

UNOFFICIAL COPY



Doc#: 0422627093
Eugene "Gene" Moore Fee: \$112.00
Cook County Recorder of Deeds
Date: 08/13/2004 11:59 AM Pg: 1 of 45

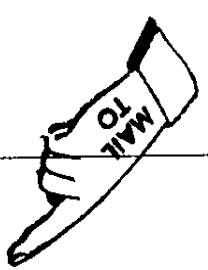
THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT LEGAL DESCRIPTIONS.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK II TOWNHOMES**

F		A
P	112	P
T	<i>[Signature]</i>	V
I	8-13	

N 02040125 1 of 1 -Lmb

Property of Cook County Clerk's Office



Prepared by and mail to:

Stacey Thomas Balten
Belgravia Group, Ltd.
833 N. Orleans St. - Suite 400
Chicago, IL 60610

Property:
118-132 E. 18th Street
1638-1654 S. Indiana Avenue
1700-1746 S. Indiana Avenue
Chicago, Illinois 60616

Near North National Title Corp
222 North LaSalle Street
Chicago, Illinois 60601

PINs: 17-22-302-037
17-22-302-038
17-22-302-041

RECORDING FEE 112
DATE 8-13-04 COPIES 6
OK BY *[Signature]*

4/5 p

UNOFFICIAL COPY
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK II TOWNHOMES

THIS DECLARATION ("Declaration") is made this ____ day of _____, 200_, by KENSINGTON PARK II LLC, an Illinois limited liability company (together, "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate (the "Development Site") located in the City of Chicago, County of Cook, State of Illinois, the legal description of which is set forth in Exhibit "A" attached hereto and made a part hereof, and desires to create thereon a residential community of attached Townhomes (as hereinafter defined) with various amenities (the "Development"); and

WHEREAS, Declarant desires for its own benefit and the benefit of its successors, assigns and all Owners (as hereinafter defined) and occupants of all the Townhome Lots (as hereinafter defined) to establish certain covenants, conditions, restrictions and easements for the mutual benefit and enjoyment of the Owners from time to time of the Development Site or any portion or portions thereof in order to promote, preserve and enhance the value and desirability of the Development Site or any portion or portions thereof and the architectural integrity and continuity of the improvements erected thereon and to facilitate the continuing care and maintenance thereof; and to impose certain obligations and duties on the Owners and occupants with respect to the ownership, occupancy and use of the Townhome Lots; and in furtherance thereof intends to submit to the provisions of this Declaration the portion of the Development Site (the "Parcel") legally described on Exhibit "B" attached hereto and forming a part hereof and to reserve the right to annex to the Parcel and submit to this Declaration certain additional portions of the Development Site (the "Additional Land") legally described on Exhibit "C" attached hereto and forming a part hereof; and

WHEREAS, Declarant desires to declare and establish that all of the Common Area and Common Facilities (as hereinafter defined), whether already completed or to be constructed, and to the extent not otherwise prohibited by this Declaration, the By-Laws (as hereinafter defined) or by subsequent instruments, shall be for the benefit of the Owners as set forth in this Declaration and any such Person (as hereinafter defined) as from time to time may be lawfully in title to the Common Area and Common Facilities; and

WHEREAS, Declarant desires to make the Common Area subject to a general plan or scheme; to create and establish certain easements, restrictions and obligations pursuant to such general plan or scheme with respect to the Common Area and Development Site or any portion or portions thereof; and to create certain restrictions subject to which and upon which the Development Site or any portion or portions thereof may be improved, leased or held by Declarant, its successors and assigns;

NOW THEREFORE, Declarant, as the legal title holder of the Parcel and the remainder of the Development Site, hereby declares that the Parcel legally described in Exhibit "B" attached hereto and made a part hereof together with all improvements and structures now and hereafter erected, constructed or contained therein and thereon and all easements, rights and appurtenances now and hereafter belonging thereto, and all fixtures and equipment intended for the partial use, benefit or enjoyment of Declarant and Owners is hereby submitted to the provisions of this Declaration and shall be owned, transferred, held, sold, conveyed and accepted subject to this Declaration, all the provisions of which shall be deemed to be covenants running with the Parcel 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 Parcel or any portion thereof.

UNOFFICIAL COPY

ARTICLE I.

Definitions

- 1.1 Adjacent Garden Area: The landscaped area or areas located on a Townhome Lot including landscaped areas immediately adjacent to a Townhome to which the Owner may be in legal title and which landscaped areas shall be subject to the control of the Association, to the extent provided in Section 8.3.
- 1.2 Architectural Control Committee: The Architectural Control Committee of the Association created pursuant to Article VI of this Declaration.
- 1.3 Association: KENSINGTON PARK II TOWNHOMES HOMEOWNERS' ASSOCIATION, an Illinois not-for-profit corporation, its successors and assigns.
- 1.4 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 III of this Declaration.
- 1.5 By-Laws: The By-Laws of the Association which are attached hereto as Exhibit "D", as may be amended from time to time.
- 1.6 City: The City of Chicago, an Illinois municipal corporation.
- 1.7 Common Area: The Courtyards, Private Roads and Stairtowers as delineated on the Plat and such other Lot or Lots and such other areas as may be designated by Declarant from time to time and intended to be devoted to the common use and enjoyment of the Owners and such other parties as set forth in this Declaration.
- 1.8 Common Facilities: All roads, curbs and gutters, walkways, sewers, traps, catch basins, water lines, gas lines, street lights, signs, cable television systems, security systems, fences, mailboxes (on Lot 1), fountains, planters, landscaping, benches, monuments, gates and other improvements of all kinds located on, under or over the Common Area; and those appurtenances and facilities on or serving more than one Townhome Lot or Townhome, if any.
- 1.9 Courtyards: Lots 48 and 49 constituting the Indiana Avenue entrances to the Development designated and intended for pedestrian ingress and egress to and from the Townhome Lots and Indiana Avenue, including the Common Facilities appurtenant thereto as more fully described in Section 2.3 below.
- 1.10 Declarant: KENSINGTON PARK II LLC, an Illinois limited liability company, its successors and assigns.
- 1.11 Development Site: The real estate legally described on Exhibit "A" attached hereto.
- 1.12 Family: One or more individuals, each related to the other by blood, marriage or legal adoption, or a group of not more than three individuals not all related, together with his or their domestic servants, maintaining a common household in a Townhome.
- 1.13 Lot: Any individual subdivided parcel of real estate shown upon any recorded plat of subdivision of the Development Site or portion thereof.
- 1.14 Member: Each Person who holds membership in the Association.
- 1.15 Owner: The Person or Persons whose estates or interest, individually or collectively, aggregate fee simple absolute ownership of a Townhome Lot or who have entered into an installment contract or articles of agreement for deed for the purchase of a Townhome Lot; provided that the rights of a contract purchaser shall be as set forth in Section 3.4 of this Declaration. For the purposes hereof, unless otherwise specifically provided

UNOFFICIAL COPY

herein, the term "Owner" shall include any beneficiary of a trust, any shareholder of a corporation or any partner of a partnership holding title to a Townhome Lot or purchasing a Townhome Lot as aforesaid. Notwithstanding any applicable theory of mortgages, the term "Owner" shall not mean or refer to the mortgagee of a Townhome Lot unless and until such mortgagee has acquired title thereto pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

1.16 Parcel: The real estate legally described on Exhibit "B" attached hereto (together with the portion or portions of the Additional Land, if any, as Declarant at any time and from time to time hereafter may submit to the provisions of this Declaration, as set forth in Article XI hereof), all improvements and structures now or hereafter erected, constructed or contained therein or thereon, including without limitation, all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners.

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

1.18 Plat: The plat of Kensington Park II Subdivision of the Development Site or portion thereof as recorded with the Recorder on June 22, 2004 as Document Number 0417410110 together with all amendments and supplements thereto and any and all further subdivision plats now or hereafter recorded with respect to any Additional Land which may be submitted to the provisions of this Declaration as provided herein.

1.19 Private Roads: Lots 47, 49 and 51 to be used for ingress, egress and internal movement by vehicles and pedestrians to, from and within the Development Site.

1.20 Recorder: The Recorder of Deeds for Cook County, Illinois.

1.21 Stairtowers: Lots 46, 48, 50 and 52 include emergency access stair towers for the common use of each Townhome Lot Owner.

1.22 Townhome: An attached residential housing unit including an attached garage located on a Townhome Lot intended for use exclusively as residential living quarters by a single Family as constructed by the Declarant upon the Parcel having lawful access to a public road or alley and/or easement or easements to a public road or alley.

1.23 Townhome Lot: A Lot as delineated on the Plat which includes the Townhome constructed or to be constructed thereon, the fenced enclosed patio area, Adjacent Garden Area and all other improvements located thereon.

ARTICLE II Easements

2.1 Easements for Support, Party Walls and Certain Encroachments:

(a) Each Owner of a Townhome Lot located on the Parcel is hereby granted the following perpetual non-exclusive easements for support and use if and to the extent required by reason of the design or construction of the Townhome located on the Townhome Lot owned by such Owner: (i) in and to all foundations, footings, structural members and supporting components of and for the Townhome owned by such Owner which are located on any adjoining Lot which is not owned by such Owner; and (ii) in and to each exterior wall of and for the Townhome owned by such Owner which is located on any adjoining Lot which is not owned by such Owner. Declarant reserves a perpetual non-exclusive easement for support and use in and to all foundations, footings, structural members, exterior walls and supporting components of the Townhome to be constructed on Townhome Lots 4, 5, 11, 12, 19, 20, 27, 28, 35, 36, 40, 41, 42 and 43 to construct, install, operate, maintain, repair, renew and replace an emergency walkway and exit stair.

UNOFFICIAL COPY

(b) In the event that by reason of construction, settlement or shifting, any portion of a Townhome located on a Townhome Lot encroaches or shall hereafter encroach upon any portion of any other Lot which is not owned by the Owner of the Townhome so encroaching, or said encroachment occurs upon any portion of the Common Area, or if by reason of the design or construction thereof, any pipes, conduits, ducts or other utility facilities serving more than one Townhome encroach or shall hereafter encroach upon any part of any Townhome Lot, or if, by reason of the design or the construction of any Townhome, it shall be necessary or advantageous for any Owner to occupy or use any portion of the Common Area for any reasonable use appurtenant to said Townhome, including but not limited to decks, bay windows or balconies, valid easements for the maintenance of such encroachment and for such use of the Common Area are hereby established and shall exist for the benefit of the Owner of the Townhome so encroaching for so long as the encroachment exists. In no event shall a valid easement for any encroachment or use of the Common Area 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 Lot or Common Area burdened thereby or such encroachment results from the negligent or willful conduct of the Owner of the Townhome so encroaching.

2.2 Utility Easements: The City, Ameritech, Peoples Energy, Commonwealth Edison Company, all other public utilities serving the Development Site (including any utility company providing cable, micro-wave or other satellite television service) and their respective successors and assigns are hereby granted the right to lay, construct, renew, operate, repair, replace and maintain conduits, cables, pipes, mains, sanitary and storm sewers and services, drainage ways and sewages, ducts, wires, street lights and other equipment into and through the Common Area, underneath all Townhome Lots or other areas of the Parcel designated on the Plat or grant of easement made pursuant to this Declaration which Declarant may from time to time cause to be recorded with the Recorder for the purpose of providing the Townhome Lots and Common Area with such utilities. Any restoration required shall be the responsibility of the Association. Easements underneath Townhomes shall not include the right of surface access subsequent to the construction of improvements on such lots. Every Owner is also hereby granted an easement of ingress and egress over and upon any other Parcel for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities if such utilities are servicing such Owner's Parcel; provided, however, that a Parcel Owner shall restore to its pre-existing condition any portion of the other Parcel damaged by any such construction, installation, repair, maintaining or inspection.

2.3 Access Easements: Each Owner of a Townhome Lot located on the Parcel is hereby granted the following perpetual non-exclusive easements: (a) for vehicular and pedestrian access, ingress and egress on, over and across the Private Roads as delineated on the Plat ; (b) for pedestrian access, ingress and egress on, over and across the Courtyards; (c) for access on, over and across the Common Area and Common Facilities thereon at reasonable times and locations to effectuate repairs and improvements by an Owner and his contractors and agents to the Townhome on the Townhome Lot owned by such Owner if and when such access may be required for such purpose; and (d) for emergency access and egress on, over and across the roofs, decks, balconies, exterior stairways and gates on adjacent Townhome Lots in the event of an imminent threat to personal safety. The easements hereinabove granted in this Section 2.3 shall benefit the Owners and other occupants, from time to time, of the Townhome Lots herein described and their respective guests and invitees. The Association, through its Board, shall have the right to establish, and thereafter amend and modify, rules and regulations in respect to the exercise of the easement rights granted in this Section 2.3 by the Persons benefited thereby, including, by way of example and not limitation, rules and regulations pertaining to the use of security gates and security access control devices and equipment, parking restrictions and towing of illegally parked vehicles, including regulations for the use of guest parking located on the Common Area. In no event shall Owners be permitted to park in such guest parking spaces.

2.4 City Easement: A perpetual non-exclusive easement for ingress and egress over the Courtyards and Private Roads is granted to the City, its employees and agents for purposes of providing the Owners and the Development Site with such public services as may be furnished by the City from time to time to the Owners.

UNOFFICIAL COPY

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

ARTICLE III Administration

3.1 Association: The Association has been formed as a not-for-profit Illinois corporation under the General Not-For-Profit Corporation Act of the State of Illinois having the name "Kensington Park II Townhomes Homeowners' Association" 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 Lots and the use, maintenance and repair of the Common Facilities and Common Area. The Association shall not be deemed to be conducting a business of any kind, and all funds received by it shall be held and applied by it in trust for the use and benefits of Owners in accordance with the provisions of this Declaration.

3.2 Membership: Every Owner of a Townhome Lot shall be a Member of the Association and such membership shall automatically terminate when he ceases to be an Owner. Membership is appurtenant to and shall not be separated from ownership of a Townhome Lot. Each Owner by acceptance of a deed or other conveyance of a Townhome Lot thereby becomes a Member, whether or not this statement of such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Continuing membership in the Association shall be compulsory and no Owner of any interest in a Townhome Lot shall have any right or power to disclaim, terminate, or withdraw from his membership in the Association or any of his obligations as such Member, any such purported disclaimer, termination or withdrawal being null and void. There shall be one Person with respect to every Townhome Lot who shall be entitled to vote at any meeting of the Members. Such Person shall be known as a "voting member." Such voting member may be the Owner or one of the group comprising Owner of a Townhome Lot or may be a Person designated by such Owner to act as proxy on his behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by notice to the Board by the Owner.

3.3 Voting Rights: The Association shall have two classes of voting members:

Class A: Each Owner shall be a Class A voting member and as such shall be entitled to one vote for each Townhome Lot owned by him; provided, however, that the Declarant shall not be a Class A voting member so long as the Declarant is a Class B voting member;

Class B: The Class B voting member shall be the Declarant who shall at any given time be entitled to three (3) times the number of votes to which the Class A voting members shall be entitled at such time. The Declarant shall cease to be a Class B voting member and shall become a Class A voting member upon the first to occur of either of the following dates:

(a) The date upon which Declarant shall have sold and conveyed title to ninety percent (90%) of the total number of the Townhome Lots within the Development Site (including on the Additional Land), or

(b) The date upon which the Declarant elects to convert its Class B membership to Class A membership by written notice of such election to the Association.

3.4 Voting Rights Concerning Resale by Installment Contract: In the event of a resale of a Townhome Lot, the purchaser of such Townhome Lot pursuant to an installment contract or articles of agreement for deed ("Contract Purchaser") from a selling Owner other than the Declarant ("Contract Seller") shall, during such times as the Contract Purchaser resides in the Townhome, be the voting member with respect to such Townhome Lot and shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board, unless the Contract Seller expressly retains in writing any or all of such rights.

UNOFFICIAL COPY

In no event may the Contract Seller and Contract Purchaser both be counted toward a quorum, be permitted to vote or be elected to and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents upon demand. Notwithstanding the foregoing, resale by installment contract shall not contravene the terms and conditions of the Kensington Park II Purchase Agreement executed by such Contract Seller.

3.5 Qualifications of Board: For a period commencing on the date this Declaration is executed and ending upon the qualification of the Board elected at the initial meeting of voting members, the Declarant shall have the right to designate and select the Persons who shall serve as members of each Board or elect to exercise itself the powers of the Board as provided herein. Except for directors so designated by Declarant, each member of the Board shall be an Owner and shall reside in a Townhome; 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 Declarant) resides in a Townhome.

3.6 Election of Directors:

(a) The initial Board designated by the Declarant 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 therefor in the office of the Secretary of State of Illinois and ending upon the qualification of the Board elected at the initial meeting of voting members held as provided in Section 3.7 hereof. At the initial meeting held as provided in Section 3.7 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 number of votes with respect to the number of offices to be filled shall be deemed to be elected except as otherwise provided herein. Each voting member shall be entitled to cast the number of votes specified in Section 3.3 hereof. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting of the voting members, three (3) Board members shall be elected. The Owners of the Townhome Lots receiving the two highest number of votes at the first annual meeting each shall be elected to the Board for a term of two (2) years. The Owner of the Townhome Lot receiving the next highest number of votes at the first annual meeting shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. 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.

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

3.7 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

UNOFFICIAL COPY

quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

(b) The initial meeting of voting members shall be held upon not less than ten (10) days written notice from the Declarant. Such notice must be given no later than thirty (30) days after the sale and conveyance of title to ninety percent (90%) of the total number of Townhome Lots which may be constructed by Declarant on the Development Site (including on the Additional Land), but such notice may, at the discretion of the Declarant, be given earlier. Thereafter, there shall be an annual meeting of the voting members on or about the second Tuesday of October of each succeeding year thereafter, or at such other reasonable date, time and at such place as may be designated by written notice from the Board.

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

(d) Notices of meetings may be delivered personally or by mail to the voting members, addressed to each such voting member at the address given by him to the Board, or if no address shall be given, addressed to such voting member at the address of his Townhome.

3.8 General Powers of the Board: The Board shall have the following powers subject to the provisions of this Declaration:

(a) To adopt rules and regulations governing the use, maintenance and administration of the Townhome Lots, Common Area and Common Facilities 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 Lots, Common Area and Common Facilities on the terms provided for in Article IV and Article VIII 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, attorneys and other professionals) required by the terms of this Declaration or the Bylaws of the Association, or which in its reasonable opinion shall be necessary or proper for the operation or protection of the Association and its Members and for the enforcement of the provisions of this Declaration.

(d) To enter upon, and to have its contractors, subcontractors and agents enter upon, any Townhome Lot and the exterior of any Townhome 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 constitutes an emergency or is a nuisance or damaging to any Owner or occupant.

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

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

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

UNOFFICIAL COPY

(h) To grant non-exclusive easements in respect to, and dedicate to or as directed by governmental authorities, portions of the Common Area and to execute and cause to be recorded such instruments as may be required in respect thereto.

(i) To borrow money in the name of the Association to provide for the maintenance, repair or replacement of the Common Area or Common Facilities; provided, however, that the Board shall not secure any such borrowings by encumbering the Common Area or Common Facilities with a mortgage or trust deed without the affirmative vote of at least two-thirds (2/3) of the votes of all the voting members of the Association. The Board shall, however, have the power to secure such borrowings by pledging and granting a security interest in the assessments payable to the Association hereunder.

(j) To enter into a contract for the management of the Development Site with a professional manager or management company on such reasonable terms as the Board shall determine; provided that, except as to any contract to provide security services to the Townhomes, any such management contract shall be cancelable by the Association at the end of one year from the date of qualification of the Board elected at the initial meeting of voting members held as provided in Section 3.7 hereof.

(k) To have standing and capacity to act in a representative capacity in relation to matters involving the Common Area of the Association or more than one Townhome Lot on behalf of the Owners as their interests may appear.

(l) 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.

3.9 Meetings of the Board: Meetings of the Board shall be open to all Owners except for the portion of any meeting held: (a) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent; (b) to consider information regarding appointment, employment or dismissal of an employee; or (c) to discuss violations of rules and regulations of the Association or unpaid assessments owed to the Association. Any Owner may record the proceedings at meetings required to be open, by tape, film or other means; provided that the Board may prescribe reasonable rules and regulations governing the right to make such recordings. Notice of Board meetings shall be mailed or delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the Persons entitled to such notice before the meeting is convened.

3.10 Notice of Board Meeting Concerning Budgets or Assessments: Each Owner shall receive written notice mailed or delivered no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of the proposed annual budget or any increase, or establishment of an assessment.

3.11 Annual Accounting: The Board shall annually supply to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment. This accounting shall show the net excess or deficit of income over expenditures plus reserves.

3.12 Proposed Budget: Each Owner shall receive, at least thirty (30) days prior to the adoption by the Board, a copy of the proposed annual budget.

3.13 Insurance on Common Area and Common Facilities: The Board shall have the authority to and shall obtain insurance for the Common Facilities and Common Area as follows:

(a) Comprehensive General Liability insurance covering bodily injury and property damage insuring against hazards of premises/operation, death, personal injury liability, independent contractors and other risks as deemed necessary by the Board. Such insurance shall provide limits of coverage as deemed desirable by the Board, but in no event for less than One Million Dollars

UNOFFICIAL COPY

(\$1,000,000.00). Such policy shall be endorsed to cover cross-liability claims of one insured against the other;

(b) Casualty insurance covering damage to the Common Area and Common Facilities. Such insurance shall provide limits of coverage as deemed desirable by the Board.

(c) Worker's Compensation and Employer Liability as necessary to comply with applicable laws;

(d) 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;

(e) Directors and officers liability insurance for the officers and directors of the Board as necessary to comply with applicable laws; 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; medical payments coverage for members of the public (not Owners) injured on the Common Area, without regard to liability of the Board or the Association; and non-owned and hired automobile liability coverage.

The premiums for all of the insurance coverages described in this Section 3.13 shall be paid from the funds collected by the Board described in Article IV.

All insurance provided for in this Section 3.13 shall be effected under valid and enforceable policies issued by reputable insurance companies authorized and licensed to transact business in the State of Illinois. If possible, all such policies shall provide a minimum of thirty (30) days advance notice of nonrenewal or cancellation in writing to the insureds thereunder and to the holder of each first mortgage on a Townhome Lot if requested in writing by such mortgagee unless such cancellation is for non-payment of premium, in which case ten (10) days advance written notice shall be sufficient. Insurance coverage provided in subsection 3.13(a) shall insure on an occurrence basis, and the Association shall indemnify, defend and hold harmless, the Association, Board, members of the Board, officers of the Association, and their respective agents (including any management agent) and employees, against claims for personal injury including death and property damage in connection with (i) the ownership, occupancy, supervision, operation, repair, maintenance or restoration of the Common Area and Common Facilities, (ii) the maintenance, repair and restoration of the Townhome Lots as provided in Article VIII of this Declaration, (iii) the maintenance and repair of all or any portion of the Development Site provided for in this Declaration, or (iv) any act or omission of or on behalf of the Association, the Board, members of the Board, officers of the Association, and their respective agents and employees. To the extent feasible, as the Board in its discretion may desire, such insurance policy or policies also shall include cross liability claims of one insured against another. Declarant and its partners, agents and employees shall be named insureds under such policies until such time as the rights, duties, powers and obligations of the Declarant with respect to the Common Area and Common Facilities have been transferred to the Association pursuant to Section 9.3. The insurance coverage provided in subsection 3.13(d) shall not be required until the delivery of Association funds by the Declarant to the Board as provided in subsection 3.16(c).

3.14 Liabilities: No one or more of Declarant, its partners, the Board, the Association, members of the Board, officers of the Association, the Architectural Control Committee and their respective agents (including any management agent) and employees (all of the above hereinafter collectively referred to as the "Protected Parties") shall be liable to the Owners or any other person for any mistake of judgment for any acts or omissions of any nature whatsoever in their respective positions, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence, fraud or as otherwise provided in this Declaration. All Owners, jointly and severally, shall indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits (civil or criminal), losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees and amounts paid in settlement or compromise incurred in connection therewith. The cost of such indemnification hereunder shall be insured by

UNOFFICIAL COPY

means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Board.

3.15 Books and Records: The Board shall maintain the following records of the Association available for examination and copying during normal business hours by any Owner or his mortgagee and their duly authorized agents or attorneys:

(a) Copies of the recorded Declaration, other duly recorded covenants and Bylaws and any amendments, Articles of Incorporation of the Association, annual reports and any rules and regulations adopted by the Association or its Board. Prior to the organization of the Association, the Declarant shall maintain and make available the records set forth in this subsection for examination and copying;

(b) Detailed accurate records in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred, and copies of any and all contracts, leases and other agreements entered into by the Association;

(c) The minutes of all meetings of the Association and the Board, which shall be maintained for a period of not less than seven (7) years; and

(d) Written ballots, if any, for any election held for the Board and for any other matters voted on by the Owners shall be maintained for a period of not less than one (1) year.

A reasonable fee may be charged by the Association or its Board for the cost of copying.

3.16 Document Delivery by Declarant. Within sixty (60) days following the election of the members of the Board at the initial meeting of voting members, the Declarant shall deliver to the Board the following:

(a) All original documents as recorded or filed pertaining to the Development Site, its administration and the Association, such as the Declaration, Articles of Incorporation, other instruments, annual reports, minutes, rules and regulations, contracts, leases and all other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the Declarant, or an officer or agent of the Declarant, as being a complete copy of the document as recorded or filed;

(b) A detailed accounting by the Declarant setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Development Site pursuant to this Declaration and copies of all insurance policies and a list of any loans or advances to the Association which are outstanding;

(c) Association funds, which shall have been at all times segregated from any other funds of the Declarant;

(d) A schedule of all real or personal property, equipment and fixtures belonging to the Association, including documents transferring the Development Site, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills; and

(e) A list of any and all pending litigation, administrative actions and arbitrations involving the Association, copies of any notices from governmental bodies involving actions which may be taken concerning the Association, the originals of all current governmental certificates and renewable permits, copies of any correspondence involving enforcement of any Association requirements, and copies of any documents relating to disputes involving Owners.

UNOFFICIAL COPY

3.17 Document Availability Upon Resale: In the event of any resale of a Townhome Lot by an Owner other than the Declarant, such Owner shall obtain from the Board and shall make available for inspection to the prospective purchaser, upon demand, the following:

- (a) A copy of this Declaration as amended and any rules and regulations of the Association;
- (b) A statement of any liens, including a statement of the account of the Townhome Lot setting forth the amounts of assessments for such Townhome Lot, unpaid assessments and other charges due and owing;
- (c) A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years;
- (d) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board;
- (e) A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available;
- (f) A statement of the status of any pending suits or judgments in which the Association is a party;
- (g) A statement setting forth what insurance coverage is provided for all Owners by the Association; and
- (h) A statement that any improvements or alterations made to the Townhome Lot or any part of the Common Area assigned thereto by the prior Owner are in good faith believed to be in compliance with the Declaration of the Association.

The principal officer of the Association or its designated agent shall furnish the above information within thirty (30) days after receipt of written request therefor. A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or its Board to the selling Owner.

ARTICLE IV
Assessments

4.1 Personal Obligation: Each Owner (except for the Declarant) by acceptance of a deed or other conveyance instrument for a Townhome Lot, whether or not so expressed in any such deed or other conveyance instrument for such Townhome Lot, hereby covenants and agrees to pay to the Association such assessments and fees as are levied pursuant to the provisions of this Declaration and the By-Laws of the Association. Such assessments and fees, whether special or otherwise, not paid when due, together with interest thereon until paid at the "Default Rate" (hereinafter defined), late fees of \$25.00 per month (or such other amount as the Board may determine from time to time) and costs of collection, including attorneys' fees incurred in respect thereto regardless of whether suit shall be instituted, shall be a charge and a continuing lien upon the Townhome Lot against which such assessment is made. For purposes of this Declaration, "Default Rate" means an annual rate of interest equal to the "prime rate" of interest from time to time in effect at LaSalle National Bank or its successor plus three percent (3%), which Default Rate shall change when and as the "prime rate" changes. Furthermore, each such assessment, together with such interest, costs, late fees and other fees, shall be the personal obligation of the Person who was the Owner of such Townhome Lot on the date upon which such assessment became due. No Townhome any interest therein may be transferred or sold or the beneficial interest transferred (where title is held in land trust) by its Owner unless and until all outstanding assessments together with any interest, cost, late fees and other fees are paid to the Association. The Declarant, to the extent that it shall be an Owner of any Townhome Lots which are leased to any Person, shall, as to each such leased Townhome Lot, be subject to the provisions of this Article from and after the first day of the month in which the

UNOFFICIAL COPY

Declarant first receives rent for such Townhome Lot. Except as provided in the immediately preceding sentence, the Declarant shall not be liable for the payment of assessments hereunder and portions of the Development Site owned by the Declarant shall not be subject to liens hereunder; provided, however, that the Declarant shall pay the actual costs incurred by the Association attributable to the maintenance and repair of those portions of the Development Site owned by the Declarant.

4.2 Purpose of Assessments: The assessments and fees levied by the Association shall be used for the purpose of promoting the health, safety and welfare of the Members of the Association and, in particular, for (a) paying the cost of maintenance and repair of the Common Area and Common Facilities, including the cost of labor, equipment, services (including utilities and security services, accountants', attorneys' and other professional fees, licenses and permits, including driveway license renewal fees) and the materials in connection therewith, (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 and the By-Laws, including the enforcement of the provisions thereof, (d) paying the cost of any maintenance, repair and upkeep of the Townhome Lots to the extent that such costs are not assessed against the particular Owners benefited by such services pursuant to Article VIII hereof, and (e) in general, carrying out the purposes of the Association as stated herein and in the Articles of Incorporation of the Association.

4.3 Annual Assessments: Each year on or before December 1, the Board shall estimate the total amount (the "Aggregate Annual Assessment") necessary to provide the materials and services which will be required for the ensuing calendar year in the operation of the Association (which estimate shall include a reasonable amount considered by the Board to be desirable for contingencies and replacement of roofs of Townhomes and replacement of Common Facilities) and shall give written notice to each Owner of the amount of the Aggregate Annual Assessment with a reasonable itemization thereof and of the amount thereof allocable to such Owner. Except as otherwise provided in this Declaration, there shall be allocated to each Owner a pro rata portion of the Aggregate Annual Assessment. On or before January 1 of the ensuing year, and on the first day of each and every month of said year, each Owner shall be personally liable for and obligated to pay one-twelfth (1/12th) of the portion of the Aggregate Annual Assessment allocated to such Owner, unless the Board shall determine that such payments shall be made on a different basis during the calendar year. On or before April 1 of each calendar year following the initial meeting of voting members, the Board shall furnish to each Owner an itemized accounting of the expenses for the preceding calendar year and the amounts collected from the Owners. Any deficiency or excess shall be applied as an adjustment to the monthly installments due under the current year's estimate in the succeeding six (6) months after rendering of the itemized accounting. Notwithstanding anything to the contrary contained herein, the allocation of the Aggregate Annual Assessment may be adjusted by the Declarant in the event of any change in the composition of Townhomes in the Development or in the event that all Townhome Lots have not been conveyed by the Declarant, or both. Upon the creation of the Association, the Board shall determine an initial Aggregate Annual Assessment for the period commencing on the date on which the Association is incorporated and ending on December 31st of that calendar year.

4.4 Special Assessments: In addition to the annual assessments authorized pursuant to Section 4.3, the Board may at any time and from time to time levy special assessments. Special assessments shall be levied for the purpose of defraying, in whole or in part, the cost incurred by the Association for any repair, replacement, maintenance, service, labor, materials or capital improvement not provided for in the Aggregate Annual Assessment or reserve for the current calendar year. Except for special assessments which in the aggregate do not exceed in any twelve-month period the sum of \$1,000.00 per assessed Townhome Lot, any special assessment shall first be approved by the affirmative vote of not less than one-half (1/2) of the votes cast at the annual or a special meeting of the Members called and held in accordance with the provisions of Section 4.5 hereof. Special assessments shall be allocated to each Owner in the same manner as such Owner's proportionate share of the Aggregate Annual Assessment unless the Board shall determine that the benefits of any expense or any part thereof accrue to less than all Townhome Lots or to certain Townhome Lots to a greater degree than to other Townhome Lots, in which case the Board shall serve notice on the appropriate Owners of any such special assessment or part thereof, including without limitation, the special assessments described in subsection 4.4(b), which notice shall consist of a written statement setting forth the reason for the special assessment, the amount and date on which such special assessment (or installment thereof) shall become due

UNOFFICIAL COPY

and payable. The Declarant shall be liable for the payment of special assessments only on those Townhome Lots for which the Declarant is obligated to pay a regular assessment.

4.5 Notice and Quorum: Written notice of any meeting called for the purpose of authorizing any special assessment requiring approval pursuant to Section 4.4(a) hereof shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At such meeting, the presence in person or by proxy of Members entitled to cast at least one-half (1/2) of all votes shall constitute a quorum.

4.6 Proof of Payment: Upon written request by an Owner or mortgagee at any time, the Association shall furnish to such Owner or mortgagee a written certificate signed by an officer of the Association stating whether there are any unpaid annual or special assessments, interest, costs, late fees or other fees levied against such Owner's Townhome Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments, interest, costs, late fees or other fees not stated therein as unpaid.

4.7 Nonpayment of Assessments: Any assessment which is not paid when due shall be deemed delinquent. If an assessment is not paid within ten (10) days after the due date, such assessment shall bear interest at the Default Rate (defined in Section 4.1) from the delinquency date until paid and the Board may impose a late fee as provided in Section 4.1. In the event of the failure of any Owner to pay any assessment, maintenance charge, interest charge, late fee or other fees or costs of collection when due, the amount thereof shall constitute a lien on the Townhome Lot of such Owner. In the event such Owner fails to pay such assessment within thirty (30) days after notice from the Board of such default, the Board may accelerate the maturity of the remainder of the installments of annual and special assessments due from such Owner for the balance of the calendar year and may enforce collection thereof. The Board shall, in the name of and on behalf of the Association, have all rights and remedies to enforce such collections as shall from time to time be permitted by law, including bringing an action at law or in equity against such Owner and foreclosing the aforesaid lien. All expenses of the Association in connection with such action or proceedings, whether or not suit shall be instituted, including attorneys' fees and court costs and other fees and expenses, shall be charged to and assessed against such Owner (and shall constitute a personal liability of such Owner) and shall be added to and deemed part of his assessments and the Association shall have a lien for all of the same upon the Townhome Lot of such Owner. In addition, the Association shall have (a) the right to bar the Owner and anyone claiming any rights under him from using any or all of the Common Area and (b) a lien for any unpaid assessments by said Owner on all tangible personal property located in, on or about the Owner's Townhome Lot, provided such lien shall be subject to prior bona fide liens of record.

4.8 Subordination of Lien to Taxes and Mortgage: The lien of the assessments provided for herein shall be subordinate to (a) the lien of taxes, special assessments and special taxes theretofore or thereafter levied by the City or any political subdivision of this State and other state or federal taxes which by law constitute a lien on such Townhome Lot prior to pre-existing recorded encumbrances thereon, and (b) the lien of any prior, recorded first mortgage or trust deed on a Townhome Lot held by any bank, savings and loan association or other institutional lender, except for the amount of any assessments which become due and payable from and after the date such lender obtains possession of or title to such Townhome Lot after default pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure or has a receiver appointed in a suit to foreclose its lien. Such transfer of title shall not relieve such Townhome Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments.

4.9 Exemption from Assessment on Lots Owned by Declarant: In order that those Townhome Lots which are improved and conveyed or leased by Declarant or its agents may, with reasonable promptness, receive the benefits of maintenance by the Association for the enjoyment of the residents of the Development Site and be subject to assessments therefor, and so as not to discourage the Declarant from voting for such assessments at such times as the Declarant may still own a substantial number of unoccupied Townhome Lots and inasmuch as assessments levied against such Townhome Lots impose a burden on the Declarant without the Declarant desiring, or receiving the benefits of maintenance upon such Townhome Lots as may from time to time be provided by the Association, it is therefore expressly provided that no Townhome Lot owned by the Declarant, shall be subject to the assessments, charges and liens provided for herein until the date upon which such Townhome Lot shall be conveyed to a bona fide purchaser or leased to any person who shall have commenced

UNOFFICIAL COPY

to pay rental therefor or sold pursuant to installment contract or articles of agreement for deed; provided, however, that each year, until the initial meeting of the elected Board pursuant to Section 3.6, the Declarant shall contribute to the Association the amount, if any, by which the operating expenses of the Association incurred or paid during such year (exclusive of any amounts allocated to reserves) exceed the gross revenues of the Association during such year. Upon the conveyance or leasing by Declarant of a Townhome Lot which was theretofore entitled to the foregoing exemption from assessments, such Townhome Lot and the Owner thereof shall immediately become subject to the payment of all assessments and other charges and the liens provided for herein.

4.10 Initial Assessments: The Declarant shall collect from each purchaser of a Townhome Lot at the time of closing of the purchase thereof, an amount equal to three (3) times the monthly assessment allocable to such Townhome Lot. The amounts so collected shall be utilized to fund an operating reserve for the Association.

4.11 Negligent and Willful Acts of Owners: If due to the negligent or willful act or omission of an Owner, Owner's lessee, or any Family member, or invitee, guest or permitted pet of any such person damage shall be caused to any portion of the Development Site, or expenses shall otherwise be incurred by the Board, then the responsible Owner or Owners, jointly and severally, shall be assessed by the Board in an amount equal to such expenses incurred by the Board as a special assessment pursuant to Section 4.4.

4.12 Delay: The failure or delay of the Board to prepare or transmit to any Owner an Aggregate Annual Assessment in respect of any calendar year shall not constitute a waiver or release in any manner of such Owner's obligation to pay the monthly assessments or special assessments whenever assessed, and in the absence of any Aggregate Annual Assessment, unless otherwise determined by the Board, such Owner shall continue to pay to the Board the monthly assessments in the installments in force and effect as of the most recent Aggregate Annual Assessment until a new Aggregate Annual Assessment shall become effective.

4.13 Use of Funds: All funds collected by the Board hereunder shall be held and expended for the benefit of the Owners and the Association and for the purposes designated herein.

ARTICLE V

Covenants and Restrictions as to Use and Occupancy

5.1 Residential Use: Except as specifically permitted by local law, each Townhome shall be used for private, residential purposes by a single Family and for no other purposes. No industry, business, trade, occupation or profession of any kind, commercial, religious, charitable, educational or otherwise, conducted for profit, altruism or otherwise shall be conducted, maintained or permitted anywhere on a Townhome Lot; provided, however, that none of the foregoing restrictions shall preclude an Owner, with respect to his Townhome from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incidental to the principal residential use and not in violation of said restrictions.

5.2 Leasing: No Townhome Lot may be leased for "transient purposes." For purposes of this Section 5.2, "transient purposes" shall mean for a term of less than six (6) months. All leases shall be in writing and shall be subject to the provisions of Section 12.7 and require the lessee to observe and comply with the provisions of this Declaration and any rules and regulations from time to time adopted by the Board.

5.3 Restrictions: Except for activities of the Declarant during original construction of the Development:

(a) No animals of any kind shall be raised, bred or kept in or about any Townhome Lot except that dogs, cats or other usual household pets may be kept in a Townhome, subject to rules and regulations from time to time adopted by the Board, provided that they are not kept, bred or maintained

UNOFFICIAL COPY

for any commercial purpose; and further provided that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Development Site upon three (3) days' prior written notice from the Board. Pets shall be leashed at all times when outside any Townhome and no pet shall be permitted to defecate on any Townhome Lot or on the Common Area other than the area designated as the "dog run", provided that all animal refuse is removed by the pet owner. Any pet excrement shall be immediately removed from public or private property by the pet's owner. Unless permitted by rules and regulations adopted by the Board, pets shall not be walked on any of the Common Area. No snakes or poisonous insects shall be permitted to be kept in or about any Townhome Lot.

(b) No noxious, offensive or illegal activity shall be carried on anywhere on a Townhome Lot or Common Area, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants.

(c) No campers, trucks, mobile homes, snowmobiles, trailers, buses, commercial vehicles, vans, vehicles not bearing a current license plate, inoperable vehicles, boats, motorcycles, bicycles, sleds or other recreational vehicles shall be parked on any Townhome Lot except inside the garage thereof and except that an operable automobile or mini-van may be parked on the garage drive to the extent one exists on the applicable Townhome Lot. No maintenance of any vehicle shall be performed on a Townhome Lot. No vehicle shall be parked on any portion of the Common Area unless permitted pursuant to rules and regulations adopted by the Board. The foregoing restriction shall not apply to any trucks or other vehicles owned by the Declarant, its contractors, subcontractors, material suppliers, agents and employees which may be parked on any portion of the Common Area or any Townhome Lots owned by the Declarant during the construction and marketing of the Development or necessary to make service calls.

(d) No clotheslines, clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of a Townhome Lot. All rubbish, trash and garbage shall be placed in closed plastic bags, deposited in closed trash receptacles and regularly removed from each Townhome Lot. No trash receptacles shall be kept outside on a Townhome Lot and no burning of trash shall be permitted. Notwithstanding the foregoing, each Owner shall place its trash receptacle in the designated area in the morning of the trash pick-up day, and return its receptacle to his/her garage at the end of such day.

(e) With the exception of machinery, equipment, building materials and supplies and similar items which the Declarant may store or permit to be stored upon any Townhome Lot owned by the Declarant during construction and marketing of Townhome Lots, no machinery, equipment, building materials and supplies or similar items may be stored, kept or maintained on any part of a Townhome Lot. No lawn furniture, swing sets, playpens, sandboxes or other recreational or playground equipment or barbecue grills may be placed or used on any part of the Common Area or on any part of a Townhome Lot except within the fenced-in patio area and deck adjacent to a Townhome. No basketball poles or nets shall be permitted on the exterior of any Townhome or anywhere on a Townhome Lot. No swimming pools (other than portable, non-permanent children's wading pools) shall be permitted on any Townhome Lot. No statuary, sculpture or other objects purporting to be artistic in nature shall be located outside on a Townhome Lot without the prior written approval of the Architectural Control Committee.

(f) All exterior lighting and seasonal lighting and decorating on a Townhome Lot shall be subject to rules, regulations and limitations of the Board and all seasonal lighting and decorating shall be removed no later than thirty (30) days after the last day of the holiday to which they relate.

(g) No radio or television antennas or satellite dishes (except as permitted below) shall be affixed to or placed in, through or upon the exterior walls, roof or windows of a Townhome or shall be installed anywhere on any part of a Townhome Lot, except in accordance with Section 2.2 herein and except for satellite dishes which may be placed on the roof of a Townhome only provided such satellite

UNOFFICIAL COPY

dishes are not visible from the street or Private Road and are installed in accordance with specifications approved by the Board. No shortwave radio or other type of radio transmitter shall be permitted in or about any Townhome which may interfere with the radio or television reception in any Townhome. No Owner shall at any time install recessed speakers in common walls or common ceilings of a Townhome. In addition, the Owner of a Townhome shall be responsible for the addition of any soundproofing in such Townhome should it become necessary to prevent sound from audio equipment from being transmitted into adjoining Townhomes.

(h) No wall sleeve or window air conditioning unit shall be installed in any Townhome without the prior approval of the Architectural Control Committee. Each wall sleeve or window air conditioning unit permitted or approved pursuant to the immediately preceding sentence shall be neat, properly maintained and in keeping with the character of the community and shall be allowed only between May 1 and September 30 of each year.

(i) No additions of any kind shall be made on a Townhome Lot which would increase the square footage of the existing improvements. No sheds, greenhouses, solariums, out buildings, storage buildings, tents or other structures of any kind shall be erected on any part of a Townhome Lot. Carpet runners shall be installed by Owner on all wood or other hard surface stairs installed by any Owner or Developer. Garages shall be used for storage of vehicles as permitted herein and for no other purpose including, but not limited to, the making of mechanical repairs to vehicles. Garage doors shall remain closed to the extent possible.

(j) No Owner shall alter the grading of his Townhome Lot from the grading originally installed by the Declarant. No Owner shall remove any shrubbery, trees, gardens, plants, rock gardens, fountains or other elements of landscaping originally furnished to his Townhome Lot by the Declarant on his Townhome Lot (except for replacement of any dead landscaping and landscaping other than trees within the fenced-in patio area and except as approved by the Architectural Control Committee). No modifications in the color, materials or otherwise of the exterior of a Townhome from that originally furnished by the Declarant shall be permitted without the approval of the Architectural Control Committee as provided in Article VI.

(k) No sign, banner, billboard, or other display or advertising device of any character shall be erected or maintained upon any part of a Townhome Lot, except by the Declarant. Subject to applicable law, one "For Sale" sign containing no more than six (6) square feet may be exhibited on a Townhome Lot in such location as shall be approved by the Board, but in no event in a window of a Townhome.

(l) Other than fences originally installed by the Declarant, no fence shall be erected or maintained on a Townhome Lot without the prior approval of the Architectural Control Committee. No fence may be erected that differs in design, material, color or height from the fence installed by the Declarant.

(m) No exterior addition to or exterior change or alteration in a Townhome, including, but not limited to, structural additions, storm doors and windows, exterior lighting, railings, flower boxes, benches, shutters and seal coating of driveways, shall be made, done or performed except in compliance with Article VI, which provides, among other requirements, for the unanimous approval of the Architectural Control Committee. Any such exterior addition to or exterior change or alteration to a Townhome approved by the Architectural Control Committee (i) shall be of color, design, material and construction at least equal to that of the Townhome as originally constructed, (ii) shall comply with all applicable building, fire and safety laws, statutes, ordinances and any other requirements of the City, and the zoning as approved by the City for the Development Site, (iii) shall be performed in a good and workmanlike manner, and (iv) shall harmonize, to the satisfaction of the Architectural Control Committee as to design, color, location and size, with surrounding structures and topography.

(n) No motorcycles, dune buggies or similar type motorized vehicles may be operated anywhere on the Parcel.

(o) No planting or landscaping by an Owner shall be permitted on a Townhome Lot (except within the fenced-in patio area adjacent to the Townhome Lot). All landscaping and maintenance thereof on the Townhome Lots (except within the fenced-in patio areas adjacent to the Townhome Lots) and Common Area shall be the initial responsibility of the Declarant and become the responsibility of the Association upon its creation. Landscape plants, trees, bushes and other material which shall be removed by the Association by reason of damage, disease, overgrowth or other reason shall be replaced in type, size and kind by the Association. No plants or seeds or other things or conditions harboring or breeding infectious plant disease or noxious insects shall be introduced or maintained upon or in any portion of the Parcel.

(p) There shall be no obstruction of the Common Area and nothing shall be stored on the Common Area without the prior consent of the Board, except as otherwise in this Declaration expressly provided. At no time shall gates between roofs or walkways or stairways for emergency exiting be installed or locked or the means of emergency egress be blocked. Areas designated for emergency exit on the rooftop of each Townhome may not be occupied or improved.

(q) Nothing shall be done or kept in or upon any portion of the Townhome Lot or the Common Area which will result in (a) an increase in premiums for any insurance secured by an Owner or the Association over then prevailing rates, without the prior written consent of the Board, or (b) the cancellation of any insurance on any Townhome Lot or other improvement on the Parcel, or (c) the violation of any law.

(r) No waste shall be committed on the Development Site by any Owner.

5.4 Remedies: The violation of any covenant, condition, restriction, rule or regulation adopted by the Board, or the breach of any provision of this Declaration, shall give the Board (or the Declarant prior to the creation of the Board) upon not less than ten (10) days' prior written notice (or immediately in the event of any matter of an emergency nature which might result in damage or injury to persons or property) any one or more of the following rights which may be exercised at any time and from time to time cumulatively or otherwise:

(a) to enter upon that part of the 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 Declarant or the Board, or their respective employees, agents or contractors shall not thereby be deemed guilty in any manner of trespass;

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

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

All expenses of the Board or Declarant 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 Default Rate (defined in Section 4.1) until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the expenses of the Association, and the Association shall have a lien for all of the same upon the Townhome Lot of such defaulting Owner and upon all of his additions and improvements thereto and upon all of his personal property located in his Townhome or located elsewhere on his Townhome Lot, which lien shall be enforceable pursuant to Section 4.7.

UNOFFICIAL COPY

ARTICLE VI Architectural Control Committee

6.1 Membership: The Architectural Control Committee shall consist of three persons who shall be appointed by the Board. Until the initial meeting of voting members, the Declarant shall designate the members of the Architectural Control Committee. Thereafter, until the Declarant shall have sold and conveyed title to all Townhome Lots in the Development Site, the Declarant shall designate two (2) members of the Architectural Control Committee and the Board shall appoint the one (1) remaining member. Upon the sale and conveyance by the Declarant of all of the Townhome Lots, all three (3) members shall be appointed by the Board. Except for members designated by the Declarant, each member of the Architectural Control Committee shall be an Owner and shall reside on a Townhome Lot.

6.2 Powers and Duties: The Architectural Control Committee shall have the following powers and duties:

(a) to review requests by Owners for approval of any exterior addition to or modification or alteration to a Townhome or other matter described in this Declaration as requiring approval of the Architectural Control Committee and, subject to final approval thereof by the Board, to render decisions thereon;

(b) to propose to the Board rules, regulations and procedures concerning exterior maintenance, repair, landscaping, fences, trash removal and the enforcement of the provisions of this Declaration in relation thereto; and

(c) such other powers and duties as the Board shall from time to time delegate.

6.3 Procedures: Any matter requiring the approval of the Architectural Control Committee, including the installation of wood flooring surfaces, shall be submitted to the Architectural Control Committee in writing and, if approval of any alteration or addition to a Townhome shall be requested, shall include preliminary design drawings, plans and specifications, elevations, landscaping schemes and descriptive materials showing the size, color, design, configuration, height, shape and materials of such alteration or addition. Within a reasonable time not to exceed thirty (30) days after receipt of all such items, the Architectural Control Committee shall advise such Owner and the Board in writing:

(a) Whether such Owner's request has been approved or denied and if denied, the specific reasons therefor; or

(b) Whether the Architectural Control Committee requires additional information, plans or other materials to render a decision, in which case such additional items shall be furnished as expeditiously as possible.

If additional items shall be required pursuant to subsection (b) above, within a reasonable period of time not to exceed ten (10) days from the date of receipt of all such items, the Architectural Control Committee shall advise such Owner and the Board in writing whether such Owner's request has been approved or denied and if denied, the specific reasons therefor. If such Owner's request for approval shall have been denied, such Owner shall have the right to appeal the decision of the Architectural Control Committee to the Board pursuant to Section 6.4 hereof.

6.4 Right of Appeal: Any adverse decision of the Architectural Control Committee may be appealed to the Board, which shall render a final decision as to the matter in question. An Owner desiring to appeal shall so advise the Board in writing. The Board shall consult with the Architectural Control Committee and such Owner, shall review the plans and other materials submitted by such Owner and shall render a written decision as to the matter under consideration as expeditiously as practical. In rendering its decision, the Board shall take into consideration the criteria set forth in Section 5.3(m) and Section 6.5, the manner in which the Architectural Control Committee has applied such criteria to the matter under review and such other factors as

UNOFFICIAL COPY

the Board deems relevant in respect to the overall enhancement and preservation of the value and desirability of the Parcel.

6.5 Review Criteria: In evaluating requests by Owners for approvals required of the Architectural Control Committee hereunder, the factors to be considered by the Architectural Control Committee shall include those set forth in Section 5.3(m) and the following:

(a) the architectural integrity and compatibility of any proposed exterior modification to a Townhome with the design, color scheme and materials of such Townhome as originally constructed, in regard to which the Architectural Control Committee shall not have the authority to approve an exterior alteration or addition that:

(i) changes color schemes or architectural styles from those originally constructed by the Declarant;

(ii) substitutes materials of lesser quality than those originally furnished by the Declarant; or

(iii) results in a change in the grade of a Townhome Lot or the elevation, size or basic exterior design from that originally provided by Declarant, including, by way of example and not limitation, changes in door and window placement or addition of a penthouse not part of the original construction of a Townhome.

(b) the aesthetic effect of any proposed modification to exterior fences or exterior lighting; and

(c) such other factors as the Architectural Control Committee deems relevant in assessing the overall effect of the Owner's request upon the maintenance and operation of the Parcel.

6.6 Final Board Approval: There is hereby reserved to the Board the power to modify or reverse any decision of the Architectural Control Committee, whether approving or denying an Owner's request, if, in the Board's judgment, which shall not be subject to challenge or review, the Architectural Control Committee, in rendering such decision, has failed to correctly apply the criteria set forth in Section 5.3(m) or Section 6.5.

ARTICLE VII

Party Walls, Decks, Stairways and Fences

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 (or as reconstructed following fire or other casualty) which is located on the boundary line between separate Townhome Lots shall constitute a party wall for which an easement is granted in Section 2.1 of this Declaration. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, support easements and of liability for property damage due to negligence or willful acts or omissions shall apply to each such wall and fence and to each deck and stairway which is not located entirely on the Townhome Lot of an Owner.

7.2 Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall, deck, stairway and fence which is not located entirely on the Townhome Lot of an Owner shall be shared by the Owners who make use thereof in proportion to such use.

7.3 Destruction by Fire or Other Casualty: If a party wall, stairway, deck or fence is destroyed or damaged by fire or other casualty, either Owner entitled to use the same may restore it, and if the other Owner entitled to use the same thereafter makes use of the wall, stairway, deck or fence, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to

UNOFFICIAL COPY

call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

ARTICLE VIII**Insurance, Maintenance and Landscaping**

8.1 Insurance: Each Owner shall maintain in full force and effect, with a reputable company licensed to conduct business in the State of Illinois, a policy of insurance covering his Townhome Lot against loss or damage by fire and against loss or damage by occurrences now or hereafter embraced by standard extended coverage and vandalism and malicious mischief in one hundred percent (100%) of the full insurable replacement cost of such Townhome. Each Owner shall deliver to the Board a certificate of insurance confirming that such insurance is in effect and a certificate for all renewals thereof. In the event that any Owner shall fail to maintain the insurance required herein, the Association shall have the right, but not the obligation, to obtain such insurance in the name of such Owner and to add the cost thereof to the next monthly assessment due from such Owner.

8.2 Maintenance by Association: The Association shall be responsible for:

- (a) snow removal from the Common Area, Private Roads, Courtyards and adjacent public alley at the Board's discretion; provided, however, nothing herein contained shall impose upon the Association any greater duty with respect to snow removal than is otherwise imposed by law;
- (b) maintenance, repairs and replacement of the Common Area and Common Facilities (other than the cost thereof which any utility company may bear), including without limitation, maintenance and repair of common sewer lines and common water main lines located on and serving the Parcel from the point of connection to the sewer main or water main, as the case may be, in the public street if and to the extent required by the City;
- (c) the acquisition or construction of and payment for any additions, improvements, alterations or repairs to the storm sewers, sanitary sewers, telephone, water, gas, electric and other utility facilities lying within and serving only one Townhome Lot up to the point of entry to the Townhome to the extent not undertaken by the appropriate utility company; provided, however, that at the election of the Board, the Owner of such Townhome Lot may be assessed the costs associated therewith as a special assessment pursuant to the provisions of Section 4.4;
- (d) Intentionally Omitted;
- (e) payment of all real estate taxes or general or special assessments levied on the Common Area and upon such other items for the general benefit of the Owners;
- (f) the acquisition, construction and payment for any emergency items or other items otherwise required for the preservation and safety of the Common Area or by applicable law or ordinance or regulations promulgated pursuant thereto, the cost of which shall be funded by charges against the reserves maintained pursuant to Section 4.2, or if sufficient funds are unavailable therefrom, then by special assessment pursuant to the provisions of Section 4.4, which special assessment shall be enforceable and collectible as provided therein; provided, however, that the Board shall not be required

UNOFFICIAL COPY

to secure the approval of the voting members as set forth in Section 4.4 for any items required under this Section 8.2 (f); and

- (g) the items described in Sections 8.3, 8.4 and 9.5.

8.3 Landscaping and Lawn Maintenance Services:

(a) The maintenance and upkeep of all landscaping located anywhere on the Parcel (except for landscaping within the fenced-in patio area of a Townhome Lot) and, if required by the City, on parkways adjacent to the Parcel shall be the initial responsibility of the Declarant and become the responsibility of the Association upon its creation. Any change to the landscaping located anywhere on the Parcel (except for landscaping other than trees within the fenced-in patio area of a Townhome Lot) or on a parkway adjacent to the Parcel for which the Association is responsible or assumes responsibility, shall require the prior approval of the Board. The Association shall cause the lawn and shrubbery, trees and plantings located on the Parcel (except for landscaping within the fenced-in patio area of a Townhome Lot) to be watered as often as may be deemed advisable and necessary by the Board. The Association shall be responsible for and shall have exclusive authority to perform the maintenance, including without limitation, fertilizing, spraying, weed control, mowing, trimming, pruning and cultivating) and replacement required on account of natural causes, of the lawn, shrubbery, trees, evergreens or plantings on the Parcel (except for landscaping other than trees within the fenced-in patio area of a Townhome Lot). The landscaping and lawn maintenance costs shall be paid by each Owner pursuant to the payment procedure set forth in Section 4.3 or as otherwise established by the Board. The Association may assess as a special assessment as provided in Section 4.4 for maintenance or replacement costs against any Owner where such maintenance or replacements are necessitated by reason of the act or neglect of such Owner.

(b) Each Owner shall maintain in first-class condition all landscaping located in the fenced-in patio area of his Townhome not required to be maintained by the Association, including by way of example and not limitation, lawn, shrubbery, trees, evergreens and plantings. In the event any Owner fails to maintain the landscaping for which he is responsible as aforesaid, the Association shall have the right, but not the obligation, to enter upon such Owner's Townhome Lot to perform such maintenance and such Owner shall promptly pay upon demand all costs and expenses of the Association incurred thereby. The cost of any maintenance and replacements performed by the Association under this Section 8.3(b) shall be charged to the Owner benefited thereby and shall be added to the next assessment payment due from such Owner and shall bear interest at the Default Rate until paid and constitute the personal liability of such Owner and shall be a continuing lien on such Owner's Townhome Lot enforceable as provided in Article IV hereof.

8.4 Exterior Maintenance and Repair of Townhomes: The Association shall maintain, repair and replace, at the expense of the Owners benefited thereby, the roofs, exterior walls and exteriors of windows of Townhomes, emergency stairways and the fences associated with such Townhomes. Such maintenance, repairs and replacements shall be made when and as deemed necessary by the Board to maintain the Parcel as a first-class residential development. Each Owner shall maintain in first-class condition and repair all exterior portions of his Townhome if and to the extent not maintained by the Association, including by way of example and not limitation, downspouts, gutters, trim, lighting (except for lighting in Common Area which shall be the responsibility of the Association), shutters, doors, walks, decks, stairways and patios. In the event any Owner fails to maintain or repair his Townhome as aforesaid, the Association shall have the right, but not the obligation, to enter upon such Owner's Townhome Lot to perform such maintenance or repair and such Owner shall promptly pay upon demand all costs and expenses of the Association incurred thereby. The cost of any maintenance, repairs and replacements performed by the Association under this Section 8.4 shall be charged to the Owner benefited thereby and shall be added to the next assessment payment due from such Owner and shall bear interest at the Default Rate until paid and constitute the personal liability of such Owner and shall be a continuing lien on such Owner's Townhome Lot enforceable as provided in Article IV hereof.

UNOFFICIAL COPY

8.5 Exterior Repainting: As the character of the architecture and color coordination of the Townhomes within the Parcel constitute a primary aspect of the ultimate residential environment, there shall be no change in any exterior color of any Townhome from the color scheme then in effect, except in connection with a general change in such color scheme under the direction and with the approval of the Association. At least once each five (5) years, unless the Association shall otherwise provide, the exteriors of the Townhomes shall be painted or stained as necessitated by the type of material in a color scheme agreed upon by two-thirds (2/3) of the voting members. If no such agreement is reached, the prevailing color scheme shall again be used. The cost of such exterior repainting and/or restaining shall be borne by the Owners of each Townhome and apportioned to each Owner as to the actual cost for such exterior repainting and/or restaining for his specific Townhome. At such time as exterior repainting and/or restaining of any Townhome shall be scheduled as provided by the provisions of this Section, in order to ensure the continuity of color coordination, the Association shall secure and engage, for the benefit of the Owners, such contractor or contractors as it shall determine to perform such exterior repainting and/or restaining as may be required. Prior to the commencement of any exterior repainting and/or restaining, the Association shall notify each Owner of a date for the commencement of the work and include with such notice a written estimate setting forth the anticipated cost for the performance of the said exterior maintenance. Not later than fifteen (15) days after notice shall have been given to an Owner such Owner shall deposit with the Association funds equal to the full amount of the cost of such exterior maintenance as set forth in the written estimate. If such funds are not deposited with the Association when due, then the amount shall bear interest at the Default Rate until paid and constitute the personal liability of such Owner and shall be a continuing lien on such Owner's Townhome Lot enforceable as provided in Article IV hereof.

8.6 Reservation of Certain Easement Rights: Declarant hereby reserves unto itself and grants unto the Association and its and their respective successors and assigns the right of passage and easements, licenses, rights and privileges (and the right to grant the same to any of their contractors and employees) over the Parcel or any portion thereof for the purposes set forth in this Article VIII. Each Owner (a) shall be subject to such additional rules and regulations as may from time to time be adopted by the Board and (b) agrees to abide by and comply with such rules and regulations as may subsequently be adopted by the Board. Further, each Owner shall grant from time to time to the Declarant, the Association and their respective successors and assigns such easements and rights with respect thereto as may be reasonably necessary to conform with the terms and conditions of this Declaration.

8.7 Damage or Destruction: In the event of any damage to a Townhome by fire or other casualty, the Owner thereof shall repair, restore and rebuild the portion of his Townhome so damaged or destroyed to its condition, as near as possible, immediately preceding such fire or other casualty and as promptly as possible, but in all events within 120 days after the occurrence of such casualty, unless prevented from doing so by inclement weather or other causes beyond such Owner's reasonable control, in which event reconstruction shall be completed within 180 days after the occurrence of such casualty. In order to assure the proper completion of the work concerned, the Association shall have the right, but not the obligation to exercise such supervision and direction over any and all repair, restoration and reconstruction carried out pursuant to the provisions of this Section 8.7, and the Owner of each Townhome which shall have been damaged or destroyed shall fully cooperate with and abide by any and all instructions and directions of the Association in connection therewith. Should such Owner fail to reconstruct such Townhome as aforesaid, the Association may undertake to do such construction as it deems necessary and to charge such Owner the costs thereof. All such construction costs shall be promptly paid by Owner upon the Association providing Owner with copies of the bills evidencing such construction costs. Any amounts so charged to a Owner shall bear interest at the Default Rate and constitute a lien in the same manner as provided in Section 8.4 hereof and shall be enforceable as provided in Article IV hereof.

ARTICLE IX Rights Reserved to Declarant

9.1 Declarant's Promotional Rights: The right is reserved to the Declarant to place and maintain on any area of the Parcel, with the exception of a Townhome Lot which has been sold and conveyed or sold on contract, or sold pursuant to an installment contract or articles of agreement for deed, to an Owner, all model

UNOFFICIAL COPY

Townhomes, 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 Declarant for construction, sales and leasing purposes. There is also reserved to the Declarant, its agents, employees and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Parcel for such sales and leasing purposes. The Declarant also reserves the right to maintain on any portion of the Parcel without charge (a) a general office for the purpose of exercising the rights reserved in Sections 9.1 and 9.2 hereof, (b) a general construction office for Declarant's contractors and subcontractors and (c) appropriate parking facilities for the employees of Declarant's agents and contractors. Declarant's aforesaid reserved rights shall continue for so long as Declarant is engaged in the construction, sale or leasing of Townhomes on any portion of the Parcel.

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

9.3 Right of Declarant to Make Dedications and to Grant Easements:

(a) As used in this Section 9.3, the term "utilities" means all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment, devices, components and systems which serve the Parcel including, without limitation, the following: (i) those for the transmission and/or distribution of water, electricity, gas, telephone, sewage, drainage and television and other electronic signals; and (ii) all standpipes, valves, hydrants, pumps, equipment vaults and other structures and facilities for the provision of fire protection services.

(b) Declarant hereby expressly reserves the following rights and easements:

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

(ii) To dedicate space in the Parcel or any portion thereof to any public or quasi-public utility or to any governmental authority for the location of utilities serving any portion of the Parcel;

(iii) To reserve or grant easements in, on, over, under, to and across the Parcel or any portion thereof for ingress and egress to and for the installation, construction and maintenance of any or all of the utilities;

(iv) To record plats of subdivision and resubdivision of the Parcel and any amendments thereto;

(v) To erect at the entrances to the Development in the Common Area such signs, structures or other written legends as may describe or otherwise identify the Development and such persons who shall have conceived and developed the concepts for the use of the Development Site. The Association shall preserve and maintain any such signs, structures or

UNOFFICIAL COPY

legends as shall have been erected at the entrances as a part of the Common Area and the same shall not be altered, amended or removed or relocated.

(c) Any rights hereby reserved to the Declarant, to the extent affecting the Parcel or Common Facilities located thereon, (i) may be assigned and transferred by the Declarant to any successor developer or to the Association by an instrument in writing executed by the Declarant and recorded with the Recorder, following which the rights so assigned and transferred shall be exercised by such successor developer or the Association, as the case may be, or (ii) may be collaterally assigned to the holder of any first mortgage on the Development Site and the successors and assigns of such holder, and in the event that such mortgage holder acquires title to the Development Site pursuant to the exercise of any remedy provided for in its mortgage, or by conveyance in lieu of foreclosure, all rights reserved to the Declarant, to the extent affecting the Parcel or Common Facilities located thereon, may be assigned and transferred by the Declarant to such holder, following which the rights so assigned or transferred shall be exercised by such holder. Each Owner hereby grants to Declarant, the Association and their respective successors and assigns an irrevocable power of attorney to execute, acknowledge, file, register and record such instruments as may be desirable or necessary to effectuate the provisions of this Article IX. Until Declarant's rights under Section 9.2 hereof are terminated, Declarant shall have the right to tap into all utilities for the purpose of exercising all such rights.

9.4 Contracts: The Declarant shall have the right to enter into contracts on behalf of the Association prior to the date of the initial meeting of voting members.

9.5 Lighting: It is intended that the Association or the Declarant may from time to time install upon the Private Roads and Courtyards and other portions of the Common Area and Lots certain types of decorative lighting and with regard thereto, there shall be a right and easement in favor of the Association or the Declarant, as the case may be, upon and across such of the Private Roads, Courtyards and Common Area and Lots as may be required for the installation and maintenance of such decorative lighting and upon and across the Parcel for the lines, pipes and conduits thereto as shall be reasonably required.

9.6 Powers of the Board: After the qualification of the Board elected at the initial meeting of voting members as provided in Section 3.7 and in the event that the Board or its authorized agents shall fail or refuse to execute and deliver to Declarant promptly upon request by the Declarant a statement of paid assessments or any similar document required from the Board to enable Declarant to convey title to or place a mortgage on any Townhome Lot owned by Declarant free and clear of any lien thereon for unpaid assessments or other charges, the Declarant shall have the right to execute and deliver such statement or other similar document on behalf of the Association or the Board and in its name as the attorney-in-fact for the Association or the Board. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to execute and deliver any such statement or similar document as authorized hereunder on behalf of the Association and the Board. Each deed, mortgage, trust deed, or other evidence of obligation affecting a Townhome Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a covenant and reservation of the power of the Declarant as aforesaid. The right of Declarant to act pursuant to rights reserved or granted under this Section 9.6 shall terminate at such time as the Declarant no longer holds or controls title to a Townhome Lot under construction or intended by Declarant to be constructed upon the Parcel.

ARTICLE X

First Mortgagees' Rights

10.1 Mortgagees' Consent: The prior written approval of fifty-one percent (51%) of the holders of the first mortgages on Townhome Lots shall 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 the holders of first mortgages on any Townhome Lot or which changes the provisions of Section 3.13 or Article VIII of this Declaration; or

UNOFFICIAL COPY

- (b) The removal of the Parcel from the provisions of this Declaration.

10.2 Notice to First Mortgagees: Each Owner shall notify the Association of the name and address of his first mortgagee and the Association shall maintain a record of such information with respect to all Townhome Lots. Each first mortgagee 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 a first mortgagee to the Board, the first mortgagee shall receive any one or more of the following designated in the request:

- (a) Notice of any decision by the Owners to make any material amendment to this Declaration;
- (b) Notice of substantial damage to or destruction of any Townhome Lot (in excess of \$100,000.00) or any part of the Common Area or Common Facilities (in excess of \$100,000.00);
- (c) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any Townhome Lot or any part of the Common Facilities or Common Area;
- (d) Notice of any default in payment of assessments by the Owner of the Townhome Lot which is subject to the first 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;
- (e) Any lapse or cancellation of any insurance coverage required to be maintained by the Association; or
- (f) Any proposed action that requires the consent of a specified percentage of holders of first mortgages.

The request of a first mortgagee shall specify those items and matters described above which 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 a first mortgagee who has made a proper written 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 a first mortgagee hereunder and in the event of multiple requests from purported first mortgagees of the same Townhome Lot, the Association shall honor the most recent request received.

ARTICLE XI Additional Land

11.1 Additions to the Parcel: Notwithstanding anything to the contrary contained in this Declaration, the Declarant may, at its sole discretion, at any time and from time to time hereafter add to the Parcel and submit to the provisions of this Declaration some or all of the Additional Land; provided, however, that the Declarant shall not be obligated to submit any Additional Land to this Declaration.

11.2 Supplementary Declarations: In the event that the Declarant elects to annex some or all of the Additional Land to the Parcel, the Declarant shall record with the Recorder a supplementary declaration ("Supplementary Declaration") which shall contain the legal description of the portion or portions of the Additional Land so annexed. Upon the recording of such Supplementary Declaration, the portion or portions of the Additional Land described therein shall be annexed to the Parcel and shall become subject to all of the terms, covenants and conditions contained in this Declaration; provided, however, that each such Supplementary Declaration may contain such additions to and modifications of the terms, covenants, obligations and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the development of the Additional Land and as are consistent with the scheme and spirit of this Declaration.

UNOFFICIAL COPYARTICLE XXGeneral

12.1 Amendment by Declarant: This Declaration may be amended by the Declarant at any time and from time to time in any manner prior to the conveyance by Declarant of any Townhome Lot. Declarant reserves the right to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities (including without limitation, any bank or savings and loan association) to make, purchase, sell, insure or guarantee first mortgages covering Townhome Lots, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit, supplement or amendment hereto. After the sale of any Townhome Lot and prior to the initial meeting of voting members, the Declarant shall have the right to change or modify this Declaration (provided, however, that the provisions of Section 4.8 shall not be amended or modified without the consent of one hundred percent (100%) of the mortgagees holding first mortgages on Townhome Lots) provided such change or modification shall not unfairly or unreasonably affect any rights of the Owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make any change or modification as authorized hereunder on behalf of each Owner as attorney-in-fact for such Owner. Each deed, mortgage, trust deed, or other evidence of obligation affecting a Townhome Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a covenant and reservation of the power of the Declarant as aforesaid. Such amendment shall become effective upon being recorded with the Recorder. The right of Declarant to act pursuant to rights reserved or granted under this Section 12.1 shall terminate at such time as the Declarant no longer holds or controls title to a Townhome Lot under construction or intended by Declarant to be constructed upon the Development Site.

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

12.3 Amendment: After the initial meeting of voting members, the provisions of this Declaration may be amended by an instrument executed and acknowledged by the Board and approved by the Owners of not less than three-fourths (3/4ths) of the Townhome Lots which are subject to the provisions of this Declaration, and containing an affidavit by an officer of the Association certifying that a copy of the amendment has been mailed by certified mail to all mortgagees having bona fide liens of record against any Townhome Lot not less than five (5) days prior to the date of such affidavit. No amendment affecting the right of the holder of any first mortgage or trust deed on a Townhome Lot shall be made without the consent of such mortgagee or holder. An amendment shall not be effective until it is recorded with the Recorder. Those provisions of this Declaration relating to the rights, privileges or obligations of the Declarant may be amended only with the prior written consent of the Declarant.

12.4 Notices:

(a) Any notice required or permitted to be given under this Declaration or the By-Laws shall be in writing. Any notice hereunder may be served either by prepaid United States mail or by delivery in person; provided, however, that notice to the Declarant, the Association or the Board may be served only by mail. Any such notice served by mail shall be addressed or delivered as follows:

(i) If to an Owner, to the Person or Persons and to the address designated by such Owner as reflected on the books of Declarant or the Association and, in the absence thereof, to the Owner at the address of his Townhome;

UNOFFICIAL COPY

(i) If to any devisee or personal representative of a deceased or incompetent Owner, to such devisee or personal representative at the address of such Owner as reflected on the books of the Declarant or the Association or to the address of such devisee or personal representative set forth in the records of the court in which the estate of such deceased or incompetent Owner is being administered;

(iii) If to the Association:

Kensington Park II Townhomes Homeowners' Association
c/o Belgravia Group, Ltd.
833 North Orleans Street
Suite 400
Chicago, Illinois 60610

(iv) If to the Declarant:

KENSINGTON PARK II LLC
c/o Belgravia Group, Ltd.
833 North Orleans Street
Suite 400
Chicago, Illinois 60610

(v) If to a first mortgagee of a Townhome Lot, at its address provided pursuant to Section 10.2.

(b) The Declarant, the Board and the Association, respectively, may designate a different address for notice purposes by giving written notice thereof to all Owners in the manner provided herein. Any Owner may designate a different address for notice purposes by giving written notice thereof to the Declarant, the Association and the Board in the manner provided herein. Any first mortgagee of a Townhome Lot may designate a different address by giving written notice thereof to the Declarant, the Association and the Board in the manner provided herein. All notices shall be deemed served three (3) days after being deposited in the United States mail, or on the day and at the time delivered in person.

12.5 Ownership of Common Area and Common Facilities: Title to the Common Area and Common Facilities shall be held by Declarant until the date on which all Townhome Lots have been sold by the Declarant or sooner at the option of the Declarant, at which time title to the Common Area and Common Facilities shall be transferred by the Declarant to the Association by a quitclaim deed and other appropriate documentation.

12.6 Titleholding Land Trust: In the event title to any Townhome Lot is conveyed to and held by a titleholding trust, under the terms of which all power of management, operation and control of such Townhome Lot remains vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries hereunder 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 Townhome Lot. No claim shall be made against any such titleholding trustee personally for payment of any liens or obligations created hereunder and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon such Townhome Lot and the obligation of the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Townhome Lot.

12.7 Sale, Lease or Transfer:

(a) General: Each Owner who is a grantee of the Declarant, each subsequent Owner by the acceptance of a deed of conveyance for a Townhome Lot, each tenant under a lease of a Townhome Lot

UNOFFICIAL COPY

and each Contract Purchaser, devisee, donee or transferee of a Townhome Lot or any interest therein, whether or not so expressed in any such deed, instrument or lease, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants running with the land and shall bind any Person having at any time an interest or estate in a Townhome Lot, and shall inure to the benefit of such Owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every such deed, instrument or lease.

(b) Unrestricted Transfer: Except as otherwise provided in the purchase agreement for a Townhome Lot between an Owner and the Declarant and subject to the provisions of subsection (c) of this Section 12.7, each Owner of a Townhome Lot shall at all times be free to sell, give, devise, convey, lease or otherwise transfer fee simple title to the Townhome Lot or any interest therein owned by such Owner. Notice of any such transfer by an Owner other than the Declarant shall be given to the Board, in the manner provided in Section 12.4 for the giving of notices, within five (5) days after the consummation of such transfer, indicating in such notice the effective date of such transfer and the name and current address of the new Owner of such Townhome Lot or transferee of any interest therein.

(c) Leasing: Each Owner other than the Declarant shall have the right to lease all (but not less than all) of his Townhome Lot for the purposes for which it was designed and intended and upon such terms and conditions as such Owner may deem advisable, except that no Townhome Lot shall be leased for a period of less than six (6) months as provided in Section 5.2. Every lease of a Townhome Lot shall be in writing, shall provide that the lease shall be subject to the provisions of the Declaration and any rules and regulations from time to time adopted by the Board and that any failure of the tenant to comply with this Declaration or any such rules and regulations shall be a default under the lease. The Owner making any such lease shall not be relieved thereby from any of his obligations under this Declaration and any rules and regulations from time to time adopted by the Board. The Owner leasing the Townhome Lot owned by him shall deliver (i) a copy of the fully signed lease to the Board within ten (10) days after the lease is executed and prior to the date of occupancy by the tenant, and (ii) a copy of any amendment to such lease to the Board within ten (10) days after the execution thereof by the parties. The provisions of this subsection (c) shall not apply to a lease of a Townhome Lot or any interest therein by the Declarant; provided, however, that any such lease by Declarant shall be subject to the provisions of subsection (a) of this Section 12.7.

(d) Effect of Non-Compliance: Any lease or sublease which is attempted or made other than in strict compliance with the provisions of this Section 12.7 shall be subject to the rights and remedies available to the Declarant or the Board, as the case may be, under this Declaration or otherwise, including without limitation, the right to institute such proceedings at law or in equity to set aside the non-complying lease or other transfer by the Owner of the Townhome Lot in question. All costs incurred by reason of setting aside the non-complying lease or other transfer together with attorneys' fees, shall be the personal obligation of the Owner of the Townhome Lot in question and shall be deemed a special assessment pursuant to the provisions of Section 4.4.

12.8 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. Failure by the Association or any Owner to so enforce shall in no event be deemed a waiver of the right to do so thereafter. After the expiration of said forty (40) year period, all of such covenants, restrictions, conditions, reservations, liens and charges shall continue to run with and bind the land for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part, by an instrument in writing which is executed by the Owners of not less than two-thirds of the Townhome Lots, and recorded with the Recorder. Except in case of condemnation or destruction of a substantial portion of the Townhomes, the legal status of the Association shall not be terminated without the concurrence and affirmative vote of not less than two-thirds of the holders of first mortgages on the Townhomes.

UNOFFICIAL COPY

12.9 Conflicts Between Declaration and City Ordinances: In the event there is at any time a conflict between any provision of this Declaration and any provision of the Municipal Code of the City or any City Ordinance, rule or regulation, then the provision of the Municipal Code of the City or City Ordinance, rule or regulation shall prevail, but only to the extent it is more restrictive than this Declaration.

12.10 Zoning: The Owners shall not make any alterations, allow any use of their respective portions of the Development Site or take or fail to take any action which would violate the provisions of the Chicago Zoning Ordinance, as said ordinance may be amended from time to time, or any similar or successor ordinance in effect from time to time hereafter and applicable to the Development Site or any portions thereof. The Development Site shall continue to be treated as two zoning lots for the purpose of complying with the Chicago Zoning Ordinance. No Owner shall have the right to request or obtain any amendment to the Chicago Zoning Ordinance as applicable to any portions of the Development Site without the consent of the other Owners.

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

12.12 Liberal Interpretation: This Declaration shall be liberally construed so as to facilitate and promote the objectives of the Declaration hereinabove set forth and to protect the integrity of the Development. Narrow, technical and literal construction of this instrument, inconsistent with the intent and objectives of the Declarant and Association shall be avoided.

12.13 Gender, Usage of Singular and Plural Forms, and Other Usage: Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders.

12.14 By-Laws Made a Part Hereof: The By-Laws attached as Exhibit "E" hereto are expressly made a part hereof.

12.15 Conflict with By-Laws: If there shall be any conflict between the provisions of this Declaration and the provisions of the By-Laws, the provisions of this Declaration shall control.

12.16 No Dedication To Public Use: Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of all or any part of the Parcel to or for any public use or purpose whatsoever.

12.17 Mortgages: Nothing herein contained shall preclude a bank, savings and loan association, insurance company or other lending institution from owning a mortgage on any Townhome Lot, and the holder of any such mortgage shall have an unrestricted, absolute right to accept title to the Townhome Lot in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof and the laws of the State of Illinois and to bid upon said Townhome Lot at the foreclosure sale.

12.18 Common Area Usage: There shall be upon the Common Area such driveways, Private Road and paths as shall be necessary to provide ingress and egress to and from the Townhome Lots for the use and benefit of the Owners and other occupants, from time to time, of the Townhome Lots and their respective guests and invitees, and such spaces for the parking of motor vehicles as the Association or the Declarant, as the case may be, shall from time to time determine and as shall be in compliance with such governmental laws, ordinances and regulations, if any, as shall be applicable from time to time. No vehicles shall be parked or left standing unattended at any time upon any portion of the Private Road, upon any other portion of the Common Area, or operated upon the Private Road in any manner violative of any rules or regulations adopted by the Board.

12.19 Signature by Declarant: It is expressly understood and agreed, anything herein to the contrary notwithstanding, that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant, its members or managers or any of their respective officers, directors, partners, shareholders, agents or employees on account of this Declaration or any act pursuant hereto or on

UNOFFICIAL COPY

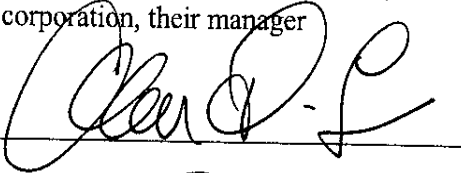
account of any representation, covenant, undertaking or agreement of Declarant, either express or implied, contained in this Declaration, all such personal liability, if any, being expressly waived and released.

WITNESS the due execution of this Declaration by the Declarant as of the day and year first above written.

DECLARANT:

KENSINGTON PARK II LLC, an Illinois limited liability company

By: BELGRAVIA GROUP, LTD., an Illinois corporation, their manager

By: 

Its: 

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Stacey L Thomas, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Alan D Lev, personally known to me to be the _____ President of Belgravia Group, Ltd., an Illinois corporation (the "Corporation"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said Corporation, as the manager of KENSINGTON PARK II LLC, an Illinois limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12 day of July, 2004.

Stacey L Thomas

Notary Public

Property of Cook County Clerk's Office

UNOFFICIAL COPY

CONSENT OF MORTGAGEE

The undersigned, _____ ("Bank"), as mortgagee under that certain Construction Mortgage dated _____, 200__ and recorded with the Cook County Recorder on _____, 200__, as Document Number _____ ("Mortgage"), does hereby consent to the execution, delivery and recording of the Declaration of Covenants, Conditions, Restrictions and Easements For Kensington Park II Townhomes ("Declaration") and subordinates the lien of the Mortgage to the Declaration.

IN WITNESS WHEREOF, the Bank has caused this instrument to be signed by its duly authorized officers on its behalf; all done at Chicago, Illinois on this _____ day of _____, 200__.

By: _____

Title: VP

ATTEST: _____

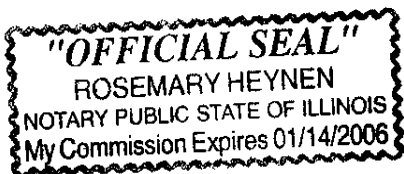
Title: FVP

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Rosemary Heynen, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that C. JOHN WOLFEICHER, personally known to me to be the Vice President of LASALLE BANK N.A. ("Bank") and JASON M. COSTELLO, personally known to me to be the F.V.P. of said Bank, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and F.V.P., respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary acts and as the free and voluntary act and deed of said Bank, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 12 day of July, 2007.

Rosemary Heynen
Notary Public



UNOFFICIAL COPY
 DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
 FOR
 KENSINGTON PARK II TOWNHOMES
 EXHIBIT A

Legal Description of Development Site

PARCEL 1:

LOTS 9, 10, 11, 12, 13, 14 AND LOT 15 (EXCEPT THE NORTH 6 INCHES THEREOF) IN LUTHER HAVEN'S SUBDIVISION OF THE SOUTH PART OF BLOCK 3 IN THE ASSESSOR'S DIVISION OF THE SOUTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

WARD T. HUSTON'S BLOCK "M" BEING A CONSOLIDATION OF PART OF THE EAST $\frac{1}{2}$ OF BLOCK 3 IN ASSESSOR'S DIVISION OF THE SOUTHWEST FRACTIONAL $\frac{1}{4}$ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS SHOWN BY PLAT THEREOF RECORDED JUNE 4, 1923 IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS AS DOCUMENT 7961452, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE SOUTHWEST FRACTIONAL QUARTER OF FRACTIONAL SECTION 22 IN TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS, TO WIT: BEGINNING ON THE WEST LINE OF INDIANA AVENUE AT A POINT 9.40 FEET SOUTH OF THE SOUTHEAST CORNER OF BLOCK 2 OF CLARKE'S ADDITION, BEING 387 FEET SOUTH OF THE SOUTH LINE OF 16TH STREET; THENCE WEST ON A LINE PARALLEL TO THE SOUTH LINE OF 16TH STREET, 163.20 FEET, MORE OR LESS, TO THE EAST LINE OF A 16 FOOT ALLEY; THENCE SOUTH ON THE EAST LINE OF SAID ALLEY 67.83 FEET, MORE OR LESS, TO A POINT 344 FEET AND 10 INCHES NORTH OF THE NORTH LINE OF 18TH STREET; THENCE EAST ON A STRAIGHT LINE 163.20 FEET, MORE OR LESS, TO A POINT IN THE WEST LINE OF INDIANA AVENUE, 454.71 FEET SOUTH OF THE SOUTH LINE OF 16TH STREET; AND THENCE NORTH ON SAID WEST LINE OF INDIANA AVENUE 67.71 FEET TO THE PLACE OF BEGINNING. ALSO THAT PART OF LOTS 8 AND 9 IN GURLEY'S SUBDIVISION OF THE NORTH PART OF BLOCK 3 IN THE ASSESSOR'S DIVISION OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE 3RD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS; BEGINNING AT A POINT 77.10 FEET SOUTH OF THE SOUTHEAST CORNER OF BLOCK 2 IN CLARKE'S ADDITION TO CHICAGO, AND RUNNING; THENCE WEST ON A LINE PARALLEL WITH THE SOUTH LINE OF SAID CLARKE'S ADDITION AND WITH THE SOUTH LINE OF 16TH STREET, 163 FEET, MORE OR LESS, TO THE EAST LINE OF AN ALLEY, 16 FEET WIDE; RUNNING THENCE SOUTH ON THE EAST LINE OF SAID ALLEY 50 FEET AND 1.56 INCHES; THENCE EASTERLY, PARALLEL WITH THE NORTH LINE OF 18TH STREET; 163 FEET MORE OR LESS TO A POINT ON THE WEST LINE OF INDIANA AVENUE, 294 FEET 8-1/2 INCHES NORTH OF THE NORTH LINE OF 18TH STREET, AND THENCE NORTH ALONG THE WEST LINE OF INDIANA AVENUE 50.20 FEET, MORE OR LESS, TO PLACE OF BEGINNING.

P.I.N.s:

PARCEL 1: 17-22-302-041

PARCEL 2: 17-22-302-038

PARCEL 3: 17-22-302-037

UNOFFICIAL COPY
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK II TOWNHOMES
EXHIBIT B

Parcel Legal Description

Lot No.	Unit Type	Street Address
1	E	1642 S. Indiana Avenue
2	B	1644 S. Indiana Avenue
3	B	1646 S. Indiana Avenue
4	D	1648 S. Indiana Avenue
5	D	1650 S. Indiana Avenue
6	B	1652 S. Indiana Avenue
7	B	1654 S. Indiana Avenue
8	A	1700 S. Indiana Avenue
9	B	1702 S. Indiana Avenue
10	B	1704 S. Indiana Avenue
11	D	1706 S. Indiana Avenue
12	D	1708 S. Indiana Avenue
13	B	1710 S. Indiana Avenue
14	C	1712 S. Indiana Avenue
15	A	1714 S. Indiana Avenue
16	A	1716 S. Indiana Avenue
17	C	1718 S. Indiana Avenue
18	B	1720 S. Indiana Avenue
19	D	1722 S. Indiana Avenue
20	D	1724 S. Indiana Avenue
21	B	1726 S. Indiana Avenue
22	B	1728 S. Indiana Avenue
23	F	1730 S. Indiana Avenue
24	F	1732 S. Indiana Avenue
25	B	1734 S. Indiana Avenue
26	B	1736 S. Indiana Avenue
27	D	1738 S. Indiana Avenue

UNOFFICIAL COPY

Lot No.	Unit Type	Street Address
28	D	1740 S. Indiana Avenue
29	B	1742 S. Indiana Avenue
30	C	1744 S. Indiana Avenue
31	A	1746 S. Indiana Avenue
32	A	132 E. 18th Street
33	C	130 E. 18th Street
34	B	128 E. 18th Street
35	D	126 E. 18th Street
36	D	124 E. 18th Street
37	B	122 E. 18th Street
38	B	120 E. 18th Street
39	E	118 E. 18th Street
40	H	1638 S. Indiana - #1
41	G	1638 S. Indiana - #2
42	G	1638 S. Indiana - #3
43	G	1638 S. Indiana - #4
44	G	1638 S. Indiana - #5
45	H	1638 S. Indiana - #6
46	Common Area	Stair Tower - Between 35 & 36
47	Common Area	Private Road (Farthest South)
48	Common Area	Courtyard (Farthest South) Includes Stair Tower Between 19 & 20, 27 & 28
49	Common Area	Private Road (Middle of Project)
50	Common Area	Courtyard - Includes Stair Tower Between 4 & 5, 11 & 12
51	Common Area	Private Road (Farthest North) Includes Visitor Parking
52	Common Area	Private Alley (Farthest North)

UNOFFICIAL COPY

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK II TOWNHOMES
EXHIBIT C**

Additional Land Legal Description

None

Property of Cook County Clerk's Office

UNOFFICIAL COPY

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
KENSINGTON PARK II TOWNHOMES
EXHIBIT D**

**BY-LAWS
OF
KENSINGTON PARK II TOWNHOMES HOMEOWNERS' ASSOCIATION**

**ARTICLE I
PURPOSES**

The purposes of the Corporation as stated in its Certificate of Incorporation are:

To administer, operate and maintain a residential development in Chicago, Illinois, in accordance with and subject to the provisions of a Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") which has been recorded on _____, 200__ in the office of the Recorder of Deeds of Cook County, Illinois as Document No. _____ (the Declaration, as the same may be amended from time to time, is hereinafter referred to as the "Declaration.") The Corporation also has such powers as are now or may hereafter be granted by the General Not-For-Profit Corporation Act of the State of Illinois.

**ORGANIZATION OF ARTICLE II
ASSOCIATION**

Kensington Park II Homeowners' Association ("Association") shall be organized at such time and place and in such manner as provided in the Declaration.

**ARTICLE III
OFFICES**

The Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

**ARTICLE IV
MEMBERS**

SECTION 1. CLASSES OF MEMBERS, MEMBERSHIP, AND TERMINATION THEREOF.

The Association shall have two classes of voting members. The designations of such classes and the qualification of the members of such classes shall be as follows:

Class A: Class A voting members shall be all Owners with the exception of the Declarant and each Class A voting member shall be entitled to one vote for each Townhome Lot owned by him or her;

Class B: The Class B voting member shall be the Declarant who shall at any given time be entitled to three (3) times the number of votes which the Class A voting members shall be entitled at such time. The Declarant shall cease to be a Class B voting member and shall become a Class A voting member upon the first to occur of any of the following dates:

- (a) The date upon which the Declarant shall have sold and conveyed title to ninety percent (90%) of the total number of Townhome Lots within the Development Site, or
- (b) The date upon which the Declarant elects to convert its Class B membership to Class A membership by written notice of such election to the Association.

UNOFFICIAL COPY

Each Owner of a Townhome Lot shall be a Member of the Association and such membership shall terminate when he ceases to be an Owner. Such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with the Development or this Association, during the period of such ownership and membership in, this Association. Furthermore, such termination shall not impair any rights or remedies which the board of Directors of the Association or others may have against such former Owner and Member arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the Association.

SECTION 2. VOTES AND VOTING RIGHTS.

(a) There shall be one person with respect to every Townhome Lot who shall be entitled to vote at any meeting of the Members and who shall be known as a "voting member." Such voting member may be the Owner or one of the group comprising the Owner of a Townhome Lot or may be some person designated by such Owner to act as proxy on his or her behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by notice to the Board of the death or judicially declared incompetence of any designator or by notice to the Board by the Owner. Any and all such Owners may be present at any meeting of the voting members and (those constituting a group acting as a single voting member) may vote or take any other action as a voting member, either in person or by proxy as provided in Section 5 of Article V hereof. The Declarant shall be the voting member with respect to any Lot or Townhome Lot owned by the Declarant.

(b) Until the date of the initial meeting of the voting members, as provided in Article V hereof, no member of the Association shall have any voting rights and the right of the members to vote on any matter is hereby denied until such date.

(c) Commencing with the date of the said initial meeting of the voting members, each voting member shall be entitled to the number of votes provided for in Article IV, Section 1 hereof.

(d) In the event of a resale of a Townhome Lot, the purchaser of such Townhome Lot pursuant to an installment contract or articles of agreement for deed ("Contract Purchaser") from a selling Owner other than the Declarant ("Contract Seller") shall, during such times as the Contract Purchaser resides in the Townhome, be the voting member with respect to such Townhome Lot and shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board, unless the Contract Seller expressly retains in writing any or all of such rights. In no event may the Contract Seller and Contract Purchaser both be counted toward a quorum, be permitted to vote or be elected to and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents upon demand. Notwithstanding the foregoing, resale by installment contract shall not contravene the terms and conditions of the Fulton Station Purchase Agreement executed by such Contract Seller.

SECTION 3. TRANSFER OF MEMBERSHIP. Membership in this Association is not transferable or assignable, except only as is provided in Article IV, Section 1 hereof.

ARTICLE V MEETING OF MEMBERS

SECTION 1. ANNUAL MEETING. The initial meeting of the voting members shall be held upon not less than ten (10) days written notice from the Declarant. Such notice must be given no later than thirty (30) days after the sale and conveyance of title to ninety percent (90%) of the total number of Townhome Lots which may be constructed by Declarant on the Development Site (including on the Additional Land), but such notice may, at the discretion of the Declarant, be given earlier. Thereafter, there shall be an annual meeting of the voting members on or about the second Tuesday of October of each succeeding year thereafter, or at such other reasonable date and at such time, and at such place, as may be designated by written notice from the Board.

UNOFFICIAL COPY

SECTION 2. SPECIAL MEETINGS. Special meetings of the voting members may be called at any time for any reasonable purpose on not less than ten (10) days notice from a majority of the Board or the voting members holding one-fourth (1/4) of the total votes.

SECTION 3. NOTICES OF MEETINGS. Notices of meetings required to be given herein may be delivered personally or by mail to the voting members, addressed to each such voting member at the address given by him to the Board or if no address shall be given, addressed to such voting member to the address of his or her Townhome.

SECTION 4. QUORUM. 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. If a quorum is not present at any meeting of voting members, a majority of the members present may adjourn the meeting from time to time without further notice. In the event that a quorum is not present at any meeting of the voting members, another meeting may be called by notice from the Board and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 5. PROXIES. At any meeting of voting members, a voting member entitled to vote may vote either in person or by proxy executed in writing by the Owner to the Board and shall be revocable and automatically cease upon conveyance by the Owner of a Townhome Lot.

**ARTICLE VI
BOARD OF DIRECTORS**

SECTION 1. GENERAL POWERS. The affairs of the Association shall be managed by its Board of Directors.

SECTION 2. NUMBER, TENURE AND QUALIFICATIONS.

(a) Until the date of the initial meeting of the voting members as hereinabove provided, the number of directors shall be three (3), consisting of the directors named in the Articles of Incorporation and such successors to the directors so named as shall from time to time be designated by the Declarant. At the time of the initial meeting of the voting members, the number of directors shall remain at three (3).

(b) In all elections for members of the Board, each voting member shall be entitled to vote on a non-cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Each voting member shall be entitled to cast the number of votes specified in Section 1 of Article IV hereof. The three (3) members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting of the voting members, three (3) Board members shall be elected. The Owners of the Townhome Lots receiving the two highest number of votes at the first annual meeting each shall be elected to the Board for a term of two (2) years. The Owner of the Townhome Lot receiving the next highest number of votes at the first annual meeting shall be elected to the Board for a term of one (1) year. The election and term of office as between candidates receiving the same number of votes shall be determined by lot. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each.

SECTION 3. DUTIES, POWERS, ETC. OF THE BOARD. The Board of Directors shall be vested with and shall possess all of the rights, powers, options, duties and responsibilities as are provided for in the Declaration.

SECTION 4. REGULAR MEETINGS. A regular annual meeting of the Board of Directors shall be held without other notice than this by-law, immediately after, and at the same place as, the annual meeting of voting members. The Board of Directors may provide by regulations which the Board of Directors may, from time to time, adopt, the time and place for the holding of additional regular meetings of the Board without other

UNOFFICIAL COPY

notice than such regulation. This Section 4 of Article VI shall in no way contravene the rights of any Owner to receive notice of Board meetings and the rights of any Owner to attend Board meetings as provided in the Declaration.

SECTION 5. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called, held and conducted in accordance with such regulations as the Board may adopt.

SECTION 6. NOTICE. Notice of any special meeting of the Board of Directors shall be given not less than ten (10) days nor more than thirty (30) days previous thereto by written notice delivered personally or sent by mail to each director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws. This Section 6 of Article VI shall in no way contravene the rights of any Owner to receive notice of Board meetings and the rights of any Owner to attend Board meetings as provided in the Declaration.

SECTION 7. VACANCIES. Prior to election of the first Board by the voting members, vacancies on the Board shall be filled by such persons as the Declarant shall designate. Thereafter, vacancies on the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the majority vote of all remaining Board members.

SECTION 8. QUORUM. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided, that if less than a majority of the directors are present at said meeting, the majority of directors present may adjourn the meeting from time to time without further notice.

SECTION 9. MANNER OF ACTING. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except where otherwise provided by law or by these bylaws.

SECTION 10. REMOVAL. Prior to the initial meeting of voting members, directors may be removed by the Declarant. Directors elected at said initial meeting and thereafter may be removed from office by affirmative vote of the voting members having at least two-thirds (2/3) of the total votes at any special meeting called for the purpose. A successor to fill the unexpired term of the Board member so removed may be elected by the voting members of the same meeting or at any subsequent meeting called for that purpose.

ARTICLE VII OFFICERS AND THEIR DUTIES

SECTION 1. OFFICERS. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer and such other officers as the Board shall see fit. Each member of the Board may hold more than one (1) such position.

SECTION 2. ELECTION AND TERM OF OFFICE. The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified.

SECTION 3. RESIGNATION, REMOVAL. Any officer elected by the Board of Directors may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign

UNOFFICIAL COPY

at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 4. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term. The office of Vice President may be kept vacant for any period of time if the Board of Directors declines to fill such office during such period.

SECTION 5. MULTIPLE OFFICES. Any one individual may hold more than one office, provided, however, that no one individual simultaneously may hold the offices of President and Secretary or President and Vice President.

SECTION 6. DUTIES. The duties of the officers are as follows:

PRESIDENT

The President shall be the chief executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the members and of the Board of Directors. He may sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any deeds, mortgages, contracts, or other instruments which the Board of Directors have authorized to be executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

VICE PRESIDENT

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

TREASURER

The Treasurer shall keep the financial records and books of account of the Association, and shall perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

SECRETARY

The Secretary shall keep minutes of the meetings of the members and of the Board of Directors and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

**ARTICLE VIII
COMMITTEES**

SECTION 1. COMMITTEES OF DIRECTORS. The Board of Directors, by resolution adopted by a majority of the directors present at any meeting at which a quorum is present, may designate one or more committees, each of which shall consist of two or more directors, which committee, to the extent provided in said resolution, shall have and exercise the authority of the Board of Directors; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by law or by the Declaration.

UNOFFICIAL COPY

SECTION 2. OTHER COMMITTEES. Other committees not having and exercising the authority of the Board of Directors in the management of the Association may be designated by resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the Association but need not be directors, and the President of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Association shall be served by such removal.

SECTION 3. TERM OF OFFICE. Except as provided by the term of his appointment, each member of a committee shall continue as such until the next annual meeting of the voting members of the Association or until his successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

SECTION 4. CHAIRMAN. One member of each committee shall be appointed chairman.

SECTION 5. VACANCIES. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

SECTION 6. QUORUM. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

ARTICLE IX CONTRACTS, CHECKS, DEPOSITS AND FUNDS

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

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

SECTION 3. DEPOSITS. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, savings and loan associations, trust companies or other depositories as the Board of Directors may select.

SECTION 4. GIFTS. The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Association.

ARTICLE X BOOKS AND RECORDS

The Association shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Association may, subject to the provisions of the Declaration, be inspected by any Owner and any holder of a first mortgage on a Townhome Lot, during normal business hours for any proper purpose upon prior, written notice to the Board. The Declaration, the articles of incorporation and the By-Laws of the Association shall be available for inspection by

any member at the registered or principal office of the Association, where copies may be purchased at reasonable cost.

This Article X shall in no way contravene the rights of an Owner to examine and copy records and documents as provided in the Declaration.

ARTICLE XI FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the last day of December unless changed by the Board of Directors, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE XII CORPORATE SEAL

The Association may have but shall not be required to have a corporate seal as shall be determined by the Secretary of the Association in his discretion. If a seal is obtained, the seal shall contain the name of the Association: KENSINGTON PARK II HOMEOWNER'S ASSOCIATION.

ARTICLE XIII WAIVER OF NOTICE

Whenever any notice whatever is required to be given under the provisions of the General Not-For-Profit Act of Illinois or under the provisions of the articles of incorporation or by-laws of the Association, or the Declaration, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. In addition, the presence of any voting member at any meeting shall be deemed to waive the requirements for notice of such meeting to such voting member.

ARTICLE XIV AMENDMENTS TO BY-LAWS

Provisions of these By-Laws which are referenced in the Declaration may be amended in the manner prescribed by the Declaration. Subject to the foregoing limitation, until the date of the initial meeting of the voting members, these By-Laws may be altered, amended or repealed, and new By-Laws may be adopted, by the affirmative vote of a majority of the directors in office, and from and after said date these By-Laws, may be altered, amended or repealed and new By-Laws may be adopted by the affirmative vote of voting members representing a majority of the Owners at a regular meeting or any special meeting. Articles XIV, XV and XVI may not be amended, provided, however, that Section 1 of Article XVI may be amended from time to time to conform Section 1 thereof to any provisions of law applicable to indemnification of directors or officers, or to facilitate obtaining any insurance policy described in Section 1 of said Article XVI.

ARTICLE XV INTEGRATION OF BY-LAWS WITH DECLARATION

(a) Nothing hereinabove contained shall in any way be construed as altering, amending or modifying the Declaration. Said Declaration and these By-Laws shall always be construed to further the harmonious, beneficial, cooperative and proper use and conduct of the Development Site. If there is any inconsistency or conflict between these By-Laws and the aforesaid Declaration, the provisions of the Declaration shall control.

(b) All words and terms used herein which are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.

UNOFFICIAL COPY

ARTICLE XVI INDEMNITY, INSURANCE AND DISABILITY

SECTION 1. The Association shall indemnify all of its directors and officers, and its former directors and officers, against expense actually and necessarily incurred by them in connection with the defense or settlement of any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or a director or officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action, suit or proceeding to have acted fraudulently, with gross negligence, contrary to the provisions of the Declaration or such matters as shall be settled by agreement predicated on the existence of such fraudulent action, gross negligence or action contrary to the provisions of the Declaration. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

SECTION 2. The Board may purchase and maintain insurance on behalf of any and all of its directors or officers or former directors or officers against any liability, or settlement based on asserted liability, incurred by them by reason of being or having been directors or a director or officer of the Association, whether or not the Association would have the power to indemnify them against such liability or settlement under the provisions of Section 1 of this Article XVI.

SECTION 3. In exercising the rights reserved by the Declarant pursuant to the Declaration, the Declarant (and its designees on the Board of Directors of the Association) shall not be under any disability which would otherwise be imposed by law by reason of Declarant's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

ARTICLE XVII MISCELLANEOUS

The captions and titles contained in these By-Laws are for convenience of reference only and in no way define, limit or describe the scope and intent hereof or of any Article, Section or Paragraph hereunder.