

UNOFFICIAL COPY

Prepared by and return to:

George Caravelli
Arbor Glen Development Corp.
460 Briargate Drive, Suite 500
South Elgin, Illinois 60177



Doc#: 0626447059 Fee: \$90.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/21/2006 09:23 AM Pg: 1 of 34

Amended and Restated

**DECLARATION OF
PARTY WALL RIGHTS,
COVENANTS, RESTRICTIONS,
CONDITIONS AND EASEMENTS
FOR ARBOR GLENN,
SCHAUMBURG, ILLINOIS**

For Recorder's Use

**Amending and Restating the Declaration
Recorded August 27, 2003
As Document 0323932070**

WHEREAS, Declarant is the owner and legal title holder of certain real estate in the Village of Schaumburg, County of Cook, and State of Illinois which real estate is legally described in Exhibit "A" attached hereto and by this reference made a part hereof; and

WHEREAS, the Declarant presently intends to construct a development containing Townhome Units, as herein defined, together with certain common areas which will require uniformity and continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in the Townhome Units; and

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and amenities of the proposed development to create an agency to which shall be delegated and assigned the powers of maintaining and administering the Common Areas, as hereinafter defined, and the administering and enforcing the covenants and restrictions hereinafter contained and created; and

WHEREAS, there has been incorporated or will soon be incorporated under the laws of the State of Illinois, as an not-for-profit corporation, the Arbor Glenn Homeowners' Association for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires to establish for its own benefit and the mutual benefit of all future owners, tenants and occupants of the aforesaid development and real estate and any party thereof, certain easements or rights in, over, under, upon and along said development and

UNOFFICIAL COPY

real estate and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

WHEREAS, the Declarant may, from time to time for the purposes hereinafter enumerated, convey certain portions of the Property, as hereinafter defined, to the Association, as hereinafter defined, as well as to various owners;

NOW, THEREFORE, the Declarant hereby declares that only the real estate described in Exhibit "A" shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements. The easements, covenants, restrictions, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquired rights, title or interest in any portions of the real estate; (2) be binding upon and inure to the benefit of each Owner (as hereinafter defined); and (3) run with the land subject to this Declaration, to be held, sold and conveyed subject thereto.

ARTICLE I *Definitions*

SECTION 1.01. "Associations" shall mean and refer to Arbor Glenn Homeowners' Association, an Illinois not-for-profit corporation.

SECTION 1.02. "Board" shall mean 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.

SECTION 1.03. "Bylaws" shall mean the Bylaws of the Arbor Glenn Homeowners' Association, a copy of which is attached as Exhibit "B" hereto and by this reference made a part hereof.

SECTION 1.04. "Common Area" shall mean all real estate owned by the Association for the common use and enjoyment of all members of the Association (except for those portions reserved for the exclusive use of certain Owners as hereinafter set forth) and such uses thereto by way of easements or other grant from the Declarant, the Association or others as may be granted to or by the Association for the common use and enjoyment of the Owners. The common area shall be hereafter conveyed to the Association from time to time and by this reference made a part hereof and such additions thereto as may hereafter be brought within jurisdiction of, or conveyed to, the Association.

SECTION 1.05. "Declarant" shall mean and refer to the Arbor Glen Development Corporation, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

UNOFFICIAL COPY

SECTION 1.06. "Declaration" shall mean this instrument, by which the certain covenants and restrictions are established to govern the use, maintenance and administration of the Property for the mutual benefit and enjoyment of the owners of the Townhome Units.

SECTION 1.07. "Family" shall mean one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than six (6) persons not all so related maintaining a common household in the Townhome Unit.

SECTION 1.08. "Initial Capitalization Fee" shall mean a sum equal to 3 times the monthly assessment fee which shall be payable by purchaser upon the closing of the initial conveyance from the Declarant.

SECTION 1.09. "Limited Common Area" shall mean a portion of the Common Area so designated in the Declaration or on the Plat as being reserved for the use of a certain Unit or Units to the exclusion of the other Units.

SECTION 1.10. "Lot" shall mean and refer to a platted lot designated as such upon any recorded subdivision map or Plat of Planned Unit Development of the Property and upon which lot a Townhome Unit is construction or to be constructed.

SECTION 1.11. "Member" shall mean and refer to any person or entity who holds membership in the Association.

SECTION 1.12. "Occupant" shall mean any person or persons other than the Owner rightfully in possession of a Townhome Unit.

SECTION 1.13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Townhome Unit, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of any obligations. The term "Owner" shall include the Declarant, Arbor Glen Development Corporation, to the extent of a number of Lots or Townhome Unit owned by Declarant and also includes the interest of Declarant as contract seller of any Lot or Townhome Unit.

SECTION 1.14. "Property" shall mean and refer to that certain real estate described in Exhibit "A".

SECTION 1.15. "Townhome Unit" shall mean a residential house unit consisting of a group of rooms which may be attached to one or more other Townhome Units by common party wall and which are designed or intended for the exclusive use as living quarters for one Family as heretofore defined, as construction by the Declarant upon the Property.

UNOFFICIAL COPY

ARTICLE II *Membership*

Every person(s) or entity who is (are) a record owner(s) of a fee or undivided fee interest in any Unit which is subject by covenants or record to assessment by the Association, including a contract seller, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Unit that is subject to assessment by the Association. Ownership of such Townhome Unit shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any owns one or more Townhome Units. Voting rights with regard to each Member are set forth in Article III hereof.

ARTICLE III *Voting Rights and Board of Directors*

SECTION 3.01. The Association shall have two classes of voting membership:

CLASS A: The Class A Members shall be all those owners as defined in Article II, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Unit in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Townhome Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Townhome Unit.

CLASS B: The Class B Members shall be Declarant, Arbor Glen Development Corporation. The Class B Members shall be entitled to twenty (20) votes for each Townhome Unit in which Declarant holds the interest required for membership by Article II, provided that the Class B membership shall cease and be converted to Class A membership on the earlier of either (a) the date which is Five (5) years after the date this Declaration is recorded; or (b) the date on which the Developer has sold a total of twenty four (24) Townhome Units.

SECTION 3.02. No owner of any interest in any Unit 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, and no purported disclaimer, termination or withdrawal thereof of therefrom on the part of any such owner shall be of any force or effect for any purpose.

SECTION 3.03. The Association shall have a Board of Directors, consisting of not less than three (3) members, who shall be elected by the Members of the Association at such intervals as the Bylaws of the Association shall provide, except that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided

UNOFFICIAL COPY

by the Bylaws. The initial Board shall be appointed by the Declarant and shall act until the initial meeting of the Board of Directors as provided in the Bylaws. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the board. Except as otherwise expressly provided by the Bylaws, all power and authority to act on behalf of the Association shall be vested in its Board and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of its Members. The Bylaws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

SECTION 3.04. The Association, being a not-for-profit corporation, shall not distribute its Members any sums in the nature of dividends upon its shares. To the extent that funds shall not be required for current expenditures or for such reserves, the next monthly assessments may, in the discretion of the Board, be eliminated or the amount thereof appropriately reduced.

SECTION 3.05. Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time. The Association itself shall also have power to perform its functions and carry out its duties.

SECTION 3.06. The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Townhome Units and the uses thereof.

SECTION 3.07. The books and records to be kept by the Board shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a first mortgage lien on any Townhome Unit as such reasonable time or times during the normal business hours as may be requested by the Owner or by the holder of said first mortgage lien.

ARTICLE IV ***Common Area***

SECTION 4.01. Every Member shall have right and easement in, over, upon and to the Common Area for purposes of vehicular and pedestrian ingress and egress and use of the open spaces and other common facilities and the Common Area shall be held for the use and benefit of each Member, and such easement shall be appurtenant to and shall pass with the title to every Townhome Unit subject to the following provisions:

- (a) The Association shall have the right to dedicate or transfer all or any part of the Common Area or Limited Common Area to any public agency, authority, or utility

UNOFFICIAL COPY

subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer. In the event the Class B membership has ceased, then two-thirds (2/3) of the votes of the Class A membership shall be required to make such dedication or transfer effective.

(b) As part of the overall program of development of the Property into a residential community and to encourage the marketing and construction thereof, the beneficiaries of the Declarant and its contractors, subcontractors, and their respective agents and employees shall, for sales and construction purposes only, have the rights of use of certain Lots and the Common Area and Limited Common Areas and facilities without charge during the sales and construction period on the Property to aid its construction and marketing.

(c) Each owner shall be entitled to the exclusive use and possession of that portion of the driveway falling within the Common Area which is contiguous to and serves his Townhome Unit except as otherwise provided herein.

SECTION 4.02. Each Owner and Owners of the Property legally described in Exhibit "A" attached hereto and by this reference made a part hereof and their tenants, guests and invitees shall have a right and easement in, over, upon and to the street located in the Common Area for the purpose of vehicular and pedestrian ingress and egress.

SECTION 4.03. The Association, upon a vote of two-thirds (2/3) of the Class B Members or if such membership has ceased, two-thirds (2/3) of the Class A membership, retains the right to dedicate easements over or upon the Common Areas and Limited Common Areas and the demised lots for the purpose of providing cable television service to the Units. Nothing contained herein, however, shall provide the right to enter within any Townhome Unit without the express consent of the Owner of any Townhome Unit.

SECTION 4.04. There shall be upon the Common Area such driveways as shall be necessary to provide ingress and egress to and from the Townhome Units for the use and benefit of the Owners of the Townhome Units and their guests and invitees, and such landscaping, and spaces for the parking of motor vehicles as the beneficiaries of the Declarant shall from time to time determine and shall be in compliance with such governmental laws, ordinances and regulations as shall be in effect during the development of the Property. There may also be upon the Common Area such facilities for the housing of tools, vehicles and equipment and such other structures and facilities as shall be reasonably necessary for the carrying out of duties imposed upon the Association hereunder, or as the Association may determine to erect from time to time.

SECTION 4.05. Intentionally Omitted

UNOFFICIAL COPY

SECTION 4.06. An easement is hereby granted to the Village of Schaumburg (the "Village") to go upon the Common Area and Limited Common Area for the purpose of providing police and fire protection services and maintaining and repairing those portions of the Common Area and Limited Common Area (street, sewer and water mains and lines, storm water detention and retention facilities, if any) which the Village shall deem to require maintenance or repair for the purpose of keeping (a) the street open for the passing of fire, police and other emergency vehicles, personnel and equipment from the date such notice is received; and (b) the sewer, water main lines and storm water retention and detention areas functioning properly. Except in the event of emergency situations, the Village shall serve written notice upon the Association setting forth the manner in which the Association has failed to maintain or repair the street, retaining walls, and storm water retention and detention facilities and said notice shall include a demand that such condition be cured within a reasonable number of days from the date such notice is received. If the deficiency has not been cured within a reasonable number of days or any extension thereof, the Village may exercise said easement by entering the Common Area and Limited Common Areas and performing such maintenance and repair. The Association shall reimburse the Village for all expenses incurred by it in performing such maintenance and repair. If the Association has not reimbursed the Village in full for all such expenses incurred by it within ninety (90) days after receipt of a bill detailing such expenses, the cost of such maintenance or repair not so reimbursed shall be assessed in equal shares against the Townhome Units, and shall become a lien upon such Townhome Units. Said easement shall be exercised only to the extent and for such period of time that the maintenance or repair is required to accomplish the purpose herein above mentioned.

SECTION 4.07. Any Member may delegate, in accordance with the Bylaws, his right to ingress and egress to the Common Area and Limited Common Area to the members of his family, occupants, guests, invitees, or contract purchasers who reside on the Property.

SECTION 4.08. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area, including the Limited Common Area, to the Association coincident with the conveyance of the Last Townhome Unit as contained in Exhibit "A" attached hereto free and clear of any mortgage liens of record subject, however, to the provisions of Section 4.01(a) hereof. Declarant shall reserve, upon conveyance to the Association of the Common Area, including the Limited Common Area, a perpetual and non-exclusive easement for egress and ingress in, to and from each Townhome Unit which it shall grant to each Townhome Unit upon the conveyance thereof.

SECTION 4.09. Declarant, its beneficiaries, agents, employees, guests and invitees shall have the right and easement for ingress and egress on, over, upon, under and across the Common Area and Limited Common Area for sale and construction purposes until Declarant has conveyed all of the Townhome Units to the purchasers thereof.

UNOFFICIAL COPY

SECTION 4.10.

- (a) The Association shall have the right and duty to build, construct, reconstruct, repair and maintain the Common Area, except the Limited Common Area.
- (b) The Association shall have the right of ingress and egress over and upon the Common Area and Limited Common Area for any and all purposes connected with the use, maintenance, construction, operation, repair and reconstruction of the Common Area.
- (c) The Association, through resolution of the Board, shall have the right to adopt rules and regulations governing the use, maintenance, construction, operation, repair, reconstruction and administration of the Common Area and Limited Common Area for the health, comfort, safety and general welfare of persons using the Common Area and Limited Common Areas.

SECTION 4.11. Notwithstanding any provisions herein to the contrary, the easements hereinafter created shall be subject to:

- (a) The right of the Declarant to execute all documents and do all other acts and things affecting the Property, which, in the Declarant's opinion, are desirable in connection with the Declarant's rights hereunder.
- (b) Easements of record on the date hereof, including each and every easement granted on the Plat of Subdivision for Arbor Glenn recorded in the Office of the Recorder of Deeds of Cook County, Illinois. And any easements which may hereafter be granted by Declarant to any public utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit, cable TV lines, gas pipes, sewers, water mains and pipes, or any other utility services servicing any Townhome Unit.

SECTION 4.12. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, or any part of the Common Area and Limited Common Areas to or for any public use or purpose whatsoever.

SECTION 4.13. The Common Area and Limited Common Areas will be subject to utility easements for sanitary and storm sewers, storm water detention and retention facilities, water, gas, electricity, telephone, cable TV and any other necessary utilities. If any such utilities are not installed or any easements not created for same prior to conveyance of the Common Area, including the Limited Common Areas, to the Association, the Association shall grant such easement or easements upon request of the Declarant. Alternatively, Declarant may elect to convey title to the Common Area, including the Limited Common Areas, subject to a reservation in favor of Declarant that it shall have the right thereafter to create such non-exclusive easements.

UNOFFICIAL COPY

SECTION 4.14. In the event that, by reason of the construction, settlement or shifting of any residential building now or hereafter located on the Property, any part of any such Townhome Unit encroaches or shall hereafter encroach on any part of the Common Area and Limited Common Areas, or, if by reason of the design or construction of any Townhome Unit, it shall be necessary or advantageous that such Townhome Unit or any portion of the Common Area and Limited Common Areas for any reasonable use appurtenant to said Townhome Unit, which will not unreasonably interfere with the use or enjoyment of the Common Area and Limited Common Area by the members of the Association and their guests and invitees, valid easements for the maintenance of such encroachment and for such use of the Common Area and Limited Common Areas is hereby established and shall exist for the benefit of such Townhome Unit and its owners and occupants thereof so long as all or any part of such Townhome Unit shall remain standing; provided, however, in no event shall a valid easement be created for any encroachment or use of the Common Area and Limited Common Areas in favor of any Townhome or any owner or occupant thereof if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Common Area and Limited Common Areas by the other members of the Association and their guests and invitees and if it occurred due to the willful conduct of any owner or owners of such Townhome Unit.

SECTION 4.15. All easements herein described are easements appurtenant running with the land and shall at all times inure to the benefit of and be binding on Declarant and all its grantees and their respective heirs, personal representatives, successors or assigns, perpetually in full force and effect. Reference in the respective deeds of conveyance, or in any mortgages, or trust deeds, or other evidence obligation, to the covenants, conditions, restrictions and easements herein described shall be sufficient to create and reserve such covenants, conditions, restrictions and easements to the respective grantees, mortgagees or trustees of any portion of the Property irrespective of the submission of any portion thereof to the provision of the Illinois Condominium Property Act as fully and completely as though said covenants, conditions, restrictions and easements were fully recited and set forth in their entirety in such documents.

SECTION 4.16. Except as otherwise provided in this Declaration, the Limited Common Area shall consist of all portions of the Common Area set aside and allocated for the restricted use of the particular Units. Without limiting the generality of the foregoing, the Limited Common Area shall include the following: (a) any patio, courtyard, deck, terrace, front stoop, stairway, landing or balcony, direct access to which is provided from a Townhome Unit; and (b) the land and landscaping located outside of and adjoining such Townhome Unit and which is located outside of and adjoining such Townhome Unit.

SECTION 4.17. Each Owner and Occupant shall have the right to the exclusive use and possession of the Limited Common Area serving exclusively the Townhome Unit of such Owner or Occupant, which right shall be appurtenant to and shall run with the title to such Townhome Unit, and shall not be separated from such Townhome Unit.

UNOFFICIAL COPY

ARTICLE V

Maintenance of Townhome Unit

SECTION 5.01. The Association shall determine the need for and may carry out or cause to be performed all maintenance and repair to the exteriors of the Townhome Units including, without limitation, all walls, including the foundation thereof, front masonry steps, roofs, gutters, downspouts, glass surfaces, windows and patio doors, front entry and garage doors. The Association shall, in addition, carry out or cause to be performed all such maintenance and repair of all water, sewer, gas, telephone, cable TV, and electrical lines incorporated in and forming a part of the Townhome Units as originally constructed that services more than one Townhome Unit. The Association shall not maintain or repair any furnaces, water heaters, stoves, refrigerators, fireplaces, washing machines or household appliances, electrical fixtures, air conditioners, compressors, courtyard heating systems, fountains or any other portion of said unit which serves only one Townhome Unit or the interior of any Townhome Unit or portion thereof. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Townhome Unit is subject. The obligations of the Association as contained in this Section 5.01 shall be limited, however, to the extent that there are funds available in the Article VI hereof.

SECTION 5.02. The Association shall pay, as agent and on behalf of the Owners and out of the funds furnished to it by them for such purpose, all taxes and other governmental imposition levied upon the Common Area and any part thereof.

SECTION 5.03. Each Owner shall have the obligation to maintain in good condition and repair his Limited Common Area, including but not limited to any outside deck, balcony, patio or courtyard. Upon the failure of any Owner to maintain those areas, though not the maintenance responsibility of the Association, the Association through its agents and employees, is hereby granted the right to enter upon the Townhome Unit and make such reasonable repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, and the costs thereof shall become a lien upon the Townhome Unit in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments. The Association shall mow and maintain the lawns in all Limited Common Areas, excepting the watering of the lawns which shall be the responsibility of the Owners. The Association shall also contract to have snow removed from all walks and drives, excluding all courtyards, patios and balconies.

SECTION 5.04. The Association shall pay for all water bills incurred on the Property in the performance of its obligation. Each Owner shall be billed pursuant to a separate water meter installed in each Unit by the Village of Schaumburg for water and sewer.

UNOFFICIAL COPY

ARTICLE VI *Maintenance Assessments*

SECTION 6.01. The Declarant, for each Townhome Unit owner within the Property, hereby covenants, and each Owner of any Townhome Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) Initial Capitalization Fee as determined by Declarant; (2) annual assessments or charges; and (3) special assessments for capital improvements or such other improvements upon the Property, such assessments to be fixed, established and 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 charge on the land and shall be a continuing lien upon the Townhome Unit against which each such assessment is made. Each such assessment, together with such interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Townhome Unit at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless assumed by them.

SECTION 6.02. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Property in particular for the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of such Common Area, and of the Townhome Units situated upon the Property. Such uses shall include, but are not limited to, the costs to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area and of the maintenance of the exteriors of the Townhome Units (except as otherwise provided herein) as may from time to time be authorized by the Board, and other facilities and for the grounds, landscaping, equipment, street lighting, if any, all sanitary and storm sewer and water lines, structures and appurtenances (other than those maintained by any governmental authority or utility company), storm water detention and retention facilities, fencing, if any, and other charges required by this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including establishment and maintenance of a reserve for repair, maintenance, replacements, taxes and other charges as specified herein. In addition water, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners, shall be paid by the Association from the maintenance funds. In the event any utilities which benefit the Common Area are directly charged to any Owner, the Association will reimburse such Owner for any such expense. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund. At the time each Townhome Unit is first occupied, the Owner shall pay (in addition to the first monthly installment) to the manager or managing agent, or as otherwise directed by the Board an amount equal to three times the first full monthly assessment for such Owner, which amount shall be used and applied as a reserve for replacements in the manner herein provided. In the event, however, that the Board determines that there exists a surplus in

UNOFFICIAL COPY

the replacement reserve, the Board shall have the authority to transfer such funds into the operating account to fund any deficiency in said account.

SECTION 6.03. The Board shall be authorized to fix the annual assessment in an amount sufficient to meet the costs and expenses as contained in Section 6.02 hereof.

SECTION 6.04. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement (including those items of maintenance and repair set forth in Section 5.01 hereof) of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, if any.

SECTION 6.05. Both annual and special assessments must be fixed at a uniform rate for all Townhome Units, except for certain Townhome Units as provided in Section 6.09 hereof, and shall be collected on a monthly basis.

SECTION 6.06. The annual assessments provided for herein shall commence for all Townhome Units within the Property on the first day of the month following the conveyance of the first Townhome Unit, except as otherwise provided in Section 6.09 hereof. The Board shall fix the amount of the annual assessment against each Townhome Unit at least thirty (30) days in advance of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of annual assessment shall be due on the first day of each month.

The first Owner after Declarant shall be liable for payment of the Initial Capitalization Fee upon conveyance of his Townhome Unit title to him. This payment shall be in addition to the prorated portion of the monthly assessment which Owner shall pay as of the date title to his Townhome Unit is conveyed. The Association shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Townhome Unit have been paid and, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein, and the Association shall be entitled to a reasonable fee for the issuance of the certificate.

SECTION 6.07. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a monthly interest rate equal to one and one-half percent (1 ½%) and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the respective Townhome Unit and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Townhome Unit, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods

UNOFFICIAL COPY

available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property.

SECTION 6.08. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or thereafter placed on the Townhome Units provided, however prior assessments with respect to a Townhome Unit which become due and payable subsequent to the date holder of said mortgage takes possession of the Townhome Unit, accepts a conveyance of any interest in the Townhome Unit or has a receiver appointed in a suit to foreclose his lien shall have priority.

SECTION 6.09. With regard to any Lots upon which Townhome Units are constructed and which are owned by Declarant, the assessment respecting any such Townhome Unit shall be limited to the pro rata share of the aggregate amount of actual operating expenses with respect to such unoccupied Townhome Units, provided, however, that in the event Declarant enters into a lease or installment contract for any Townhome Unit, then Declarant shall be responsible for the payment of assessments on those Townhome Units on the same basis as any other Owner provided in Section 6.01 hereof. Actual operating expenses shall include but not be limited to those ordinary expenses covering the common area landscaping, plowing, drive maintenance, lighting, watering, insurance, real estate taxes, management fees, street repairs, and general maintenance and operation of the Property but shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, prepaid items or inventory items to the extent attributable to subsequent periods, or services which are not rendered and not charged only because a Unit is unoccupied, such as management fee, scavenger service, water and janitorial. The prorata share covering the Townhome Units which have not been sold by the Declarant may be paid on a monthly basis or, at Declarant's option, paid to the Association at the close of each calendar year without interest. There shall be no assessments with respect to any Lot until such time as Declarant (or other Owner) shall receive a Certificate of Occupancy from the Village with respect to that Lot.

ARTICLE VII

Insurance

SECTION 7.01. The Association shall have the authority to and shall obtain insurance as follows:

(a) **Property:** The Association shall have the authority to and shall obtain insurance for the Property against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Common Areas and the Townhome Units, and against such other hazards and for such amounts as the Association may deem advisable. Insurable replacement cost shall be deemed the cost of restoring the Common Areas, Townhome Units or any part thereof to substantially the same condition in which they existed prior to damage or destruction. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to the Board, as Trustee, for each of the Unit Owners and for the holders of mortgages on his

UNOFFICIAL COPY

Townhome Unit, if any. Losses under such policies shall be adjusted by the Board, as trustee for said Unit Owners and mortgagees, provided however that the Board shall have the power to retain public adjusters if and when deemed advisable by the Board, and the cost thereof shall be paid by the Association. The policy of insurance should also contain, if possible, a waiver of subrogation rights by the insurer against individual Townhome Unit Owners, and against Declarant and all employees, agents and contractors of each of them, and all tenants and others holding through or under Declarant. The premiums for such insurance shall be a common expense.

(b) The Board may, and upon written demand upon any Unit Owner in the affected Building shall, engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of this Declaration. The fees of such corporate trustee shall be paid by the Association. In the event of any loss in excess of \$100,000.00 in the aggregate, the Board shall engage a corporate trustee as aforesaid. The rights of first mortgagees under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of this Declaration with respect to the application of insurance proceeds to the repair or reconstruction of the units. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of a release from the Board of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

(c) Each Owner shall obtain his own insurance on the contents of his own Unit and furnishings and personal property therein, to the extent not covered by the insurance for all of the Owners obtained as part of the insurance as above provided, and the Board shall have no obligation whatsoever to obtain any such insurance coverage on behalf of the Owners. Each Owner shall promptly report, in writing to the Board, any betterments or improvements to his Unit without prior request from the Board. Unless otherwise specifically agreed to by the Board, the Owner shall be responsible for insuring any such betterments and improvements in his Unit and the Board shall not be responsible for obtaining insurance on such betterments or improvements and shall not be obligated to apply any insurance proceeds from policies it is obligated to maintain hereunder to restore the affected Unit to a condition better than the condition existing prior to the making of such betterments or improvements.

(d) Each Owner shall keep in force a general liability policy or policies to protect the Association against any liability to the public or to any invitee of the Owner incidental to the use of or resulting from any accident occurring in or upon said Owner's Unit, with a limit of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 in the annual aggregate, or such larger amount as the Board may require from time to time.

UNOFFICIAL COPY

(e) All policies of insurance required herein to be carried by the Owners shall name the Association and any property manager as additional insureds. A certificate of liability insurance in compliance with the insurance requirements herein to the Board upon reasonable request of the Board, but in no event less often than once each calendar year.

(f) Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Association, its directors and officers, the Declarant, the manager and the managing agent if any, and their respective employees and agents, for damage to the Unit or to any personal property located in the Units caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance.

(g) In the case of damage by fire or other disaster to any Building element where the insurance proceeds are sufficient to repair or reconstruct the Building element, then the proceeds shall be used by the Association to repair or reconstruct the Building element. In the case of damage by fire or other disaster to any Building element where the insurance proceeds are insufficient to repair or reconstruct the Building element the Board shall have the obligation to levy a special assessment among all Unit Owners to pay the excess cost. The Board shall have the power to borrow the cost thereof and to pledge Association Assessments as collateral.

(h) **Public Liability:** The Association shall also have authority to and shall obtain comprehensive liability insurance, in such amounts as it deems desirable, and workmen's compensation insurance and other liability insurance as it deems desirable, insuring individually and severally, each unit Owner, mortgagee of record, if any, the Association, its officers, directors and Association, Declarant, Managing Agent, and their respective employees, agents and all persons acting as agents, if any, from liability in connection with the use, management, and ownership of the Common Areas and the streets and sidewalks adjoining the Property and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Such insurance shall also, if possible, contain a waiver of subrogation rights by the insurer against any of the above-named insured persons and against any contractors of each of them and all tenants and owners holding through or under Declarant. The premiums for such insurance in connection with the Common Areas shall be a common expense, subject to Declarant's obligations to make contributions (if any). The Association shall retain in safekeeping any public liability policy for seven (7) years after the expiration date of the policy.

(i) **Fidelity Bond:** The Association shall have the authority to and shall obtain a fidelity bond indemnifying the Association, the Board, the Unit Owners and the Declarant for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or the managing Agent or of any other person handling the funds of the Association, the Board or the Unit Owners in such amount as the Association shall deem desirable, but not less than twenty-five percent (25%) of the total annual budget. The premium for such fidelity bond shall be a common expense. All management companies which are responsible for the funds held or

UNOFFICIAL COPY

administered by the Association shall maintain and furnish to the Association a fidelity bond for the maximum amount of coverage available to protect funds in the custody of the management company at any time. The Association shall bear the cost of the fidelity insurance and fidelity insurance and fidelity bond unless otherwise provided by contract between the Association and a management company. The Association shall be the direct obligee of any such fidelity bond.

(j) Directors and Officers: The Association shall also have authority to obtain such insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable, insuring the property and each member of the Board and officer of the Association and member of any committee appointed pursuant to the By-Laws of the Association, from liability arising from the fact that said person is or was a director or officer of the Association or a member of such a committee. The premiums for such insurance shall be a common expense.

(k) Miscellaneous: The Association shall also have the authority to obtain such other insurance in such reasonable amounts as the Association shall deem desirable for the best interests of the Association. The cost of such insurance shall be a common expense.

ARTICLE VIII *Interim Procedure*

SECTION 8.01. Until Townhome Units shall have been conveyed by the Declarant to the first Owner thereof (or to such Owner's nominee) the Declarant shall, with respect to each such unsold Townhome Unit, have all the rights granted to the Owners.

SECTION 8.02. Until the initial meeting of the Members, the Declarant (or its beneficiaries or designees) may appoint the Board which shall have the same powers and authority as given to the Board generally.

SECTION 8.03. The powers granted to the Declarant by Section 8.02 hereof shall include, without limitation, the power to assess upon and collect from the individual Owners, their respective proportionate shares of the funds required for the carrying out of all the duties and obligations of the Association.

ARTICLE IX *Restrictions*

SECTION 9.01. All buildings or structures on the property shall originally be of new construction.

UNOFFICIAL COPY

SECTION 9.02. Each Townhome Unit conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

SECTION 9.03. The Townhome Units shall be used only for residential purposes, as a private residence, and no professional business or commercial use shall be made of the same, or any portion thereof or resident's use of a Townhome Unit endanger the health or disturb the reasonable enjoyment of any other Owner or resident, except as provided in Section 4.01(b) herein and provided further, that the Townhome Unit restrictions contained in this Section shall not be construed in such a manner as to prohibit an Owner from (a) maintaining his personal professional library therein; (b) keeping his personal, business or professional records or accounts therein; (c) handling his personal business or professional telephone calls or correspondence therefrom; or (d) conducting incidental commercial activities such as giving piano lessons.

SECTION 9.04. No building other than Townhome Units originally constructed by Declarant or its assigns shall be constructed on each Lot.

SECTION 9.05. Except as hereinafter provided in Section 9.07 hereof, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used as a residence at any time, either temporarily or permanently.

SECTION 9.06. No advertising sign or "for sale" sign, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on a Townhome Unit except as provided in Section 9.07 hereof.

SECTION 9.07. The foregoing covenants of this Article IX shall not apply to the activities of the Declarant. The beneficiaries of the Declarant may maintain, while engaged in the construction and sales activities, in or upon such portions of the Property as said beneficiaries determine, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, signs and construction trailers.

SECTION 9.08. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Townhome Unit, except dogs, cats or other common household pets (not to exceed a total of two (2) pets may be kept, provided, that they are not kept, bred or maintained for any commercial purposes. Owners are responsible for removing all animal waste generated by their pets. Dogs must be attended by their owners and restrained by a leash.

SECTION 9.09. All rubbish, trash or garbage, including trash containers, shall be kept in the interior of the Townhome Units so as not to be seen from neighboring Townhome Units and streets, and shall be regularly removed from the Property, and shall be not allowed to accumulate thereon.

UNOFFICIAL COPY

SECTION 9.10. Drying of clothes shall be confined to the interior of the Townhome Units.

SECTION 9.11. Without prior written authorization of the Board, no television, radio antennas, or electronic equipment of any sort shall be placed, allowed or maintained on the exterior of any Townhome Unit or any portion of the exterior of the improvements locate, on the Property, nor upon any structure situated upon the Property.

SECTION 9.12. An Owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other properties or their owners.

SECTION 9.13. There shall be no change in any exterior color of any Townhome. All drapes or shades shall have a white back visible from the exterior of any building.

SECTION 9.14. No nuisance, odors or offensive activity shall be conducted on the Property nor shall anything be done therein, either willfully or negligently, which may become an annoyance or nuisance to the Owners.

SECTION 9.15. Each lot is subject to an easement to and in favor of the Association and each and all of its employees, agents, and instrumentalities to go upon such Lot for reasonable inspection thereof from time to time and for the purpose of carrying out any and all of the obligations and functions with respect to such Lot and the Townhome Units located thereon as are herein imposed upon or permitted to an easement in favor of any adjoining Lot to the extent necessary to permit the maintenance, supply, repair and servicing of utility services to the various Lots and Townhome Units located thereon.

SECTION 9.16. The Owner of each Townhome Unit shall from time to time grant such additional easements and rights over, across, on, under and upon his Townhome Unit as may be reasonably necessary in connection with the Supply of any of the utilities described in Section 4.12 hereof to any part of the Property.

SECTION 9.17. The Board may adopt such other rules and regulations from time to time governing the use and enjoyment of the Common Area and Limited Common Areas and the use of the Townhome Units as the Board, in its sole discretion, deems appropriate or necessary.

SECTION 9.18. Garages and driveways shall be used for parking operable automobiles only and shall not be used for campers, trailers, commercial vehicles, snowmobiles, boats or for any other purposes. All other parking areas and spaces are reserved for guests. The Board may authorize such vehicles parked in violation of this provision to be towed away and any such towing charge shall become a lien upon the Townhome Unit of the owner of the vehicle in the same manner Article VI hereof for non-payment of maintenance assessments.

UNOFFICIAL COPY

SECTION 9.19 Each Lot and the Common Area and Limited Common Areas is hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, including roof structures which overhang and encroach upon the servient lot or Common Area, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the dominant tenement provided, however, that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section 9.19. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at the owner's expense when requested by the owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvements, material or other obstacle was placed in or over the easement area.

SECTION 9.20. No building, fence, wall or other structure or landscaping shall be commenced, erected or maintained upon the Property.

SECTION 9.21. Until such time as title to any Townhome Unit is conveyed to a bona fide purchaser, the Declarant reserves the right to lease such Townhome Units upon such terms and conditions as the Declarant may, in its sole discretion approve.

SECTION 9.22. Any Owner shall have the right to lease all (but not less than all) of their Townhome Unit upon such terms and conditions as the Owner may deem advisable. Any such lease shall be in writing, a copy of which must be delivered to the Association, and shall provide that the lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease.

ARTICLE X *Party Walls*

SECTION 10.01. All dividing walls which straddle the boundary line between Townhome Units and which stand partly upon a Townhome Unit and partly on another, and all walls which serve two or more Townhome Units, shall at all times be considered party walls, and each of the owners of Townhome Units upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for the support of said Townhome Units and for the support of any building constructed to replace the same, and shall have the right to maintain in or on said wall any pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained.

UNOFFICIAL COPY

SECTION 10.02. No owner of any Townhome Unit nor any successor in interest to any such owner shall have the right to extend said party wall in any manner, either in length, height or thickness.

SECTION 10.03. In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the owner of any Townhome Unit upon which such party wall may rest shall have the obligation to repair or rebuild such wall and the owner of each Townhome Unit upon which such wall shall rest, be served or benefitted by shall pay his allocated portion of the cost of such repair or rebuilding. All such repair or rebuilding shall be done within a reasonable time, in a workmanlike manner with materials comparable to those used in the original wall and shall conform in all respects to the laws or ordinances regulating the construction of building in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

SECTION 10.04. The foregoing provision of the Article notwithstanding, the owner of any Townhome Unit, or other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Owner under this Article shall be appurtenant to the land and shall pass to such Owner's or other person's successors in title.

SECTION 10.05. The title of each Owner to the portion of each party wall within such Townhome Unit is subject to a cross easement in favor of the adjoining owner for joint use of said wall.

ARTICLE XI *Miscellaneous*

SECTION 11.01. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Owner found to be in violation by a court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorney's fees incurred by the Association in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Owner's Townhome Unit, enforceable as other liens herein established. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 11.02. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, all of which shall in fact remain in full force and effect.

UNOFFICIAL COPY

SECTION 11.03. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Owner of any Townhome Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended as successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants and restrictions of this Declaration may be amended during the first fifty (50) year period or within any subsequent successive ten (10) year period by an instrument signed by those Members (Class A and Class B) entitled to cast seventy-five percent (75%) of the total votes as provided in Article III, Section 3.01 hereof and then properly recorded. These covenants and restrictions may also be cancelled or amended by an instrument signed by sixty percent (60%) of Owners executed, acknowledged and recorded within ninety (90) days of expiration of any successive ten (10) year period, such cancellation or amendment to be effective on the date of commencement of the ten (10) year period in question. Any instrument executed pursuant to the provisions contained herein shall be filed for record in a true, complete copy of such instrument shall be transmitted to each Owner promptly.

SECTION 11.04. In the event and to the extent that any of the covenants 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, President of the United States of America and her Majesty, Elizabeth II, Queen of England, living at the date of this Declaration; provided however that Declarant does hereby waive any such rule to the extent permissible under applicable law.

SECTION 11.05. Any notices required to be sent to any member of the Association or to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of such Member or Owner as it appears on the records of the Association at the time of such mailing.

SECTION 11.06. If at any time or times the Board shall deem it necessary or advisable to prerecord this Declaration or any part hereon in the Office of the Recorder of Deeds of Cook County, Illinois, in order to avoid the expiration hereof or of any of the covenants, easements, agreements or other provisions herein contained under any of the provisions of Section 13-114, Chapter 110 of the Illinois Revised Statutes presently in force commonly known as the Marketable Title Act, or any other law or statute of similar purport, they shall submit the matter to a meeting of Members called upon not less than ten (10) days' notice, and unless at such meeting at least two-third (2/3) of Members shall vote against such prerecording, the Association shall have, and is hereby granted, power to so prerecord this binding upon all Owners of any part of the Property in every way and with an the full force and effect as though such action were

UNOFFICIAL COPY

taken by each of said Owners and prerecorded document executed and acknowledged by each of them.

SECTION 11.07. All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Property and their grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof. Reference in the respective deeds of conveyance, or in mortgage or trust deed or other evidence of obligation, to the easement and covenants herein described shall be sufficient to create and reserve such easements and covenants were fully recited and set forth in their entirety in such documents.

SECTION 11.08. In amplification of and in addition to the provisions contained in Article VI, Section 5.07, in the event of any default of any Owner, the Association may and shall have the right and remedy as shall otherwise be provided or permitted by law, including the right to take possession of such Owner's interest and Townhome Unit for the benefit of all other Owner's by an action for possession in the manner prescribed in Article IX (Forcible Entry and Detainer) of the Illinois Code of Civil Procedure, Illinois Revised Statutes, Chapter 110, Section 9-101, et seq.

SECTION 11.09. Notwithstanding anything in the Declaration to the contrary, with regard to the provisions of Section 11.03 dealing with the method of amending the Declaration and Section 608 which expressly subordinates the lien of the Association for unpaid assessment to the lien of any first mortgage on any Townhome Unit, no amendment to, change or modification of these Sections shall be effective unless such change or amendment shall be first consented to, in writing, by all mortgagees of record of such Townhome Units.

SECTION 11.10. In the event that any part of any Townhome Unit as originally constructed by the beneficiaries of the Declarant encroaches or shall hereafter encroach upon any part of any other Lot or the Common Area, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Townhome Unit of another Owner and if it occurred due to the willful conduct of any Owner.

SECTION 11.11. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class cooperative housing development.

UNOFFICIAL COPY

ARTICLE XII *General Provisions*

SECTION 12.01. *Certain Rights of the Declarant.* Until the time established by the Declaration for the election of the initial Board by the Unit Owners, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board in the Act and in this Declaration shall be held and performed by the Declarant. If the initial Board shall not be elected by the Unit Owners at the time established by this Declaration, the Declarant shall continue in the aforesaid office for a period of thirty (30) days after written notice of its resignation is sent to all of the Unit Owners entitled to vote at such election. In exercising such rights, and the other rights reserved by the Declarant pursuant to this Declaration, the Declarant shall not be under any disability which would otherwise be imposed by law by reason of the Declarant's interest in the subject matter of any transaction, provided, however, that any such transaction shall have been entered into in good faith.

SECTION 12.02. *Notice to Mortgagees.* Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner whose Unit Ownership is subject to such mortgage or trust deed.

SECTION 12.03. *Notices to Estate Representatives.* Notices required to be given any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

SECTION 12.04. *Conveyance and Leases.* Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under Articles of Agreement for Deed and each tenant under a lease for a Unit, 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 the Property, and shall inure to the benefit of such Unit Owner in like manners as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

SECTION 12.05. *No Waivers.* No covenants, restrictions, conditions obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

SECTION 12.06. *Change, Modification or Rescission.* No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without its written consent. The change, modification or rescission shall be effective upon recordation of

UNOFFICIAL COPY

such instrument in the Office of the Recorder of Deeds of Cook County, Illinois; provided, however, that no such change, modification or rescission shall change the boundaries of any lot, the allocation of percentages of ownership in the Common Elements and votes in the Association, quorum and voting requirements for action by the Association, or liability for Common Expenses assessed against any Townhome Unit, except to the extent authorized by other provisions of this Declaration.


SECTION 12.07. *Special Amendment.* Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans' 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 to make, purchase, sell, insure, or guarantee first mortgages covering Unit Ownerships, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto and any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute the record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to a Unit.

SECTION 12.08. *Assignments by Declarant.* All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

IN WITNESS WHEREOF, the Declarant, Arbor Glen Development Corporation, has caused its name to be signed to these present on the day and year first above written.

DATED: April 24, 2006

Arbor Glen Development Corporation,
an Illinois Corporation

By: 

Its: President

UNOFFICIAL COPY

STATE OF ILLINOIS)
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that George Caravelli, President, of Arbor Glen Development Corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such appeared before me this day in person and acknowledged that he signed and delivered the said instrument as their free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth

Given under my hand and official seal this 24th day of April, 2006.

Nancy R Caravelli
Notary Public



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

**ARBOR GLEN BEING PART OF THE WEST HALF OF THE
SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 41 NORTH,
RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.**

R:\5000a\5200-5299\5217-17-000-0000 G Declaration amended.doc

Property of Cook County Clerk's Office

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: [Signature]
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN RECKE & ROGER DUBBS

By: _____
Voting Member

JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By: [Signature]

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: *Steve Hayes* / *Minal Patel Hayes*
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN KECKE & ROGER DUBBS

By: _____
Voting Member

JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By: *[Signature]*

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: *Joseph Lipari*
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN FOLKE & ROGER DUBBS

By: _____
Voting Member

JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By: *[Signature]*

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By:  _____
Voting Member

KAREN KEEKE & ROGER DUBBS

By: _____
Voting Member


JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By:  _____

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By:  _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN REEKE & ROGER DUBBS

By: _____
Voting Member

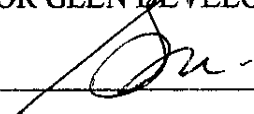
JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By:  _____

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By:  _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN RUCKE & ROGER DUBBS

By: _____
Voting Member


JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By:  _____

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN KELKE & ROGER DUBBS

By:  _____
Voting Member

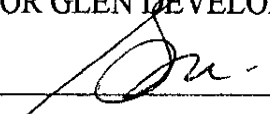
JON & WAKABA WINSTON

By: _____
Voting Member

CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By:  _____

UNOFFICIAL COPY

CONSENT TO AMENDMENT

The undersigned, representing no fewer than seventy-five percent (75%) of the total votes as set forth in Article III, Section 3.01 of this Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Arbor Glenn, Schaumburg, Illinois (the "Declaration") do hereby consent to the amended Declaration in the form attached to this Consent.

DENIS & JOSEPHINE ANG

By: _____
Voting Member

JAMES & DEBRA DREYER

By: _____
Voting Member

STEVE & TINA HAYES

By: _____
Voting Member

JACK & JENNIFER JONES

By: _____
Voting Member

JOSEPH & DIANE LIPARI

By: _____
Voting Member

RAJAN & MINAL PATEL

By: _____
Voting Member

CHRISTOPHER & STEPHANIE PURYEAR

By: _____
Voting Member

KAREN RICKE & ROGER DUBBS

By: _____
Voting Member


JON & WAKABA WINSTON

By: _____
Voting Member


CHERYL SERNA, Voting Member

CAROL OSTROWSKI, Voting Member

DECLARANT and Voting Member:
ARBOR GLEN DEVELOPMENT CORPORATION

By:  _____