from the Board. Pets shall be leashed at all times when outside any Dwelling Unit. Any pet waste shall be immediately removed from public or private property. No snakes or poisonous insects shall be permitted to be kept in any Dwelling Unit. The rules adopted by the Board may prohibit certain species of pets.

(b) No noxious, offensive or illegal activity shall be carried on in or on any Dwelling Unit, Building or Lot, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants.

(c) No campers, trucks, mobile homes, recreational vehicles, snowmobiles, buses, commercial vehicles, vans, vehicles not bearing a current license, inoperable vehicles, boats, motorcycles, bicycles, sleds, boats or other recreational vehicles shall be parked on any Lot or the Common Areas. No maintenance of any vehicle shall be performed on a Lot or the Common Areas. Except as permitted by the Board, no vehicles shall be parked overnight on the Private Roads. The foregoing restriction shall not apply to any trucks or other vehicles owned by the Developer, its contractors, subcontractors,



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material suppliers, agents and employees which may be parked on any portion of the Development Site owned by the Developer or the Declarant during the construction and marketing of the Development or necessary to make service calls.

(d) No clotheslines, clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of a Lot. All rubbish, trash and garbage shall be placed in closed plastic bags, deposited in closed trash receptacles and regularly removed from each Lot. No trash receptacles shall be kept outside a Dwelling Unit and no burning of trash shall be permitted.

(e) With the exception of machinery, equipment, building materials and supplies and similar items which the Developer may store or permit to be stored upon any Lot owned by the Developer or Declarant or the Common Areas during construction and marketing of Dwelling Units, no machinery, equipment, building materials and supplies or similar items may be stored, kept or maintained on any part of a Lot or the Common Areas. No lawn furniture, swingsets or other recreational or playground equipment or barbecues may be placed or used on any part of the Common Areas or, unless enclosed by a privacy fence, on any lot. No swimming pools other than portable, non-permanent children's wading pools shall be permitted on any Lot or the Common Areas.

(f) All exterior lighting and seasonal lighting and decorating shall be subject to rules, regulations and limitations of the Board and all seasonal lighting and decorating shall be installed no earlier than the first day of December and be removed no later than the fifteenth (15th) day of January.

(g) No radio or television antennas shall be affixed to or placed in, through or upon the exterior walls, roof, or windows of a Dwelling Unit or shall be installed on any exterior part of a Building. No shortwave radio or other type of radio transmitter shall be permitted in or about any Dwelling Unit which may interfere with the radio or television reception in any Dwelling Unit.

(h) No window air conditioning units shall be installed in any Dwelling Unit.

(i) No sheds, storage buildings, tents or other temporary structures of any kind shall be erected on any part of a Lot or the Common Areas.

(j) No Owner shall alter the landscaping originally furnished by the Developer or remove or add any shrubbery, trees, gardens or other plants, hanging baskets, rock gardens, fountains or other elements of landscaping without the prior approval of the Board. No modifications in the color, materials or otherwise of the exterior of a Dwelling Unit or Building from that originally furnished by the Developer shall be permitted.

(k) No sign, billboard, or other advertising device of any character shall be erected or maintained upon any part of a Dwelling Unit, Building or Lot or on any lot therein, excepting by the Developer.



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(l) No fence shall be erected or maintained on a Lot other than those installed by the Developer.

(m) No exterior addition to or exterior change or alteration in a Dwelling Unit including storm doors and windows, railings, flowerboxes, benches and shutters shall be made without the unanimous approval of the Board. Any such exterior addition to or exterior change or alteration to a Dwelling Unit or Building approved by the Board shall be of color, design, material and construction equal to that of the Dwelling Unit as originally constructed, shall comply with all applicable building, zoning and fire laws, statutes, and ordinances and any other requirements of the County of Cook, shall be performed in a good and workmanlike manner, and shall harmonize, to the satisfaction of the Board as to design, color, location and size, with surrounding structures and topography.

(n) Garbage cans shall not be placed out of doors for pick up until the night before pick up and shall be placed indoors the same day pick up is made.

(o) No basketball backboards shall be erected on a Lot.

(p) No trucks, buses, recreational vehicles or trailers shall be parked except within the individual garage which forms a part of each Dwelling Unit. Nor shall any such trucks, buses, recreational vehicles or trailers be parked in the Common Area.

(q) No signs of any kind shall be displayed to public view on or in a Dwelling Unit or the Common Areas without the prior written consent of the Association.

(r) Nothing shall be done or kept on the Units or the Common Areas that would increase the rate of insurance of the amount of any insurance premium or would result in the cancellation of any of the insurance policies of the Association of the Units without prior written consent of the Board.

6.4 Remedies. The violation of any covenant, condition, restriction, rule or regulation adopted by the Board, or the breach of any provision herein contained, shall give the Board the right, upon not less than ten (10) days notice (or immediately in the event of any matter of an emergency nature which might result in damage to persons or property), in addition to the rights set forth in the next succeeding section:

(a) to enter upon that part of the Development Site where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Declarant, or its beneficiaries, or their successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or

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(c) to levy fines in such reasonable amounts and pursuant to such procedures for hearings and appeals as the Board shall from time to time determine.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of ten percent (10%) per annum until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the expenses of the Association, and the Association shall have a lien for all of the same upon the Dwelling Unit of such defaulting Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Dwelling Unit or located elsewhere on his Dwelling Unit. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

## ARTICLE 7

### PARTY WALLS

#### 7.1 Party Wall Rights and Obligations.

(a) Every wall, including the foundations therefore, built as a part of the original construction of a building and resting on the boundary line between separate Dwelling Units shall be deemed a "Party Wall" and the Owner of each Dwelling Unit which utilizes a Party Wall shall have the obligations, rights and privileges set forth in this Section, as well as those not inconsistent herewith, embraced within the general rules of law regarding party walls.

(b) Without limiting the generality of Subsection (a) of this Section, each Owner of a Dwelling Unit which utilizes a Party Wall shall have the right to use such Party Wall for support of such Owner's Dwelling Unit including any replacement thereof, rebuild such party Wall including, in each case, all pipes, conduits and ducts located herein.

(c) The Owner of a Dwelling Unit which utilizes a Party Wall shall refrain from using such Party Wall in any manner which interferes with the equal use thereof by the Owner of the other utilizing Dwelling Unit. Nor, in connection with the reconstruction, repair or maintenance of a Dwelling Unit, shall the Owner thereof permit any joists, crossbeams, studs or other structural members used to encroach upon the Dwelling Unit of the other Owner whose Dwelling Unit utilizes such Party Wall. No openings shall be made through a Party Wall other than customary holes for nails, screws, anchors or other devices for hanging pictures or other accessories and which do not diminish the structural integrity of such Party Wall, its fire resistancy, or its sound-deadening quality.

(d) If any Party Wall is damaged or destroyed due to the act or omission of the Owner of a Dwelling Unit which utilizes such Party Wall, or the guest or other occupant or invitee of such Owner, such Owner shall forthwith proceed to rebuild or repair the same to a condition at least as good as that which was obtained prior to such

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damage or destruction, without cost to the Owner of the adjoining Dwelling Unit which also utilizes such Party Wall.

(e) Any Party Wall damaged or destroyed by some event other than one resulting from an act or omission of the Owner of a Dwelling Unit which utilizes such Party Wall, or the guest or other occupant or invitee of such Owner, shall be rebuilt or repaired by the Owners of the two adjacent Dwelling units which utilize such Party Wall to a condition at least as good as that which was obtained prior to such damage or destruction, at the joint expense of such Owners and as promptly as is reasonably possible.

(f) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction of the type addressed by this Section, to perform the necessary repair or rebuilding, the Board may cause such repair or rebuilding to be performed and the cost thereof charged in the manner provided for in Section 7.2 of this Article 7.

(g) In the event of disagreement between the Owners of adjoining Dwelling Units as regards to their respective Party Wall rights to obligations, upon the written request of either of said Owners to the other, with a copy to the Board, the matter shall be adjudicated by the Board, whose decision with respect thereto shall be final and binding.

## 7.2 Damage or Destruction to Buildings.

(a) In the event of damage to or destruction of any Dwelling Unit by fire or other casualty, the Owner thereof shall within a reasonable time after such damage or destruction, repair or rebuild the same in substantial and workmanlike manner with materials comparable to those used in the original structure and in conformity in all respects to the ordinances of the County of Cook regulating the construction of buildings in force at the time of such repair or reconstruction. The exterior of the Dwelling Unit, when rebuilt, shall be substantially similar to and its architectural design and landscape shall be acceptable to the Board and in conformity with the surrounding Dwelling Units which have not been so damaged or destroyed. The Owner shall not be relieved of his or her obligation to repair or rebuild his or her Dwelling Unit under this Subsection (a) by reason of such Owner's failure to carry sufficient insurance or the fact that proceeds received by the Owner from the insurer are not sufficient to cover the cost thereof.

(b) In the event that any Owner shall fail, within a reasonable time after the occurrence of the damage or destruction referred to in Subsection (a), to perform the necessary repair or rebuilding, then the Board may cause such repairs or rebuilding to be performed in the manner and as provided in Subsection (a) and the cost thereof shall be charged to such Owner as his or her personal obligation and shall be a continuing lien on other Owner's Dwelling Unit.

7.3 Insufficient Insurance. If the insurance proceeds and the reserve for replacements are insufficient to reconstruct the Building so damaged or destroyed, the Owners of the Dwelling

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Units in such Building shall pay the deficiency in equal, pro rata shares and such repair, restoration or reconstruction shall be undertaken as provided in Section 7.2(a).

7.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

7.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.6 Repair, Restoration or Reconstruction. As used in this Article 7, "repair, restoration, or reconstruction" means restoring the improvements (excluding additions, alterations, improvements or betterments to a Dwelling Unit) to substantially the same condition in which they existed prior to the damage or destruction, with each Dwelling Unit and Building having the same vertical and horizontal boundaries as before. Any repair, restoration or reconstruction shall be in accordance with law and this Declaration.

## ARTICLE 8

### EXTERIOR MAINTENANCE

8.1 Maintenance, Repairs and Replacements. The Association shall be responsible for the maintenance and repair of the roofs, exterior walls, gutters, downspouts and trim of each Dwelling Unit and those portions, if any, of each Dwelling Unit which contribute to the support of the Building, together with all exterior walks and patios, whether located on a Lot or immediately adjacent thereto, excluding, however, interior wall, ceiling, and floor surfaces and all interior doors. The Association shall also maintain and replace the shrubs, plantings, grass and trees on the Lots, unless enclosed by privacy fences, and sewer and water connection to the point of entry to each Building. Such maintenance, repairs, and replacements shall be made when and as deemed necessary by the Board to maintain the Development Site as a first class residential development.

8.2 Maintenance, Repair and Replacement of the Common Areas and Common Area Improvements. The Association shall be responsible for the maintenance, repair and replacement of the Common Areas and Common Area Improvements. Such responsibility shall include, without limitation, the specific responsibilities set forth with particularity in Subsections 8.3 through 8.5 inclusive of this Article 8. Except as specifically provided for in Section 8.8, the cost of maintenance, repairs and replacement of the Common Areas shall be Association Expenses. However, unless and until the Association provided for herein is formed pursuant to this Declaration, the Developer shall be responsible therefor.

8.3 Maintenance of Detention Area. That portion of the Common Areas designed or intended for the proper drainage or detention of storm water (as depicted on the site plan), the landscape plan and engineering plan for the real estate approved by the County shall be kept unobstructed and shall be mowed regularly. No trees, plantings, shrubbery, fencing, patios, structures of any kind, landscaping treatment or other obstruction shall be planted, placed or

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allowed to remain in the detention area, except as depicted on the aforesaid plans. Each Owner acknowledges, by acceptance of a deed to a Dwelling Unit, that the portion of the Common Areas designed for storm water detention is for the benefit of the entire real estate, and that consequently the Declarant, any Owner, Cook County or the Association shall have the right to enter upon the Common Areas to maintain drainage and detention in consonance with the aforesaid plans approved by Cook County.

8.4 Maintenance of Private Road. The Private Roads and sidewalks which provide ingress and egress to any portion of the Property shall be maintained in good condition and repair at all times, including the prompt and effective removal of snow and ice and shall provide a means for safe, efficient, unobstructed and comfortable passage from the public right of way to the Development Site.

8.5 Maintenance of Deep Well Facilities. The Association shall maintain the Deep Well Facilities at all times in good condition and repair and in compliance with all rules and regulations of applicable governmental authority including, without limitation, the Illinois Environmental Protection Agency.

8.6 By the Owner. Except as otherwise provided in Sections 8.1 or Section 8.3 hereof, each Owner shall furnish and be responsible for, at his own expense:

(a) All of the maintenance, repairs, and replacements within his own Dwelling Unit and of the doors appurtenant thereto, and all internal installations of such Dwelling Unit such as refrigerators, ranges, and other kitchen appliances, lighting fixtures and other electrical fixtures, plumbing fixtures or installations, and any pipes, ducts, flues, shafts, electrical wiring, and conduits; provided, however, that such maintenance, repairs, and replacements as may be required for the bringing of water, electricity, and other utilities to the Dwelling Units, shall be furnished by the Board as part of the Association Expenses.

(b) All of the decorating within his own Dwelling Unit as may be required from time to time, including, but not limited to, painting, wallpapering, washing, cleaning, paneling, floor covering, draperies, window shades, curtains, lighting, and other furnishings and decorating. The interior surfaces of all doors and windows forming part of a perimeter wall of a Dwelling Unit shall be cleaned or washed at the expense of each respective Owner. The use of and the covering of the interior surfaces of such windows, whether by draperies, shades, or other items visible on the exterior of the Building, shall be subject to the rules and regulations of the Board as may be imposed from time to time.

(c) All exterior portions of Dwelling Units not maintained by the Association, including by way of example and not limitation, lighting (other than porch lighting and rear alley lighting which shall be maintained by the Association), and doors and all shrubbery, trees, grass and plantings on areas of Buildings enclosed by fences. In the event any Owner fails to maintain or repair his Dwelling Unit or Lot as aforesaid, the Association shall have the right, but not the obligation, to enter upon such Owner's Dwelling Unit to perform such maintenance or repair and such Owner shall pay all costs and expenses of the Association incurred thereby upon demand. The cost of any



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maintenance, repairs and replacements performed by the Association under this Section shall be charged to the Unit Owners benefited thereby and shall be added to the assessment payments due from such Owners and shall bear interest and constitute the personal liability of such Owner and shall be a continuing lien on such Owner's and Dwelling Unit enforceable as provided in Article 5 hereof.

8.7 Nature of the Obligation. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair, and replacement of the Dwelling Units or any portion or parts thereof; the Association's liability shall be limited to damages resulting from its negligence. The respective obligations of the Association and Owners set forth in this Declaration shall not be limited, discharged, or postponed by reason of the fact that any such maintenance, repair, or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Building, nor because they may become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything hereinabove to the contrary, no Owner shall have a claim against the Board or Association (or against the Developer) for any work ordinarily the responsibility of the Board or Association, but which the Owner himself has performed or paid for, unless the same shall have been agreed to in advance, in writing, by the Board, the Association or the Developer.

8.8 Negligence of Owner. If, due to the negligent or willful act or omission of an Owner, a member of his family, a household pet, or a guest or other authorized Occupant or visitor of such Owner, damage shall be caused to a Building or a Dwelling Unit or Units owned by others, or maintenance, repairs, or replacements shall be required which would otherwise be an Association Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Board.

8.9 Conveyance of Common Areas and Common Area Improvements. The Declarant shall convey title to the Common Areas and Common Area Improvements to the Association within sixty (60) days following the initial meeting of the voting members.

## ARTICLE 9

### RIGHTS RESERVED TO DEVELOPER

9.1 Developer's Promotional Rights. The right is reserved to the Developer to place and maintain on any area of the Development Site, all model Dwelling Units, construction trailers, sales offices, fencing, flag poles, advertising signs, banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Developer for construction, sales and leasing purposes. There is also reserved to the Developer, its agents, employees and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Development Site for such sales and leasing purposes. The Developer also reserves the right to maintain on the Development Site without charge (a) a general office for the purpose of exercising the rights reserved in Sections 9.1 and 9.2 hereof, (b) a general construction office for Developer's contractors and subcontractors and (c) appropriate parking facilities for the employees of Developer's agents and contractors. Developer's aforesaid reserved rights shall continue for so long as Developer or any successor

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owner of the Development Site or any portion thereof is engaged in the construction, sale or leasing of Dwelling Units on any portion of the Development Site.

9.2 Developer's Easements. The Declarant reserves unto itself and the Developer a non-exclusive easement to, through, over, under and across the Development Site and all portions thereof for the purpose of exercising the rights reserved to the Developer pursuant to this Declaration, and for the purpose of implementing the overall development of the Development Site, including, without limitation, the planning, construction, marketing, leasing, management and maintenance of improvements in any portion of the Development Site. Such easement shall continue for a period of ten (10) years from the date of this Declaration unless Developer, by written notice to the Association, elects to terminate such rights prior to such date. All rights and easements in favor of the Owners created by this Declaration shall be subject and subordinate to the aforescribed development rights and easements of Developer, whether or not inconvenient to any Owner shall result therefrom. The rights and easements reserved pursuant to this Section 9.2 and Section 9.3 shall inure to the benefit of the Developer, the Declarant, their respective successors and assigns including any successor to or assignee of the Developer's rights under this Declaration.

9.3 Right of Developer to Make Dedications to Grant Utility Easements. As used in this Section 9.3, the term "utilities" means all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment, which serve the Development Site, including, without limitation, those for the transmission and/or distribution of water, electricity, gas, telephone, sewage, drainage, and television and other electronic signals. Said term also includes all standpipes, hydrants, pumps, equipment vaults and other structures and facilities for the provision of fire protection services.

Declarant and Developer hereby reserve the following rights and easements:

(a) to dedicate streets and street lights, walks, malls, parkways, parkland, drives, open space and water rights to any governmental authority and to make such other dedications as may be required to implement the ordinances of any governmental authority from time to time applicable to the Development Site and to the public improvements therein.

(b) to dedicate space in the Development Site or any portion thereof to any public or quasi-public utility or to any governmental authority for the location of utilities serving any portion of the Development Site.

(c) to reserve or grant easements in, over, under, to and across the Development Site or any portion thereof for ingress and egress to, and for installation, construction and maintenance of, any of all of the utilities.

(d) to record plats of subdivision and resubdivision of portions of the Development Site.

Any rights hereby reserved to the Developer and Declarant may be assigned and transferred by the Declarant and Developer to any successor developer or to the Association by an instrument in writing, executed by the Declarant and Developer and recorded in the office of

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the Cook County Recorder of Deeds, following which the rights so assigned and transferred shall be exercised by such successor developer or the Association as the case may be. All such rights shall be mortgageable and may be exercised by the holder of any mortgage from the Developer encumbering the Development Site which succeeds to the interest of the Developer by foreclosure or deed in lieu of foreclosure by any assignee of such holder. Until Developer's rights under Section 9.2 hereof are terminated, Developer shall have the right to tap into all utilities for the purpose of exercising all such rights.

## ARTICLE 10

### ELIGIBLE MORTGAGEES' RIGHTS

10.1 Eligible Mortgagees' Consent. The prior written approval of fifty-one percent (51%) of the holders of Eligible Mortgages on Dwelling Units will be required for the Association to do or permit to be done any of the following:

- (a) adoption of an amendment to this Declaration which changes any provision of this Declaration which specifically grants rights to holders of Eligible Mortgages or which changes the provisions of Section 3.8 or Article 8 of this Declaration; or
- (b) the removal of the Development Site from the provisions of this Declaration.

10.2 Notice to Eligible Mortgagees. Each Owner shall notify the Association of the name and address of his Eligible Mortgagee and the Association shall maintain a record of such information with respect to all Dwelling Units. Each Eligible Mortgagee, upon prior written request, shall have the right to examine the books and records of the Association at the place where such books and records are maintained at any reasonable time upon prior, written request. Upon the specific written request of an Eligible Mortgagee to the Board the Eligible Mortgagee shall receive some or all of the following designated in the request.

- (a) notice of the decision of the Owners to make any material amendment to this Declaration;
- (b) notice of substantial damage to or destruction of any Dwelling Unit or condemnation thereof in excess of \$5,000.00;
- (c) notice of any default in payment of assessments by the Owner of the Dwelling Unit which is subject to the Eligible Mortgagee's mortgage, when such default is not cured by the Owner within sixty (60) days after the giving of notice by the Association to the Owner of the existence of the default;
- (d) any lapse or cancellation of any insurance coverage required to be maintained by the Association; or
- (e) any proposed action that requires the consent of a specified percentage of holders of Eligible Mortgages.

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The request of an Eligible Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to an Eligible Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by an Eligible Mortgagee hereunder and in the event of multiple requests from purported first mortgagees of the same Dwelling Unit, the Association shall honor the most recent request received.

10.3 Insurance Proceeds/Condemnation Awards. In the event of (i) any distribution of any insurance proceeds hereunder as a result of substantial damage to, or destruction of, any part of the Buildings or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Buildings, any such distribution shall be made to the Owners and their respective Eligible Mortgagees, as their interests may appear, or the Insurance Trustee as provided in Section 4.5 hereof, and no Owner or other party shall be entitled to priority over the Eligible Mortgagee of a Dwelling Unit with respect to any such distribution to or with respect to such Dwelling Unit; provided, that, nothing in this Section shall be construed to deny to the Association the right to apply any such proceeds to repair or replace damaged portions of the Buildings or to restore what remains of the Buildings after condemnation or taking by eminent domain of a part of the Buildings.

10.4 VA Approvals. Anything herein to the contrary notwithstanding, whenever this Declaration or the By-Laws provide for the approval or consent of the Department of Veteran Affairs ("VA"), such approval or consent shall not be required unless the VA (a) has issued its approval of the Property and such project approval has not terminated, (b) has issued a guarantee of the Eligible Mortgage on at least one Unit which guarantee is then outstanding, (c) is the owner or holder of an Eligible Mortgage on a Unit, or (d) is the Owner of a Unit. Whenever required, such approval or consent shall be deemed granted unless the party seeking the consent or approval is advised to the contrary in writing within thirty (30) days of making the request for consent or approval.

10.5 Inspection of Books. The Association must maintain current copies of the Declaration, By-Laws, Rules, books, records and financial statements. The Association will permit any Eligible Mortgagee, Eligible Insurer or other first mortgagees of Dwelling Units to inspect the books and records of the Association during normal business hours.

10.6 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them and by any available means, at law or in equity.

10.7 Attendance at Meetings. Any representative of an Eligible Mortgagee or Eligible Insurer may attend any meeting which a Unit Owner may attend.

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## ARTICLE 11

### GENERAL

11.1 Amendment by Declarant. Until the initial meeting of voting members, the Declarant or its successors and assigns shall have the right to change or modify this Declaration; provided, however, that the provisions of Section 5.8 shall not be amended or modified without the consent of one hundred percent (100%) of the Eligible Mortgagees holding Eligible Mortgages on Dwelling Units; and provided that except as provided in Section 11.3, such amendment shall be executed only to (i) comply with the requirements of the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal National Mortgage Association, the Federal Housing Authority or any similar entity; (ii) comply with any statutes laws or ordinances; (iii) correct clerical or typographical errors; (iv) comply with the requirements of any holder of a first mortgage on the entire Development Site; or (v) comply with the requirements of the Illinois Commerce Commission with respect to the Deep Well Facilities. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make any change or modification as authorized hereunder on behalf of each Owner as attorney-in-fact for such Owner. Each deed, mortgage, trust deed, or other evidence of obligation affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of and a covenant and reservation of the power of the Declarant as aforesaid. Such amendment shall become effective upon recording in the office of the Recorder of Deeds for Cook County, Illinois.

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

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

11.4 Enforcement. Enforcement by the Association or any Owner of the covenants and restrictions contained in this Declaration shall be had by any proceeding at law or in equity against any person or persons violating or attempting to violate any such covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created



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by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

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

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

11.7 Duration. The covenants, restrictions, conditions, reservations, liens and charges imposed or established by or created under this Declaration shall run with and bind the land for a period of forty (40) years from the date of the recording of this Declaration and may be enforced by the Association or any Owner through any proceeding in law or in equity. Failure by the Association or any Owner to so enforce shall in no event be deemed a waiver of the right to do so thereafter. After the expiration of said forty (40) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by an instrument in writing which is executed by the Owners of not less than two-thirds of the Dwelling Unit and recorded in the office of the Recorder of Deeds for Cook County, Illinois. Except in case of condemnation or destruction of a substantial portion of the Dwelling Units, the legal status of the Association shall not be terminated without the affirmative vote of not less than 67% of the holders of Eligible Mortgage on the Dwelling Units.


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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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IN WITNESS WHEREOF, the Declarant hereto has caused these presents to be signed by its authorized member as of the day and year first above written.

**LINDEN TREE VENTURE CORPORATION,**  
an Illinois corporation

By:   
Victor Moore

Its: President

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

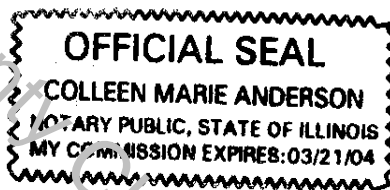
I HEREBY CERTIFY that on this 17 day of July, 2003, before me personally appeared VICTOR MOORE, PRESIDENT of LINDEN TREE VENTURE CORPORATION, an Illinois corporation, to me known to be the same person who signed the foregoing instrument as his free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at 1809 Techny in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

Colleen Marie Anderson  
Notary Public

My Commission Expires: 3/21/04



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## EXHIBIT "A"

FINAL PLANNED UNIT DEVELOPMENT PLAT OF LINDEN TREE DEVELOPMENT

COOK COUNTY, ILLINOIS BEING A SUBDIVISION OF THE NORTHWEST QUARTER  
OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL  
MERIDIAN IN COOK COUNTY, ILLINOIS

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## Linden Tree Lane

Homeowners Association

4/21/03

Estimated Annual Operating Budget

Landscape maintenance	\$ 35,000.00
Snow Removal	\$ 29,000.00
Pond Maintenance	\$ 6,000.00
Irrigation maintenance	\$ 3,000.00
Water System maintenance	\$ 7,000.00
Profession Mgmt. Fee	\$ 7,000.00
Accounting/ Taxes	\$ 7,500.00
Insurance	\$ 4,000.00
Common Area utilities	\$ 3,000.00
Misc./Contingency	\$ 2,300.00
Reserves	<u>\$ 15,000.00</u>
Total Expenses	\$ 118,800.00
Per Unit / month	\$150

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