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Doc#: 0634522088 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/11/2006 12:29 PM Pg: 1 of 10

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK AVENUE HOMEOWNER'S ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by Harris N.A., Successor Trustee to Harris Trust and Savings Bank, As Trustee, Under Trust Agreement Dated September 29, 1998 and Known as Trust Number I-718, hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS, Declarant is the owner of a certain property in the Village of Palatine, County of Cook, State of Illinois which is more particularly described as:

See attached legal description.

Permanent Real Estate Index Number: see attached legal description

WHEREAS, portions of the Property, pursuant to local laws and ordinances, have been designed as storm water detention areas, and provisions for proper maintenance and insurance thereof and for other portions of the Property must be established.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of providing for storm water management on the Property and the proper maintenance of storm water management areas and other areas of the Property, and protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, personal representatives, legatees, and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE 1 DEFINITIONS

Section 1: "Association" shall mean and refer to Park Avenue Homeowner's Association, Inc., its successors and assigns.

Section 2: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as my hereinafter be brought within the jurisdiction of the Association.

Section 4: "Developer" shall mean George A. Amend, Inc.

Section 5: "Maintenance Area" shall mean and include the following:

- (a) The Fence along Dundee Road situated upon lots 13,14, 15 and 16.
- (b) Outlots A and B.

Section 6: "Lot" shall mean and refer to any of Lots 1 through 21, inclusive, shown upon any recorded subdivision plat of the Property, or any new or additional lot or residence created or developed to the East of Amend's Park Avenue Estates which shall be required to join and become part of Park Avenue Homeowner's Association.

Section 7: "Declarant" shall mean and refer to George A. Amend, Inc., its successors and assigns.

ARTICLE II PROPERTY RIGHTS

Section 1: Association: The Association, its agents and employees, shall have the right and easement, which easement is hereby granted, to enter upon the Maintenance Area for the purpose of maintaining the Maintenance Area as more fully set forth hereinafter.

Section 2: Village of Palatine: If the Village, in its sole opinion, determines that the Association fails to maintain the Maintenance Area or otherwise breaches the terms and conditions created by this Declaration, the Village of Palatine, its employees and agents, may, at its election, enter upon the Maintenance Area and perform such obligations in which event said Village of Palatine, upon recording with the Cook County Recorder of Deeds a notice thereof, shall have liens against the Property for failure to meet its obligations hereunder, which liens shall be enforceable by any proceeding at law or in equity in the amount of any such monies expended by the Village of Palatine in connection with performing the obligations hereunder with interest thereon at the maximum legal rate paid plus costs of suit and reasonable attorney's fees, all of which shall be the responsibility of the Association.

Section 3: Declarant and Developer. Declarant and Developer, and their agents and employees, shall have the right and license but not the obligation, to enter upon the Maintenance Area, either prior or subsequent to the conveyance thereof, for the purpose of constructing or

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maintaining such improvements thereto and thereon required by the Village of Palatine or other governing agencies.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1: Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2: The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any one of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership or
- (b) upon resignation of Declarant from Class B membership or
- (c) December 31, 2008.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made upon the recording of a Certificate of Non-Payment of Assessments in the office of the Recorder of Deeds of Cook County, Illinois. Each such assessment, together with interest, costs, reasonable attorney's fees and the costs of collection as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Assessments shall be collected and paid in periodic installments as determined by the Board of Directors of the Association.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the preservation and maintenance of the Maintenance Area, for the purchase

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of annual insurance for the easement area located on Lot 1 including the pond and barrier landscaping and also for the conduct of the general affairs of the Association, which shall be limited to the said preservation and maintenance of the Maintenance Area.

Section 3: Levy of Annual Assessments - Maximum Annual Assessments. The Board of Directors of the Association shall levy annual assessments on each Lot, subject to the limitations hereinafter provided:

(a) Upon the sale of a Lot by the Declarant to an Owner, the Owner shall pay a one-time initial assessment to the Association in the amount of \$250.00 to be used by the Association to pay the expenses. Any shortage of funds necessary to pay the expenses of the Association shall be paid by the Class B members until Class B membership shall cease as provided in Article III.

(b) From and after the first day of the month immediately following the cessation of the Class B membership, the assessment for the balance of that calendar year, and for the following year, shall be fixed by the Board of Directors.

(c) From and after January 1 of the second full year following the cessation of the Class B membership, the maximum annual assessment may be increased each year not more than 10% above the previous year's Maximum Annual Assessment (excluding any special assessments) without a vote of the membership.

(d) From and after January 1 of the second full year following the cessation of the Class B membership, the Maximum Annual Assessment (excluding any special assessments) may be increased above ten percent (10%) of the previous year's Maximum Annual Assessment by a vote of sixty percent (60%) of the members who are voting, in person or by proxy, at a meeting duly called for that purpose.

(e) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum.

Section 4: Levy of Special Assessment. The Board of Directors of the Association may levy special assessments on each Lot to carry out the stated purposes in Section 2; of Article IV of this Declaration.

Section 5: Notice and Quorum for Any Action Authorized Under Section 3 and Section 4: Written notice to any meeting called for the purpose of taking any action authorized under Section 3 and Section 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6: Uniform Rate Assessment. Annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

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Section 7: Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the cessation of the Class B membership. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but the failure to do so shall not affect the validity thereof. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8: Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate of applicable interest permitted under Illinois law. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Property, or avail itself of any other competent proceeding and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment, the cost of recording any Certificates of Sale, payment of assessments, costs of the action as well as reasonable attorney's fees fixed by the Court. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot.

Section 9: Subordination of the Lien Mortgages. The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

In addition to the duties and powers inherently charged to and possessed by the Association as an Illinois not-for-profit corporation, the Association shall have only the following duties and powers:

- (a) Collect, and enforce collection of, all assessments described in Article IV.
- (b) Grant easements where necessary for public utilities over the Maintenance Area to serve both such Maintenance Area.
- (c) Maintain such policies of insurance in sufficient amounts to protect the interests of the Association, its members, officers and directors.
- (d) Contract with independent contractors, and others, if the same shall be deemed necessary by the Board of Directors, to perform and effectuate all or any of the duties and powers of the Association.

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(e) Maintain the Maintenance Area, in a first rate condition at all times, including, without limitation, the following:

- i. all landscaping in all parts of the Maintenance Area, including, without limitation, a grass cover in a trimmed condition and free of noxious weeds;
- ii. all storm water drainage facilities, including, without limitation, the detention pond, and all pipes, valves and related appurtenances, and keep them clear and free of obstructions of every kind and nature and provide adequate drainage therefore.
- iii. the Fence along Dundee Road, which shall be maintained in accordance with the fence details approved by the Village of Palatine and which shall be replaced every 10 years or at the discretion of the Village Manager.

(f) To purchase or pay for the insurance policy for outlots A and B.

(g) Comply with all ordinances and regulations of the Village of Palatine, this Declaration, and the bylaws of the Association.

ARTICLE VI NEW OR ADDITIONAL DEVELOPMENT

If at any time subsequent to the recording of this Declaration the land adjacent to and immediately East of Amend's Park Avenue Estates is subdivided, developed or constructed upon, the developer of said land shall be permitted to widen the detention basin situated on Outlot A Eastward, providing additional detention storage. Any subdivided lot or newly constructed residence which expands the detention basin shall automatically, upon the recording of the plat of subdivision or issuance of the certificate of occupancy by the appropriate governmental agency, whichever occurs first, become a member of the Association, whereupon the one-time initial assessment of \$250.00 shall be immediately due and payable to the Association. Thereafter said lots and/or residences shall be subject to assessment by Park Avenue Homeowner's Association as are the original lots 1-21 of Amend's Park Avenue Estates.

ARTICLE VII GENERAL PROVISIONS

Section 1: Enforcement. The Association, any Owner, or the Village of Palatine, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, any Owner, or the Village of Palatine, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for the term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than one hundred percent (100%) of the Owners, and thereafter by an instrument signed by not less than one hundred percent (100%) of the Owners. Any amendment must be duly adopted and recorded with the Cook County Recorder of Deeds.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand and seal this 6th day of December, 2006.

Harris N.A., Successor Trustee to Harris Trust
and Savings Bank, As Trustee, Under Trust
Agreement Dated September 29, 1998 and Known as
Trust Number L-718 AND NOT PERSONALLY

This instrument is executed by the undersigned Land Trustee, not personally but solely as trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, releases, covenants, conditions, undertakings and agreements hereinafter made shall be deemed to be undertaken by it solely in its capacity as trustee and shall not be deemed to be undertaken by it personally. No personal liability or personal obligation shall be incurred by or shall at any time be asserted against the undersigned Land Trustee on account of any warranty, indemnity, release, covenant, condition, undertaking or agreement of the trustee in this instrument.

By: [Signature] Trust Officer

Attest: [Signature] Mary M. Bray Trust Officer

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and state aforesaid, DO HEREBY CERTIFY that [Signature] of HARRIS N.A. and Mary M. Bray, Trust Officer of said corporation are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this 6th day in person and severally acknowledged that as such Land Trust Officer and Trust Officer signed and delivered the said instruments of said corporation to be affixed thereto, pursuant to authority given by the shareholders of said Corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 6th day of December, 2006.

[Signature]
Notary Public

My commission expires: 08/18/09



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LOTS 1 TO 21 AND OUTLOTS A & B IN PARK AVENUE ESTATES SUBDIVISION, BEING A
SUBDIVISION OF CERTAIN LOTS IN THE NORTHWEST 1/4 OF SECTION 9, TOWNSHIP 42 NORTH
RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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