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This instrument prepared by  
and after recording mail to:

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Doc#: 0411060115  
Eugene "Gene" Moore Fee: \$86.00  
Cook County Recorder of Deeds  
Date: 04/19/2004 01:58 PM Pg: 1 of 32

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND BY-LAWS  
FOR  
WILMETTE TOWNHOMES ASSOCIATION**

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

**LOCATED AT THE PREMISES COMMONLY KNOWN AS  
704-712 11<sup>th</sup> Street  
and  
1028-1032 Central Avenue  
Wilmette, Illinois**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND BY-LAWS  
FOR  
WILMETTE TOWNHOMES ASSOCIATION**

THIS DECLARATION (the "Declaration") is made and entered into this 16<sup>th</sup> day of April 2004 by Wilmette Townhomes LLC, an Illinois limited liability company (the "Developer").

WHEREAS, on February 17, 1972, LaSalle National Bank, N.A., ("LaSalle"), as Trustee under a Trust Agreement dated January 4, 1971 and known as Trust No. 41857, recorded a certain Declaration (the "Declaration") with the Cook County Recorder of Deeds as to certain property (the "Property") located in the Village of Wilmette, County of Cook, State of Illinois and legally described in Exhibit A attached hereto and made a part hereof, and which Property is improved with certain residential dwellings and related improvements; and

WHEREAS, LaSalle conveyed the entire Property to Eileen Laurence-Epstein and Robert L. Epstein (the "Epsteins"), who in turn conveyed the entire Property to the Developer on April 15, 2004; and

WHEREAS, the Developer desires to establish for the mutual benefit and enjoyment of the owners and occupants of the Property or portions thereof, certain covenants, conditions, restrictions and easements in order to promote, preserve and enhance the value, desirability and architectural integrity of the Property and the improvements erected thereon; and

WHEREAS, the Developer desires to provide for the harmonious, beneficial and proper use of the Property and to facilitate the continuing care and maintenance thereof; and

WHEREAS, the Developer intends that the several owners of the Property, their successors and assigns, and their mortgagees, guests, and invitees shall at all times enjoy the benefit of and that the several owners of and all persons hereafter acquiring an interest in the Property hold their interests subject to, the terms of this Declaration; and

WHEREAS, the Developer deems it desirable to amend and restate the Declaration to clarify and modify said Declaration;

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NOW THEREFORE, the Developer hereby declares that the Property legally described in Exhibit "A" attached hereto and made a part hereof are 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 Property 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 Property or any portion thereof.

## **ARTICLE I** **DEFINITIONS**

1.1 **Association**. Wilmette Townhomes 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 **Common Area**. Those portions of the Property that are not included as Dwelling Parcels, which include but are not limited to landscaping, parking areas, and walkways.

1.4 **Common Expenses**. The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Board. Such expenses include, by way of example and not limitation, the expenses of administration (including management and professional services, if any), maintenance, operation, repair, and replacement of the Common Improvements including, without limitation, structural repairs, additions and alterations to the Common Improvements; the cost of insurance required or permitted to be obtained by the Board under Article 4 hereof, any additional Common Expenses as defined in this Declaration; if not separately metered or charged to the Owners, the cost of waste removal, scavenger services, sewer, or other necessary utility services to the Dwelling Parcels; and any other expenses lawfully incurred by or on behalf of the Association for the common benefit for all of the Owners.

1.5 **Common Improvements**. Any portion of the Townhome Buildings that are not included as Townhome Units, including but not limited to downspouts, gutters, roofing and fencing.

1.6 **Developer**. Wilmette Townhomes LLC, an Illinois limited liability company, its successors and assigns, or such other persons or entities as it may from time to time designate.

1.7 **Property**. The real estate legally described on Exhibit "A" attached hereto which is subdivided into portions of the Common Area and the Dwelling Parcels.

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1.8 Eligible Mortgagee. The holder of a first or second security interest in a Dwelling Parcel 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 Parcel. Such notice will be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 10.

1.9 Maintenance Fund. All monies collected by the Association pursuant to the terms hereof.

1.10 Member. Each person or entity who is a member of the Association, as provided in Article 3 below.

1.11 Owner. The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Dwelling Parcel or who have entered into an installment contract or articles of agreement for deed for the purchase of a Dwelling Parcel; 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 include any beneficiary of a trust, shareholders of a corporation or partner of a partnership holding title to a Dwelling Parcel or purchasing a Dwelling Parcel as aforesaid.

1.12 Person. A natural person, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.13 Plat. The plat of subdivision of the Property recorded, or to be recorded, in the office of the Cook County Recorder of Deeds, as from time to time amended.

1.14 Share. A fraction assigned to each Dwelling Parcel, the numerator of which is 1 and the denominator of which is the total number of Dwelling Parcels in the Association, for the purposes of voting and determining the allocation of Common Expenses in the Association.

1.15 Townhome Building. A structure containing Townhome Units and Common Improvements.

1.16 Dwelling Parcel. That subdivided portion of the Property as designated on the Plat which is improved with a Townhome Unit and which may include, front and/or rear lawn areas and any other improvements.

1.17 Townhome Unit. A residential housing unit in located on a Dwelling Parcel and consisting of a group of rooms which may be attached to one or more other Townhome Units by common party walls and which are designed or intended for use exclusively as residential living quarters.

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1.18 Turnover Date. The date being thirty (30) days after (a) the sale and conveyance of all Townhome Units by the Developer, or (b) the third anniversary of the recordation of this Amended and Restated Declaration, whichever occurs first.

## **ARTICLE 2** **EASEMENTS**

2.1 Easement for Unintentional Encroachments. In the event that, by reason of construction, settlement or shifting any Townhome Unit or other Improvement originally constructed and located on the Property encroaches or shall hereafter encroach upon any portion of any other Townhome Unit on the Property which is not owned by the Owner of the Townhome Unit so encroaching, or upon any portion of the Common Improvements, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of the Owner of the Townhome Unit so encroaching. However, 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 Townhome Unit burdened thereby or such encroachment results from the willful conduct of the Owner of the Townhome Unit so encroaching.

2.2 Utility Easements. Easements for ingress and egress and for the installation, use, maintenance, repair and replacement of public utilities including sewer, gas, electricity, telephone and water lines for the use of the Dwelling Parcels hereinafter designed and described are hereby created over, under and across the Property: All other utilities and telecommunication companies serving the Property (including, but not limited to, any company providing broadband, internet, cable, microwave or satellite television service) are hereby granted the right to lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, transformers, switches, fiber optics, mains, sanitary and storm sewers and services, drainage ways, ducts, wires, street lights and other equipment, including housing for such equipment, into, over, under, on and through the areas of the Dwelling Parcels designated on the Plat or on any other plat of such division which Developer may from time to time cause to be recorded in the office of the Recorder of Deeds for Cook County, Illinois, for the purpose of providing the Dwelling Parcels or the Property with such utilities or services.

Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Improvements and any other Dwelling Parcels for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Dwelling Parcels; provided, however, that an Owner shall restore to its pre-existing condition any portion of the Common Improvement or other Dwelling Parcels damaged by any such construction, installation, repair, maintaining or inspection. Easements are also hereby declared and granted to the Developer or its assignee to install, lay, construct, operate, maintain, renew, repair and replace any conduits, cables, pipes, wires or other equipment or components of a community antenna

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television service system into, over, under, on and through the Common Improvement and any Dwelling Parcels for the purpose of providing such television service to the Property.

2.3 Easements for Support. A non-exclusive easement appurtenant to each Townhome 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 Townhome Unit or Townhome Building is hereby granted, reserved, declared and created for the benefit of the Owner of each Townhome Unit which may be affected thereby.

2.4 Access Easements. The Owners, their guests and invitees, but not the public generally, are hereby granted a non-exclusive easement for vehicular use and for ingress and egress to the entrances and garage entrances of their Townhome Units to and from, over, on, across, and through any driveway, sidewalk or other access route, including emergency exit routes, of the Townhome Building in which the Townhome Unit exists. Upon the conveyance of title to the Common Improvements to the Association, as provided in Section 2.9, the Association hereby grants to the Owners, their guests and invitees, but not the public generally, easements for use and enjoyment and ingress and egress from any portions of the Dwelling Parcels over, upon, and across the Common Improvements, or portions thereof, and shall have the power to grant such easements or licenses for such other purposes as appropriate to such Persons, and upon such terms and conditions, at such costs, if any, and for such duration as the Association deems appropriate.

2.5 Easements in Favor of the Association. Each Dwelling Parcel is subject to an easement and right to and in favor of the Association and each and all of its employees, agents and instrumentalities to go upon such Dwelling Parcel for reasonable inspection thereof from time to time and for the purpose of carrying out any and all of the obligations and functions, including, but not limited to, maintenance and repair with respect to such Dwelling Parcel and the Townhome Building and Townhome Unit located thereon as are herein imposed upon or permitted to the Association.

2.6 Blanket Easement in Favor of the Developer. A blanket easement is hereby created in favor of the Developer and its representatives, agents, associates, employees, contractors, subcontractors, successors and assigns for the purpose of (i) access and ingress to and egress from the Property or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, roads, buildings, landscaping and any other improvements on the Property or any part thereof including the right to restrict and regulate access to the Common Improvements for the purposes of completing renovation of the Common Improvements or Townhome Units, and (iii) the installation and maintenance of signs advertising the Townhome Units on the Dwelling Parcels or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with marketing for sale of such Units and for such purposes as described in Article 8 hereof. The foregoing easements in favor of the Developer shall continue until such time as the Developer no longer holds legal title to, or the beneficial interest in any trust holding



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legal title to, any Townhome Units, at which time such easements shall cease and be of no further force and effect without the necessity of any further action.

2.7 General Provisions. All easements and rights described in this Declaration are perpetual nonexclusive 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 Townhome Unit and their respective heirs, administrators, executors, personal representatives, successors and assigns. All persons who reside on a Dwelling Parcel shall have the same rights to use and enjoy the Common Improvements and all improvements situated thereon as the Owner of that Dwelling Parcel.

Notwithstanding any provision herein to the contrary, the easements created under this Section shall be subject to: (i) the right of the Developer to improve the Dwelling Parcels in accordance with such plans and specifications as it deems appropriate; and (ii) the right of Developer to execute all documents and do all other acts and things affecting the Common Improvements which, in the Developer's opinion, are desirable in connection with Developer's rights hereunder, provided any such document or act or thing is not inconsistent with the property rights of any Owner. Developer reserves the right to use any portion of the Common Improvements as it deems necessary in connection with the sale or rental of Improvements being constructed or to be constructed within the Dwelling Parcels and Property, including but not limited to parking for sales personnel and sales prospects.

2.8 Parking Area. The Parking Area consists of 12 parking spaces and is a part of the Common Area. Each Dwelling Parcel (except 1028 Central) shall be assigned and granted exclusive easements to two (2) parking spaces for the use of the Owner of said Dwelling Parcel and their respective occupants, tenants, guests and invitees; such assignment shall be made initially by the Developer. Each Dwelling Parcel (except 1028 Central) shall at all times have two parking spaces assigned to it; however, the Owner of the Dwelling Parcel shall have the right to lease or license the use of such parking spaces to another person. The use of the Parking Area shall be subject to such rules and regulations as may be adopted by the Board from time to time.

## **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 "Wilmette Townhomes 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 Townhome Units and Townhome Buildings.

3.2 Membership. Every Owner of a Townhome Unit, shall be a Member of the Association and such membership shall automatically terminate when he or she ceases to

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be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Townhome Unit. Each Owner by acceptance of a deed or other conveyance of a Townhome Unit thereby becomes a Member. There shall be one (1) person with respect to every Townhome Unit in the Association 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 Townhome 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 Voting Members shall be all Voting Members with the exception of the Developer and each Class A Voting Member shall be entitled to one (1) vote for each Townhome Unit represented by him or her;

Class B: The Class B Voting 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 Voting Member and shall become a Class A Voting Member on the Turnover Date.

3.4 Qualifications for Board of Directors. 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 to 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 Townhome 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 Townhome Unit.

3.5 Election of Directors.

(a) The initial Board of Directors designated by the Developer shall consist of three (3) directors who shall serve without compensation. Such initial Board shall serve for a period commencing on the date the Association is formed by the filing of the Articles of Incorporation in the office of the Secretary of State of Illinois and ending upon the qualification of the directors elected at the initial meeting of Voting Members held as provided in Section 3.6 hereof. At the initial meeting held as provided in Section 3.6 hereof, the Voting Members shall elect three (3) Board members who shall serve until the first annual meeting. In all elections for members of the Board, each Voting Member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest



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number of votes with respect to the number of offices to be filled shall be deemed to be elected.

(b) Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting three (3) Board members shall be elected 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 one (1) year each. Vacancies in 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.

(c) 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 Secretary who shall keep minutes of all meetings, and a Treasurer who shall be the chief financial officer of the Association. 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.

(d) Notwithstanding anything in this Declaration or the By-laws of the Association to the contrary, the first and each subsequent Board of the Association shall consist of, and vacancies on the Board shall be filled by, such persons as the Developer shall from time to time appoint, who may but need not be members of the Association, until the Turnover Date. The Developer shall have the right, from time to time, to remove from office any director appointed by it. Without the prior written consent of Developer, neither the Articles of Incorporation of the Association nor the By-laws shall be amended, modified or changed in any way to diminish the authority of the Board during the time in which the Developer has the right to appoint all members of the Board.

## 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 (½) 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.

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(b) The initial meeting of Voting Members shall be held upon not less than ten (10) days from the receipt of written notice from the Developer. Such notice must be given no later than the Turnover Date, but such notice may, at the discretion of the Developer, be given earlier. Thereafter, there shall be an annual meeting of the Voting Members on or about the second Tuesday of May following such initial meeting and on or about the second Tuesday of May of each succeeding year thereafter, 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 from 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 or her to the Board, or if no address shall be given, addressed to such Voting Member to the address of his or her Townhome 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 Townhome Buildings and Townhome Units for the health, comfort, safety and general welfare of the Owners and occupants thereof;

(b) To provide for maintenance, repair and replacement with respect to the Townhome Buildings, Townhome Units and Common Improvements on the terms provided for in Article 8 hereof;

(c) 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 the By-Laws of the Association, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its members and for the enforcement of the provisions of this Declaration; provided, however, that any contract with a person related by blood or marriage to any Director or a Director's immediate family (that is, spouse or children) must be approved by the Owners of a majority of the Dwelling Parcels; and provided further that any contract for management of the Property must be limited in duration to three (3) years, but renewable, and must be terminable without cause or penalty on ninety (90) days or less notice;

(d) To enter upon, and to have its contractors, subcontractors and agents enter upon, the Dwelling Parcel and the exterior of the Townhome Buildings and Townhome Units as may be required to exercise all of the rights and obligations granted to or imposed upon it pursuant to this Declaration or to correct any condition that in the Board's judgment is a nuisance or is damaging to any Owner or occupant;

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(e) 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;

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

(g) To take such action as may be required or deemed appropriate to enforce the provisions of this Declaration, By-Laws, and the rules and regulations made hereunder;

(h) To borrow money in the name of the Association to provide for the maintenance, repair or replacement of exterior areas of the Townhome Building or Townhome Units; provided, however, that the Board shall not secure any such funds by encumbering the Dwelling Parcels or Townhome Units. The Board shall, however, have the power to secure such funds by pledging and granting a security interest in the assessments due the Association hereunder; and

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

**3.8 Liability of the Board of Directors** Neither the members of the Board nor the officers of the Association shall be liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members and officers except for any acts or omissions found by a court to constitute gross negligence or actual 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, attorneys' fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any member of the Board or officers of the Association may be involved by virtue of having been such member or officer. However, 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 actual fraud in the performance of his or her 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

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reasonable ground for such person being adjudged liable for gross negligence or actual fraud in the performance of his or her 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 Townhome 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 Property. (a) The Board on behalf of the Association shall have the authority to and shall obtain insurance for the Common Improvements, Townhome Buildings and Townhome Units as follows:

(a) Physical Damage Insurance on each Townhome Building and each Townhome Unit (but excluding all contents, improvements, betterments, additions and alterations within or appurtenant to each Townhome Unit, including by way of example and not limitation, all flooring, carpeting, wall coverings, paint and paneling, appliances, and other furnishings), subject to the foregoing conditions:

(i) Each Townhome Building shall be insured for an amount not less than one hundred percent (100%) of its full replacement cost on a blanket basis;

(ii) Replacement cost values are to be reviewed periodically by an independent appraiser and the insurance policy or policies shall be endorsed with an agreed amount clause. The cost of any and all appraisals for insurance purposes shall be paid by the Association; and

(iii) Risks to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property, and such other perils as may be deemed appropriate by the Board.

(b) Commercial General Liability Insurance covering bodily injury and property damage insuring against hazards of premises/operation, death, personal injury liability (with exclusions (a) and (c) deleted), independent contractors and other extensions as deemed necessary by the Board. Such insurance shall name the Association and any managing agent as insureds, and provide limits of liability as deemed desirable by the Board, but in no event for less than One Million Dollars (\$1,000,000.00) with respect to each occurrence. Such policy shall be endorsed to cover cross-liability claims of one insured against the other;

(c) Umbrella Liability Insurance in excess of the required Commercial General Liability and Employee Liability Policies in an amount deemed desirable by the Board, but in no event less than Two Million Dollars (\$2,000,000.00) with respect to each occurrence;

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(d) Worker's Compensation and Employer Liability Insurance (minimum amount of the greater of \$300,000 or statutory limits) as necessary to comply with applicable laws;

(e) Fidelity Bond Insurance covering any officer, director, managing agent or other person who handles or is responsible for funds of the Association, in an amount necessary to comply with the insurance requirements of the Federal National Mortgage Association; and

(f) Such other insurance, which may include, without limitation, any or all of the following, in such amounts as the Board shall deem desirable; directors and officers liability insurance for the officers and directors of the Board of Directors of the Association, medical payments coverage for members of the public (not Owners) injured on the Property, without regard to liability of the Board or the Association; and non-owned and hired automobile liability coverage.

4.2 Insurance Carriers. All insurance provided for in Section 4.1 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.

4.3 Insureds. (a) All policies of insurance of the character described in paragraphs (a) and (b) of Section 4.1: (i) shall name as insureds the Board, as trustees for the Owners, and the Insurance Trustee described in Section 4.5 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 Townhome Units and/or the additions and improvements made by such Owners to their respective Townhome Units; and (iii) shall contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to the Eligible Mortgagee of each Townhome 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 Townhome 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 subsections (a) and (b) 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.

(b) All policies of insurance of the character described in subsections (c), (d), (e), and (f) of Section 4.1 shall name as insureds the Association, the Board, managing agent,



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and the other agents and employees of such Association, Board and managing agent and the Developer in his, her or its capacity as an Owner and Board member and shall also provide coverage for each Owner (but as to the insurance described in Section 4.1(c) hereof, only with respect to those portions of the Townhome Building not reserved for their exclusive use). In addition, all policies of insurance of the character described in subsections (a), (b) and (c) of Section 4.1 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board, the Developer, the managing agent, their respective employees and agents, and the Owners and occupants.

4.4 Premiums. The Association, for the benefit of the Owners and the Eligible Mortgagee of each Townhome Unit, shall pay the premiums or obtain a binder on the policies of insurance described in subsection (a) of Section 4.1 at least thirty (30) days prior to the expiration date of the respective policies, and upon written request therefor, shall notify the Eligible Mortgagee of each Townhome Unit of such payment within ten (10) days after the date on which payment is made.

4.5 Losses. Loss, if any, under any policies of insurance of the character described in subsections (a) and (b) 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 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 Townhome Building(s) to substantially the same condition in which it or they existed immediately prior to such damage or destruction, with each Townhome Unit the same vertical and horizontal boundaries as before, free from vendor's, mechanic's, materialman's, and other similar liens; 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 a corporate trustee appointed by the Board (the "Insurance Trustee") for the purpose of collecting and disbursing the insurance proceeds described in this subsection (b). The Insurance Trustee (or its successor appointed pursuant hereto) must be 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 Townhome Building(s) to substantially the same condition in which it or they existed immediately prior to such damage or destruction, with each Townhome Unit having the same vertical and horizontal boundaries as before. 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 Townhome Building(s). The Association and the Insurance Trustee may, prior or subsequent to any such loss, enter



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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.

4.6 Owner Responsibility. Each Owner shall be responsible for (a) physical damage insurance on the personal property in his or her Townhome Unit and anywhere on the Dwelling Parcel, his or her automobiles, and any additions, alterations and improvements to his or her Townhome Unit (whether installed by such Owner or any prior Owner or whether originally in his or her Townhome Unit); (b) his or her personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Owners as above provided; and (c) his or her additional living expenses. 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 4.6, "additions, alterations and improvements" shall mean any property (excluding personal property readily removable without damage to the Townhome Unit) attached to the Townhome Unit, including, without limitation, flooring, carpeting, wall covering, paint and paneling, appliances and all other furnishings. The Board shall not be responsible for obtaining physical damage insurance on any additions, alterations and improvements to a Townhome Unit or any personal property of an Owner or any other insurance for which an Owner is responsible pursuant to this Section 4.6.

4.7 Owner Releases. Each Owner hereby waives and releases any and all claims which he or she may have against any other Owner, the Association, its directors and officers, the Developer and its employees and agents, the manager and managing agent of the Association, if any, and their respective employees and agents, for any damage to the Common Improvements, Townhome Buildings, Townhome Units, or to any personal property located in the Townhome Buildings or Townhome Units 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 4.6.

4.8 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 Townhome 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 Townhome Buildings over which the named insured (or Owners collectively) has no control."

4.9 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

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shall be on a per occurrence basis irrespective of the number of insureds suffering injury or damage. The Board of the Association may, in the case of a claim for damage to a Unit or the Common Elements, (i) pay the deductible amount as a common expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the Owners who caused the damage or from whose Units the damage or cause of loss originated, or (iii) require the Unit Owners of the units affected to pay the deductible amount.

## **ARTICLE 5 ASSESSMENTS**

5.1 Personal Obligation. Each Owner, except for the Developer, 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, which are not paid when due, together with interest, late fees and collection fees described in Section 5.6 below, shall be a charge and a continuing lien upon the Dwelling Parcel against which such assessment is made. Furthermore, such assessment, together with the applicable interest, costs, late fees and other fees, shall be the personal obligation of the person who was the Owner of such Dwelling Parcel on the date upon which such assessment became due. Personal liability for such past due assessments shall not pass to a bona fide purchaser of a Dwelling Parcel 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) maintaining, repairing and replacing the roofs, gutters, facades, downspouts, exterior walls, fences and those portions of the Townhome Buildings which contribute to the support of each Townhome Unit; (b) the establishment of such reasonable reserves, if any, as the Board deems appropriate; (c) the performance of the duties of the Board as set forth in this Declaration, including the expenses of administration (including management and professional services, if any), maintenance, operation, repair, and replacement of the Common Improvements including, without limitation, structural repairs, additions and alterations to the Common Improvements and the enforcement of the provisions hereof; (d) the cost of waste removal, scavenger services, water, sewer, or other necessary utility services to the Townhome Units; (e) the cost of insurance required or permitted to be obtained by the Board under Article 4 hereof; 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 "Common Expenses").

5.3 Annual Assessments. Each year on or before December 1st, the Board shall estimate the annual amount of Common Expenses including the total amount required for the cost of wages, materials, insurance, services and supplies that will be required during the ensuing calendar year for the rendering of all services by the Association as provided herein, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, if any, and it shall also notify each Owner on

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or before December 1st in writing as to the amount of such estimate with a reasonable itemization thereof. Such Common Expenses shall be assessed to the Owners and their respective Dwelling Parcels according to each such Owner's and Dwelling Parcel's Share.

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 Common Expenses allocated to such Owner's Dwelling Parcel. On or before April 30 of each calendar year following the initial meeting of Voting Members, the Board shall furnish each Owner with an itemized accounting of the expenses for the preceding calendar year and the amounts collected from the Owners. The failure or delay of the Board in preparing or delivering the annual or adjusted budget to the Owners shall not constitute a waiver or release in any manner of the Owner's obligation to pay the assessments, as herein provided, whenever the same shall be determined, and in the absence of the preparation and delivery of any annual budget or adjusted budget, the Owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period until the first monthly installment which is due more than 10 days after such new annual or adjusted budget shall have been mailed or delivered.

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

5.5 Nonpayment of Assessments. Any assessment which is not paid when due shall be deemed delinquent. The Board may impose a late fee in such amount as the Board may determine from time to time. Such fees and costs, including attorney's fees incurred in connection thereto shall constitute a lien and personal obligation as described in Section 5.1 above. The Board further reserves the right to accelerate the total outstanding assessments for the fiscal year for those Owners who are more than three (3) months delinquent in their assessments. In addition, 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, but not limited to 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 or her assessments and the Association shall have a lien for all of the same upon the Dwelling Parcel of such Owner.

5.6 Subordination of Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any prior, recorded Eligible First or Second Mortgage or trust deed on a Dwelling Parcel made to any bank, savings and loan

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association or other institutional lender except for the amount of any assessments which becomes due and payable from and after the date such lender obtains title to such Dwelling Parcel pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such transfer of title shall not relieve such Dwelling Parcel from liability for any assessments thereafter becoming due (even if said assessment in part incorporates an allocable share of the assessment previously assessed said Dwelling Parcel), nor from the lien of any such subsequent assessment.

5.7 Exemption from Assessment on Parcels Owned by Developer. 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 Townhome Units, and inasmuch as assessments levied against such Townhome Units impose a burden on the Developer without the Developer desiring, or receiving the benefits of maintenance upon such Townhome Units as may from time to time be provided by the Association, it is therefore expressly provided that no Dwelling Parcel or Townhome Unit owned by the Developer shall be subject to the assessments, charges and liens provided for herein until the date upon which such Dwelling Parcel or Townhome 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. Upon the conveyance or leasing by Developer of a Townhome Unit which was theretofore entitled to the foregoing exemption from assessments, such Townhome Unit and the Owner thereof shall immediately become subject to the payment of all prospective assessments and other charges and the liens provided for herein.

5.8 Initial Assessments. The Developer shall collect from each purchaser of a Dwelling Parcel, at the time of closing of the purchase thereof; an amount equal to twice the monthly assessment allocable to such Dwelling Parcel. The amounts so collected shall be utilized to fund an operating reserve for the Association.

5.9 Special Assessment. If the annual budget proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may at any time prepare an adjusted budget and levy a further assessment based thereon, which shall be assessed equally among the Dwelling Parcels. The Board shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the next monthly installment which is due more than 30 days after such notice of further assessment.

5.10 General Provisions. (a) The Board shall keep full and correct books of account on such basis as the Board shall determine. Upon written request of any Owner or mortgagee, such books of account may be inspected by such requesting person or its representative, duly authorized in writing, at such office and at such reasonable time or times during normal business hours, as the Board shall designate in writing.

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(b) No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Improvements or abandonment of the Townhome Unit.

(c) It is understood that real estate taxes are to be separately taxed to each Owner for his or her Dwelling Parcel. In the event that for any year such taxes are not separately taxed to each Owner, then the Association shall collect from each Owner not separately taxed the share of the tax bill attributable to his or her Dwelling Parcel on an equitable basis based on the number of Dwelling Parcels not separately taxed.

## ARTICLE 6

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Townhome Units, Townhome Buildings and Common Improvements shall be occupied and used as follows:

6.1 Residential Use. (a) Each Townhome 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 Townhome Unit, Townhome Building or on a Dwelling Parcel. However, the restrictions contained in this Section 6.1 shall not be construed in such a manner as to prohibit an Owner from: (i) maintaining a personal professional library therein; (ii) keeping personal business or professional records or accounts therein; (iii) handling personal business or professional telephone calls or correspondence therefrom; (iv) maintaining a computer or other office equipment within the Unit; or (v) utilizing secretarial help or having occasional business visitors.

(b) No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Common Improvements except at such location and in such form as shall be determined by the Association. The right is reserved by the Developer or its agents to place "For Sale" or "For Rent" signs on any unsold Townhome Units or any part of the Common Improvements until all the Townhome Units are sold and conveyed. The Developer shall have the right to use any unsold Townhome Unit as a model unit or for sales or display purposes and to maintain on the Dwelling Parcels all models, sales offices and advertising signs or banners, if any, and lighting in connection therewith until the last Townhome Unit is sold and conveyed.

6.2 Leasing. No Townhome Unit may be leased for "transient purposes." For purposes of this Section 6.2, "transient purposes" shall mean for a term of less than six (6) months. All leases shall be in writing and shall require the tenant to observe and comply with the provisions of this Declaration, By-Laws, and any rules and regulations from time to time enacted by the Board. Any Owner who leases his or her Townhome 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 the Townhome Unit, and (c) the tenant's



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telephone number at the Townhome Unit. The Board may enact reasonable rules and regulations in connection with the leasing of Townhome Units. The restrictions contained in this Section 6.2 shall not apply to the Developer who expressly reserves the right to lease any unsold Townhome Units until the last Unit in the Property has been conveyed.

6.3 Restrictions. 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 Townhome Unit or Dwelling Parcel except that dogs, cats, birds and fish, not to exceed one domestic (1) dog or cat and one (1) bird per Townhome Unit may be kept in a Townhome 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 Property upon sixty (60) days' written notice from the Board. Pets shall be leashed at all times when outside any Townhome 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 Townhome Unit. The rules adopted by the Board may prohibit certain breeds, species and size (weight) of pets.

(b) No noxious, offensive or illegal activity shall be carried on in or on any Townhome Unit, Townhome Building or Dwelling Parcel, 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, mobile homes, snowmobiles, buses, commercial vehicles, vehicles not bearing a current license, inoperable vehicles, boats, sleds or other recreational vehicles shall be parked on any Dwelling Parcel or the Parking Area. The foregoing restriction shall not apply to any trucks or other vehicles owned by the Developer, its contractors, subcontractors, material suppliers, agents and employees which may be parked on any portion of any Dwelling Parcels owned by the Developer during the construction and marketing of the Townhouse Units 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 Dwelling Parcel Patios and yards shall at all times be kept free from excess debris.

(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 Dwelling Parcel owned by the Developer during construction and marketing of Townhome Units, no machinery, equipment, building materials and supplies or similar items may be stored, kept or maintained on any part of a Dwelling Parcel. No swingsets or other recreational or playground equipment may be placed or used on any part of a Dwelling Parcel, except within the fenced in patio or lawn area adjacent to a Townhome Unit. No swimming pools other than portable, non-permanent children's wading pools shall be permitted on any Dwelling Parcel.



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(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 thirty-first (31st) day of January.

(g) No radio or television antennas or satellite dishes shall be affixed to or placed in, through or upon the exterior walls, roof or windows of a Townhome Unit or shall be installed on any exterior part of a Townhome Building without the prior written consent of the Board or unless required by law. No shortwave radio or other type of radio transmitter shall be permitted in or about any Townhome Unit which may interfere with the radio or television reception in any Townhome Unit.

(h) No sheds, storage buildings, or other temporary structures of any kind shall be erected on any part of a Dwelling Parcel.

(i) No sign, billboard, or other advertising device of any character shall be erected or maintained upon any part of a Townhome Unit, Townhome Building or Dwelling Parcel, except by the Developer or unless approved by the Board.

(j) No Owner shall alter the landscaping originally furnished by the Developer by removing any shrubbery, trees, gardens or other plants, rock gardens, fountains or other elements of landscaping on any Dwelling Parcel without the prior approval of the Association. No crops shall be grown on any Dwelling Parcel for commercial purposes.

(k) No exterior addition to or exterior change or alteration in a Townhome Unit including, but not limited to, the facade, storm doors and windows, railings, flowerboxes, benches, and shutters, shall be made without the approval of the Association.

(l) No modifications in the color, materials or otherwise of the exterior of a Townhome Unit or Townhome Building, including but not limited to any fences, porches or patios, from that originally furnished by the Developer shall be permitted without the approval of the Association.

(m) 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. All rubbish, trash and garbage shall be placed in closed plastic bags, deposited in closed trash receptacles and regularly removed from each Dwelling Parcel. No burning of trash shall be permitted.

(n) No cooking shall be done nor play pools shall be utilized in the front yard of the Dwelling Parcel.

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

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any matter of an emergency nature which might result in damage to persons or property), in addition to any other remedies available at law or equity:

(a) to enter upon that part of the Dwelling Parcel 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 Developer, 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

(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 to 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 twelve percent (12%) per annum or the highest rate permitted by law, whichever is lesser, until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his or her respective share of the expenses of the Association, and the Association shall have a lien for all of the same upon the Townhome Unit and Dwelling Parcel of such defaulting Owner and upon all of his or her additions and improvements thereto and upon all of his or her personal property in his or her Townhome Unit or located elsewhere on his or her Townhome 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 General Rules of Law to Apply. Each wall and fence which is built as a part of the original construction of a Townhome Unit (or as reconstructed following fire or other casualty) which is located on the boundary line between separate Townhome Units, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall and fence shall be shared by the Owners who make use of the wall in proportion to such use, subject to Section 7.3 below.

7.3 Destruction by Fire or Other Casualty.

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(a) If a party wall or fence is destroyed or damaged by fire or other casualty, the Owners shall jointly restore it, and if the other Owner thereafter makes use of the wall or fence, he or she shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(b) In the event any Townhome Building or any portion thereof including any Townhome Units, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus the capital reserves and payments by the Owners of the affected Townhome Units, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration, or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the reserve for replacements shall be applied by the Board or the payee of such insurance proceeds in payment therefor.

7.4 Insufficient Insurance. If the insurance proceeds and the reserve for replacements are insufficient to reconstruct the Townhome Building so damaged or destroyed, the Owners of the Townhome units in such Townhome Building shall pay the deficiency in equal, pro rata shares and such repair, restoration or reconstruction shall be undertaken as provided in Section 7.3(c).

7.5 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her 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.

7.6 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.

7.7 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 Townhome Unit) to substantially the same condition in which they existed prior to the damage or destruction, with each Townhome Unit and Townhome 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**

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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 Townhome Unit and those portions, if any, of each Townhome Unit which contribute to the support of the Townhome Buildings, together with all exterior walks, located on or serving a Townhome Unit, whether or not located on a Dwelling Parcel excluding, however, interior walls, ceiling, and floor surfaces and all interior doors. The Association shall also maintain and replace the shrubs, plantings, grass and trees on the front yard of the Dwelling Parcel. Such maintenance, repairs, and replacements shall be made when and as deemed necessary by the Board to maintain the Dwelling Parcels and the Property as a first class residential development. Maintenance, repairs, and replacements of the Townhome Buildings shall be furnished by the Association acting by and through the Board as part of the Common Expenses, subject to the rules and regulations of the Association.

8.2 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 or her own expense:

(a) all of the maintenance, repairs, and replacements within his or her own Townhome Unit and of the doors appurtenant thereto, and all internal installations of such Townhome 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 up to the Townhome Units, shall be furnished by the Board as part of the Association Expenses.

(b) all of the decorating within his or her own Townhome 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 Townhome 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 Townhome 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 Townhome Units not maintained by the Association, including by way of example and not limitation, patio, lighting, interior doors and all shrubbery, tree, grass and planting on rear areas of Townhomes Buildings. In the event any Owner fails to maintain or repair his or her Townhome Unit or Dwelling Parcel, the Association shall have the right to enter upon such Dwelling Parcel to perform such maintenance or repair and the Owner shall pay all costs and expenses of the Association incurred as a result thereby.

8.3 Nature of the Obligation. Nothing herein contained shall be construed to impose a contractual liability upon the Association for maintenance, repair, and

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replacement of the Townhome 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 Townhome Building, nor because they may become entitled to proceeds under policies of insurance. In addition, and notwithstanding anything herein above 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 or herself 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.

8.4 Negligence of Owner. If, due to the negligent or willful act or omission of an Owner, a member of his or her family, a household pet, or a guest or other authorized occupant or visitor of such Owner, damage shall be caused to a Townhome Building or Dwelling Parcel or Townhome 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.

## **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 Property (including the Dwelling Parcels) all model Townhome 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 Property (including the Dwelling Parcels) for such sales and leasing purposes. The Developer also reserves the right to maintain on the Property (including the Dwelling Parcels) without charge (a) a general office for the purpose of exercising the rights reserved in Paragraphs 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 owner of the Property or any portion thereof is engaged in the construction, sale or leasing of Townhome Units on any portion of the Property.

9.2 Developer's Easements. In accordance with Section 2.6 above, the Developer reserves unto itself a non-exclusive easement to, through, over, under and across the Property 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



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development of the Property, including, without limitation, the planning, construction, marketing, leasing, management and maintenance of improvements in any portion of the Property. Such easement shall continue until the last Townhome Unit is sold and conveyed to an Owner. All rights and easements in favor of the Owners created by this Declaration shall be subject and subordinate to the above described development rights and easements of Developer, whether or not inconvenience to any Owner shall result therefrom. The rights and easements reserved pursuant to this Section shall inure to the benefit of the Developer and its respective successors and assigns including any successor to or assignee of the Developer's rights under this Declaration.

9.3 Contracts. The Developer shall have the right to enter into contracts on behalf of the Association prior to the Turnover Date, provided, however, that with the exception of contracts for telecommunication and cable services, any such contracts shall be terminable by the Association without penalty on not more than ninety (90) days prior notice no later than two (2) years following the date of recording of this Declaration.

## **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 Parcels 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 5.6 or Section 12.3 of this Declaration; or
- (b) the removal of the Dwelling Parcels 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 or her Eligible Mortgagee and the Association shall maintain a record of such information with respect to all Townhome 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 the Townhome Unit or condemnation thereof in excess of \$5,000.00;



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(c) notice of any default in payment of assessments by the Owner of the Dwelling Parcel 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.

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 Parcel, 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 a Townhome Building 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 Townhome Buildings, any such distribution shall be made to the Owners and their respective Eligible Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the Eligible Mortgagee of a Dwelling Parcel with respect to any such distribution to or with respect to such Dwelling Parcel; 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 Townhome Buildings or to restore what remains of the Townhome Buildings after condemnation or taking by eminent domain of a part of the Townhome 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

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permit any Eligible Mortgagee, Eligible Insurer or other first mortgagees of Dwelling Parcels 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 Owner may attend.

## **ARTICLE 12** **GENERAL**

12.1 Amendment by Developer. Until the initial meeting of Voting Members, the Developer or its successors and assigns shall have the right to change or modify this Declaration; provided that except as provided in Section 12.3, such amendment shall be executed only to (i) comply with the requirements of the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal National Mortgage Association, the Federal Housing Authority or any similar entity; (ii) comply with any statutes, laws or ordinances; (iii) correct clerical or typographical errors; or (iv) comply with the requirements of any holder of a first mortgage on the Property or any portion thereof. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make any change or modification as authorized hereunder on behalf of each Owner as attorney-in-fact for such Owner. Each deed, mortgage, trust deed, or other evidence of obligation affecting a Dwelling Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a covenant and reservation of the power of the Developer as aforesaid. Such amendment shall become effective upon recording in the office of the Recorder of Deeds for Cook County, Illinois.

12.2 Severability. The invalidity 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 and are hereby declared to be severable.

12.3 Amendment. The provisions of this Declaration may be amended by an instrument executed and acknowledged by a majority of the Board and approved by the Owners representing not less than two-thirds (2/3) of the Dwelling Parcels 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 or record against any Dwelling Parcel, no less than five (5) days prior to the date of such affidavit. The provisions of Section 5.6 and Article 10 shall not be amended or modified without the consent of one hundred percent (100%) of the Eligible Mortgagees. 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

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to the rights, privileges or obligations of the Developer may only be amended upon the prior written consent of the Developer. This Declaration may be amended by the Developer in any manner prior to the conveyance by Developer of any Dwelling Parcel to any other Owner.

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

12.5 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.

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

12.7 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. 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, in whole or in part, by an instrument in writing which is executed by the Owners representing not less than two-thirds of the Dwelling Parcels and recorded in the office of the Recorder of Deeds for Cook County, Illinois. Except in case of condemnation or destruction of a substantial portion of the Townhome 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 Mortgagees on the Dwelling Parcels.

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

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

Wilmette Townhomes LLC, an Illinois limited liability company

By:

Eileen Epstein

  
\_\_\_\_\_

Robert Epstein

  
\_\_\_\_\_

Its: Managers

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STATE OF ILLINOIS     )  
   ) SS  
 COUNTY OF COOK        )

I HEREBY CERTIFY that on this 15<sup>th</sup> day of April, 2004, before me personally appeared Eileen Epstein and Robert Epstein, Managers of Wilmette Townhomes LLC, an Illinois limited liability company, 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 company.

Given under my hand a notarial seal this 15th day of April, 2004.

*Nancy Endliss*  
 \_\_\_\_\_  
 Notary Public

My Commission expires: 7/31/05



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## EXHIBIT "A" LEGAL DESCRIPTION OF THE PROPERTY

Parcel 1: (except the West 61.63 feet of the North 31 feet) & (Except the West 33 feet of the East 46 feet of the North 15 feet), the North 55.49 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13

property address: 712 11th Street, Wilmette, Illinois  
P.I.N.: 05-34-107-027

Parcel 2: The South 24 feet of the North 79.49 feet and the East 30 feet of the West 61.63 feet of the South 16 feet of the North 31 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13

property Address: 710 11th Street, Wilmette, Illinois  
05-34-107-028

Parcel 3: The South 23.92 feet of the North 103.41 feet and the South 16 feet of the North 31 feet of the West 31.63 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13

property Address: 708 11th Street, Wilmette, Illinois  
05-34-107-029

Parcel 4: The South 24 feet of the North 127.41 feet and the North 15 feet of the West 33 feet of the East 46 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13.

property Address: 706 11th Street, Wilmette, Illinois  
05-34-107-030

Parcel 5: The South 23.92 feet of the North 151.33 feet and the North 15 feet of the West 30 feet of the East 76 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13

property Address: 704 11th Street, Wilmette, Illinois  
05-34-107-031

Parcel 6: (except the North 151.33 feet) the East 53.59 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13

property Address: 1028 Central, Wilmette, Illinois  
05-34-107-032

Parcel 7: (except the East 53.50 feet) part South of the North 151.33 feet of Lot 14; and (except the East 76 feet) of the North 15 feet of Lot 14 in Block 24 in Ouilmette Reservation in Township 42, Range 13

property Address: 1032 Central, Wilmette, Illinois  
05-34-107-033