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PREPARED BY

SCHAIN, FIRSEL & BURNLEY, LTD.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601
312/332-0200



04071138

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE HIGGINS AND BARRINGTON OWNERS ASSOCIATION

THIS DECLARATION (the "Declaration") made this 21st day of December, 1994, by BARRINGTON VENTURE PARTNERSHIP, an Illinois general partnership (hereinafter referred to as the "Declarant").

PREAMBLES:

A. Declarant is the owner in fee simple of a certain parcel of real estate in the Village of Hoffman Estates, County of Cook, State of Illinois, legally described in Exhibit "A", attached hereto and incorporated herein (the "Property"); and

B. Declarant is desirous of submitting the Property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, transferred, occupied and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DECLARATION PURPOSES AND PROPERTY SUBJECT TO DECLARATION

1.1. The Declarant desires to provide for the maintenance of the Common Parcel (as hereinafter defined) including but not limited to the retention pond located in the Common Parcel.

1.2. To further the general purposes herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth.

ARTICLE 2

DEFINITIONS

The following words, when used in this Declaration or in any supplemental Declaration shall, unless the context shall prohibit, have the following meanings:

DEPT-01 RECORDING #69.50
12/27/94 TRAN 2177 12/23/94 14:25:00
1998 DW #04-071138
COOK COUNTY RECORDER

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2.1. "Association" shall mean and refer to the Higgins and Barrington Owners Association, an Illinois not-for-profit corporation, and a Common Interest Community as defined in section 9-102(n)(8) of the Illinois Code of Civil Procedure as from time to time amended, its successor and assigns.

2.2. "Board" shall mean and refer to the Board of Directors of the Higgins and Barrington Owners Association, an Illinois not-for-profit corporation; said entity shall govern and control administration and operation of the Common Parcel.

2.3. "By-Laws" shall mean and refer to the By-Laws of the Higgins and Barrington Owners Association. The By-Laws are incorporated into this Declaration by this reference.

2.4. "Common Parcel" shall mean and refer to all real property and improvements thereon to be owned or maintained by the Association for the common use and enjoyment of all members of the Association, which is legally described on Exhibit "B", which is attached hereto and made a part hereof.

2.5. "Declarant" shall mean and refer to Barrington Venture Partnership, an Illinois general partnership.

2.6. "Developer" shall mean and refer to Barrington Venture Partnership, an Illinois general partnership.

2.7. "Parcel" shall mean and refer to that portion of the Property indicated upon the Plat of Subdivision as set forth on Exhibit "I", which is attached hereto and made a part hereof and comprised of "Parcel 1", "Parcel 2", "Parcel 3", "Parcel 4", "Parcel 5" and "Parcel 6" (all which are hereinafter defined).

2.8. "Parcel 1" shall mean and refer to that certain portion of the Property legally described on Exhibit "C", which is attached hereto and made a part hereof.

2.9. "Parcel 2" shall mean and refer to that certain portion of the Property legally described on Exhibit "D", which is attached hereto and made a part hereof.

2.10. "Parcel 3" shall mean and refer to that certain portion of the Property legally described on Exhibit "E", which is attached hereto and made a part hereof.

2.11. "Parcel 4" shall mean and refer to that certain portion of the Property legally described on Exhibit "F", which is attached hereto and made a part hereof.

2.12. "Parcel 5" shall mean and refer to that certain portion of the Property legally described on Exhibit "G", which is attached hereto and made a part hereof.

2.13. "Parcel 6" shall mean and refer to that certain portion of the Property legally described on Exhibit "H", which is attached hereto and made a part hereof.

2.14. "Owner" shall mean and refer to the record owner, whether one or more Person, of a fee simple title to any Parcel, which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

2.15. "Member" or "Membership" shall mean and refer to every person or entity who holds Membership in the Association.

2.16. "Mortgage" shall mean and refer to a Mortgage creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

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2.17. "Person" shall mean and refer to a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

2.18. "Property" shall mean and refer to the real estate legally described in Exhibit "A", attached hereto and made a part hereof.

2.19. "Plat of Subdivision" shall mean and refer to the Final Plat of Subdivision for the Restaurant Mall Subdivision, which is attached hereto and made a part hereof as Exhibit "L."

2.20. "Turnover Date" shall mean and refer to the meaning referred to and set forth in Section 3.9.

ARTICLE 3

MEMBERSHIP AND BOARD OF DIRECTORS

3.1. Membership. Every Owner of a Parcel shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Parcel. Ownership of a Parcel shall be the sole qualification for membership.

3.2. Voting Rights. The Association shall have one (1) class of membership and the Owner or Owners of a Parcel shall collectively have one (1) vote for such Parcel. In no event shall more than one (1) vote be cast with respect to any one (1) Parcel. If more than one (1) person is the record owner of any Parcel, or if an Owner is a trustee, corporation, partnership or other legal entity, the vote for such Parcel shall be exercised as such Owner or Owners of that Parcel shall designate. Such designation shall be made in writing to the Board or in such other manner as may be provided in the By-Laws.

3.3. Board of Directors. Until the Turnover Date (as defined in Section 3.9), the Association shall be governed by a Board of Directors comprised of the six (6) Parcel Owners. The Board shall maintain and administer the Common Parcel and improvements thereon in accordance with the terms and provisions of this Declaration and the By-Laws.

3.4. Officers. The Association shall have such Officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the Articles of Incorporation or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board, from time to time, and its officers under the direction of the Board and shall not be subject to the approval of the Members. The Articles of Incorporation and By-Laws of the Association may include such added provisions for the protection and indemnification of its Officers and Directors as shall be permissible by law.

3.5. Action of the Board. In the event it is necessary to expend Association funds for the usual, normal and customary repair and replacement of the detention facilities and related appurtenances located on the Common Parcel to maintain the detention facilities in accordance with the original plans and specifications upon which they were originally constructed (including, but not limited to shoreline protection, dredging, algicide, mowing and repair and replacement of the out-flow structures within the Common Parcel), such action shall only be taken by the Board of Directors upon an affirmative vote of the Members owning at least 76.5% of the Property based upon the Schedule attached hereto as Exhibit "J". Notwithstanding the foregoing, in the event it is recommended to expend Association funds for items which are of a capital nature (unless required to maintain the detention facilities in accordance with the original plans and specifications upon which they were originally constructed) and not for the usual, normal and customary repair and replacement of the detention facilities and related appurtenances located on the Common Parcel, such action shall only be taken upon the consent of the members owning at least 76.50% of the Property based upon the Schedule attached hereto as

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Exhibit "J". In the event all of the members of the Board of Directors of the Association do not unanimously consent to the recommendation to expend Association funds for items which are of a capital nature (unless required to maintain the detention facilities in accordance with the original plans and specifications upon which they were originally constructed) and not for the usual, normal and customary repair and replacement of the detention facilities and related appurtenances located on the Common Parcel, then the Owners of such Parcels desiring to expend funds necessary for the capital improvements to the Common Parcel shall have the right to expend such funds and construct such improvements, at their sole cost and expense, provided, such Owners first obtain the prior written approval of all governmental entities having jurisdiction over the Common Parcel and such improvements do not adversely affect the detention facilities and appurtenances located on the Common Parcel.

3.6. Director and Officer Liability. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute gross negligence, fraud or bad faith. The Association shall indemnify and hold harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors and Officers on behalf of the Owners or the Association or arising out of their status as Directors or Officers unless any such contract or such act shall have been made fraudulently, with gross negligence or bad faith. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director or Officer may be involved by virtue of being, or having been such Director or Officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence, fraud or bad faith in the performance of his duties as such Director or Officer, or (ii) any matter settled or compromised unless, in the opinion of independent counsel selected by or in a manner determined by the Board there is no reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his/her duties as such Director or Officer.

3.7. Board Powers. The Association, through the Board, shall have the following powers and duties:

- a. Own, maintain and otherwise manage the Common Parcel, including but not limited to the detention pond located thereon and all appurtenances related thereto, and all improvements thereon, maintain and otherwise manage all other property acquired by the Association;
- b. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm approved as a Manager or Managing Agent shall provide for the right of the Association to terminate the same not later than ninety (90) days after the initial meeting of the Members of the Association is held as provided in the By-Laws;
- c. Establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- d. Provide for the maintenance of landscaping fencing, retaining walls, water systems, brick pavers, lighting and other improvements located within the Common Parcel;
- e. Make such improvements to the Common Parcel, including but not limited to the detention pond located thereon, and provide such other facilities and services as may

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be authorized from time to time by the affirmative vote of the Members owning at least 76.50% of the Property in accordance with the schedule attached hereto as Exhibit "J"; and

- f. Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, the Articles of Incorporation or the By-Laws.

3.8. Insurance. The Board shall also have the authority to and shall obtain comprehensive liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers, members of the Board, the Declarant, and their respective employees, agents, successors and assigns from liability and insuring the Officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses payable out of the proceeds of the Assessments required by and collected in accordance with Article 5. The Board shall be further responsible for maintaining such policies of insurance for the Common Parcel against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable and may also obtain such other kinds of insurance as the Board shall from time to time deem prudent. The coverage shall contain an endorsement to the effect that said coverage shall not be terminated for non-payment of premiums without at least 30 days prior written notice to the Association. The insurance policies shall contain waivers of subrogation with respect to the Board, its employees, agents, Owners and Owner's mortgagees.

3.9. Turnover. The Developer shall, through and with the concurrence of the Board comprised of all Owners, as provided above, exercise control over all Association matters, until the first to occur of the following dates: a) twenty (20) years from the date of this Declaration, b) the sale and conveyance of legal title to all of the Parcels to Owners other than Declarant or an assignee of Declarant as provided in Section 8.10 hereof, or (c) Developer elects voluntarily to turn over to the Members the authority to appoint the Board, which election it shall evidence by directing the Declarant to execute and record in the Office of the Recorder of Deeds of Cook County, Illinois an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or prior to the Turnover Date, the Developer shall cause Declarant to convey to the Association, and the Association shall accept, the Common Parcel to be owned by the Association hereunder and the Association shall undertake to maintain the Common Parcel pursuant to the terms hereof.

3.10 Developer Rights.

1. Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized to take as herein provided subject, however, with the concurrence of the Board comprised of all Owners as provided herein.
2. Until the Turnover Date, Developer may elect to maintain the Common Parcel and shall pay all expenses and costs in connection with the Common Parcel, including without limitation, the costs of improving and maintaining the Common Parcel and general real estate taxes payable in connection with the Common Parcel owned by the Association; provided such improvements shall require approval of the Board. To the extent that any real property taxes payable after the Turnover Date are attributable to the period prior to the Turnover Date, Developer shall reimburse the Association, on a pro rata

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basis, based upon the Schedule, attached hereto as Exhibit "J" for such real property taxes. Declarant shall, not later than the Turnover Date, convey to the Association the Common Parcel to be owned by the Association.

3. Developer shall be entitled at all times to conduct sales of Parcels from the Property and shall have the right, for itself and its agents, employees, guests, invitees, to utilize roads, streets, Common Parcel and all other portions of the Property, excluding sold Parcels, for such purposes until all Parcels are sold. Developer may at all times utilize signage, lighting and establish temporary construction and sales office, buildings and trailers to conduct its construction, sales and marketing of the Property.

ARTICLE 4

EASEMENTS AND PROPERTY RIGHTS

4.1. Easements and Use and Enjoyment. A drainage and pedestrian access easement is hereby declared and created over and upon the Common Parcel for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access, including drainage to the detention pond located thereon, to and of pedestrian ingress and egress on, over, across, in, upon and to the Common Parcel, and such right and easement shall be appurtenant to and shall pass with title to every Parcel or portions thereof, subject to the following provisions:

- a. The right of the Association, in accordance with its By-Laws, to adopt rules and regulations not in conflict with this Declaration governing the use, operation and maintenance of the Common Parcel, which must be reasonable and of general application.
- b. The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Parcel. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Parcel unless such mortgage is approved by the Board and by a majority of the Members, voting at a general or special meeting duly called and held in accordance with the By-Laws.
- c. The right of the Association to dedicate or transfer all or any part of the Common Parcel or any utility system thereon to any public agency, park district, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by all the Members of the Association, has been recorded.

4.2. Easements Run With the Land All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and binding upon any owner, purchaser, mortgagee or to the person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

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ARTICLE 5

COVENANT FOR ASSESSMENTS

5.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner or Owners of a Parcel, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such deed or other covenants, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Parcel owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Parcel against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the person who was the Owner of such Parcel at the time when such assessment fell due.

5.2. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of maintenance, repair, replacement, improvement and additions of and to the Common Parcel and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Parcel and all facilities and improvements thereon, for repair maintenance, and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-Laws.

5.3. Assessment Procedure - Annual Assessments.

- a. Each year, on or before December 1, the Board shall prepare a budget for the Association for the ensuing twelve (12) months which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Parcel, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. The Association shall multiply the total Annual Assessment by the percentage for each Parcel as set forth in the "Percentage Responsibility for Common Parcel" attached hereto as Exhibit "J". The product of the multiplication function shall be the amount of the Annual Assessment attributable to each Parcel. On or before the next January 1, following the preparation of the budget, and on the first day of each and every month for the next twelve (12) months, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before May 1 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding calendar year together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, of income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association and shall be placed in a reserve account.
- b. If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves in Paragraph 5.5, charge the deficiency against existing reserves, or levy a further assessment which shall be assessed in the same proportions as set forth in Section 5.3a hereinabove against all Parcels subject to assessment. The Board shall serve notice for such further assessment on all Owners by a statement in writing showing the amount due and reasons therefor, and such further assessment shall become effective with the monthly installment which is due more than ten (10) days after

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delivery or mailing of such notice of further assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly assessment.

- c The failure or delay of the Board to prepare or serve the annual or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided. Whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay his monthly installment at the then existing rate established for the previous period until the monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

5.4 Special Assessments for Capital Improvements. Subject to the terms and conditions of Section 3.5 of this Declaration, in addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Parcel and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessments which in one (1) year exceed Five Thousand and No/100 Dollars (\$5,000.00) for all Parcels involved shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by the Members present at a general or special meeting duly called for that purpose or, in lieu of such Member's meeting, by an instrument signed by the Members owning at least 76.5% of the Property based upon the Schedule attached hereto as Exhibit "J". Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members, and shall be used only for the specific purpose for which such assessment was levied.

5.5 Capital Reserve. To the extent the annual budget includes an amount specifically designated as a capital reserve, that proportion of each installment of the annual assessments paid to the Association as the amount so designated as a capital reserve bears to the total annual budget shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Parcel and the improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder.

5.6 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which require approval of the Members shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of such meeting. At the first such meeting called, the presence of voting Members in person or by proxy having sixty percent (60%) of the votes entitled to be cast shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.7 Assessments. Each owner hereby agrees to pay its prorata share of all annual and special assessments based upon the percentage schedule, which is attached hereto and made a part hereof as Exhibit "J".

5.8 Collection of Assessments. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to such Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the maximum rate permitted by law. The Board may determine a late charge not to exceed Two Hundred and No/100 Dollars (\$200.00) per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments and recover the

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same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, late charges as determined by the Board, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Parcel when payable and may be foreclosed by any action brought in the name of the Association. To the extent permitted by statute, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

5.9. No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Parcel or abandonment of his Parcel. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

5.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Parcel by a bona fide lender. Each holder of a first mortgage on a Parcel who obtains title or comes into possession of that Parcel pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Parcel free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title, possession, or the filing of a suit to foreclose the mortgage.

ARTICLE 6

MAINTENANCE BY ASSOCIATION

In addition to other rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-Laws of the Association, the Association shall have the following rights, powers and duties with regard to the Common Parcel, including but not limited to the detention pond located thereon, and the cost and expense of which shall be paid for by the Association from assessment funds:

a. Common Parcel. The Association shall maintain, repair, replace and manage the Common Parcel, including the detention pond located thereon and all facilities, improvements and equipment thereon, and pay for all expenses and services in connection therewith, including without limiting the generality of the foregoing: landscape maintenance, comprehensive liability, hazard and other insurance, payment of all taxes, assessments and other liens and encumbrances which are assessed to or charged against the Common Parcel and such other services for the Common Parcel as the Board deems to be in the best interests of the Association and its Members.

b. Culverts. The Association shall maintain, repair and replace any and all culverts located on the Property.

ARTICLE 7

RIGHTS OF FIRST MORTGAGEES

7.1. In addition to all other rights of the first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary (except for Section 7.5 hereinafter):

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Unless at least fifty-one (51) percent of the first mortgagees (based upon one vote for each first mortgage owned) of individual Parcels (hereinafter referred to as "Mortgagees") have given their prior written approval, the Association shall not be entitled to:

- a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvement thereon which are owned, directly or indirectly, by the Association for the benefit of the Parcels and the Owners.
- b. Change the method of determining the obligations, assessments, dues, reserves for maintenance, repair and replacement of Common Parcels, or other charges which may be levied against a Parcel and the Owner thereof as provided in Article 5, subject, however, to the provisions in Paragraph 7.3 hereof.
- c. Fail to maintain fire and extended coverage insurance on the insurable improvements in the Common Parcel in an amount not less than one hundred percent (100%) of the full insurable replacement cost.
- d. Use hazard insurance proceeds for losses to any improvements to the Common Parcel for other than the repair, replacement or reconstruction of such improvements.
- e. Change the responsibility for maintenance and repairs of the Common Parcel thereof as provided in Article 6 or as elsewhere stated herein.
- f. Change the interests in the Common Parcel or rights to their use.
- g. Change the voting rights of any Member of the Association.
- i. By act or omission, seek to terminate the legal status of the Association after substantial destruction or condemnation.

7.2. First Mortgagees shall have the right to examine the books and records of the Association at reasonable times upon reasonable notice.

7.3. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Parcel and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Parcel and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

7.4. Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Parcel in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.

7.5. First Mortgagees are entitled to timely written notice, if requested in writing of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the Parcel securing its mortgage;
- b. Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Parcel on which it holds the mortgage;
- c. A lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the owners' association; and

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- d) Any proposed action that requires the consent of a specified percentage or eligible mortgage holders.

The request must include the Association, stating both its name and address and the Parcel address of the Parcel it has a mortgage on.

This Article 7 may be amended only with the written consent of seventy-five percent (75%) of the Mortgagees (based upon one vote for each first mortgage owned).

ARTICLE 8

GENERAL PROVISIONS

8.1. Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at the highest interest permitted by law, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his assessment and constitute a lien on his Parcel and be enforceable as provided in Article 5. If any Owner, or his guests, violates any provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Parcel and be enforceable as provided in Article 5.

8.2. Severability. Invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision hereof, all of which shall remain in full force and effect.

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

8.4. Amendments. The provisions of Article 4, Paragraph 3.5 and Article 5, and this paragraph may be amended only by an instrument in writing setting forth such amendment signed and acknowledged by all Owners. Subject to Article 7, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment signed and acknowledged by the voting Members having at least fifty-one (51%) percent of the total votes of the Members or that is approved at a duly called and held general or special meeting of Members by the affirmative vote, either in person or by proxy, of the voting Members having a majority of the total votes of the Members and containing a certification by an officer of the Association that said instrument was duly approved as aforesaid. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

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8.5. Special Amendment. Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto.

8.6. Headings. All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine the feminine and neuter and vice versa.

8.7. Mailing Information. Each Owner of a Parcel shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the common street address of the Parcel owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mails, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant shall be sufficient and proper notice to such Owner shall be deemed delivered on the third (3rd) day after deposit in the United States mails.

8.8. Notices. Any notice required or desired to be given under the provisions of this Declaration to any Owner shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the person who appears as the Owner at his last known address, all as shown on the records of the Association at the time of such mailing.

8.9. Binding Effect. Except for matters discussed in Article 7 of this Declaration, the easements created by this Declaration shall be of perpetual duration unless cancelled in a written document signed by one hundred percent (100%) of the Owners. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Parcel subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

8.10. Assignment of Declarant's/Developer's Rights. Notwithstanding anything herein to the contrary, Declarant and/or Developer reserve the right to transfer, assign, mortgage or pledge any and all of either respective privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Cook County, Illinois. Upon such assignment, Declarant and/or Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment; provided the assignee assumes the obligations of the assignor under this Agreement.

ARTICLE 9

COMMON INTEREST COMMUNITY

The Association shall act and operate as a Common Interest Community as defined in Illinois Revised Statutes, (1989), Chapter 110, Section 9-102, as from time to time amended. The Declaration and By-laws shall be deemed to be amended as necessary to comply with any statute relating to Common Interest Communities, and the Developer or Board may record such documents as are necessary to effect this compliance.

ARTICLE 10

MAINTENANCE OF COMMON PARCEL AND CULVERTS BY VILLAGE OF HOFFMAN ESTATES

In the event the Association fails to maintain the Common Parcel or the culverts located on the Property as stated in this Declaration, the Village of Hoffman Estates shall have the right, but not the obligation, to

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maintain or cause to be maintained the Common Parcel and the culverts in good repair, including but not limited to landscaping, cleaning, dredging, filling, treating with chemicals, charging with water and otherwise maintaining the Common Parcel and the culverts. The Owners shall reimburse the Village of Hoffman Estates for their prorate share (based upon the schedule attached as Exhibit "I") of the cost of such maintenance as required in this Article.

ARTICLE II

CREATION OF ASSOCIATION FOR PARCEL 6

In the event the initial Owner of Parcel 6 within the Property subsequently conveys title to any portion of Parcel 6 or subsequently subdivides Parcel 6 into two (2) or more separate parcels, then the initial Owner shall cause a non-profit association to be created and formed, with the separate individual owners of the subdivided or individual parcels being the members of the new association so created. The purpose of the new association shall be for the collection of the Assessments for the maintenance of the Common Parcel and the culverts from the owners of each subdivided or individual parcel for their prorata share of the assessments due and owing to the Association with regard to the subdivided Parcel 6. The Association created pursuant to this Article II shall be the Owner of Parcel 6 for purposes under this Declaration. In the event an Initial Owner does create the aforesaid association and no longer owns a portion of Parcel 6, then such Initial Owner shall be released of any obligations under this Agreement which accrue subsequent to the date of the Initial Owner's conveyance of all of its interest in the Parcel.

IN WITNESS WHEREOF, the DECLARANT, has caused its name to be signed to these presents as of the date and year first above mentioned.

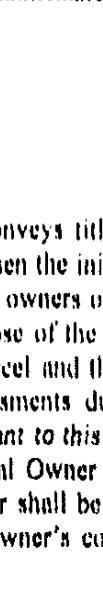
PARRINGTON VENTURE PARTNERSHIP, an Illinois
general partnership

BY: 
Name: Larry Deal, a Partner

BY: POPLAR CREEK DEVELOPMENT COMPANY,
a Partner

BY: 
Its: George A. Moser

ATTEST:

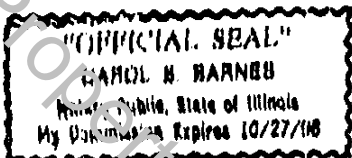
BY: 
Its: Notary Public

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STATE OF ILLINOIS)
) SS.
COUNTY OF ~~COOK~~ *COOK*)

I, Carol S. Barnes, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that LARRY FAUL, a Partner of BARRINGTON VENTURE PARTNERSHIP, personally known to me to be the same person whose name is subscribed to the foregoing Declaration, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said Declaration, on behalf of the partnership and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 19th day of December, 1994.

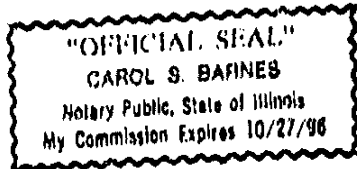


Carol S. Barnes
Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF ~~COOK~~ *COOK*)

I, Carol S. Barnes, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that GEORGE A. MOSER, JR., *Partner* of POPLAR CREEK DEVELOPMENT COMPANY, personally known to me to be the same person whose name is subscribed to the foregoing Declaration, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said Declaration, on behalf of the partnership and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 19th day of December, 1994.



Carol S. Barnes
Notary Public

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CONSENT OF MORTGAGEE

COLE-TAYLOR BANK ("Bank"), holder of a First Mortgage
 (the "Mortgage") dated as of August 11, 1994, and recorded in the Office of the Recorder of Deeds
 of Cook County, Illinois, on September 12, 1994, as Document Number 94795201
 hereby consents to the execution and recording of the attached HIGGINS AND BARRINGTON
 COMMERCIAL DISTRICT ASSOCIATION DECLARATION OF COVENANTS, CONDITIONS AND
 RESTRICTIONS and agrees that said Mortgage is subject thereto.

IN WITNESS WHEREOF, the said Cole Taylor Bank has caused this Consent of
 Mortgagee to be signed by its duly authorized officers on its behalf in Beverlybrook, Illinois,
 on this 15 day of December, 1994.

COLE-TAYLOR BANK

By: [Signature] President

ATTEST:

[Signature]
 Vice Pres. (R.I.F.)

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

I, Janice Rosa, a Notary Public in and for said County and State, do hereby
 certify that [Signature] and Asst. Vice Pres President and [Signature]
 respectively, of Cole Taylor Bank
 as such Asst. Vice President and Vice President, appeared before me this day in person and
 acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the
 free and voluntary act of said Company, for the uses and purposes therein set forth

Given under my hand and notarial seal this 19 day of December, 1994

[Signature]
 NOTARY PUBLIC

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EXHIBIT "A"

LEGAL DESCRIPTION OF "PROPERTY"

LOTS 1-6, INCLUSIVE AND OUTLOT A IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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11/15/2011

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EXHIBIT "B"

LEGAL DESCRIPTION OF "COMMON PARCEL"

OUTLOT A IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "C"

LEGAL DESCRIPTION FOR PARCEL "1"

LOT 1 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "D"

LEGAL DESCRIPTION FOR PARCEL "2"

LOT 2 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "F"

LEGAL DESCRIPTION FOR PARCEL "3"

LOT 3 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "E"

LEGAL DESCRIPTION FOR PARCEL "4"

LOT 4 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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11/13/2013

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EXHIBIT "G"

LEGAL DESCRIPTION FOR PARCEL "5"

LOT 5 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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LEGAL DESCRIPTION FOR PARCEL "6"

LOT 6 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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EXHIBIT "A"

LEGAL DESCRIPTION FOR PARCEL "6"

LOT 6 IN RESTAURANT MALL SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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EXHIBIT "E"

PLAT OF SUBDIVISION

PLAT OF SUBDIVISION FOR RESTAURANT MALL SUBDIVISION RECORDED IN THE OFFICE OF THE
RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS ON DECEMBER 3, 1994.

DOCUMENT NUMBER: 04016244

Property of Cook County Clerk's Office

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EXHIBIT "J"

PERCENTAGE RESPONSIBILITY FOR COMMON PARCEL

Parcel	
1	12.0%
2	7.6%
3	11.5%
4	10.3%
5	11.1%
6	<u>47.5%</u>
	100.00%

PREPARED BY: [illegible]
[illegible]

Property of Cook County Clerk's Office

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