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Cook County Recorder of Deeds
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THIS DOCUMENT WAS PREPARED BY, AND
UPON RECORDATION, SHOULD BE
RETURNED TO:
DAVID B. BERZON, ESQ.
LEVENFELD PEARLSTEIN, LLC
TWO N. LASALLE STREET, STE. 1300
CHICAGO, ILLINOIS 60602

8315510

(This Space for Recorder's Use Only)

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR
THE TIMBERS GLEN HOMEOWNERS' ASSOCIATION**

THIS DECLARATION (this "Declaration") is made this 21st day of February, 2006, by Timbers Glen LLC, an Illinois limited liability company ("Declarant").

PREAMBLES:

Declarant owns fee simple title to a certain parcel of real estate in the City of Glenview, the County of Cook, State of Illinois, legally described in "Exhibit "A"" attached hereto and made a part hereof and all improvements thereon and appurtenances thereto; and

Declarant desires to develop a residential townhome development on the Property to be known as the "Timbers Glen Planned Unit Development"; and

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

NOW, THEREFORE, Declarant hereby declares that the Property is, and shall be, held, transferred, sold, conveyed, mortgaged and occupied, subject to the covenants, conditions, restrictions and easements hereinafter set forth.

**ARTICLE I
DEFINITIONS**

"**Affiliate of Declarant**" shall mean any subsidiary or parent (on any level) of, or other entity controlled by or in common control with, Declarant.

"**Approving Body**" shall mean the Declarant prior to the Completion Date, and the Association, acting through the Board, subsequent to the Completion Date.

"**Association**" shall mean and refer to the Timbers Glen Homeowners' Association, an Illinois not-for-profit corporation and its successors and assigns.

"**Board**" shall mean and refer to the Board of Directors of the Association.

"**Building**" shall mean any building on the Property containing one or more Units.

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"By-Laws" shall mean those by-laws duly which govern the activities of the Association, in the form and containing the provisions as attached hereto as "Exhibit B," or as may be amended from time to time in accordance with the provisions of this Agreement.

"Cell Tower Access Easement" shall mean a non-exclusive easement to and in favor of Declarant, and its lessees, licensees, grantees, invitees, successors and assigns, for vehicular and pedestrian ingress and egress over the roadways located in the area designated as "Easement for Cellular Tower Access" on the Subdivision Plat to provide access to and from the Cell Tower Area from and to Potter Road via said roadways, and to provide parking for maintenance and other vehicles pertaining to the repair and use of the cell tower in the area designated for "Cellular Tower Parking Spaces" on the Subdivision Plat.

"Cell Tower Area" shall mean the area designated as the "Cellular Tower Area" on the Subdivision Plat.

"Cell Tower Easements" shall mean, collectively, the Cell Tower Access Easement and the Cell Tower Use Easement. The Cell Tower Easements shall remain in effect until October 12, 2012 (being the outside expiration date of the existing lease of the cell tower), subject, however, to any extension thereof provided in the lease or otherwise approved by the Municipality, at which time said easements will terminate and the Cell Tower Area shall continue to be part of the Common Owned Area, free and clear of the Cell Tower Easements.

"Cell Tower Use Easement" shall mean an exclusive easement to and in favor of the Declarant, and its lessees, licensees, grantees, invitees, successors and assigns, to maintain, repair, replace, alter, receive transmissions and transmit to and from, and otherwise use and enjoy the cell tower currently located on the Cell Tower Area or any replacement thereof. The Cell Tower Use Easement shall give the Declarant and its lessees, licensees, grantees, invitees, successors and assigns sole and exclusive use of the Cell Tower Area, to the exclusion of the other Owners and the Association until such easement is terminated.

"Common Area" shall mean, collectively, the Common Owned Area and the Common Easement Area, together with (a) the Common Facilities and Improvements located on, under or above the Common Owned Area or Common Easement Area, and (b) the Common Structural and Building Components located in, on or adjacent to the Buildings. The Common Area shall include all areas of the Property outside of the Buildings to allow the Declarant and/or the Association, as the case may be, to have exclusive rights over the installation, maintenance, repair and replacement of exterior improvements; however, those rights do not affect each individual Owner's ownership and use of its own Lot, subject to the easements, restrictions and other provisions of this Declaration.

"Common Easement Area" shall mean and include all areas (other than the Common Owned Area) designated on the Subdivision Plat as an area subject to an easement, whether for utilities, water, sewer, drainage, detention, parking, lighting, common mail boxes, ingress and egress (via driveways, roads, sidewalks, or otherwise), or for other similar common facilities.

"Common Facilities and Improvements" shall mean and include (a) the underground detention facility located in or under the Detention Area, (b) all roadways, driveways, sidewalks, utilities, landscaping, irrigation, hardscaping, retaining walls, street lighting (including, without limitation, street lighting located on any Lot), fencing (whether temporary or permanent and including fencing around the perimeter of the Property, privacy fencing between patios serving the Units and construction fencing) and other exterior Improvements located on the Common

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Area, (c) all storm and sanitary sewer lines, drainage improvements, all pipes, cables and other lines for water, gas, telephone, electric, cable television, internet service, satellite television and/or satellite internet systems, other than those exclusively serving a single Lot or Unit (d) air conditioning units servicing more than one Unit, (e) postal mailbox pylons (containing mailboxes for more than one Unit), and (f) other facilities or improvements, all to the extent servicing more than one Lot or Unit.

"Common Owned Area" shall mean Lot 20, which shall be owned by the Association; provided, however, that Lot 20 may initially be owned by Declarant but will be conveyed to the Association on or before the time when the Common Facilities and Improvements, located in the Common Owned Area, area needed by the Owners for access to, and the use and enjoyment of, their respective Units.

"Common Structural and Building Components" shall mean all foundations, footings, drain tiles and other footing drainage facilities, common heating, ventilating and air conditioning equipment, fire sprinkler and other life safety equipment, common electrical components and wiring, Building exterior walls, roofs, supports, roof overhangs, gutters and other structural and building elements, that are shared, in common, by more than one adjoining Units and located in, on or under a Building.

"Completion Date" shall mean the date on which Declarant has conveyed the last remaining Unit to a third-party buyer; provided, however, that Declarant at its option in its sole discretion, may accelerate the Completion Date to any date selected by Declarant by recording of a unilateral declaration to that effect.

"Declarant" shall mean and refer to Timbers Glen LLC, an Illinois limited liability company, and Declarant's successors and assigns. Any such successor or assignee shall only be deemed a Declarant and entitled to exercise all or any rights of Declarant provided herein if designated as such by Declarant in any instrument recorded by Declarant for such purposes.

"Detention Area" shall mean the areas of the Property designated on the Subdivision Plat as a "Detention Easement." The underground detention facilities are located in the Detention Area.

"Estimated Cash Requirement" shall have the meaning set forth in Section 6.3.

"Improvements" shall mean and include each Building (including the Units and Common Structural and Building Components of such Building), Common Facilities and Improvements, any and all other buildings, driveways, pedestrian walkways, walls, decks, patios, fences, hedges, lawns, sidewalks, mailboxes, street lights, planted trees, shrubs and all other structures or landscaping improvements of every kind and description, including any changes in grade or slope.

"Lot" shall mean each of Lots 1 through 20 of the Property, as established pursuant to the Subdivision Plat.

"Member" shall mean and refer to each Person who holds membership in the Association.

"Mortgage" shall mean an arms-length third party mortgage or trust deed from a lending institution creating a lien against a Lot given to secure an obligation of the Owner of such Lot.

"Municipality" shall mean the Village of Glenview, Illinois.

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"**Owner**" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, but excluding any Person having an interest in a Lot merely as security for the performance of an obligation. An "Owner" shall include a purchaser of a Lot from a seller, other than Declarant, pursuant to an installment contract for purchase during such times as such purchaser resides in the Unit on such Lot. The Declarant shall be considered an Owner, but shall not have any of the obligations of the individual Lot owners except as expressly and unconditionally described herein.

"**Owner's Prorata Share**" shall have the meaning set forth in Section 6.3.

"**Person**" or "**Persons**" shall mean all natural individuals, corporations, partnerships, limited liability companies, trusts or other legal entities capable of holding title to real property.

"**Plans and Specifications**" shall have the meaning set forth in Section 4.2.

"**Property**" shall mean and refer to the real estate legally described in "Exhibit A" attached hereto and made part hereof, together with all improvements thereon and appurtenances thereto including, without limitation, the Buildings (and all Units therein), and the Common Facilities and Improvements and the Common Structural and Building Components.

"**Recorder**" shall mean the Office of Recorder of Deeds of Cook County, Illinois.

"**Subdivision Plat**" shall mean the plat of subdivision for the Timbers Glen Planned Unit Development as recorded with the Recorder on February 21st, 2006, as Document Number 0605217040.

"**Turnover Date**" shall have the meaning set forth in Section 5.3.

"**Unit**" shall mean any individual townhome unit located on a Lot and intended for the shelter and housing of a single family. A "Unit" shall include each garage serving such townhome, but shall not include the exterior of a Building or other outside areas of a Lot, which outside areas shall be considered part of the Common Area, to be maintained by the Association in common with the outside areas of all Units; provided, however, the fact that each area of a Lot outside of the Unit on such Lot may be designated as a Common Area shall not affect each individual Owner's ownership and use of its own Lot, to the exclusion of other Owners, including its Unit and the Common Area on its Lot (subject to the easements, restrictions and other provisions of this Declaration).

ARTICLE II

DECLARATION PURPOSE AND PROPERTY SUBJECTED TO DECLARATION

- 2.1 Declarant desires to create on the Property a residential townhome development for future owners of all of the Lots and for the following general purposes:
- (a) Declarant desires to provide upon the Property, through its planning and layout, the harmonious development of a community of individual townhome residences by the imposition of the covenants, conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the Owners.
 - (b) By the imposition of covenants, conditions and restrictions set forth herein, and the reservation of certain powers as herein contained, Declarant intends to

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provide a plan for development of the Property which is intended to enhance and protect the value of the residential community.

- (c) Declarant desires to provide for the maintenance of the Common Area.
- 2.2 To further the general purposes herein expressed, Declarant for itself, and its successors and assigns, hereby declares that the Property at all time is and shall be held, transferred, sold, conveyed, mortgaged and occupied subject to the covenants, conditions, restrictions and easements as set forth in this Declaration.

ARTICLE III

GENERAL RESTRICTIONS AND COVENANTS

- 3.1 All Lots shall be used exclusively for single-family townhomes and the other ancillary purposes expressly permitted hereunder (provided that certain townhomes shall be attached to other townhomes). Each Owner shall (i) maintain his Unit and all Improvements located therein (expressly excluding the Common Facilities and Improvements and Common Structural and Building Components) in a clean, slightly and safe condition, (ii) cause the prompt removal of all papers, debris and refuse from his Lot, and (iii) comply with all applicable governmental codes, laws, ordinances, orders, decrees, rules and regulations. No active business with regular customer traffic will be permitted in the Units; provided, however, that the foregoing restriction shall not be deemed to prohibit the maintenance of a home office or typical incidental home office activities.
- 3.2 All Improvements shall be constructed in accordance with Article IV and in accordance with all applicable governmental building and zoning codes, laws, ordinances, orders and decrees.
- 3.3 Except as expressly provided herein, no Improvements including, without limitation, any temporary or permanent building, trailer, mobile home, tent, shack or other similar improvement shall be installed or located upon the Lots, and no fencing may be installed or maintained on the Property unless installed by, or installed at the express written direction of, the Approving Body.
- 3.4 No Lot shall be planted with anything other than grass and other landscaping and hardscaping materials installed by, or installed at the express written direction of, the Approving Body. No Person shall accumulate on his Lot any derelict vehicles, litter, refuse or other unsightly materials. Garbage shall be placed in receptacles and all garbage receptacles shall be kept in garages or otherwise fully screened from view, except on days of garbage pick-up by the applicable garbage removal company. No burning of refuse or building materials will be permitted. Prior to completion of a Unit on a particular Lot, such Lot may remain completely unplanted by Declarant.
- 3.5 Trucks, boats, snowmobiles, campers, recreational vehicles, trailers or other vehicles (other than automobiles) shall at all times be parked in the garage of the Unit, and their repair or maintenance shall not be permitted except within the confines of the garage of the Unit. Parking of commercial vehicles on any Lot and habitual parking on roadways is prohibited. Parking for guests, service providers and other invitees and licensees of an Owner will be restricted to the driveway of said Owner or, on a first come, first served basis, in the areas depicted on the Subdivision Plat as "Guest Parking" as more

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particularly described in Section 7.1(d) below. Owners shall not park their own vehicles in the Guest Parking areas.

- 3.6 No animals (other than common domestic household pets such as dogs and cats which are not deemed by the Board or under the laws, codes, ordinances, rules and regulations of the Municipality to be dangerous or a nuisance) shall be kept on any Lot or within the confines of any Improvement thereon. The breeding or keeping of dogs or cats for sale or profit is expressly prohibited. Dangerous breeds of dogs, including pit bulls or other breeds so designated by local authorities or the Association, are expressly prohibited. Any Owner concerned about whether a dog is deemed dangerous may request a determination from the Association prior to bringing the animal onto the Property.
- 3.7 The erection of any communication antennae, communication dishes or discs, or similar devices shall not be allowed; provided, however, (i) a simple television mast antennae may be located within the interior portion of the attic of a Unit; and (ii) communication dishes or discs with a diameter of 24" or less shall be permitted in accordance with applicable Federal regulations. The forgoing shall not prohibit, limit or otherwise affect the Declarant's right to maintain the existing cell tower or any replacement thereof in the Cell Tower Area during the term of the Cell Tower Easements.
- 3.8 Each Owner shall keep unobstructed all areas of the Lots designed or intended for the proper drainage or detention of water, including swale lines and ditches. No trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other obstruction shall be planted, placed or allowed to remain in any such areas of any Lots except by the Approving Body, and no Owner shall alter the rate or direction of the flow of water from any Lot by impounding water, changing grade, blocking or re-directing swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that any and all such drainage or detention areas are for the benefit of the entire Property.
- 3.9 No noxious or offensive activity shall be carried on, in or upon any Lot. No plants, seeds, or other things harboring infectious plant diseases or noxious insect shall be introduced or maintained on any Lot.
- 3.10 No above-ground or in-ground swimming pools shall be maintained on any Lot.
- 3.11 No billboards or any advertising signs shall be erected, placed, permitted or maintained on any Lot or Improvement except "For Sale" signs of the type, size and number as the Approving Body may prescribe which shall be removed upon execution of contract of sale. Except for the Declarant's advertising signage (which shall be fully permitted in any manner deemed necessary or desirable by Declarant, subject to Municipal requirements), no Owner may maintain any "for sale" or other similar signs prior to the Completion Date.
- 3.12 Except for any construction instituted, or improvements undertaken, by Declarant, any construction undertaken on any Lot shall be commenced within six (6) months from the date on which the approval of such improvement has been secured from the Approving Body in accordance with Article IV, and shall be continued with diligence toward the completion; provided that construction of any Unit shall be completed within one (1) year of commencement of construction unless the Approving Body expressly agrees in

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writing otherwise. If the construction has commenced in the absence of the Approving Body having given written approval of such construction, or if the construction has not been completed within one (1) year of commencement of construction, then the Approving Body shall have the right, but shall not be obligated, to (A) recover from the Owner of the Lot on which such construction has occurred any and all costs incurred by the Approving Body to dismantle and remove all materials and debris relating to such construction; (B) place a lien on such Lot for the amount of such costs and foreclose such lien against the Owner's Lot, and interest, costs and reasonable attorneys' fees incurred in any action by the Approving Body shall be added to the amount due to the Approving Body; and (C) file suit for injunctive relief to enjoin the Owner from constructing or maintaining any unauthorized addition or improvement on its Lot. Notwithstanding anything contained in this Section 3.12 to the contrary, if approval for the construction of an improvement has been secured from the Approving Body in accordance with Article IV, but such construction is not completed within one (1) year of its commencement, the Approving Body shall have the right to dismantle and remove the materials relating to such construction unless the Approving Body expressly agreed in writing that completion of construction may be extended beyond such one (1) year period, or if the construction of the improvement has been substantially completed prior to the Approving Body having initiated the dismantling and removal thereof.

- 3.13 Notwithstanding the fact that certain portions of each Lot (and the improvements thereon or thereto) are deemed to be "Common Areas" under this Declaration for the purpose of reserving solely to the Declarant and/or the Association, as the case may be, the rights of installation, maintenance, repair, and replacement of the areas outside of the Units, as more fully provided in this Declaration, it is intended that all driveways, patios, walkways leading to Units, and other portions of each Lot shall be for the exclusive use and enjoyment of only the Owner of such Lot, and his or her guests and other invitees and licensees, as private property, to the exclusion of other Owners, but subject to (a) the rights of the Declarant and the Association set forth herein, (b) the rights of the all Owners in each Building to the common use of areas surrounding such Building which are not intended for the exclusive use of a single Unit in such Building and (c) the rights of all of the other Lot Owners to enjoy the street lighting, common mailboxes and other facilities and improvements clearly intended for the mutual benefit of more than the Owner of the Lot on which such facilities and improvements are located.
- 3.14 Notwithstanding anything set forth in this Article III to the contrary, the provisions hereof shall not restrict any activities of the Declarant (or any Affiliate of Declarant or any employee or agent of Declarant or its Affiliates) in connection with the development, marketing or sale of the Property or any Unit, including, without limitation, the installation and maintenance of sales and construction trailers and adjoining parking areas, and advertising signage, the intent being that the restrictions set forth in this Article III are imposed only on the Owners of individual Lots after they are purchased from Declarant.

ARTICLE IV

ARCHITECTURAL CONTROLS

- 4.1 Except for any construction instituted, or improvement undertaken, by or on behalf of Declarant, no Improvements, whether temporary or permanent, shall be constructed

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placed or permitted on any Lot without the prior written approval of the Approving Body obtained in the manner hereinafter set forth. Approvals under this Article IV shall not be arbitrarily or capriciously withheld, but may be withheld for aesthetic reasons. All Improvements shall be in compliance with all codes, laws, and ordinances of the Municipality, whether constructed by Declarant or other persons. The provisions of this Section 4.1 shall not apply to any improvements to the interior of a Unit. The foregoing notwithstanding, under no circumstances shall any party construct any improvements, whether temporary or permanent, to the interior portions of a Unit without the prior written consent of the Approving Body being first obtained to the extent such construction or improvements may in any way affect or impair any Common Facilities and Improvements and/or Common Structural and Building Components.

- 4.2 In order to secure the Approving Body's approval of any proposed improvements, the Owner shall submit to the Approving Body two (2) complete sets of the following (to the extent generally applicable to the type of improvements being proposed, as determined by the Approving Body):
- (a) The Lot site plan showing among other things the location and dimension of all intended improvements;
 - (b) Drawings, plans and specifications of all landscaping and exterior surfaces, showing elevations and grade, and, including without limitation, the color, quality and type of exterior construction materials; and
 - (c) All such information as the Approving Body may reasonably require to determine the locations, scale, design, character, style and exterior appearance of the Owner's intended improvements.

All of the items described in clauses (a), (b) and (c) of this Section 4.2 are hereinafter collectively referred to as the "Plans and Specifications", and shall conform to the applicable provisions of this Declaration.

- 4.3 Within forty five (45) days after the Approving Body's receipt of the Plans and Specifications, the Approving Body shall notify Owner in writing whether such Plans and Specifications are approved or disapproved. Any such disapproval shall set forth the reason or reasons for such disapproval. Once approved by the Approving Body, the approved Plans and Specifications without amendment shall be submitted to the Municipality by the Owner for the issuance of a building permit.
- 4.4 If the Approving Body shall disapprove all or any portion of the Plans and Specifications submitted as aforesaid, the Owner shall revise the Plans and Specifications to incorporate the changes required and shall deliver two (2) complete sets of revised Plans and Specifications to the Approving Body. The Approving Body shall have thirty (30) days after its receipt of said Plans and Specifications to approve or disapprove the revised Plans and Specifications. If the Approving Body disapproves all or any portion of said revised Plans and Specifications, Owner shall revise the Plans and Specifications in the manner set forth in this Section 4.4 until such time as the Approving Body shall approve said Plans and Specifications (or Owner may withdraw its submission).
- 4.5 Owner shall secure the approval of the Approving Body with respect to any material changes, deviation or revision in any Plans and Specifications approved in accordance

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with this Article IV in the manner provided in this Article for the approval of Plans and Specifications.

- 4.6 The Approving Body and the Approving Body's respective agents, employees, contractors and designated successors and assigns (collectively and individually, the "Released Parties") shall not be liable in damages, and shall be deemed fully released of any liability, to any Owner or to any other Person submitting Plans and Specifications to any of the Released Parties for approval by reason of or in connection with (i) the Released Parties' withholding of consent or any mistake in judgment, negligence or nonfeasance arising out of or occurring in connection with the Released Parties' approval or disapproval or failure to approve or disapprove any such Plans and Specifications, or (ii) any defect or non-compliance with code in any such Plans or Specifications or any structure erected according thereto.
- 4.7 The covenants, conditions and restrictions contained in this Article IV shall not apply in any manner to Lots owned by Declarant or any Affiliate of Declarant.
- 4.8 Prior to the Completion Date, Declarant, in its capacity as the "Approving Body," and from and after the Completion Date, the Association, in its capacity as the "Approving Body," shall have the approval rights set forth in this Article IV, and the right to enforce the provisions of Section 3.12.

ARTICLE V

HOMEOWNERS' ASSOCIATION

- 5.1 Declarant shall form an Illinois non-for-profit corporation to be known as "Timbers Glen Homeowners' Association", to provide for maintenance and operation of the Common Area, and, in general, to maintain and promote the desired character of the Property. The Association shall be deemed a "Master Association," formed pursuant to Section 18.5 of the Illinois Condominium Property Act (the "Act") and governed by said Section only; provided, however, that the Association shall not be a condominium association or otherwise governed by the Act (except to the extent other provisions of the Act are expressly incorporated by reference in said Section 18.5).
- 5.2 (a) The Association shall have a Board of three (3) directors who shall be elected by the Members of the Association at such intervals as the By-Laws of the Association shall provide. The first Board and subsequent Boards (until the Turnover Date) shall be appointed by Declarant. Any Board appointed by Declarant may have less than three (3) directors; and except for directors of the Board appointed by Declarant, all directors shall be Members of the Association.
- (b) The Association shall have such officers as specified in the By-Laws, whom the Board shall elect and who shall manage and conduct the affairs of the Association under the direction of its officers. Except as expressly provided otherwise by the articles of incorporation of the Association or the By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, including, but not limited to, the right to enforce the provisions of Article IV hereof after the Completion Date, shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The directors and officers of

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the Association shall not be liable to the Owners or any others for any mistake of judgment or any acts or omissions made in good faith.

- 5.3 Declarant shall have the right, in its sole discretion, to appoint the Board until no later than sixty (60) days after the earliest to occur of the following: (a) the date which is three (3) years after the date this Declaration is recorded with the Recorder, (b) the date the sale and conveyance of legal title to seventy-five percent (75%) of the Lots to Owners, other than Declarant, or an Affiliate of Declarant, occurs, or (c) the date Declarant elects voluntarily to turn over to the Members the authority to appoint the Board, which election shall be made in writing. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or prior to the Turnover Date (i) Declarant shall convey, quit claim and assign to the Association, and the Association shall accept and assume, the Common Owned Area and the Common Facilities and Improvements, and the Association shall (1) maintain the entire Common Area as required hereunder, and (2) assume all obligations of Declarant with respect to any agreement by Declarant to maintain any public or private property located on, under, at or adjacent to the Property, and the Association, through the elected Board, shall thereafter maintain such public or private property. The turn-over of the Association shall not affect Declarant's continuing rights as the Approving Body until after the Completion Date.
- 5.4 (a) Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any Affiliate of Declarant owns one or more Lots.
- (b) From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by the Member on each matter submitted to a vote of Members; provided, however, that where there is more than one Owner of a Lot, such co-Owners of a Lot shall only be entitled to one vote in the aggregate, to be exercised as a whole.
- 5.5 The Association, through the elected Board, shall have the power and duty to:
- (a) Own the Common Owned Area and Common Facilities and Improvements, and shall maintain, manage and pay all applicable taxes and other costs and expenses of the Common Area.
- (b) Maintain and otherwise manage the Common Area and all other property acquired by the Association or which the Association agrees or is required to maintain, including, without limitation, (i) the Detention Area, together with any off-site detention facilities that the Association may be required to maintain, whether in the ordinary course or in the event of an emergency (including the drainage into the Illinois Tollway Authority's drainage system to which the drainage system of the Property is connected at or around the northwest corner of the Property) (ii) the Common Facilities and Improvements, and (iii) the Common Structural and Building Components. The foregoing shall include, without limitation, the maintaining, repairing and replacing of all signs, monuments, retaining walls, irrigation systems, and lighting, and caring for, spraying, trimming, protecting, irrigating and replanting of trees, shrubbery, grass

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and other landscaping improvements and outside areas, and the removal of snow and ice from every driveway and sidewalk located on each Lot as reasonably deemed necessary by the Board.

- (c) Employ a manager or other Persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.
- (d) Mow, care for, remove underbrush from, maintain and remove rubbish from any vacant or unimproved portions of the Property, and do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Property neat in appearance and in good order, and any entry on any Lot by or on behalf of the Association in performance of the powers under this clause (d) shall not be deemed a trespass. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Declarant or an Affiliate of Declarant.
- (e) Make such additions and improvements to the Common Area and provide such other facilities and services for the common use of the Members after the Completion Date, provided, however, that (i) any such action so authorized shall always be for the express purpose of keeping the development a highly desirable residential community and (ii) any capital expenditure (as opposed to regular operating expenses) in excess of \$5,000 for any one item or \$10,000, in the aggregate in any one calendar year, shall require the affirmative vote of at least sixty percent (60%) of the Members of the Association acting in accordance with the articles of incorporation of the Association and the By-Laws. Any such additions or improvements properly authorized shall be paid, whether from the regular assessments or, if required, through collection of special assessments as provided in Article VI.
- (f) Ensure all continuity, care, conservation, maintenance, including operation in a first rate condition, of the Common Facilities and Improvements and Common Structural and Building Components in accordance with the terms and provisions within this Declaration and as required by the Municipality's laws, codes, ordinances, rules and regulations.
- (g) Maintain casualty and liability insurance, and pay all real estate taxes and other costs and expenses with respect to the Common Area, and establish reasonable reserves to pay future anticipated capital expenditures or improvements; provided, however, that the Association shall not establish reserves for capital improvements requiring Member approval without first obtaining such approval.
- (h) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, and the articles of incorporation of the Association and the By-Laws, including, but not limited to, the enforcement of any of the architectural controls set forth in Article IV of this Declaration after the Completion Date.

5.6 The Board shall also have the authority and responsibility to obtain and maintain such insurance as it may reasonably deem necessary or desirable, including, without

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limitation, casualty and liability insurance for the Common Area, and directors and officers' liability insurance. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with Article VI.

- 5.7 Declarant, the Board, the officers of the Association and the respective employees and agents of any of them shall not be liable, and shall be deemed fully released of any liability, to the Owners or any other person for any mistake of judgment or 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 or fraud. The Owners shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Article VI hereof. To the extent reasonable, the Board's and Association's liability hereunder and the Owner's indemnification obligation shall be insured by means of appropriate contractual endorsements to the insurance policies held from time to time by the Association. Each Owner, by taking title to a Lot, shall be deemed to have covenanted and agreed to the releases and indemnities contained in Section 4.6 and this Section 5.7.
- 5.8 (a) Until the Turnover Date, Declarant shall have all the rights and powers therein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board. Until the Completion Date, Declarant shall act as the "Approving Body" with respect to architectural controls and as otherwise provided herein.
- (b) Until the Turnover Date, Declarant shall maintain the Common Area and all signs and monuments located thereon and, at its sole discretion, to pay all expenses and costs, arising in connection with the Common Area, including, without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area. Such costs and expenses shall be deemed expenses for which assessments can be collected under Article VI.
- (c) Declarant and Affiliates of Declarant shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests and invitees, to utilize roads, streets, the Common Area and all other portions of the Property (excluding the interior of Units actually conveyed to third party buyers, except as needed to access Common Structural and Building Components), for such purpose until all Lots are sold to bona fide purchasers for value. Declarant and Affiliates of Declarant may at all times utilize signage, parking lots, roadways and lighting and establish sales offices, trailers, and model homes as required to conduct its sales and marketing of the Property until such time that all Lots are sold to bona fide purchasers for value.

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accrue or be brought by anyone against Declarant or the Association for or on account of delay or failure to bring any action on account of any breach by Owner hereunder.

- 6.8 The lien of assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed on any of the Lots. In the event of the issuance of a deed pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any such lien for assessment authorized by this Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed but after recording of the Mortgage.

ARTICLE VII EASEMENTS

- 7.1 Declarant hereby grants and reserves the following easements:

- (a) A temporary easement for the installation and construction of roads (and related roadway improvements), parking areas, sidewalks, sewer facilities, drainage facilities, water, electric, gas, telephone, cable television, internet services and other similar transmission lines and facilities, landscaping, sound, retaining and decorative walls, exterior lighting (including street lighting and lighting mounted on Buildings and all necessary wiring for power thereto), signage, irrigation lines and facilities, mailboxes, and other similar utilities and facilities and all other improvements to be constructed on the Property by Declarant is hereby declared, created, reserved and granted by Declarant over, under, across and upon the entire Property for the benefit and use of Declarant, to enable Declarant to go on the Property and construct and install all of the public and private land improvements contemplated by or otherwise permitted in the applicable annexation and zoning documents, as amended from time to time (or otherwise deemed necessary by Declarant for the proper development of the entire Property in the manner contemplated by Declarant); provided, however, that such easement shall not extend to the interior of any Units not owned by Declarant, except as reasonably necessary for the construction, installation or modification of any of the Common Structural and Building Components. Said temporary installation and construction easement shall terminate at such time as Declarant has completed the installation and construction of all of the aforesaid improvements, as stated by Declarant in a written declaration to that effect.
- (b) A temporary easement for the installation, maintenance, repair, replacement and use of sales and construction trailers, with adjoining parking areas, and for all desired advertising signage is hereby declared, created, reserved and granted by Declarant over, under, across and upon the entire Property for the benefit and use of Declarant; provided, however, that such easement shall not extend to the specific area on which any completed Buildings are located. Said temporary trailer, parking and signage easement shall terminate at such time as Declarant has completed the installation and construction of all of the intended improvements on the Property, as stated by Declarant in a written declaration to that effect.
- (c) A perpetual, non-exclusive easement for the installation, construction, maintenance, repair, replacement and use of the underground detention facility

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ARTICLE VI ASSESSMENTS

- 6.1 Each Owner (expressly excluding the Declarant), by taking title to a Lot, shall be deemed to have covenanted and agreed to pay to the Association (whether or not incorporated) annual assessments or charges and special assessments for expenses related to the Common Area and other functions and costs of the Association hereunder, to be collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a lien on the Lot against which each such assessment is made and each such assessment, together with such interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. Prior to the Turnover Date, the Declarant shall have full power and authority to collect and disburse all assessments authorized or contemplated under this Article VI, through the Board appointed by the Declarant.
- 6.2 The assessments levied by the Association shall be used exclusively for charges required or permitted by this Declaration and for the cost of those items that the Board shall determine to be necessary or desirable to meet the purpose of the Association.
- 6.3 Each year, on or about the first day of November, the Board shall adopt an annual budget. Each Owner shall receive a copy of such annual budget at least thirty (30) days prior to the date on which the Board adopts such annual budget. The annual budget shall contain an estimate of the total amount of expenses necessary for the Association to perform its duties and otherwise operate hereunder during the ensuing calendar year (January 1 - December 31). On or before December 1, the board shall notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). A prorata share of the Estimated Cash Requirement shall be assessed on a monthly basis against each Lot that has been conveyed to a third-party buyer, specifically excluding any Lots owned by Declarant. The prorata share of the Estimated Cash Requirement attributable to each Lot shall be based upon the square footage of the Unit located on such Lot as compared to the total square footage of all of the Units (specifically excluding any Units owned by Declarant), and such share shall be expressed as a percentage determined by dividing the square footage of each individual Unit by the total square footage of all of the Units taken in the aggregate (specifically excluding any Units owned by Declarant)(the "Owner's Prorata Share"). The anticipated size of each Unit is set forth on Exhibit C attached hereto and made a part hereof, which is subject to change from time to time for any change of the size of any Unit. At such time that all of the Lots have been sold to bona fide purchasers for value, Exhibit C shall be modified to reflect the actual, final Owner's Prorata Share for each Lot. On or before January 1 of the ensuing calendar year after adoption of each budget, and on or before the first day of each month during such year, each Owner shall be obligated to pay to the Board, or as the Board may direct, one-twelfth (1/12th) of the annual assessment made pursuant to this Section 6.3. The Board shall furnish an annual itemized accounting of the collections and expenses for the preceding calendar year, and show the excess over or deficit of the actual expenditures. The Board shall, within fifteen (15) days of demand by any Owner, furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on the Lot owned by such Owner

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have been paid. Such certificates shall be conclusive evidence of payment or non-payment of any assessment thereon.

- 6.4 The Board may, at any time, levy a special assessment, which shall be assessed proportionately among the Lots (excluding any Lots owned by the Declarant or its Affiliates) based upon each Owner's Prorata Share if, in its reasonable judgment, the regular annual assessments are insufficient to pay anticipated Association expenses (and reserves). The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such special assessment shall become effective and fully payable thirty (30) days after the delivery or mailing of any notice of assessment.
- 6.5 The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay his share of the Estimated Cash Requirement as herein provided, and when the Estimated Cash Requirement shall be determined, and, in the absence of the preparation of the Estimated Cash Requirement, each Owner shall continue to pay his Owner's Prorate Share of such Estimated Cash Requirement at the then existing monthly rate established for the previous calendar year, subject to adjustment at such time at the Estimated Cash Requirement has been prepared and the Owner has been notified thereof. Each Owner shall pay to the Association, or as the Board may direct, the Owner's Prorata Share of any such adjustment to the Estimated Cash Requirement with respect to any current calendar year. Such payment shall become fully payable within thirty (30) days after the delivery or mailing of any notice of such adjustment.
- 6.6 The Board shall keep full and correct records of Association documents, receipts and expenditures, minutes, ballots and books of account in chronological order. Such records and the vouchers authorizing the payments described therein shall be available for inspection within thirty (30) days after written request by any Owner or any other representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours when requested by an Owner in good faith. The Board shall have the right to charge the requesting Owner a reasonable fee to compensate the Board or the Association for any reasonable cost incurred by the Board or the Association to assemble the documents and to otherwise comply with the Owner's request.
- 6.7 Any assessments or other charges which are not paid when due, shall be delinquent. If the assessments or other charges are not paid within thirty (30) days after the due date, the assessment or such charge shall bear interest, from and after the end of such 30-day period, at the rate of twelve percent (12%) per annum (i.e., one percent (1%) per month or any portion of a month after the due date). In addition, the Board may assess a late fee equal to the reasonable amount set by the Board, from time to time, for any assessments or other charges that are more than thirty (30) days past due. The Association may bring an action at law against the Owner personally for collection of all sums due by the Owner and/or foreclose the lien, described in Section 6.1 above, against the Owner's Lot, and interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of any such overdue assessment. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from re-acquiring his interest at such foreclosure/sale. No right of action shall

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and all other drainage facilities and improvements for the drainage, retention and overflow of storm water runoff, is hereby declared, created, reserved and granted by Declarant over, under and upon those portions of the Property (the "Drainage Easement Parcels") situated in each of the areas designated "Easement for Drainage," "Easement for Detention" or "Easement for Detention and Overflow" on the Subdivision Plat. The foregoing drainage easement burdens each Drainage Easement Parcel and benefits the other portions of the Property as required for proper storm water drainage.

- (d) A perpetual non-exclusive easement for the parking of automobiles and other vehicles is hereby declared, created, reserved and granted by Declarant over and upon those portions of the Common Area (the "Parking Easement Parcels") designated "Guest Parking Spaces" on the Subdivision Plat. The foregoing parking easement burdens each Parking Easement Parcel and benefits only the invitees, licensees and guests of Owners on a first come, first-served basis. The easement granted herein shall be subject to all parking rules and regulations promulgated by the Approving Body.
- (f) A perpetual, non-exclusive easement for the installation, construction, maintenance, repair, replacement and use of traffic, directional, informational and other similar signage is hereby declared, created, granted and reserved by Declarant to the Association and Declarant over and upon those portions of the Common Area reasonably deemed necessary by the Association or Declarant to provide for (a) the efficient flow of traffic, (b) information concerning the location of various improvements on the Property and (c) other information deemed necessary or useful by the Board or Declarant for efficient and proper operation of the Property as an integrated project.
- (g) A perpetual, non-exclusive easement for ingress and egress: (a) to and from Potter Road from and to all portions of the Property via the roadway constructed on Lot 20, and (b) to and from all Lots via any sidewalks or walkways constructed on Lot 20 or other portions of the Property, is hereby declared, created, granted and reserved by Declarant for the benefit of Declarant and all Owners over and upon those portions of Property designated "Easement for Ingress and Egress" on the Subdivision Plat. The foregoing ingress and egress easements benefit all of the Owners.
- (h) A perpetual, non exclusive easement for ingress and egress over, under, across, in and upon the Common Area is hereby declared, created, granted and reserved by Declarant for the benefit and use of the Association and Declarant, and their respective agents and employees, to enter upon the Common Area for purposes of exercising all of their respective rights and performing their respective obligations under this Declaration and enforcing all of the Owners' duties and obligations under the provisions of this Declaration. Without limiting the generality of the foregoing, a perpetual, non-exclusive easement in favor of the Approving Body for the installation, construction, maintenance, repair and replacement (including, without limitation, all of the activities described in Section 5.5 above) of all of the Common Area, including the Common Facilities and Improvements, is hereby declared, created, reserved and granted by Declarant over, under and upon the Common Areas to enable and permit the Association

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and Declarant to exercise all of their respective rights and perform all of their respective obligations, including, without limitation, the performance of all maintenance in accordance with the provisions of Section 5.5 or elsewhere in this Agreement. In addition to the foregoing, the Association and Declarant shall have access to the areas adjacent to, and outside of, the foregoing easement areas to enable it to perform the maintenance activities permitted therein, provided that any activities outside of such easement areas shall be conducted as close to said easement areas as practicable and in such manner as to minimize interference with the use and enjoyment by the Owners of their respective Lots.

- (i) A perpetual, non-exclusive easement for the installation, construction, maintenance, repair, replacement and use of all Common Structural and Building Components and Common Facilities and Improvements is hereby declared, created, reserved and granted by Declarant for the benefit and use of the Association and Declarant, and their respective agents and employees, which easement shall include the right of access thereto through the Common Area and, as necessary, the Units at all reasonable times (and at any time in the case of emergency). In addition, to the extent a portion of a Common Structural and Building Component or any other part of a Unit or the Common Facilities and Improvements on one Lot encroaches onto a Lot not intended for such component, facilities, improvements or Unit, then the Owner of said encroaching Unit (or the Association, with respect to the Common Structural Component and Common Facilities and Improvements) shall have an easement to maintain, repair, replace and use the portion of said Unit (or the facilities, improvements or components) that so encroaches, unless, and except to the extent, that the encroachment has a material adverse effect on the use or enjoyment of the Lot on which the encroachment exists.
- (j) Declarant hereby reserves for its sole and exclusive benefit, and the benefit of its lessees, licensees, grantees, invitees, successors and assigns, the Cell Tower Easements (as more fully described in the definition thereof set forth in Article I above).
- (k) A perpetual, non-exclusive easement for the installation, maintenance, repair and replacement of the roofs of the Units, rooftop equipment and devices on any or all of the roofs of the Units is hereby granted and reserved by Declarant for the purpose of allowing Declarant the ability to exercise its rights under Sections 5.5 and 7(i) above.
- (l) Without intending to limit the generality of the Common Area easements provided above:
- (i) A perpetual non-exclusive easement for the installation, maintenance, repair and replacement of common mailboxes and related equipment is hereby declared created, granted and reserved by Declarant, over, under and upon each portion of the Property (the "Mailbox Easement Parcels") designated for "Mail Box" on the Subdivision Plat; provided, however, that the Mailbox Easement Parcels may be unilaterally relocated by Declarant at the request or with the consent or approval of the United States Postal

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Service ("USPS"), as necessary. The foregoing mailbox easement burdens each Mailbox Easement Parcel and benefits the USPS and Declarant.

- (ii) A perpetual non-exclusive easement for the installation, maintenance, repair and replacement of street lighting and related equipment, including, without limitation, all necessary lines to bring power to same, is hereby declared created, granted and reserved by Declarant, over, under and upon those portions of the Property on which such lights (and related equipment) are installed by Declarant. The foregoing street lighting easement burdens the Lots upon which such lights are located and benefits the Association and the Declarant.

7.2 Declarant hereby reserves the right to grant additional easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, replacement, operation and inspection of utility services and other improvements and facilities over, under across, and through the Common Area as it deems necessary or desirable in order to effectuate the development of the Property and the intent of this Declaration.

7.3 The Property shall be subject to those additional easements as set forth on the Subdivision Plat.

ARTICLE VIII GENERAL PROVISIONS

8.1 Term. This Declaration shall be perpetual and continue in full force and effect unless and until it is terminated by an amendment providing for such termination entered into and recorded by 100% of the Owners in the real estate records.

8.2 Amendment. Except as otherwise provided herein, this Declaration may be amended by an instrument executed by Owners, holding no less than sixty percent (60%) of the Members, provided: (a) Declarant's written consent thereto shall be required to any amendment prior to the Completion Date and also shall be required after the Completion Date with respect to any amendment that materially affects Declarant's rights hereunder; and (b) no amendment shall materially adversely affect the rights of a holder of a Mortgage without such holder's consent. Notwithstanding anything set forth herein to the contrary: (i) the foregoing provisions of this Section 8.2 shall not affect the rights of Declarant or the Association to unilaterally supplement, modify, amend or administer the provisions of this Declaration pursuant to other express rights granted to such party under the provisions of this Declaration; (ii) to the extent that any proposed amendment to this Declaration involves only easements, covenants, restrictions or other provisions hereof which do not benefit or burden a particular Lot or Lots, the Owners of, and other parties having any interest in, such Lot or Lots shall not be entitled to vote on such amendment, and their consent thereto shall not be required, and the percentage required to approve such amendment shall be calculated without consideration of the unaffected Owners; and (iii) under no circumstances shall any amendment hereto affect Declarant's right to develop the Property in accordance with the applicable annexation and zoning documents (as the same may be amended from time to time), and Declarant may unilaterally supplement, amend or modify this Declaration, as reasonably deemed necessary by Declarant, and without the consent or joinder by any other Owner,

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mortgagee or other Person to enable Declarant to develop the Property in accordance with the applicable annexation and zoning documents (as the same may be amended from time to time). All amendments shall become effective when recorded with the Recorder.

- 8.3 Enforcement. The enforcement of the provisions of this Declaration shall be vested in the Association; provided, however, if the Association fails to act to begin enforcement of a provision hereof within a reasonable amount of time after the request of the Owners holding, in the aggregate, at least 33% of the aggregate Owner's Prorata Shares, or fails to diligently pursue such enforcement, then such Owners may take such actions as reasonably required to enforce same. A breach of any of the provisions of this Declaration shall give to the party entitled to enforce such provision the right to bring a proceeding at law or in equity against the party or parties breaching or attempting to breach this Declaration and to enjoin such party or parties from so doing or to cause such breach to be remedied or to recover damages resulting from such breach. A breach of this Declaration relating to the use or maintenance of a Lot or part thereof is hereby declared to be and constitute a nuisance and every public or private remedy allowed by law or equity for the abatement of a public or private nuisance shall be available to remedy such breach. In any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof, the party or parties against whom judgment is entered shall pay the attorneys' fees and costs of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceedings. All remedies provided under this Declaration, including those at law or in equity, shall be cumulative and not exclusive. The failure of a party having a right to enforce this Declaration to so do shall not be deemed a waiver of the right of any other party having such right or a waiver to do so for a subsequent breach or the right to enforce any other provision of this Declaration. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration. The Association shall enforce and administer all of the provisions hereof in good faith and in a fair and equitable manner not unreasonably benefiting the Owners of one Lot over the Owners of the other Lots.
- 8.4 Responsibility of Owners. Each Owner shall be responsible for any breach of this Declaration which is a result of its own acts or omissions or the acts or omissions of any tenant, invitee, licensee or other occupant of its Lot.
- 8.5 Compliance with Law. Each Owner shall comply at all times with all applicable federal, state, county and municipal laws, ordinances, rules and regulations and with the applicable regulations of the local fire insurance rating organization having jurisdiction or any other organization or board exercising a similar function with respect to the construction, maintenance, operation and use of such Owner's Lot and Unit or other improvements thereon or thereto.
- 8.6 Severability. If any of the covenants, conditions or other provisions of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition and provision herein set forth shall remain valid and binding to the fullest extent permitted by law.
- 8.7 Owner's Liability. From and after the closing of the sale of any portion of the Property, the Owner, including Declarant, so selling shall have no further liability for the obligations with respect to such portion of the Property which accrue after the date of

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the recording of the conveyance; provided, however, that nothing contained herein shall be construed so as to release from such portion of the Property any lien arising by reason of such liability, or release or relieve the selling Owner or such portion of the Property from any liabilities or obligations accruing under this Declaration prior to such recording.

- 8.8 Delay in Performance Force Majeure. If the performance of any act or obligation under this Declaration is prevented or delayed by an unanticipated act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, terrorism, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor union, condemnation, threatened condemnation, requisitions, laws, orders of government or civil or military or naval authorities or any other cause, whether similar to or dissimilar from the foregoing, not within the reasonable control of the party required to perform such act or obligation (excluding, in all cases, a general inability to pay for or finance such act or obligation), then such party shall be excused from the performance of such act or obligation for so long as such party is so prevented or delayed by reason thereof.
- 8.9 Rule Against Perpetuities. In and to the extent that any of the covenants herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only until the expiration of a period of twenty one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of George W. Bush (current President of the United States), living at the date of this Declaration.
- 8.10 Rules and Regulations. In addition to the other restrictions, conditions and obligations set forth in the provisions of this Declaration, the Approving Body shall have the right to adopt, amend and enforce all reasonable rules and regulations deemed necessary for the proper and efficient operation, maintenance and administration of the Property in a manner consistent with the purposes described herein. Upon the adoption or amendment of any such rules or regulations, the Approving Body shall deliver notice and a copy thereof to all Owners in accordance with the provisions of Section 8.11 below.
- 8.11 Notices. Any and all notices required or desired to be given under the provisions of this Declaration must be in writing and shall be deemed to have been given (a) on the same date personally delivered to the intended recipient, (b) one (1) business day after being sent to the intended recipient by nationally recognized overnight courier service or (c) two (2) business days after being deposited in the U.S. mails, as registered or certified mail, return receipt requested, postage prepaid if (i) to an Owner, at the last known address of such Owner; or (ii) to Declarant, at c/o The Elliott Group, Inc., 1440 Lee Street, Des Plaines, Illinois 60018, Attn: Lou and Mark Elliott (or to such other address with respect to Declarant, of which such Declarant notifies the other Owners, which notice to the other Owners may be given as described above or by recording a notice of change of address in the real estate records).
- 8.12 Binding Effect of Declaration. All the rights, covenants, agreements, easements, reservations, restrictions and conditions contained herein shall run with the land and

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shall inure to the benefit of and be binding upon Declarant, the Association, each Owner, and each subsequent holder of any mortgage or other interest in any portion of the Property and their grantees, heirs, successors, personal representatives and assigns; provided, however, that the rights and obligations of Declarant may only be assigned by an express written agreement executed by the Person then constituting the Declarant.

- 8.13 Captions. The title, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.
- 8.14 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property.
- 8.15 Land Trust Title Holders. In the event title to any Lot is conveyed to a title holding trust, under the terms of which all power of management, operation and control of the Lot remain vested in the trust's beneficiary(ies), then the beneficiary(ies) thereunder from time to time shall be personally responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Declaration against any such Lot. No claim shall be made against any such title holding trustee personally for payment for any lien or obligation hereunder created. The amount of such lien or obligation shall continue to be a charge or lien upon said Lot and the beneficiary(ies) of such trust, notwithstanding any transfers of the beneficial interest of any trust or any transfers of title to any such Lot.
- 8.16 Governing Law. This Declaration shall be construed and applied in accordance with the laws of the State of Illinois.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES ON FOLLOWING PAGE]**

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CONSENT OF LENDER

The undersigned, MB Financial Bank, N.A. ("**Lender**"), holder of a mortgage and certain other liens and encumbrances against the Property, more fully described on Exhibit A, hereby consents to the execution and recording of the attached Declaration of Covenants, Conditions, Restrictions and Easements (the "**Declaration**"), it being agreed that said mortgage and other liens and encumbrances shall be subject and subordinate to the Declaration.

IN WITNESS WHEREOF, the Lender has caused this Consent to be signed by its duly authorized officer this 27th day of February, 2006.

MB FINANCIAL BANK, N.A.

By: Andrea Bender
Name: Andrea Bender
Title: Commercial Banking Officer

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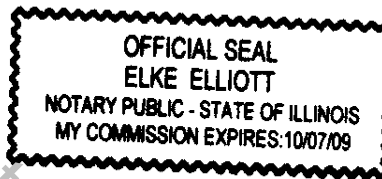
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, Elke Elliott, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Andrea Bender, Commercial Banking Officer of MB Financial Bank, N.A., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of February, 2006.

Elke Elliott
 Notary Public

My commission expires 10/07/09.



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EXHIBIT A

Legal Description of Property

THAT PART OF LOT 4 LYING EAST OF THE TRI-STATE TOLLWAY IN THE COUNTY CLERK'S DIVISION OF THE WEST ½ OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

THE FOREGOING PROPERTY IS BEING SUBDIVIDED ON OR ABOUT THE DATE HEREOF PURSUANT TO A CERTAIN PLAT OF SUBDIVISION KNOWN AS THE TIMBERS GLEN PLANNED UNIT DEVELOPMENT, RECORDED ON OR ABOUT THE DATE HEREOF, AND SUCH PROPERTY CONSTITUTES LOTS 1-20, BEING ALL OF THE LOTS IN SAID SUBDIVISION, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 4450 W. LAKE AVENUE, GLENVIEW, ILLINOIS

PIN: 04-29-100-169

NOW KNOWN AS:

LOTS 1 TO 20, BOTH INCLUSIVE, IN TIMBERS GLENN PLANNED UNIT DEVELOPMENT, BEING A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 29, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 21, 2006 AS DOCUMENT 0605217040, IN COOK COUNTY, ILLINOIS.

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EXHIBIT B

BY-LAWS OF THE TIMBER GLEN HOMEOWNERS' ASSOCIATION

ARTICLE I

Purposes and Powers

1.1 The Association shall be responsible for the general management and supervision of the Property and the ownership of the Common Owned Area and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations and duties delegated to it, as provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not-For-Profit Corporation Act of the State of Illinois, which shall be consistent with the purposes specified herein and in the Declaration. Any defined terms used in these By-Laws shall have the same meaning as set forth in the Declaration, except as otherwise expressly provided herein.

ARTICLE II

Offices

2.1 The Association shall have and continuously maintain in the State of Illinois a registered office and a registered agent whose office shall be identical with such registered office.

2.2 The principal office of the Association shall be maintained in Cook County, Illinois.

ARTICLE III

Membership

3.1 (a) Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any Affiliate of Declarant owns one or more Lots.

(b) From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by the Member on each matter submitted to vote of Members, provided, however, that if there is more than one Owner of a Lot, such co-owners of a Lot shall only be entitled to one vote, and shall, together, constitute a single Member.

3.2 (a) Meetings of the Members shall be held at the principal office of the Association or at such other place in Cook County, Illinois, as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.1 above shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having more than 50% of the total votes present at such meeting. Any Member in writing may waive notice of a meeting, or consent to any action of the Association without a meeting.

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(b) The initial meeting of the Members shall be held at such time as may be designated upon not less than ten (10) days written notice given by Declarant, provided that such initial meeting shall be held no later than sixty (60) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Members on the third Tuesday of November of each succeeding year at 7:30 p.m.

(c) Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board or by the Members having twenty-five percent (25%) of the total votes, and delivered not less than five (5) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

3.3 Notices of meetings required to be given herein may be delivered in any manner permitted under the Declaration.

3.4 At any meeting of the Members, a Member entitled to vote may either vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise expressly provided in the proxy.

ARTICLE IV

Board of Directors

4.1 The direction and administration of the Property in accordance with the provisions of the Declaration shall be vested in the Board consisting of three (3) persons who shall be elected in the manner hereinafter provided, except that, until the Turnover Date, the first and each subsequent Board shall be appointed by Declarant, and such Boards appointed by Declarant may have less than three members. Each member of the Board, with the exception of the Board members appointed by Declarant, shall be an individual Owner.

4.2 All matters of dispute or disagreement between Owners or with respect to interpretation or application of the provisions of the Declaration or these By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Owners; provided, however, that the Board shall have no right to make any such determinations that are inconsistent with the requirements of the Declaration or these By-Laws, and shall have no right to make decisions in connection with any dispute between the Declarant and any or all of the Board, the Association or any other Owner.

4.3 At the initial meeting of the Members as provided in Section 3.2(b) hereof, and at all subsequent annual meetings of the Members, there shall be elected members of the Board. In all elections for the members of the Board, each Member shall be entitled to vote for the number of Board members for which there are open positions being filled (but may not vote for the same person more than once), and the candidates receiving the highest number of total votes with respect to the number of offices to be filled shall be deemed to be elected. Three (3) Board members shall be elected at the initial meeting and shall serve until the first annual meeting. The two (2) Persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the one (1) person receiving the

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next highest number of votes at the first annual meeting shall be elected to the Board for a term of one (1) year. In the event of tie votes, the members of the Board shall determine which members shall have the two (2) year terms and which member shall have the one (1) year terms. Upon 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. Notwithstanding the aforesaid election procedure, prior to the Turnover Date, Declarant may appoint a Board comprised of one or two directors which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members is held after the Turnover Date.

4.4 Members of the Board shall receive no compensation for their services. However, any member of the Board may be reimbursed for reasonable expenses incurred in the performance of his duties.

4.5 Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.7, shall be filled by majority vote of the remaining members of the Board or of the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

4.6 The Board shall elect from among its members: (i) a President who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and Association, (ii) a Secretary who will keep the minutes of all meetings of the Members and of the Board and who shall, in general, perform all the duties incident to the office of Secretary, and (iii) a Treasurer to keep the financial records and books of accounts, and such additional officers as the Board shall see fit to elect.

4.7 After the initial Members' Board is elected, any Board member or officer may be removed from office by affirmative vote of the Members having at least sixty percent (60%) of the total votes, at any special meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a Board member removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose.

4.8 The initial meeting of the Board shall be held immediately following the initial meeting of the Members and at the same place. All subsequent meetings of the Board shall be held on at least a quarterly basis on the second Tuesday of each calendar quarter at 7:30 p.m., or at such other time or on such other date agreed on by all of the Board members, cooperating in good faith; provided, however, that the Board shall also have a special meeting immediately following each annual meeting of the Members, and officers for the coming year shall be elected at such special meeting. Special meetings of the Board shall be held upon call by the President or by majority of the Board on not less than forty-eight (48) hours notice to each member of the Board, delivered personally or by mail (or by phone, fax or email in the case of needed urgency). Any member of the Board, may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Board members shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of a majority of those present at its meetings when a quorum is present.

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4.9 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.

4.10 Meetings of the Board shall be open to any Owner, 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;
- (c) to discuss violations of rules and regulations of the Association or unpaid common expenses owed to the Association; or
- (d) to discuss any alleged violation of the Declaration or these By-Laws by Declarant.

Any vote on these matters shall be taken at a meeting or portion thereof open to any Owner.

4.11 Any Owner may record the proceedings at meetings required to be open by tape, film or other means; notice of such meetings shall be mailed or delivered at least 48 hours prior thereto.

4.12 The purchaser of a Lot from a seller other than Declarant pursuant to an installment contract for purchase shall, during such times as he or she resides in the Unit on such Lot, be counted toward a quorum for purposes of election of members of the Board, and shall have the right to vote for the election of the Board and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights. Satisfactory evidence of the installment contract shall be made available to the Association or its agents.

4.13 The Board shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from Owners for violations of the Declaration, By-Laws, and rules and regulations of the Association.

4.14 The Board shall maintain the following records of the Association available for examination and copying at convenient weekday hours by any Owners or by the holders of any mortgages, and their duly authorized agents or attorneys; copies of the recorded Declaration and By-Laws and any amendments thereto; the 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, Declarant shall maintain and make available the records set forth in this Section 4.14 to Owners for examination and copying.

4.15 With respect to Lots owned by a land trust, the beneficiary of such trust shall be deemed the Member entitled to cast votes, as the "Owner" of such Lot. Upon request, such beneficiary shall furnish to the Board satisfactory evidence of his or her beneficial ownership.

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

- (1) A copy of the Declaration, and any rules and regulations.
- (2) A statement of any liens, including a statement of the account with respect to such Lot, setting forth the amounts of unpaid assessments and other charges due and owing.
- (3) A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years.
- (4) 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.
- (5) A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available.
- (6) A statement of the status of any pending suits or judgments in which the Association is a party.
- (7) A statement setting forth the insurance coverage, if any, provided for all Owners by the Association.
- (8) A statement that any improvements or alterations made to the Lot by the prior Owner are in good faith believed to be in compliance with the Declaration.

The principal officer of the Association or such other officer as is specifically designated, shall furnish the above information when requested to do so in writing and within thirty (30) days of the request. A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the Association or the Board to the Owner for providing such information.

UNOFFICIAL COPY**EXHIBIT C****SIZE OF UNITS****LOT NUMBER****SQUARE FOOTAGE OF
UNIT ON SUCH LOT****(just anticipated size until construction of
all units is complete)**

1	1906
2	2313
3	2312
4	2666
5	2016
6	2150
7	2363
8	1980
9	2618
10	2150
11	2666
12	2150
13	2150
14	2363
15	2363
16	2150
17	2666
18	2618
19	2150