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<p>This instrument prepared by and after recording mail to: Charles R Staley 29 South LaSalle Street Suite 950 Chicago, IL 60603 312-372-5454</p>	<p><i>This space reserved for Recorder's use only.</i></p>
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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND PARTY WALL RIGHTS FOR CHURCH STREET VILLAGE HOMEOWNERS' ASSOCIATION

This Declaration of Covenants, Conditions, Restrictions, Easements and Party Wall Rights for Church Street Village Homeowners' Association (the "Declaration"), dated this 24th day of December, 2008, is made and entered into by Church Street Village, L.L.C., an Illinois limited liability company (hereinafter referred to as "Developer").

RECITALS:

This instrument prepared by and after recording mail to:

Charles R Staley
29 South LaSalle Street
Suite 950
Chicago, IL 60603
312-372-5454

1613 Church Street
Evanston, Illinois

Permanent Index Number:
10-13-222-003-0000

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WHEREAS, Developer is the title holder of certain real estate (the "Premises") in the City of Evanston, Cook County, Illinois, the legal description of which is set forth in Exhibit A attached to and made a part of this Declaration; and

WHEREAS, there are located upon the Premises buildings containing townhome style dwelling units; and

WHEREAS, the improvements to the Premises include or may include various community facilities (the "Community Facilities") such as private sidewalks, landscaping, utility facilities, parking areas, private driveways, lighting fixtures and signage, which are located or will be located on the portion of the Premises legally described in Exhibit B attached to and made a part of this Declaration (the "Common Area") intended for the benefit of the Premises and the Owners; and

WHEREAS, in order to provide for the necessary, orderly and proper administration and maintenance of the Common Area and the Community Facilities and for the preservation and enhancement of the Premises, the Declarant (i) has formed the Church Street Village Homeowners' Association (the "Association") under the Illinois General Not For Profit Corporation Act of 1986 to which the responsibility of owning, administering and maintaining the Common Area and Community Facilities will be delegated and assigned; and (ii) will subject the Premises to the provisions of this Declaration.

NOW, THEREFORE, Developer hereby declares that the Premises described in Exhibit A attached hereto are and hereafter shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Covenants, Conditions, Restrictions, Easements and Party Wall Rights.

Developer does hereby further declare that the following rights, easements, restrictions and covenants, shall (1) exist at all times hereafter among all parties having or acquiring any right, title or interest in any portion of the Premises; (2) be binding upon and inure to the benefit of each Owner (as defined in Section 1.18); and (3) run with the land subject to this Declaration, to be held, sold and conveyed subject thereto.

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ARTICLE

DEFINITIONS

The following terms, when used in this Declaration, shall have the following meanings unless otherwise required by the context:

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- 1.1 **Act.** The Condominium Property Act of the State of Illinois, as amended from time to time, or any statute enacted in its place or otherwise making provision for the type of property ownership as that presently contemplated and provided for thereby.
- 1.2 **Architectural Control Committee.** Three or more representatives which may be appointed by the Developer or the Board to review and approve proposed plans for the construction and alteration of improvements on the Premises, as more fully described in Section 9.1 hereof.
- 1.3 **Association.** The Church Street Village Homeowners' Association, an Illinois not for Profit Corporation, and its successors and assigns.
- 1.4 **Board.** The Board of Directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of ARTICLE 2.
- 1.5 **By-Laws.** The By-Laws of Church Street Village Homeowners' Association, a copy of which is attached as Exhibit D hereto and by this reference made a part hereof.
- 1.6 **Common Area.** That portion of the Premises legally described on Exhibit B attached hereto, together with all easements, rights and appurtenances belonging thereto, upon which are constructed the Community Facilities intended for the mutual use, benefit or enjoyment of the Members.
- 1.7 **Community Facilities.** The private sidewalks, landscaping, utility facilities, recreational facilities, parking areas, private driveways, lighting fixtures and signage and such other improvements or structures from time to time or at any time located or constructed on the Common Area.
- 1.8 **Declarant.** The Developer.
- 1.9 **Declaration.** This Declaration and all amendments to this Declaration as may from time to time be adopted pursuant to its terms. References to "this" Declaration shall include this instrument as so amended and supplemented.
- 1.10 **Developer.** Church Street Village, L.L.C., an Illinois limited liability company, and its successors and assigns.
- 1.11 **Dwelling Unit.** A residential housing unit consisting of a group of rooms which may be attached to one or more other Dwelling Units by common party walls and which is designed or intended for use as a residence located upon the Premises. The term Dwelling Unit shall include any porches and patios, which adjoin a given residential housing unit, and all real estate contained within the same zoning lot containing each residential housing unit. For the purposes of determining membership in the Association, each Dwelling Unit shall be considered as a separate and individual unit. If the same Owner owns two or more Dwelling Units each

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Dwelling Unit shall nevertheless be considered as a separate Dwelling Unit under this Declaration.

- 1.12 **Eligible Mortgage Holder.** Each First Mortgagee that has requested in writing that the Association notify it of any proposed action that requires consent of a specified percentage of mortgage holders.
- 1.13 **First Mortgagee.** Each holder of a first mortgage upon a Dwelling Unit.
- 1.14 **Intentionally Omitted.**
- 1.15 **Master Fund.** A special reserve account to be used to make capital expenditures in connection with the Community Facilities, as described in Section 4.4 hereof.
- 1.16 **Material Amendment.** Any amendment to this Declaration, the By-Laws or the Association's articles of incorporation that would change any of the following in a manner other than as expressly provided herein: voting rights in the Association; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of the Common Area; responsibility for the maintenance and repair of the Common Area; allocation of interests in the Common Area, or rights to use the Common Area; boundaries of any Dwelling Unit; expansion or contraction of the Premises, or the addition, annexation or withdrawal of property from the Premises; insurance or fidelity bonds; leasing of Dwelling Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling Unit; a decision by the Association to establish self-management when professional management had previously been required by an Eligible Mortgage Holder; requirements for the restoration or repair of the Premises; termination of the legal status of the Association or the Premises following substantial destruction or condemnation; or any provisions that expressly benefit holders, insurers or guarantors of mortgages secured by portions of the Premises.
- 1.17 **Member.** An Owner who holds membership in the Association pursuant to Section 2.1 of this Declaration.
- 1.18 **Owner.** The record owner, whether one or more persons or entities, of a fee simple title to any Dwelling Unit, including contract sellers, but excluding those other than contract sellers having such interest merely as security for the performance of an obligation. The term "Owner" shall include Developer to the extent of the number of Dwelling Units owned by Developer or by any other title holding trust of which Developer shall be the sole beneficiary, and also includes the interest of Developer as contract seller of any Dwelling Unit. Any purchaser of a Dwelling Unit from a seller other than the Declarant pursuant to an "installment contract" for purchase (as defined in subsection (e) of Section 1 of the Dwelling Unit Installment Contract Act) shall be deemed the "Owner" of such Dwelling Unit provided such purchaser resides in the Dwelling Unit unless the seller expressly retains all rights and obligations of ownership. Satisfactory evidence of the installment contract shall be made available to the Association.

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1.19 **Premises.** The real estate legally described in Exhibit A attached hereto (including all easements appurtenant thereto).

1.20 **Transfer Date.** The date which is the earlier of: (i) sixty (60) days after the date by which seventy-five percent (75%) of the Dwelling Units have been conveyed to Owners other than the Declarant and (ii) three (3) years after the date this Declaration is recorded.

1.21 **Unit Membership.** The membership in the Association, which is appurtenant to a Member's Dwelling Unit as provided in Section 2.1 of this Declaration.

1.22 **Utilities.** All public and private utility conduits, wires, ducts, pipes, cables and other lines and associated equipment which serve the Premises, as more fully described in Section 7.4 hereof.

1.23 **City.** The City of Evanston, Illinois.

1.24 **Voting Member** The person with respect to each Unit Ownership who shall be entitled to vote at meetings of the Association, as provided in Section 2.2 hereof.

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ARTICLE

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD OF DIRECTORS OF THE ASSOCIATION

2.1 **Membership.** Every Owner of a Dwelling Unit (including the Declarant) is hereby declared to be a Member of the Association. Membership is appurtenant to and shall not be separated from ownership of such Owner's Dwelling Unit. Each such Owner, by acceptance of a deed or other conveyance of a Dwelling Unit, thereby becomes a Member, whether or not this Declaration or such membership is made a part of, incorporated by reference in, or expressed in such deed or conveyance. There shall be one membership allocable to each Dwelling Unit (herein called a "Unit Membership") and any Member who is the Owner of more than one such Dwelling Unit shall have the number of Unit Memberships equal to the number of such Dwelling Units. If the record ownership of a Dwelling Unit shall be in more than one person, or if an Owner of a Dwelling Unit is a trustee, corporation, partnership, limited liability company or other legal entity, then the individual who shall enjoy the Unit Membership and be responsible for the obligations attributable thereto, shall be designated by such Owner or Owners in writing to the Board.

2.2 **Voting Rights.** One person with respect to each Unit Membership shall be entitled to vote at any meeting of the Association ("Voting Member"). Such Voting Member

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may be the Owner or other person designated by such Owner to act as its proxy on its behalf. Such designation shall be made in writing to the Board.

2.3 **Method of Voting.** The total number of votes which may be cast on any matter requiring assent of Voting Members of the Association shall be equal to the total number of Unit Memberships at the time of any such vote and each Unit Membership shall be allocated one vote. Whenever a vote of the Members of the Association is required pursuant to this Declaration, or pursuant to the articles of incorporation or By-Laws of the Association, or is otherwise required by law, such votes shall be cast only by the Voting Members. Unless this Declaration or the articles of incorporation or By-Laws of the Association, or any applicable law, shall specify a greater vote, all Association matters requiring action by Members shall be decided by a majority of the votes cast by Voting Members voting at a meeting at which a quorum (as defined in the By-Laws) is present. In all elections for members of the Board, all Voting Members shall be entitled to vote on a non-cumulative voting basis.

2.4 **Board of Directors.**

(a) The Association shall be governed by its Board of Directors ("Board"). The Board shall initially be comprised of three (3) persons duly appointed by Developer pursuant to its rights under Section 2.5 hereof; however, from and after such time as the initial meeting of Voting Members to elect the first Board occurs, as described in Sections 2.6 and 2.7 hereof, the Board shall be comprised of three (3) persons duly appointed or elected as provided herein and in the articles of incorporation and By-Laws of the Association.

(b) The Board members elected by the Voting Members shall be Members of the Association or spouses of Members. Board members appointed by Developer need not be Members or spouses of Members. The Board shall direct and administer the Common Area and the Dwelling Units in accordance with the terms and provisions of this Declaration, and in accordance with the Articles of Incorporation and By-Laws of the Association. All matters requiring action by the Board shall be decided by the majority vote of the Board, except as otherwise provided herein or in the By-Laws.

(c) Prior to the appointment of the first Board of the Association pursuant to Section 2.6 hereof, Developer may exercise all rights, powers and privileges of the Board and may perform all of its functions, including its functions under ARTICLE 4 of this Declaration.

2.5 **Appointment of Directors by Developer.** Notwithstanding any other provisions of this Declaration or the articles of incorporation or By-Laws of the Association, the first and each subsequent Board of the Association shall consist of, and vacancies on the Board shall be filled by, such persons as Developer shall from time to time appoint, until the first to occur of any one of the following events: (i) the Transfer Date; or (ii) the voluntary election of Developer, by written notice to the Association, to terminate its control of the Association. Such

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right of Developer to appoint directors to the Board shall be to the exclusion of the right of the Members and the Voting Members so to do. The Owners, Members or Voting Members shall not, without the prior written consent of Developer, have the right to amend, modify or change this Declaration or the articles of incorporation or By-Laws of the Association to in any way diminish the authority of the Board during the period that Developer has the right to appoint any members of the Board.

Developer may, from time to time, by written notice to the Association, voluntarily terminate its right to appoint one or more directors, and continue to exercise its right to appoint the remaining members of the Board for the period hereinabove specified. Developer's election to terminate its right to appoint any number of members of the Board or to terminate its control of the Association, shall not affect the right of Developer or Declarant to participate in the Association as a Member thereof and to appoint Voting Members (which need not be Members or spouses of Members) to cast the number of votes equal to the number of Dwelling Units owned by Developer or Declarant. Voting Members shall elect all directors who are not subject to appointment by Developer.

2.6 **Initial Meeting of Association to Elect Directors.** Within sixty (60) days following the earlier to occur of (i) the receipt by the President of the Association of a copy of the written notice of Developer to voluntarily terminate its control of the Association, or (ii) the occurrence of the Transfer Date, the President shall convene a meeting of the Voting Members for the purpose of electing a new Board or to elect those directors who no longer are to be appointed by Developer. Such meeting shall be held within the time periods and upon the notice requirements otherwise specified in the By-Laws.

2.7 **Election of Directors by Voting Members.** Upon termination of Developer's right to appoint any of or all the directors of the Board, those directors not subject to appointment by Developer shall be elected by vote of the Voting Members in accordance with the provisions of this Article, and once elected and qualified shall replace such director theretofore appointed by the Developer whom such person shall have been elected to succeed.

2.8 **Transfer of Association Records.** Within sixty (60) days following the initial meeting of the Association for election of members of the Board, the Developer shall deliver to the Board:

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

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- (b) a detailed accounting by the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Premises and copies of all insurance policies and a list of any loans or advances to the Association which are outstanding;
- (c) Association funds, which shall have been at all times segregated from any other monies of the Developer;
- (d) A schedule of all real or personal property, equipment and fixtures belonging to the Association, including documents evidencing the transfer of title to the Common Area or any part thereof, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies and all tax bills; and
- (e) A list of all litigation, administrative actions and arbitrations involving the Association, any notices of governmental bodies involving actions taken or which may be taken concerning the Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any Association requirements, copies of any documents relating to disputes involving Owners and originals of all documents relating to everything listed in this Section 2.8.

2.9 **Informal Action by Directors.** Unless specifically prohibited by the articles of incorporation or By-Laws of the Association, any action required by this Declaration to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors of the Board entitled to vote with respect to the subject matter thereof. Any such consent signed by all the directors of the Board shall have the same effect as a unanimous vote.

2.10 **Informal Action by Voting Members.** Any action required by this Declaration to be taken at a meeting of the Voting Members, or any other action which may be taken at a meeting of the Voting Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Voting Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Voting Members.

2.11 **Board Liability.** The Declarant, the Developer, and the directors, officers, shareholders, partners, members, managers, employees or agents of either of them, the Board, members of the Board, officers of the Association, and the agents and employees of any of them (all of the above hereinafter referred to as the "Protected Parties"), shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions which shall occur subsequent to the date of the recording of this Declaration, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall

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indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits, losses, damages, costs and expenses, including, without limitation, attorneys' fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. Each Owner shall be entitled to a right of contribution from every other Owner in respect of said indemnity to the end that, to the extent possible, the burden of any such indemnity shall be borne by the Owners at the time the loss, cost, damage or expense is incurred in the proportion that the number of Dwelling Units in the Premises owned by each respective Owner bears to the total number of Dwelling Units in the Premises at the time the loss, cost, damage or expense is incurred. The Board shall assess each Owner for his or her share of the cost of such indemnification, and such assessment shall be collectible and enforceable in mode and manner as set forth in ARTICLE 4 hereof. To the extent possible the obligation of the Owners for indemnification and the Board's liability hereunder shall be insured by means of appropriate contractual endorsements to the commercial general liability insurance policies held from time to time by the Association.

2.12 **Nonprofit Purposes of Association.** Nothing herein shall be construed to give the Association authority to conduct an active business for profit on its own behalf or on behalf of the Members, or on behalf of the Developer or Declarant.

2.13 **Governing Law.** Except as otherwise provided in this Declaration, the Association, its Board, the Illinois General Not For Profit Corporation Act of 1986 shall govern officers and members.

2.14 **Board as Representative of Owners.** The Board shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Area or more than one Dwelling Unit, on behalf of the Owners as their interests may appear.

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ARTICLE

EASEMENTS AND PROPERTY RIGHTS

3.1 **Easements to Run with Land.** All easements described herein are easements appurtenant to and running with the land, and, so long as the Premises are subject to the provisions of this Declaration, shall remain in full force and effect, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Premises, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this ARTICLE 3, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees and mortgagees as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

3.11. **Geothermal Community**

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The Dwelling Units have been designed to utilize an energy efficient, environmentally friendly, geothermal based heating and cooling system. Developer is able to offer this system to the Owners without an increase to the original sales prices of the Units through an agreement with the Geothermal System Owner (as defined below) under which the Geothermal System Owner will provide the Owners with rights to use this system on the terms and conditions in this Section 3.11, including the payment by the Owners of Usage Fees as provided below. Each Owner, by purchasing a Dwelling Unit, is choosing to use a geothermal based heating and cooling system upon the terms set forth in this Section 3.11 for his or her Dwelling Unit as opposed to a conventional natural gas or other fossil fuel based heating and cooling system or another alternative heating and cooling system.

(a) Geothermal Community Definitions. The following terms, when used in this Declaration, shall have the following meanings:

“Base Monthly Usage Fee Amount” means (i) for any Dwelling Unit with a floor space of less than 1850 square feet, \$ 88.00 per month, (ii) for any Dwelling Unit with a floor size of greater than or equal to 1900 square feet but less than 2250 square feet, \$ 109.00 per month, and (iii) for any Dwelling Unit with a floor size of greater than or equal to 2300 square feet, \$127.00 per month.

“CPI-U” means the Consumer Price Index for All Urban Consumers, U.S. City Average, all items, unadjusted (1982-84 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics (or any successor agency thereto), or any successor index thereto published by the United States Department of Labor, Bureau of Labor Statistics (or any successor agency thereto).

“Flow Control Centers” means the pumps for circulating the Geothermal Fluid in the Geothermal Loop Fields, the flow controls for such pumps, and _____, including _____. [specify other components] which provide the supply and return fluid to the Heat Pumps from the Geothermal Loop Fields

“Geothermal Fluid” means the propylene glycol/water mixture contained in the pipes of the Geothermal Loop Fields or such other fluid that the Geothermal System Owner may place in such pipes for the purpose of facilitating the geexchange of heat between the ground and the Heat Pumps.

“Geothermal Loop Fields” means the series of pipes forming a loop running beneath the ground to and from the Heat Pumps, including the pipefittings, grouting material and piping manifold.

“Geothermal System” means the systems being installed by the Geothermal System Owner on and under the Premises and in the Dwelling Units pursuant to an agreement with the Developer, which systems are intended to produce heated and chilled air to be circulated throughout the Dwelling Units, consisting of the Geothermal Fields, the Heat Pumps, the Geothermal Fluid and the Flow Control Centers, and including any balancing valves, expansion

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tanks, air separators and GeoLink components. For avoidance of doubt, the Geothermal System does not include the HVAC ductwork leading from the Heat Pumps, thermostats, any supporting structural elements or [specify other components that are the Owner's responsibility and not part of the Geothermal System].

"Geothermal System Owner" means Indie Energy Services Company, LLC, an Illinois limited liability company, and its successors and assignees.

"Heat Pumps" means the ground source heat pumps exchanging heat between the Dwelling Units' heating, ventilation and air conditioning circulation ductwork and the Geothermal Loop Fields and related equipment.

"Monthly Usage Fee Amount" means the amount for any Dwelling Unit for any calendar month determined as follows. The Monthly Usage Fee Amount effective as of January 1, 2007 for any Dwelling Unit shall be equal to the Base Monthly Usage Fee Amount for that Dwelling Unit. On January 1 in each calendar year, beginning on January 1, 2008, the Monthly Usage Fee Amount for each Dwelling Unit shall be adjusted to be equal to the product of (a) the Base Monthly Usage Fee Amount for that Dwelling Unit, times (b) a fraction, the numerator of which is equal to the CPI-U for the month of December immediately preceding the January 1 for which the Monthly Usage Fee Amount is being determined, and the denominator of which is the CPI-U for December, 2006.

"Permittee" means any Owner's agents, representatives, contractors (other than the Geothermal System Owner), invitees, permittees, licensees or tenants.

"Usage Fee" means the monthly fee to be paid by each Owner to the Geothermal System Owner for the right to use the Geothermal System under Section 3.11(e).

(b) General. The Dwelling Units are being constructed as a geothermal community and the Developer has arranged for the Geothermal System Owner to make the Geothermal System available for use by the Owners upon the terms and conditions set forth in this Section 3.11.

(c) System Ownership; System Not a Fixture. Except to the extent that any Owner has purchased the portion of the Geothermal System relating to such Owner's Dwelling Unit from the Geothermal System Owner as provided in Section 3.11(k) or to the extent title to any portion of the Geothermal System relating to an Owner's Dwelling Unit has vested in such Owner as provided in Section 3.11(j)(3), (i) the Geothermal System, and all parts thereof, is owned by the Geothermal System Owner, (ii) neither the Geothermal System, nor any part thereof, shall be or become a fixture and (iii) no Owner shall have the right to sell, lease, assign, or encumber the Geothermal System or any part thereof.

(d) System Usage. Subject to the terms and conditions of this Section 3.11, each Owner shall be permitted to use the portion of the Geothermal System relating to such Owner's Dwelling Unit for the purposes of providing heating and cooling to that Dwelling Unit.

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Each Owner, by purchasing a Dwelling Unit, is electing to use the portion of the Geothermal System relating to such Owner's Dwelling Unit for the purpose of providing heating and cooling to that Dwelling Unit. Each Owner will, upon request of the Geothermal System Owner, provide a written confirmation of such Owner's agreement to the terms and conditions in this Section 3.11 including information necessary for the billing of the Usage Fee hereunder. Any Owner who uses the Geothermal System or any portion thereof shall be deemed to have requested to use the Geothermal System and to have confirmed the Owner's agreement to the terms and conditions of this Section 3.11; provided, however, that, notwithstanding the foregoing, the Geothermal System Owner may suspend the rights of any such Owner to use the Geothermal System until such time as such Owner submits to the Geothermal System Owner such a written confirmation in the form provided by the Geothermal System Owner. The Geothermal System Owner offers to each Owner or prospective Owner the right to use the portion of the Geothermal System relating to such Owner's Dwelling Unit for the purposes and upon the terms and conditions specified in this Section 3.11. Any Owner's usage of the Geothermal System to provide heating or cooling for such Owner's Unit shall constitute such Owner's receipt and acceptance of the portion of the Geothermal System relating to that Unit.

(e) Usage Fee. For the right to use the Geothermal System as provided in this Section 3.11, each Owner shall pay the Geothermal System Owner a monthly Usage Fee for each of such Owner's Dwelling Units in an amount equal to Monthly Usage Fee Amount, as from time to time in effect, for each such Dwelling Unit. The Usage Fee for each Dwelling Unit shall be due from any Owner for the period beginning on the date that Owner purchases such Dwelling Unit and ending on the date of termination of such Owner's usage of the Geothermal System for such Dwelling Unit as provided in Section 3.11(j)(1) or (2), the date of termination by the Geothermal System Owner of its responsibility to provide maintenance with respect to the portion of the Geothermal System relating to that Dwelling Unit as provided in Section 3.11(j)(3) or the date such Owner purchases the portion of the Geothermal System relating to such Dwelling Unit as provided in Section 3.11(k). Each Owner will be billed for the Usage Fee at periodic intervals and each such bill will specify when payment is due, which shall not be less than 21 days after such bill is mailed to the Owner. The Usage Fee billed for any period other than a full month or months shall be prorated based upon the number of days in the billing period. A late payment charge of 1.5% per month will be due on any amount billed and not paid when due, including amounts previously past due.

(f) Taxes. Each Owner will be responsible for the payment of any federal, state or municipal or quasi-municipal sales, use, excise, value added or other taxes or impositions that may be levied upon the Geothermal System or with respect to the Owner's usage of the Geothermal System or the amounts payable by such Owner under this Section 3.11 (excluding the Geothermal System Owner's federal, state or local income taxes), all of which will be in addition to the Usage Fee.

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(g) Owner's Responsibilities.

(1) Each Owner shall be responsible to supply to the portion of the Geothermal System relating to such Owner's Dwelling Units, at such Owner's cost, all electrical power necessary to operate that portion of the Geothermal System.

(2) Each Owner will furnish, free of charge, adequate space satisfactory to the Geothermal System Owner for the location of the portion of the Geothermal System relating to such Owner's Dwelling Units and exercise by the Geothermal System Owner of its rights and discharge by the Geothermal System Owner of its responsibilities under this Section 3.11 relating thereto. Each Owner shall be responsible for maintaining such space as an indoor, weather protected space.

(3) Each Owner shall exercise due care to avoid damages to, theft or misuse of or unsafe or unsanitary conditions adjacent to the Geothermal System Owner's Geothermal System. If any Owner's or its Permittee's activities or the manner in which any Owner or one of its Permittees uses the Geothermal System causes damages to the Geothermal System, such Owner shall pay the amount of such damages to the Geothermal System Owner on demand.

(4) Each Owner shall be responsible, at its own cost, for the installation, maintenance, repair, replacement, renewal and operation of all portions of the Owner's Dwelling Unit's heating and cooling system (other than the Geothermal System, unless the Owner has acquired ownership of the portion of the Geothermal System relating to such Owner's Dwelling Unit under Section 3.11(j)(3) or 3.11(k)) including ductwork, thermostats, [specify other components].

(5) Each Owner shall not, any shall not permit any of its Permittees to, alter or change in any way, repair, replace, move, remove, add on to or otherwise manipulate the Geothermal System or any part thereof or any meters or communications equipment related thereto (except any portion of the Geothermal System owned by the Owner as a result of Section 3.11(j)(3) or 3.11(k)).

(6) Each Owner will notify the Geothermal System Owner telephonically or by electronic mail promptly after such Owner becomes aware of any malfunction in the operation of the Geothermal System or any emergency or dangerous condition affecting the Geothermal System.

(7) Each Owner shall provide the Geothermal System Owner with access to such Owner's Dwelling Unit at all reasonable times in order to enable the Geothermal System Owner to exercise its rights, and discharge its obligations, under this Section 3.11.

(h) Geothermal System Owner's Responsibilities. The Geothermal System Owner shall be responsible for performing (1) routine maintenance and repair of the Geothermal

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System in accordance with the manufacturer's recommendations and (2) other necessary maintenance, repairs and replacements of the Geothermal System, as soon as practicable after the Geothermal System Owner is notified of any equipment failure in any portion of the Geothermal System. If any Owner initiates a service visit by the Geothermal System Owner with respect to any operating problem which is determined by the Geothermal System Owner to be the result of any portion of the Owner's Dwelling Unit's heating, cooling system and ventilation system or other systems, other than Geothermal System, such Owner shall be responsible for the payment of the Geothermal System Owner's standard service call charge as from time to time in effect. The Geothermal System Owner may suspend operation of the Geothermal System with respect to any Dwelling Unit to the extent necessary to perform any maintenance, repair, modification, alteration, improvement, replacement, removal or installation of any accessory equipment. The Geothermal System Owner may subcontract any maintenance, repairs or replacements with respect to the Geothermal System. The Geothermal System Owner's responsibility to perform any maintenance, repairs, replacements or other services with respect to the portion of the Geothermal System relating to any Owner's Dwelling Unit shall terminate on the earliest of the termination of the right of that Owner to use the Geothermal System under Section 3.11(j)(1), the termination by that Owner of its rights to use the Geothermal System under Section 3.11(j)(2), the termination by the Geothermal System Owner of its responsibility to provide maintenance under Section 3.11(j)(3), or the purchase by that Owner of the portion of the Geothermal System relating to such Owner's Dwelling Unit under Section 3.11(k).

(i) **Limited Warranty; Liability Limitations.**

What is Covered: The Geothermal System Owner warrants that (1) the Geothermal System, when originally installed by the Geothermal System Owner, is free of defects and (2) all maintenance, repair and replacement services provided by the Geothermal System Owner under this Section 3.11 shall be performed in a good and workmanlike manner and all parts installed by the Geothermal System Owner as a part of such maintenance, repair and replacement services, when installed, will be free of defects.

Length of Coverage: The Geothermal System Owner will have no responsibility for any claim under any warranty, whether express or implied, unless it is notified of such claim (1) with respect to the warranty regarding the original installation of any portion of the Geothermal System, within one year after the date of the first use of such portion of the Geothermal System by any Owner, and (2) with respect to the warranty regarding maintenance, repair and replacement services provided by the Geothermal System Owner, within one year after the date the defective services were performed or the defective part was installed.

Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

Geothermal System Owner's Responsibilities: The only responsibility of the Geothermal System Owner in the case of a claim under any warranty, whether express or

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implied, is to reperform the defective service or replace the defective part at no cost to the Owner.

Exclusions:

(1) EXCEPT AS SET FORTH UNDER “WHAT IS COVERED”, THE GEOTHERMAL SYSTEM OWNER MAKES NO REPRESENTATION OR WARRANTY REGARDING THE GEOTHERMAL SYSTEM OR ANY PORTION THEREOF, THE OPERATION OR MAINTENANCE OF THE GEOTHERMAL SYSTEM, THE EFFICIENCY OR PERFORMANCE OF THE GEOTHERMAL SYSTEM OR ANY MATERIALS OR SERVICES PROVIDED BY THE GEOTHERMAL SYSTEM OWNER. EXCEPT AS SET FORTH UNDER “WHAT IS COVERED”, ALL EXPRESS AND, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED AND EXCLUDED.

(2) The Geothermal System Owner shall not be liable for interruption or inadequacy of services, loss or damage to property or injury (including death) to any person caused by act of God, public enemy, war, riot, acts of terrorism, civil disturbance, epidemic, vandalism, strikes or other labor troubles or their equivalent, legal process, state, municipal or other governmental regulation or compliance therewith, lack of power or stoppage of any utility service, any failure on the part of the Geothermal System Owner's suppliers, windstorm, snowstorm, floods or other weather event, fire or explosion, equipment failure, any act of any Owner or any of its Permittees, including any abuse or misuse of the Geothermal System, any failure by any Owner to perform any of its agreements or responsibilities under this Section 3.11, normal wear and tear or any other matter or thing beyond the Geothermal System Owner's control, whether the same shall affect or occur in connection with the activities or property of any Owner, the Geothermal System Owner or any other person. UNDER NO CIRCUMSTANCES SHALL THE GEOTHERMAL SYSTEM OWNER BE LIABLE FOR LOST PROFITS OR OTHER ACTUAL, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUFFERED BY OWNER OR ANY OTHER PERSON.

Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

(3) No agent, employee or representative of the Geothermal System Owner or the Developer has any authority to bind the Geothermal System Owner to any affirmation, representation or warranty concerning the Geothermal System or the services provided by the Geothermal System Owner. Unless an affirmation, representation or warranty concerning the Geothermal System or the

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services provided by the Geothermal System Owner is included in this Section 3.11, it does not form a part of the agreement by the Geothermal System Owner and shall not be enforceable.

How to Get Warranty Service: To obtain warranty service contact the Geothermal System Owner at the address specified in Section 3.11(l). The Geothermal System Owner will make arrangements with the Owner for a mutually agreeable time to perform warranty service at the Owner's Dwelling Unit.

Rights Under State Law: This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

Other Warranty Rights: The warranty provided by the Geothermal System Owner under this Section 3.11(i) is in addition to any warranty rights that an Owner may have against the seller of any Dwelling Unit or the manufacturer of any equipment incorporated into the Geothermal System.

(j) **Termination of Right to Use Geothermal System.**

(1) The Geothermal System Owner may terminate the right of any Owner to use the Geothermal System as follows:

(A) Upon forty-five (45) days written notice to the Owner if the Owner has failed to pay any Usage Fee or other amount due under this Section 3.11 within thirty (30) days after the date due and such failure has not been cured by the end of such forty-five (45) day period;

(B) Upon forty-five (45) days written notice to the Owner where the Owner has failed to perform any other obligation of the Owner under this Section 3.11 for thirty (30) days after notice of such failure and such failure has not been cured by the end of such forty-five (45) day period; or

(C) If required in order to comply with any law, rule, regulation, governmental order or legal process.

In the event the Geothermal System Owner terminates the ability of any Owner to use the Geothermal System as a result of a termination under this clause (1), the Geothermal System Owner will attempt to telephonically advise the Owner that the Owner's ability to use the Geothermal System is being terminated by directing the employee of the Geothermal System Owner making the disconnection to attempt to telephonically contact the Owner to advise that an attempt to disconnect is being made.

(2) Any Owner may voluntarily terminate its right to use the Geothermal System at any time upon thirty (30) days prior notice to the Geothermal System Owner specifying the date of discontinuation.

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(3) The Geothermal System Owner may voluntarily permanently terminate the provision of any services and the responsibility for providing any maintenance, repairs, replacements or renewals under this Section 3.11 with respect to any Dwelling Unit at any time by sixty (60) days prior written notice to the related Owner specifying the date of termination. In the event of termination of services by the Geothermal System Owner under this clause (3) with respect to any Dwelling Unit, effective on the date of termination ownership of the portion of the Geothermal System related to that Dwelling Unit shall vest in Owner of that Dwelling Unit, "AS IS".

(4) No termination or discontinuance of the right to use the Geothermal System or services hereunder shall relieve any Owner from responsibility for payment of Usage Fees or any other amount owed hereunder to the Geothermal System Owner accrued through the date of termination.

(5) No failure by the Geothermal System Owner to exercise any right it may have to terminate any Owner's right to use the Geothermal System or delay by the Geothermal System Owner in exercising any such right shall constitute a waiver thereof.

(6) In the event of any termination of the rights of any Owner to use the Geothermal System with respect to any Dwelling Unit under clause (1) or (2) above, the Geothermal System Owner may at any time thereafter, and shall reasonably promptly after the request of the Owner, remove the Heat Pump, Flow Control Center and other above ground portions of the Geothermal System relating to that Dwelling Unit and [how will the well be treated in this case?]

(k) Owner's Right to Purchase. Any Owner may at any time upon thirty (30) days prior written notice to the Geothermal System Owner elect to purchase from the Geothermal System Owner that portion of the Geothermal System related to that Owner's Dwelling Unit at a purchase price equal to the fair market value thereof on the date of purchase. Any such purchase shall be on Geothermal System Owner's standard terms and conditions for the sale of a used Geothermal System at the time in effect. The Geothermal System Owner will, at any time upon the request of any Owner, provide the Owner with a copy of the Geothermal System Owner's estimation of the then fair market value of the portion of the Geothermal System relating to the Owner's Dwelling Unit and a copy of the Geothermal System Owner's standard terms and conditions for the sale of a used Geothermal System at the time in effect.

(l) Notices. Any notices or other communications under this Section 3.11 to be sent to the Geothermal System Owner shall be in writing addressed to Indie Energy Services Company, LLC, 1020 Church Street, Evanston, Illinois 60201, Attention: President, or to such other address as the Geothermal System Owner may specify to the Owners. Any notices or other communication under this Section 3.11 to be sent to any Owner shall be in writing addressed to such Owner at such Owner's Dwelling Unit number at _____, Evanston, Illinois 60201, provided that any notice or communications to a Owner may be addressed to "Resident", "Current Owner" or the like at such Owner's Dwelling Unit number at such address. Any

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notices or other communications may be sent by United States mail or delivered personally or by courier service.

(m) Easements. An irrevocable, perpetual license and easement is hereby granted to the Geothermal System Owner to go upon the Premises and into any Dwelling Unit at any time and from time to time for the purpose of the installation or construction of, drilling of borings for, operation, maintenance and repair of, taking of meter readings with respect to, shutting on or off, modification, alteration or improvement of, affixing or installing accessory equipment on and replacement or removal of the Geothermal System or any portion thereof, including meters and communications equipment.

(n) Provisions to Run with the Land. The provisions of this Section 3.11 shall run with the land and shall remain in full force and effect, and be binding upon and inure to the benefit of, each Owner, the Geothermal System Owner, their respective successors and assigns, and any purchaser, mortgagee or other person having an interest in the Premises or any portion thereof. Each Owner, by his, her or its purchase of any Dwelling Unit, acknowledges and agrees to the foregoing.

(o) Recordations. Each Owner acknowledges that the Geothermal System Owner shall be permitted to record a financing statement or other instrument with respect to such Owner's Dwelling Unit reflecting the Geothermal System Owner's interests in the portion of the Geothermal System relating to such Dwelling Unit. The Geothermal System Owner will terminate any such recording relating to any Dwelling Unit after the termination by the Geothermal System Owner of its responsibility to provide maintenance with respect to the portion of the Geothermal System relating to that Dwelling Unit as provided in Section 3.11(j)(3) or the purchase by the related Owner of that portion of the Geothermal System as provided in Section 3.11(k).

(p) Entire Agreement. The provisions of this Section 3.11 contain the entire agreement of the Geothermal System Owner regarding the Geothermal System.

(q) Assignment. The Geothermal System Owner may assign its rights and interests under this Declaration without the consent of any Owner or any other person.

3.2 Easements of Access.

(a) Every Owner of a Dwelling Unit is hereby granted and reserved a perpetual nonexclusive easement for the purpose of reasonable ingress and egress to and from all public and private ways, which adjoin the Premises through, over and across the Common Area and Community Facilities. The use by each Owner and by such Owner's invitees of the Common Area and Community Facilities shall be subject to such reasonable rules and regulations, as the Board shall promulgate.

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(b) The Association, Declarant, and the Developer, and each of them, is hereby granted and reserved perpetual nonexclusive easements to, through, over and across the Common Area and the roofs and exteriors of Dwelling Units for the purpose of exercising the rights, performing the functions, and discharging the responsibilities, permitted or required to be performed or discharged by any of them pursuant to any provision of this Declaration.

3.3 **Rights of Enjoyment.** Every Member shall have the right and easement of enjoyment in and to the Common Area and Community Facilities, which right and easement shall include but not be limited to easements for pedestrian and vehicular ingress and egress and use of open spaces and other Community Facilities. Such right and easement shall be appurtenant to and shall pass with the title to every Dwelling Unit, subject to the following rights:

- (a) The right of the Association to pass reasonable rules and regulations;
- (b) The right of the Association to limit the number of guests of Members and to establish rules and fees with respect to guest usage of the Common Area and Community Facilities;
- (c) The right of the Association to specify limited areas for the location of utilities;
- (d) The right of the Association to levy assessments as provided in this Declaration;
- (e) The rights of the Association and the Declarant reserved under this Declaration;
- (f) The right of the Association to change, improve or modify the Common Area and to mortgage or otherwise encumber the same, or any portion thereof, to secure any indebtedness or obligation of the Association, whether or not the proceeds of such mortgage or encumbrance shall be used for the improvement of the Common Area;
- (g) The right of the Association to control parking in the Common Area by rules and regulations; and
- (h) The exclusive right of the Owners of certain Dwelling Units to the use and possession of Limited Common Areas, as more fully described in Section 3.11 hereof.

3.4 **Delegation of Use.** Any Member may delegate, in accordance with and subject to the By-Laws of or uniform rules adopted by the Association, such Member's right to enjoyment of the Common Area and Community Facilities to persons in such Member's family, such Member's tenants, or contract purchasers who reside at such Member's Dwelling Unit.

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3.5 **Encroachments.** In the event that, by reason of the construction, settlement or shifting of any structures located on the Premises, any such structure encroaches or shall hereafter encroach upon any portion of the Premises which is not owned by the Owner of the encroachment, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of the Owner of such encroachment; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment is detrimental to or materially interferes with the reasonable use and enjoyment of the Premises burdened thereby or if it occurred due to the willful conduct of the Owner of such encroachment.

3.6 **Utility Easements.** An irrevocable license and easement is hereby granted to Ameritech, Commonwealth Edison Company, Northern Illinois Gas Company, Comcast, Indienergy and all other public and private utilities serving the Premises and any person providing cable television or other similar entertainment to the Owners or to the Premises, to go upon the Premises at any time and from time to time for the purpose of installation, maintenance and repair of all utility facilities under control of said utility company or which said utility company shall deem to require installation, maintenance or repair for the purpose of providing utility services to the Premises, or to service and take readings of any utility meters (including water meters) located within a Dwelling Unit.

3.7 **Easement to City of Evanston.** An easement is hereby granted to the City and its officers, personnel and emergency and other vehicles to go upon the Common Area for the purpose of providing police and fire protection services and maintaining and repairing sanitary sewer and water mains some of which the City is responsible for maintaining and repairing. Said easement shall be exercised only to the extent and for such period of time that the maintenance is required to accomplish the purpose hereinabove mentioned. The Declarant and its successors and assigns, the Association and the Board shall hold harmless the City and its officers and personnel from any civil or criminal action for trespass arising from the proper exercise of the rights granted in this Section 3.7.

3.8 **No Dedication to Public Use.** Nothing contained in this Declaration shall be construed to constitute a dedication, express or implied, of any part of the Premises to or for any public use or purpose whatsoever.

3.9 **Unpermitted Common Area Parking.** No motor vehicles of any type (including recreational vehicles) shall be stored or parked (either short term or long term) on any portion of the Common Area except those portions of the Common Area which may be designated from time to time by the Board as being reserved for use as parking areas. The use of any such designated parking areas shall be governed by such rules and the Board may prescribe regulations as.

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3.10 **Street and Utilities Dedication.** The Board may elect to dedicate a portion of the Common Area to a public body for use as, or in connection with, a street or utility; provided that no such dedication shall be effective until acceptance by the appropriate public body.

4

ARTICLE

COVENANTS FOR MAINTENANCE ASSESSMENTS

4.1 **Creation of the Lien and Personal Obligation.** Each Owner (including the Declarant) of a Dwelling Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance for each Dwelling Unit owned by such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association such assessments and user charges as are levied pursuant to the provisions of this Declaration and the By-Laws of the Association. Such assessments and user charges, together with interest thereon and cost of collection, if any, as hereinafter provided, shall be a charge and continuing lien upon the Dwelling Unit against which such assessment is made and upon the Unit Membership appurtenant thereto. Each such assessment and user charge, together with such interest and costs, shall also be the personal obligation of the Member who was the Owner of such Dwelling Unit at the time when the same fell due.

4.2 **Purpose of Assessments.** The assessments levied by the Association (or by Developer acting on its behalf pursuant to Section 2.4(c) hereof) shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and in particular, without limiting the foregoing: (i) for the improvement and maintenance of the services and facilities devoted to the use and enjoyment of the Common Area and Community Facilities, (ii) for the making of repairs, replacements and additions to the Common Area and Community Facilities, defraying the cost of labor, equipment, and material required for the maintenance of the Common Area and Community Facilities, (iii) for maintenance, repairs and replacements to the roofs of the Dwelling Units, (iv) for paying utility charges for the Premises (not including the Dwelling Units) not separately metered to the Owners, (v) for the establishment and maintenance of adequate reserves, and (vi) in general for carrying out the duties of the Board as set forth in this Declaration (including ARTICLE 6 hereof) and the By-Laws of the Association; and for carrying out the purposes of the Association as stated herein and in its articles of incorporation.

4.3 **Assessment Procedures.**

(a) **Preparation of Estimated Budget.** Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, fees, supplies and other items which, in the judgment of the Board, will be required to be provided to the Association or required to meet the Association's obligations during the ensuing calendar year to effect the purposes of the Association, a copy of which estimated budget shall be provided to all Owners at least thirty (30) days

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prior to its adoption by the Board. The annual budget shall take into account any estimated net operating income or deficit which may result from the operation of the Common Area during such year and income from user charges to be received pursuant to subsection 4.3(g) hereof, together with a reasonable amount considered by the Board to be necessary for adequate reserves including, without limitation, amounts to maintain a Master Reserve (as defined in Section 4.4 hereof). Said "estimated cash requirement" shall be allocated among and assessed to Members in accordance with the provisions of Section 4.6 hereof. The Board shall give written notice, mailed or delivered, to each Owner no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of any proposed budget or any increase or establishment of an assessment.

(b) **Date Payments Due.** On or before January 1 of the ensuing year, and on the first day of each and every month of said year each Member shall be personally obligated to pay, in the manner prescribed by Sections 4.6, 4.7 and 4.8 hereof, one twelfth (1/12th) of such Member's annual assessment, together with all user charges incurred by such Member during the preceding month. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said estimated cash requirement, any net shortage or excess shall be applied as an adjustment to the installments under the current year's estimate falling due after the amount of such net shortage or excess for the preceding year has been determined.

(c) **Commencement of Assessments.** The annual assessments provided for herein shall commence for the Dwelling Units within the Premises on the first day of the month following the conveyance of the first Dwelling Unit, except as otherwise provided in Section 4.4 hereof. The Board shall fix the amount of the annual assessment against each Dwelling 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. The amount of the annual assessment to be fixed by the Board pursuant to this Section 4.3(c) shall not exceed one hundred fifteen percent (115%) of the prior year's assessment unless the assent of Voting Members entitled to cast at least sixty-seven percent (67%) of all votes is given at a meeting called for that purpose and attended after adequate notice by Voting Members or their proxies entitled to cast at least sixty percent (60%) of all votes; provided, however, that if Voting Members entitled to cast sixty percent (60%) of all votes do not attend, a second meeting may be called with the same notice and the quorum therefore shall be reduced to Voting Members or their proxies entitled to cast at least thirty (30%) of all votes. Written notice of any changed amount of annual assessment shall be due on the first day of the month immediately preceding the effective date of the changed assessment. An Owner shall first be liable for payment of the full monthly assessment on the 1st day of the month following conveyance of title to him. This payment shall be in addition to the prorated portion of the monthly assessment which a new Owner agrees to pay to its seller as of the date title to a Dwelling 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

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a specified Dwelling 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.

(d) **Assessments on Dwelling Units Under Construction.** With regard to any portions of the Premises upon which Dwelling Units are being constructed or have been completed and title has not been conveyed by Declarant, the assessment respecting any such portion of the Premises shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such portion of the Premises; provided, however, that in the event Declarant enters into a lease or installment contract for any Dwelling Unit, then Declarant shall be responsible for the payment of assessments on such Dwelling Unit on the same basis as any other Owner as provided in Section 4.6 hereof. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Premises and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, repair items or inventory items to the extent attributable to subsequent periods. The Declarant hereby agrees to satisfy any deficit or shortage in the Association's actual operating expenses for any period in which the Declarant has paid reduced assessments pursuant to this Section 4.3(d), provided, however, that the Declarant's liability hereunder shall not exceed the amount by which the Declarant's assessments have been reduced below the assessments of each other Owner by reason of this Section 4.3(d). Until such time as the Transfer Date has occurred, the assessments covering any Dwelling 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.

(e) **Adjustments to Estimated Budget.** If any "estimated cash requirement" proves inadequate for any reason (including nonpayment of any Member's assessment), the Board may at any time levy a further assessment. The Board shall serve notice of such further assessment on all Members by a statement in writing giving the amount and reasons therefore, and such further assessment shall become effective with the monthly assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Members shall be personally liable for and obligated to pay their respective adjusted monthly amount.

(f) **Failure to Prepare Annual Budget.** The failure or delay of the Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Member's obligation to pay such Member's share of the estimated cash requirement as herein provided, whenever the same shall be determined and in the absence of any annual estimate or adjusted estimate, each Member shall continue to pay the monthly charge at the then existing monthly rate established for the previous period.

(g) **User Charges.** The Board (or the Developer acting pursuant to Section 2.4(c) hereof) may establish, and each Member shall pay, user charges to defray the

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expense of providing services, facilities or benefits which may not be used equally or proportionately by all of the Members or which, in the judgment of the Board or Developer, should not be charged to every Member. Such expenses may include, without limitation, fees for the use of facilities located in the Common Area; lease charges; charges predicated on the negligence of any Member or the abuse of any Community Facility; charges for services provided by the Board or the Developer resulting from an Owner's failure to properly maintain such Owner's Dwelling Unit or adjoining patio in accordance with the requirements of this Declaration, any and all rules and regulations which the Board may promulgate or any requirements which the Architectural Control Committee may impose; and fees for such other services and facilities provided to Members which should not reasonably be allocated among all of the Members in the same manner as assessments. Notwithstanding anything to the contrary contained in this Section 4.3(g), no such fees shall be assessed for the use of Parking Spaces. Such user charges may be billed separately to each Member benefited thereby, or may be added to such Member's assessment as otherwise determined, and collected as a part thereof pursuant to Sections 4.6 and 4.7 hereof. Nothing herein shall require the establishment of user charges as hereinabove authorized, and the Board may elect to treat all or any portion thereof as expenses to be defrayed by assessments.

4.4 **Special Assessments for Capital Improvements.** In addition to the annual assessment authorized by Section 4.3, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction or purchase of a specified capital improvement upon or to the Common Area, and the necessary fixtures and personal property related thereto; provided, however, that, except for special assessments which shall not exceed in any one (1) year the sum of \$250.00 per assessed Dwelling Unit, any such special assessment shall first be approved at a meeting of the Voting Members by the affirmative votes of Voting Members entitled to cast at least sixty-seven percent (67%) of all votes cast at a meeting called and held in accordance with the provisions of Section 4.5. The provisions of this Section 4.4 shall not limit the power of the Board, without such prior approval, to levy assessments to reconstruct, replace or restore any Community Facilities to the condition as originally constructed by Developer. The Board shall segregate and maintain a special reserve account (the "Master Fund") to be used solely to make capital expenditures in connection with the Community Facilities, and at the time the initial sale of each Dwelling Unit is closed, the purchaser of the Dwelling Unit shall pay to the Association an amount equal to two (2) months assessments to be deposited into an account (the "Master Reserve") to be applied and used for start-up costs and as a working capital fund in connection with the initial operation of Community Facilities and for future working capital needs. The Board shall determine the appropriate level of the Master Reserve based on a periodic review of the useful life of the Community Facilities, the roofs of the Dwelling Units and equipment owned by the Association as well as periodic projections of the cost of anticipated repairs or improvements to the Community Facilities, the roofs of the Dwelling Units or the purchase of equipment to be used by the Association in connection with its duties hereunder, and a review of any then-existing warranties on the roofs of the Dwelling Units.

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4.5 **Notice and Quorum.** Written notice of any meeting called for the purpose of authorizing any special assessments requiring approval pursuant to Section 4.4 hereof shall be sent to all Voting Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Voting Members entitled to cast at least sixty percent (60%) of all the votes shall constitute a quorum; provided, that if Voting Members entitled to cast sixty percent (60%) of all votes do not attend, a second meeting may be called with the same notice requirements as herein provided, except that the quorum therefore shall be reduced to Voting Members entitled to cast thirty percent (30%) of all votes.

4.6 **Allocation of Assessments Among Members.** Both annual and special assessments shall be allocated among the Members by apportioning to each Member an amount equal to that proportion of the total assessment which the number of Unit Memberships held by such Member bears to the total number of Unit Memberships in the Association.

4.7 **Payment of Assessments.**

(a) The Association shall perform the collection functions for all assessments and user charges hereunder and Members shall pay all such amounts directly to the Association. The Association may exercise its aforesaid rights as frequently as it deems necessary.

(b) Upon written demand of an Owner or a First Mortgagee at any time, the Association shall furnish such Owner or First Mortgagee a written dated certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's Dwelling Unit. Such Certificate shall be conclusive evidence of payment of any annual or special assessments theretofore levied and not stated therein as unpaid.

4.8 **Nonpayment of Assessments.**

(a) Any installment of an assessment, which is not paid to the Association when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may upon notice to such Member of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall commence to bear interest from the date of acceleration at the highest legal rate per annum. The Association may bring an action against the Member personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action; and the Association may enforce and foreclose any lien it has or which may exist for its benefit.

(b) No Member shall be relieved of personal liability for the assessments and for other amounts due as provided herein by non-use of the Common Area or

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abandonment or transfer of ownership of his or her Dwelling Unit, provided that upon transfer of ownership of a Dwelling Unit, the transferor shall not be responsible for assessments accruing after the date of transfer.

(c) The lien of the assessments provided for in Section 4.1 hereof shall be subordinate to the lien of any first mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the earlier of the date the holder of said mortgage takes possession of the Dwelling Unit, accepts a conveyance of any interest in the Dwelling Unit or has a receiver appointed in a suit to foreclose his or her lien. Such taking of possession, conveyance or appointment shall not relieve the holder of said mortgage from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. Except for the foregoing, the lien for assessments provided for in Section 4.1 shall not be affected by any sale or transfer of a Dwelling Unit.

4.9 **Itemized Accounting.** The Board shall annually supply to all Owners an itemized accounting of the expenses incurred or paid for the preceding year, together with a tabulation of the assessments collected for such year; and showing the net excess or deficit of income over expenditures plus reserves.

5

ARTICLE

PARKING

5.1 **Primary Parking.** Each Owner's primary parking is located on that part of the Premises that is owned by the Owner and is for the exclusive use of Owner and Owner's guests.

5.2 **Common Parking.** There are ten (10) parking spaces that are a part of the common area. The Board subject to the rules and regulations adopts the use of these parking spaces from time-to-time.

6

ARTICLE

ADMINISTRATION AND USE OF COMMON AREA

6.1 **General Powers and Duties of the Board.** The Board shall have all of the powers and duties granted to it or imposed upon it by this Declaration, the By-laws and the Illinois General Not For Profit Corporation Act of 1986 including, without limitation, the following general powers and duties:

(a) To adopt rules and regulations governing the use, maintenance and administration of the Common Area and Community Facilities for the health, comfort, safety and general welfare of persons using the Common Area and Community Facilities.

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- (b) To repair, maintain, improve and replace the Common Area and all Community Facilities thereon, including without limitation all landscaping which is part of the Common Area, and to have such rights of ingress and egress over and upon the Premises as may be required to exercise such rights.
- (c) To provide maintenance and services with respect to the Common Area, including (i) maintenance, repair and replacement of all Community Facilities; (ii) snow and ice removal from the Common Area and private sidewalks; (iii) maintenance, repair, replacement, improvement and care of all trees, shrubs, grass and landscaped areas; and (iv) maintenance, repair, replacement and operation of those Utilities or portions thereof which are not maintained by the City or by a public or quasi-public utility or authority.
- (d) At the Board's discretion, without obligation, to provide snow removal from public sidewalks adjacent to public roads, notwithstanding that such sidewalks are not part of the Common Area;
- (e) To pay for, out of the assessment funds provided for in ARTICLE 4 hereof, all taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Area, subject to the provisions of Section 6.3 hereof.
- (f) Subject to the rights reserved by the Developer pursuant to Section 7.2 hereof, to retain and compensate a firm to manage the Association and the Common Area or any separate portion thereof, and to provide the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by such manager provided, however, that any such management agreement shall (i) contain provisions allowing for termination by the Board for cause upon thirty (30) days written notice without payment of a termination fee, (ii) contain provisions allowing for termination by the Board without cause upon ninety (90) days written notice without payment of a termination fee, (iii) be for a term not to exceed one (1) year and (iv) be renewable by agreement of the parties for successive one year periods.
- (g) To provide any material, supplies, insurance, furniture, equipment, fixtures, labor, services, maintenance, repairs, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or the By-Laws, or which in its opinion shall be necessary or proper for the operation or protection of the Association and its members or for the enforcement of this Declaration.
- (h) To make the dedications and grant the utility easements described in Section 7.4 hereof.

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(i) To obtain (and the Board shall obtain with the premiums therefore being part of the assessment levied pursuant to Section 4.3) such policy or policies of insurance as may be necessary, in the Board's opinion, to insure the Association against any liability in connection with the ownership and operation of the Common Area including, but not limited to, the following:

(1) Physical damage insurance on the Common Area (and including fixtures on the Common Area, building service equipment and any personal property and supplies of the Association) against loss or damage by fire and against loss or damage by all other hazards now or hereafter covered by the standard extended coverage endorsement with an inflation guard endorsement and a building ordinance or law endorsement, all in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof. The Board, which determination may be based upon appropriate insurance appraisals, shall determine the "full insurable replacement cost" of the Common Area from time to time. Perils to be covered by such policies shall be no less than "all risk" or "special form" on real property and "broad form" named perils on personal property, and the Board may determine such other perils as. All such policies of insurance shall name as insured the Developer, so long as the Developer has an insurable interest, and the Association.

(2) Commercial General Liability insurance against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in, on or about the Common Area or upon, in or about the streets and passageways and other areas adjoining the Common Area, and including contractual liability with such limits as the Board shall deem desirable; provided, however, that the coverage shall be no less than \$2,000,000.00 per occurrence for personal injury and/or property damage. All policies of insurance of the character described in this subparagraph shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner on account of the negligent acts of the Association or another Owner, and shall be endorsed to cover cross-liability claims of one insured against the other. All such policies shall name as insureds the Declarant, so long as the Declarant has an insurable interest, the Association and the managing agent.

(3) Such worker's compensation insurance as may be necessary to comply with applicable laws.

(4) Employer's liability insurance in such amount as the Board shall deem desirable.

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(5) Fidelity insurance against dishonest acts on the part of directors, officers, managers, trustees, employees, managing agents or volunteers responsible for handling funds belonging to or administered by the Association, written in an amount which is no less than the amount of funds within the custody or control of the Association at any time, plus all reserves held by the Association. Such policy of insurance or bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such policy of insurance or bond shall name as insured or obligee the Association.

(6) Such other insurance (including insurance with respect to officers' and directors' liability and garage keepers' liability) in such reasonable amounts as the Board shall deem desirable.

(7) If any improvements on the Premises are within a Special Flood Hazard Area as shown on the applicable Flood Insurance Rate Map prepared by the Federal Emergency Management Agency, flood insurance on the Common Area, including all contents which are located on the Common Area, for an amount not less than one hundred percent (100%) of the full replacement cost hereof on a blanket basis or the maximum coverage available through the National Flood Insurance Program, if less than full replacement cost.

(8) All insurance provided for in this Section 6.1(i) shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder's Alphanumeric and Financial Size Category Rating of not less than A/VIII according to Best's Insurance Reports or a substantially equivalent rating from a nationally recognized insurance rating service. All such policies shall provide a minimum of sixty (60) days advance notice of modification or cancellation in writing to the insured hereunder unless such cancellation is for non-payment of premium, in which case ten (10) days' advance written notice shall be sufficient. The Board shall have the right to select deductibles to the insurance coverages required or permitted under this Section 6.1 if the economic savings justify the additional risk and if permitted by law; provided, however, that no deductibles shall exceed one percent (1%) of the face amount of the insurance policy to which such deductible applies, and further provided that funds to cover any deductible amounts shall be maintained as part of the reserve account.

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Each Owner shall be responsible for (i) Homeowner's Insurance on such Owner's Dwelling Unit in an amount not less than one hundred percent (100%) of its full insurable replacement cost; and (ii) such Owner's personal liability to the extent not covered by the policies of liability insurance obtained by the Board for the benefit of all of the Owners as above provided. All Homeowner's Insurance policies carried by each Owner shall be without contribution with respect to the policies of property casualty insurance obtained by the Board for the benefit of all of the Owners. Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Association, its officers, members of the Board, Declarant, Developer, the manager and managing company of the Property, if any, and their respective employees and agents, for any damage to the Common Area, the Dwelling Units, or to any personal property located in such Owner's Dwelling Unit or the Common Area caused by fire or other casualty to the extent that such damage is covered by fire or other form of casualty insurance or would be covered by insurance for which such Owner is responsible pursuant to this Section 6.1(i).

(j) To obtain, not less often than annually, an audited financial statement for the Association.

(k) To levy and collect assessments from the Owners.

6.2 **Special Powers of the Board.** The Board shall have the following additional rights and powers, and shall pay the costs and expenses of exercising the same out of the assessment funds:

(a) To execute, on behalf of all Owners, all divisions of ownership for tax assessment purposes with regard to the Common Area or any portion thereof.

(b) To borrow funds to pay costs of operation secured by assignment or pledge of rights or other reasonable form of security against delinquent Owners, if the Board sees fit.

(c) To enter into contracts; maintain one or more bank accounts granting authority as the Board shall desire to one or more persons (including the managing agent of the Common Area) to draw upon such accounts; invest surplus funds of the Association in U.S. Government securities or in passbook savings accounts insured by the Federal Deposit Insurance Corporation or the Federal Savings & Loan Insurance Corporation; and generally, to have all the powers necessary or incidental to the operation and management of the Association.

(d) To protect or defend the Common Area from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

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- (e) To adjust the amount of, collect and use any insurance proceeds to repair damaged property or replace lost property, and on behalf of all Owners to engage in any proceedings and negotiations and to execute any settlements or agreements with respect to such insurance proceeds.
- (f) To transfer the Common Area to any title holding land trust in exchange for the entire beneficial interest therein, or to any corporation in which the Association is the sole shareholder.
- (g) To enforce the provisions of this Declaration and rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

6.3 **Real Estate Taxes and Assessments.** Notwithstanding anything to the contrary herein contained and whether or not Declarant shall have conveyed to the Association title to the Common Area pursuant to Section 7.6 hereof, the Association shall pay and discharge all general and special real estate taxes and assessments levied by any public authority with respect to the Common Area.

6.4 **Intentionally Omitted.**

6.5 **Resale of Dwelling Unit.** In the event of a resale of any Dwelling Unit by an Owner other than the Developer, and within thirty (30) days after the written request by such Owner, the Board shall deliver a copy of each of the documents and make the disclosures described in and required by Section 18.5(g) of the Act. In the event of a resale of any Dwelling Unit by an Owner, other than the Developer, such Owner shall be required to comply with all provisions of any ordinance of the City applicable to such resale, the provisions of which by this reference are hereby incorporated into and made a part of this Declaration. The Board shall be allowed to charge a reasonable fee, not to exceed the maximum amount prescribed by the Act, for providing such information.

7

ARTICLE

CERTAIN RIGHTS RESERVED TO DEVELOPER

7.1 **Developer's Promotional Rights.** The right is reserved to Developer, and its agents, to place and maintain on the Premises all models, sales offices, advertising signs and banners and lighting in connection therewith, and other promotional facilities at such locations and in such forms as shall be determined by Developer. There is also reserved unto Developer, its agents and prospective purchasers and tenants, the right of ingress and egress and transient parking in and through the Premises. Developer shall also have the right to maintain on the Premises without charge (a) a general office for the purpose of exercising the development and management rights reserved in Section 7.2 hereof and (b) appropriate permanent and transient parking facilities for the employees of Developer and of Developer's agents and for prospective

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purchasers of Dwelling Units. Developer's aforesaid rights shall exist at any time Developer is engaged in the sale or leasing of Dwelling Units on any portion of the Premises and no charge shall be made with respect thereto.

7.2 **Right to Engage a Manager.** Developer shall have the right to engage the initial manager for the Association, and in furtherance of such right to enter into a contract with a person, firm or corporation for such purposes, provided said contract shall be for a term not to exceed one (1) year, renewable by agreement of the parties for successive one (1) year terms until the appointment of the first Board of the Association pursuant to Section 2.6 hereof, which contract shall be binding upon and inure to the benefit of the Association and shall be paid for out of the assessment funds provided that the contract shall be terminable for cause by the Association upon thirty (30) days' written notice and shall be terminable without cause by the Association upon ninety (90) days' written notice, in either case without payment of a termination fee or any penalty.

7.3 **Developer's Easements.** Declarant hereby reserves for the benefit of Developer a nonexclusive easement to, through, over and across the Premises for the purpose of exercising the rights reserved to Developer pursuant to this Declaration, including, without limitation, the marketing, leasing, management and maintenance of improvements in any portion of the Premises. Said rights of Developer shall continue until the later of (a) the date which is twenty (20) years from the date of recording this Declaration, or (b) the date on which Developer has completed the sale or rental of all Dwelling Units located and contemplated to be located within the Premises, unless Developer, by written notice to the Association, elects to terminate such rights prior to such date. All rights and easements created by this Declaration are subject and subordinate to the afore-described development rights of Developer, whether or not inconvenience to any Owner shall result there from.

7.4 **Right of Developer to Make Dedications and to Grant Utility Easements.** As used in this Section 7.4 and elsewhere in this Declaration, the term "Utilities" means all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment, which serve the Premises, including, without limitation, those for the transmission and/or distribution of water, electricity, gas, telephone, cable television, sewage and drainage. Said term also includes all standpipes, hydrants, pumps, equipment vaults and other structures and facilities for the provision of fire protection services.

Declarant hereby reserves for itself and its successors and assigns the following rights with respect to the Common Area:

- (a) To dedicate streets, walks, parkways, drives, open space, water rights and other property to any governmental authority and to make such other dedications as may be required to implement the ordinances of any governmental authority from time to time applicable to the Premises and to the public improvements thereon.

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- (b) To dedicate space in the Common Area to any public or quasi-public utility or to any governmental authority for the location of Utilities serving any portion of the Premises.
- (c) To reserve or grant easements in, over, under, to and across the Premises for ingress and egress to, and for installation, construction and maintenance of, any or all of the Utilities.

Until Developer's rights under Section 7.3 hereof are terminated, Developer shall have the right to tap into all Utilities for the purpose of exercising all such rights. Developer acting on behalf of the Association may upon conveyance or transfer of the Common Area by Declarant to the Association, exercise by the Association or all the rights reserved pursuant to this Section 7.4.

7.5 Construction of Premises. In connection with the construction of improvements to any part of the Premises, the Developer, its agents and contractors, shall have the right, at its own expense, (but shall not be obligated) to make such alterations, additions or improvements to any part of the Premises including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any structure which shall contain Dwelling Units or the Common Area which the Developer deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or planting and replanting of any unimproved portions of the Premises. In connection with the rights provided in the preceding sentence, the Developer, its agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

7.6 Retention of Title by Declarant. Declarant may retain title to the Common Area until such time as, in the opinion of Developer, the Association is able to maintain the same, but covenants, for itself, its successors and assigns, that it shall convey and quitclaim to the Association the Common Area free and clear of any mortgage liens of record not later than the date specified in Section 2.6 hereof upon which Developer shall cease to have the right to appoint one or more directors of the Association.

Declarant shall reserve, upon conveyance to the Association of the Common Area, a perpetual and non-exclusive easement for egress and ingress in, to and from each Dwelling Unit, which it shall grant to each Dwelling Unit upon the conveyance thereof.

The Association shall not be relieved of any of its obligations under this Declaration by reason of Declarant's retention of title to all or any portion of the Common Area, including without limitation, the obligation to pay all general and special real estate taxes and assessments levied with respect to the Common Area, and including further, the obligation to maintain, repair and reconstruct the Common Area and to defray the cost thereof by Member assessments.

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7.7 **Terms of Conveyance of Common Area.** Upon any conveyance or assignment of the Common Area to the Association, Declarant shall be entitled to a proration credit for all expenses of the Association defrayed by Developer (including insurance and real estate taxes), which have not theretofore been reimbursed to Developer. Title to the Common Area may be subject to the easements, restrictions and covenants contained herein and to all general and special title exceptions (rights or claims of parties in possession not shown by the public records; encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises; easements, or claims of easements, not shown by the public records; any lien or right to a lien for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown on the public records; and taxes or special assessments which are not shown as existing liens by the public records) of any owner's title insurance policy covering the Common Area which Developer shall deliver to the Association in connection with such conveyance. If the Common Area shall be held in any title-holding trust, Developer may assign the beneficial interest in such trust to the Association in lieu of causing the trustee to convey the same by trustee's deed. The Common Area shall be conveyed or assigned without any express or implied warranties, which warranties are expressly disclaimed by Developer and Declarant.

7.8 **General.** Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Developer to execute or to cause Declarant or any other title-holding trust to execute all documents and do all other acts and things affecting the Premises which, in the Developer's opinion, are required to implement Developer's reserved rights hereunder (including the making of any dedications to public use) provided any such document or act or thing is not inconsistent with the then existing property rights of any Owner.

8

ARTICLE

MISCELLANEOUS PROVISIONS REGARDING MORTGAGEES

The following provisions are intended for the benefit of each First Mortgagee and to the extent, if at all, that any other provisions of this Declaration or the By-Laws conflict with the following provisions, the following provisions shall control:

- (a) Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded first mortgage or trust deed on a Dwelling Unit ("Insurer or Guarantor") and the unit number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of default of any Owner's obligations under this Declaration which is not cured within thirty (30) days. Any First Mortgagee of a Dwelling Unit who comes into possession of the said Dwelling Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of

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the Association against the mortgaged Dwelling Unit which become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Dwelling Unit, or (iii) the date on which a receiver is appointed in a suit to foreclose the holder's lien, whichever occurs first.

(b) Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

- (1) to examine current copies of this Declaration, the By-Laws, rules and regulations and the books and records of the Association during normal business hours;
- (2) to receive an audited financial statement prepared by the Association within ninety (90) days following the end of its fiscal year;
- (3) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;
- (4) to receive written notice of any decision by the Association or Owners to make a Material Amendment to the Declaration, By-Laws or the articles of incorporation of the Association;
- (5) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (6) to receive written notice of any proposed action which would require the consent of a specified percentage of First Mortgagees; and
- (7) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Property or the Dwelling Unit on which it holds, insures or guarantees the mortgage.

(c) No provisions of this Declaration, the By-Laws or the articles of incorporation of the Association or any similar instrument pertaining to the Premises or the Dwelling Units therein shall be deemed to give an Owner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of either or both of the Dwelling Units and the Common Area, or any portion thereof or interest therein. In such event, the First Mortgagees, Insurers or Guarantors of the Dwelling Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

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(d) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Dwelling Unit shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Area if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or of any damages to the Dwelling Unit in excess of One Thousand Dollars (\$1,000.00).

(e) If any Dwelling Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, Insurer or Guarantor of said Dwelling Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of this Declaration, the articles of incorporation or By-Laws of the Association or any other instrument pertaining to the Premises or the Dwelling Units will entitle the owner of a Dwelling Unit or other party to priority over such First Mortgagee with respect to the distribution of the proceeds of any award or settlement with respect to such Dwelling Unit.

(f) No amendment to, change or modification of either Section 4.8(c) (dealing with the priority of assessment liens) or Section 12.1 (dealing with the method of amending this Declaration) shall be effective unless, in addition to the terms and conditions set forth in Sections 4.8(c) and 12.1, such change or amendment shall be first consented to, in writing, by not less than seventy-five percent (75%) of the Residential Unit Owners and their respective First Mortgagees.

9

ARTICLE

ARCHITECTURAL CONTROL COMMITTEE

9.1 **Premises.** No building, wall or other structure shall be commenced, erected or maintained upon the Premises, nor shall any exterior addition to or change or alteration of any building, wall or other structure (including, without limitation, the Dwelling Units) be made nor shall any change be made to the character of the landscaping on the Premises now existing or hereafter installed and maintained by Developer or the Association (including, without limitation, the cutting of existing trees), nor shall any other changes to the exterior of a Dwelling Unit be made (any of the foregoing herein referred to as an "Alteration") without the express prior written approval by the Approving Party (as hereinafter defined), which approval may be withheld in such Approving Party's sole and exclusive discretion. Without limitation on the foregoing, no such Alteration shall be made unless and until written plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by Approving Party (as hereinafter defined). For purposes hereof, the term "Approving Party" shall mean the Developer until such time as the Developer, by written notice to the Association, voluntarily elects to terminate its approval rights

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under this ARTICLE 9, in which event the Approving Party shall mean either the Board, or an architectural committee ("Architectural Control Committee") composed of three (3) or more representatives appointed by the Board. The approval rights granted to Developer under this ARTICLE 9 shall expressly survive the Transfer Date for the maximum period permitted by applicable law. Neither the Owners, Members nor Voting Members shall, without the prior written consent of Developer, have the right to amend, modify or change this Declaration or the articles of incorporation or By-Laws of the Association to in any way diminish the rights and authority of the Developer under this ARTICLE 9. In the event the Approving Party fails to approve or disapprove such design, color and location within ninety (90) days after said plans and specification have been submitted, it shall be deemed to have been disapproved hereunder. Any disapproval may, without obligation and at the Approving Party's sole and exclusive discretion, set forth the reason or reasons for such disapproval and may list the changes required by the Approving Party. If an Owner submits revised plans and specifications, the Approving Party shall have an additional ninety (90) days to again approve or disapprove such plans and specifications, at the Approving Party's sole and exclusive discretion, as set forth above, the failure to do either of which shall be deemed to be disapproval. The Approving Party shall have the right to charge fees to each Owner requesting a review under this ARTICLE 9 in order to offset the direct out of pocket cost, if any, incurred by the Approving Party in connection with such review process.

In the event any Owner shall perform any Alteration without obtaining the approval by the Approving Party in accordance with this Section 9.1, the Board shall have the right: (i) to enter upon that part of the Premises where such violation exists and summarily abate and remove or do whatever else may be necessary to correct, at the expense of the offending Owner, any such violation or the cause of such violation, and the Developer, or Declarant, or their successors and assigns, or the Board, or any of their agents, shall not be deemed guilty in any manner of trespass, or (ii) to enjoin, abate, or remedy by a proceeding at law or in equity the continuation of such violation, provided, however, that no summary abatement shall be undertaken in connection with any alteration or demolition of improvements until judicial proceedings are instituted.

9.2 **Building Exteriors.** The Association, at its expense, shall be responsible for the maintenance, repair and replacement of the roofs and exterior portions of the Dwelling Units (including, without limitation, the structural elements of such Dwelling Units), the cost of which shall be assessed to all Owners, generally, pursuant to Article 4 of this Declaration.

9.3 **Limitations.** Notwithstanding anything to the contrary contained herein, Owners shall not be permitted to erect or install, or cause to be erected or installed, on (i) the exterior portion of any Dwelling Unit or patio adjoining thereto, or (ii) any portion of the Common Area, any of the following items: an antenna, satellite dish or other receiver which is designed to receive direct broadcast satellite service or any other video or audio transmission (collectively, "Receiver"), unless such Receiver is smaller than twenty-four (24) inches in diameter, in which case such Owner must first: (a) obtain prior written approval from the Board; (b) obtain prior written approval from the Approving Party (if applicable); and (c) such Receiver otherwise complies with any and all rules and regulations promulgated by the Board. Owners shall not be

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permitted to install or construct, or cause to be installed or constructed, a rooftop deck, skylight or other addition or alteration to the roof of a Dwelling Unit.

9.4 **Dwelling Unit Maintenance.** Each Owner shall furnish and be responsible for, at his or her own expense, all of the maintenance, repair, landscaping work and other obligations ("Maintenance Work") for his or her Dwelling Unit (including, without limitation, all such Maintenance Work to be performed on such Owner's patio), except for the Association's obligations to maintain the exteriors and roofs of Dwelling Units as provided in this Declaration, as otherwise directed by the Board or as is otherwise provided herein. At the discretion of the Board, the Board may perform, or cause to be performed, such Maintenance Work and the cost associated therewith shall be assessed in whole or in part to the Owner benefited thereby, and further, at the discretion of the Board, the Board may direct such Owner, in the name and for the account of such Owner, to arrange for the performance of such Maintenance Work and to pay the cost thereof with the funds of such Owner. Any Maintenance Work performed by an Owner or such Owner's designee shall be performed in a good and workmanlike fashion in accordance with all rules and regulations which the Board may promulgate.

9.5 **Developer Construction.** The provisions of this Article 9 shall not apply with respect to construction, installation, alteration or change of any improvements performed by the Developer or any affiliate or other entity controlled by the Developer.

10

ARTICLE

GENERAL RESTRICTIONS

10.1 **Common Area Restriction.** Except as provided in ARTICLE 7 hereof, no industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area nor, to the extent permitted by law, shall any "For Sale" or "For Rent" signs or any other advertising be maintained or permitted on any part thereof, except as permitted by the Board.

10.2 **Obstructions.** Except as permitted under Section 7.5 hereof, there shall be no obstruction of the Common Area, and nothing shall be stored in the Common Area without the prior consent of the Board.

10.3 **Pets.** No animal of any kind shall be raised, bred or kept in the Common Area. The Board may from time to time adopt rules and regulations governing the use of the Common Area by pets. Any pet causing or creating a nuisance or unreasonable disturbance on the Common Area shall be permanently removed from the Premises upon three (3) days written notice from the Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final. No animal of any kind shall be raised, bred or kept within any Dwelling Unit except, however, for animals which are of a breed or variety commonly kept as household pets in first-class residential developments located in suburban Cook County, Illinois, are not kept or bred for any commercial purpose, are not allowed to run loose on the Premises, are kept

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in strict accordance with such other rules and regulations relating to household pets as may be from time to time adopted or approved by the Board, and do not, in the judgment of the Board, constitute a nuisance to others.

10.4 **Proscribed Activities.** No noxious or offensive activity shall be carried on in the Common Area nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners. No Owner shall perform any work (including Maintenance Work), or cause to be performed any such work, which causes damage to the exterior of a Dwelling Unit, or any portion of the Common Area (including, without limitation, damage to party walls, structural elements, utility facilities, the Parking Area roof membrane or the roof or roof membrane of any Dwelling Unit). The Owner causing such damage shall repair or replace, or cause to be repaired or replaced, all such damaged materials or equipment in order to restore the damaged areas or equipment to their original condition, and such Owner shall be solely responsible for all costs associated therewith. At the discretion of the Board, the Board may perform, or cause to be performed; such repair or replacement work and the cost thereof shall be assessed in whole or in part to such Owner.

10.5 **Structural Impairment.** Nothing shall be done in, on or to the Common Area or any Dwelling Unit, which would impair the structural integrity of any building, or structure located thereon or otherwise containing such Dwelling Unit.

10.6 **No Unsightly Uses.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Dwelling Unit or the Common Area nor shall any vehicle be stored or parked upon any portion of the Common Area except in those areas designated for vehicles, if any, by the Board. No automobiles shall be stored or parked on any Common Area (including, without limitation, grass and other landscape areas) except those portions of the Common Area designated from time to time by the Board as parking areas. The Common Area shall be kept free and clear of all rubbish, debris, and other unsightly materials and no waste shall be permitted thereon. All rubbish shall be deposited in such areas and the Board shall designate such receptacles as. Each Owner shall be responsible for keeping such Owner's patio and balcony (if applicable) free and clear of all rubbish, debris and other unsightly materials and shall maintain such areas in accordance with the provisions of this Declaration, any rules and regulations which the Board may promulgate and any requirements imposed by the Architectural Control Committee. In addition, the Board may authorize any vehicles parked in violation of any parking regulations issued in connection with the Common Area to be towed away and any such towing charge shall become a lien upon the Dwelling Unit of the Owner of the vehicle in the same manner as provided in ARTICLE 4 hereof for non-payment of maintenance assessments.

10.7 **Condemnation.** In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any reserves being held for such part of the Common Area, shall, in the discretion of the Board, either (i) be applied to pay the assessments levied by the Association; (ii) to be distributed to the Owners and their respective mortgagees, as

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their interests appear, in accordance with the number of Dwelling Units owned by any such Owner; or (iii) to be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration. The Board, on behalf of the Owners, shall engage in any proceedings and negotiations and execute any settlements and agreements with respect to any such taking or condemnation. Any acquisition by the Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the Association and recorded.

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ARTICLE

PARTY WALLS

11.1 **Party Walls and Use.** All dividing walls which straddle the boundary line between Dwelling Units or which serve two or more Dwelling Units, shall at all times be considered party walls, and each of the Owners of Dwelling Units upon or between 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 Dwelling 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.

11.2 **No Extension of Party Walls.** No Owner shall have the right to extend said party wall in any manner, either in length, height or thickness.

11.3 **Damage or Destruction; Repair or Rebuilding.** In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Owners of all Dwelling Units upon or between which such party wall may rest or which are served or benefited by such party wall: (i) shall have the obligation to repair or rebuild such party wall; and (ii) shall pay in equal shares 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 buildings 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. All construction performed under this ARTICLE 11 shall be subject to the terms of ARTICLE 9 of this Declaration.

11.4 **Contribution.** Notwithstanding the provisions of Section 11.3 hereof, the Owner of any Dwelling Unit shall retain the right to receive a larger contribution from another Owner under any rule or law regarding liability for negligent or willful acts or omissions.

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ARTICLE

GENERAL PROVISIONS

12.1 **Binding Effect.** The easements created by this Declaration and the approval rights granted under ARTICLE 9 hereof shall be of perpetual duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the Premises and shall inure to the benefit of and be enforceable by the Association and/or any Owner subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date that this Declaration is recorded, after which time the same shall be automatically extended for 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 after the date this Declaration is recorded or within any successive ten (10) year period by an instrument signed by those Members owning at least seventy-five percent (75%) of the Dwelling Units which are subject to this Declaration; provided, however, that at any time, no Material Amendment to this Declaration, the By-Laws or the Association's articles of incorporation shall be effective unless approval thereof is obtained from Eligible Mortgage Holders representing at least fifty-one percent (51%) of the Dwelling Units that are subject to the mortgages held by Eligible Mortgage Holders and provided further that the provisions of this Section 12.1 may be amended only by unanimous written consent of the Owners of all Dwelling Units. These covenants and restrictions may also be cancelled or amended by an instrument signed by sixty percent (60%) of Owners executed and recorded within ninety (90) days of the 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, provided, however, that no termination or alteration of the legal status of the Association or the Premises for reasons other than substantial destruction or condemnation of the Premises shall be effective unless approval thereof is obtained from at least sixty-seven (67%) of all Eligible Mortgage Holders. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of Recorder of Deeds of Cook County, Illinois, and a true, complete copy of such instrument shall be transmitted to each Owner promptly.

12.2 **Special Amendments.** Anything herein to the contrary notwithstanding, but subject at all times to the requirements of Section 18.5 of the Act, Developer 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 Administration, the Department of Veteran's Affairs (formerly known as the Veteran's Administration), or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Dwelling units, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration

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into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Owner. Each deed, lease, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the date Developer no longer has the right to appoint all directors of the Board pursuant to Section 2.6 hereof.

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

12.4 **Title-holding Land Trust.** In the event title to any Dwelling Unit is conveyed to a title-holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries there under from time to time shall be personally responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against any such title-holding trustee for payment of any lien or obligation hereunder created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Dwelling Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Dwelling Unit.

12.5 **Responsibility of Successors and Predecessors to Developer or Declarant.** No party exercising any rights as Developer or Declarant hereunder shall have or incur any liability for the acts of any other party, which previously exercised or subsequently shall exercise such rights.

12.6 **Perpetuities and Other Invalidity.** If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Joseph P. Kennedy, former ambassador of the United States. If any easement created by this Declaration for the benefit of the Association shall be declared invalid by a final decree of a court of competent jurisdiction, the Association shall be immediately vested with, and is hereby granted, leased and demised, a leasehold estate in the portion of the servient estate theretofore burdened by such easement, for a term which shall

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commence on the date of such decree and shall expire simultaneously with the expiration of the term of this Declaration, for the same purposes and on the same terms and conditions as theretofore applied to said easement interest, except that the Association shall be required to pay as rent for said leasehold estate, an annual rental of \$100 per year for each calendar year or portion thereof which shall elapse during the demised term.

12.7 **Severability**. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision, and all other provisions shall remain in full force and effect.

12.8 **Headings**. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. The terms "Paragraph" and "Section" are used interchangeably herein and shall refer to the corresponding provision in this Declaration containing the same number heading.

12.9 **Notices**. Any notice required or desired to be given under the provisions of this Declaration to any Member, Owner or any other person entitled to use the Common Area, or any part thereof, shall be deemed to have been properly delivered when deposited in the United States Mail, postage prepaid, directed to the last known person who appears as a Member, Owner or other person entitled to notice, at the last known address for each such person, all as shown on the books and records of the Association at the time such notice is given.

12.10 **Conflict**. The provisions of this Declaration are and shall be subservient to the applicable provisions of the Act and to the applicable ordinances and regulations of the City.

12.11 **Dissolution of the Association**. Upon dissolution of the Association, its assets shall be transferred to another homeowners' association having similar purposes.

12.12 **Names of First Mortgagees**. Each Owner shall notify the Association of the name and address of the First Mortgagee relating to his or her respective Dwelling Unit.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

CHURCH STREET VILLAGE, L.L.C.,
an Illinois limited liability company

By: 

Its: MANAGER

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EXHIBIT A

TO

**DECLARATION
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND PARTY WALL RIGHTS
FOR
CHURCH STREET VILLAGE HOMEOWNERS' ASSOCIATION**

THE PREMISES

Property of Cook County Clerk's Office

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EXHIBIT B

TO

**DECLARATION
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND PARTY WALL RIGHTS
FOR
CHURCH STREET VILLAGE HOMEOWNERS' ASSOCIATION**

THE COMMON AREA

Property of Cook County Clerk's Office

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EXHIBIT C

**TO
DECLARATION
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS
AND PARTY WALL RIGHTS
FOR
CHURCH STREET VILLAGE HOMEOWNERS' ASSOCIATION**

SITE PLAN

Property of Cook County Clerk's Office

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EXHIBIT D

TO DECLARATION COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND PARTY WALL RIGHTS FOR CHURCH STREET VILLAGE HOMEOWNERS' ASSOCIATION

BY-LAWS OF

CHURCH STREET VILLAGE HOMEOWNERS' ASSOCIATION

1

ARTICLE

PURPOSES AND POWERS

The Association shall be responsible for the general management, supervision and ownership of the Common Area and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not For Profit Corporation Act of 1986 of the State of Illinois, which shall be consistent with the purposes, specified herein and in the Declaration.

2

ARTICLE

OFFICES

2.1 **Registered Office.** The Association shall have and continuously maintain in this State a Registered Office and a Registered Agent whose office shall be identical with such Registered Office. The Association may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

2.2 **Principal Office.** The principal office of the Association shall initially be maintained at the Premises.

3

ARTICLE

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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3.1 **Membership.** Every Owner of a Dwelling Unit (including the Declarant) shall be a Member of the Association. Membership is appurtenant to and shall not be separated from ownership of such Owner's Dwelling Unit. There shall be one membership allocable to each Dwelling Unit (herein called a "Unit Membership") and any Member who is the Owner of more than one such Dwelling Unit shall have the number of Unit Memberships equal to the number of such Dwelling Units. If the record ownership of a Dwelling Unit shall be in more than one person, or if an Owner of a Dwelling Unit is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the Unit Membership and be responsible for the obligations attributable thereto shall be designated by such Owner or Owners in writing.

3.2 **Voting Rights.** One person with respect to each Unit Membership shall be entitled to vote at any meeting of the Association ("Voting Member"). Such Voting Member may be the Owner or some person designated by such Owner to act as its proxy on its behalf. Such designation shall be made in writing to the Board.

3.3 **Method of Voting.** The total number of votes, which may be cast on any matter requiring assent of Members of the Association, shall be equal to the total number of Unit Memberships at the time of any such vote and each such Unit Membership shall be allocated one vote. Whenever a vote of the Members of the Association is required pursuant to this Declaration, or pursuant to the articles of incorporation for the Association or By-Laws of the Association, or is otherwise required by law, only the Voting Members shall cast such votes. Unless the Declaration or the articles of incorporation or these By-Laws or any applicable law shall specify a greater vote, all Association matters requiring action by Members or by the Voting Members shall be decided by a majority of the votes cast by Voting Members voting at a meeting of Voting Members representing a majority of the Unit Memberships governed by the Declaration at the time of such vote. In all elections for members of the Board, the Association shall be entitled to vote on a non-cumulative voting basis.

3.4 **Initial and Annual Meetings.**

(a) The initial meeting of the Voting Members for the purpose of electing directors, as required by the Declaration, and all subsequent meetings of the Voting Members, shall be held upon no less than twenty-one (21) and no more than thirty (30) days' prior written notice to the Voting Members.

(b) The first annual meeting of the Voting Members shall be held on the second Thursday of September following the initial meeting of Voting Members held pursuant to Paragraph (a), above, and on the second Thursday of September of each succeeding year thereafter, at the hour of 7:30 P.M. or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the Voting Members. Such annual meetings shall be held for the purpose of electing the number of directors of the Board which the Voting

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Members are entitled to elect, and for the transaction of such other business as may come before the meeting.

(c) If such day be a legal holiday, the meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Voting Members called as soon thereafter as conveniently may be.

(d) With respect to any meeting for the purpose of electing directors of the Board, within three (3) working days of the request of any Owner, the Association (or the Developer with respect to the Initial Meeting) shall provide such Owner with the names, addresses, telephone numbers (if in the records of the Association or the Developer, as appropriate) and the weighted vote of each Owner entitled to vote at such meeting.

3.5 **Special Meetings.** Special meetings of the Voting Members may be called at any time for the purpose of considering matters, which by the terms of the Declaration require the approval of the Voting Members or for any other reasonable purpose. Said meeting may be called by the Developer or by the President of the Association or by any two or more members of the Board, or upon written request of the Voting Members who have a right to vote one-fourth (1/4) of all of the votes entitled to be cast by the Voting Members.

3.6 **Notice.** The Secretary of the Association shall give notice of any meeting to the Voting Members. Notice may be given to the Voting Members either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid to his or her address appearing on the books of the corporation. Each Voting Member shall register his or her address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed at least twenty-one (21) days in advance of the meeting and shall set forth in general the nature of the business to be transacted.

3.7 **Consent.** Any action required by this Declaration to be taken at a meeting of the Voting Members, or any other action which may be taken at a meeting of the Voting Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Voting Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Voting Members.

3.8 **Voting.** At all corporate meetings, each Voting Member may vote in person or by proxy.

3.9 **Proxy.** All proxies shall be in writing and filed with the secretary. No proxy shall extend beyond a period of eleven (11) months.

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3.10 **Quorum.** Twenty percent (20%) of the Voting Members must be present to constitute a quorum. If a quorum is not present at any meeting of Voting Members, a majority of the Voting Members present may adjourn the meeting at any time without further notice. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting; withdrawal of Voting Members from any meeting shall not cause failure of a duly constituted quorum at that meeting.

3.11 **Place of Meeting.** The Board of Directors may designate any place of meeting within the City of Evanston for any annual meeting or for any special meeting called by the board of directors.

4

ARTICLE

BOARD OF DIRECTORS

4.1

Board of Directors

- (a) Subject to the terms of Section 4.1(d) herein below, the Association shall be governed by its Board of Directors ("Board") comprised of three (3) persons duly appointed or elected as provided herein, in the Declaration and in the articles of incorporation of the Association. The Board members elected by Voting Members shall be Members or spouses of Members. Board members appointed by Developer need not be Members or spouses of Members.
- (b) The Board shall direct and administer the Common Area and the Dwelling Units in accordance with the terms and provisions of this Declaration. All matters requiring action by the Board shall be decided by majority vote.
- (c) Prior to the appointment of the first Board of the Association pursuant to Sections 2.6 and 2.7 of the Declaration, the Developer may exercise all rights, powers and privileges of the Board and may perform all of its functions, including its functions under ARTICLE 4 of the Declaration.
- (d) Until the date of the initial meeting of Voting Members described in Section 3.4 of these By-Laws, the directors shall be three (3) in number, and shall consist of those directors named in the articles of incorporation of the Association, and successors to said named directors as designated from time to time by the Developer pursuant to the Declaration.
- (e) Commencing with the date of the initial meeting of the Voting Members described in Section 3.4 of these By-Laws, those directors who are not subject to

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appointment by the Developer shall be elected by the Voting Members as more particularly provided in Sections 2.6 and 2.7 of the Declaration.

(f) Each director shall hold office without compensation for a one-year term and until his or her successor shall have been appointed or elected and have qualified.

4.2 **Annual Meetings.** An annual meeting of the Board shall be held without other notice than this By-Law, immediately after, and at the same place as, the annual meeting of the Voting Members. The Board may provide by resolution the time and place, within the Premises or elsewhere within the City of Evanston, for the holding of additional regular meetings of the Board without other notice than such resolution.

4.3 **Special Meetings.** Special meetings of the Board may be called by or at the request of the President or by one-third (1/3) of the directors then serving. The person or persons authorized to call special meetings of the Board may fix the place within the Premises or elsewhere in the City of Evanston for holding any special meeting of the Board called by them.

4.4 **Notice of Special Meetings.** Notice of any special meeting of the Board shall be given at least five (5) days prior to any such meeting by written notice delivered personally or sent by mail or telegram to each director of the Board at his or her address as shown by the records of the Association, except as provided otherwise in the Declaration. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the message is delivered to the telegraph company. Any director of the Board may waive notice of any meeting. The attendance of a director of the Board at any meeting shall constitute a waiver of notice of such meeting, except where a director of the Board attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting, unless specifically required by law or by these By-Laws.

4.5 **Attendance of Owners at Board Meetings.** Meetings of the Board shall be open to any Owner, except for the portion of any meeting held: (A) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent, (B) to consider information regarding appointment, employment or dismissal of an employee, or (C) to discuss violations of rules and regulations of the Association or unpaid assessments owed to the Association. Any vote on these matters shall be taken at a meeting or portion thereof open to any Owner. Any Owner may record the proceedings at meetings required to be open pursuant to this Section 4.5 by tape, film or other means, provided that the board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of such meetings shall be mailed or delivered to all Owners at least 48 hours prior thereto (except as provided in Section 4.3(a) of the Declaration), unless a written waiver of such notice is signed by the person or

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persons entitled to such notice before the meeting is convened. Copies of notices of meetings of the Board shall be posted in entranceways or other conspicuous places on the Premises at least 48 hours prior to the meeting of the Board, except that where there is no common entranceway for seven or more Dwelling Units, the Board may designate one or more locations in the proximity of these Dwelling Units where the notices of meetings shall be posted.

4.6 **Consent.** Any action required by this Declaration to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors entitled to vote with respect to the subject matter thereof. Any such consent signed by all the directors shall have the same effect as a unanimous vote.

4.7 **Election of Officers.** The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members, and who shall be the chief executive officer of the Board and Association, a Secretary who will keep the minutes of all meetings of the Voting Members and of the Board and who shall, in general, perform all the duties incident to the office of Secretary, and a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. All officers shall be elected at each annual meeting of the Board and shall hold office at the pleasure of the Board.

4.8 **Quorum and Voting.** The attendance of a majority of directors serving from time to time on the Board shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board. Any action taken at any meeting at which less than a quorum is present shall be void and of no effect, unless later ratified by the Board at a meeting at which a quorum is present, or by consent of the Board pursuant to Section 4.6 hereof.

4.9 **Compensation.** Directors shall receive no compensation for their services.

4.10 **Board Liability.** The Declarant, the Developer, and the directors, officers, shareholders, partners, employees or agents of either of them, the Board, Members of the Board, officers of the Association, and the agents and employees of any of them (all of the above hereinafter referred to as the "Protected Parties"), shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions which shall occur subsequent to the date of the recording of the Declaration, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits, losses, damages, fees and amounts paid in reasonable settlement or compromise, and all costs, including attorneys' fees, incurred in connection therewith. Each Owner shall be entitled to a right of contribution from every other Owner in respect of said indemnity to the end that, to the extent possible, the burden of any such indemnity shall be borne by the Owners at the time the loss, cost, damage or expense is incurred in the proportion that the number of Dwelling Units in the Premises owned by each respective Owner bears to the total number of Dwelling Units in the Premises at the time the loss, cost, damage or expense is incurred. The Board shall assess each

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Owner for such Owner's share of the cost of such indemnification, and such assessment shall be collectible and enforceable in mode and manner as set forth in Article 6 hereof. To the extent possible the obligation of the Owners for indemnification and the Board's liability hereunder shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

4.11 **Removal.** Any officer elected by the Board may be removed by a majority vote of the Board.

4.12 **Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term. The office of vice president may be kept vacant for any period of time if the Board declines to fill such office during such period.

4.13 **Execution of Instruments.** All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President and countersigned by the Secretary.

4.14 **Nonprofit Purposes of Association.** Nothing herein shall be construed to give the Association authority to conduct an active business for profit on its own behalf or on behalf of the Members, or on behalf of Declarant.

4.15 **Governing Law.** Except as otherwise provided in the Declaration, the Association, its Board, the Illinois General Not For Profit Corporation Act of 1986 shall govern officers and Members.

5

ARTICLE

POWERS OF THE BOARD

5.1 **General Powers of the Board.** The Board shall have all of the powers and duties granted to it or imposed upon it by the Declaration, these By-Laws or the Illinois General Not For Profit Corporation Act of 1986 including, without limitation, the following general powers and duties:

- (a) To adopt rules and regulations governing the use, maintenance and administration of the Common Area and Community Facilities and for the health, comfort, safety and general welfare of persons using the Common Area and Community Facilities.

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- (b) To repair, maintain, improve and replace the Common Area and all facilities and improvements located thereon including without limitation Community Facilities and all landscaping which is part of the Common Area, and to have such rights of ingress and egress over and upon the Premises as may be required to exercise such rights.
- (c) To provide maintenance and services with respect to the Common Area, including: (i) maintenance, repair and replacement of all private sidewalks, landscaping, utility facilities, parking areas, private driveways, lighting fixtures, signage and other Community Facilities; (ii) snow and ice removal from the Common Area, private driveways and private sidewalks; (iii) maintenance, repair, replacement, improvement and care of all trees, shrubs, grass and landscaped areas; and (iv) maintenance, repair, replacement and operation of those Utilities or portions thereof which are not maintained by the City or by any public or quasi-public utility or authority.
- (d) At the Board's discretion, without obligation, to provide snow removal from public sidewalks adjacent to public roads, notwithstanding that such sidewalks are not part of the Common Area.
- (e) To pay for, out of the assessment funds provided for in Article 6 hereof, all taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Area, subject to the provisions of Section 6.3 of the Declaration.
- (f) To retain and compensate a firm to manage the Association and the Common Area or any separate portion thereof, and to provide the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by such manager.
- (g) To provide any material, supplies, insurance, furniture, equipment, fixtures, labor, services, maintenance, repairs, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of the Declaration or these By-Laws, or which in its opinion shall be necessary or proper for the operation or protection of the Association and its Members or for the enforcement of the Declaration.
- (h) To make the dedications and grant the utility easements described in Section 7.4 of the Declaration.
- (i) To obtain such policy or policies of insurance as may be necessary, in the Board's opinion, to insure the Association against any liability in connection with the ownership and operation of the Common Area, including, without limitation, those policies described in Section 6.1 of the Declaration.

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(j) To obtain and provide to all Owners, an annual audited financial statement for the Association containing an itemized accounting of the Association's expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the imposition of assessments and showing the net excess or deficit of income over expenditures, plus reserves.

(k) To levy and collect assessments from the Owners pursuant to ARTICLE 6 of these By-Laws.

5.2 **Special Powers of the Board.** The Board shall have the following additional rights and powers, and shall pay the costs and expenses of exercising the same out of the assessment funds

(a) To execute, on behalf of all Owners, all divisions of ownership for tax assessment purposes with regard to the Common Area or any portion thereof.

(b) To borrow funds to pay costs of operation secured by assignment or pledge of rights or other reasonable form of security against delinquent Owners, if the Board sees fit.

(c) To enter into contracts; maintain one or more bank accounts granting authority as the Board shall desire to one or more persons (including the managing agent of the Common Area) to draw upon such accounts; invest surplus funds of the Association in U.S. Government securities or in passbook savings accounts insured by the Federal Deposit Insurance Corporation or the Federal Savings & Loan Insurance Corporation; and generally, to have all the powers necessary or incidental to the operation and management of the Association.

(d) To protect or defend the Common Area from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

(e) To adjust the amount of, collect and use any insurance proceeds to repair damage, or replace lost property, and on behalf of all Owners to engage in any proceedings and negotiations and to execute any settlements or agreements with respect to such insurance proceeds.

(f) To transfer the Common Area to any title holding land trust in exchange for the entire beneficial interest therein, or to any corporation in which the Association is the sole shareholder.

(g) To enforce the provisions of this Declaration and rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

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5.3 **Real Estate Taxes and Assessments.** The Association shall pay and discharge all general and special real estate taxes and assessments levied by any public authority with respect to the Common Area, if any.

5.4 **Information to be Made Available by the Board.** The Board shall maintain the following records of the Association available for examination and copying at convenient hours of weekdays by any Owners or their mortgagees or duly authorized agents or attorneys:

- (a) copies of the recorded Declaration, other duly recorded covenants and By-Laws and any amendments thereto, articles of incorporation of the Association, annual reports and any rules and regulations adopted by the Association or the Board. Prior to the organization of the Association, the Developer shall maintain and make available the records set forth in this subsection (a) for examination and copying.
- (b) detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred, and copies of all contracts, leases or other agreements entered into by the Association.
- (c) the minutes of all meetings of the Association and the Board. The Association shall maintain these minutes for a period of not less than seven (7) years.
- (d) ballots and proxies related thereto, if any, for any election held for the Board and for any matters voted on by the Owners, which ballots shall be maintained for a period of not less than one (1) year.
- (e) such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986.

The Association or the Board for the cost of copying may charge a reasonable fee.

6

ARTICLE

MAINTENANCE ASSESSMENTS

The assessments to be levied by the Board shall be pursuant to the terms and provisions of ARTICLE 4 of the Declaration.

7

ARTICLE

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COMMITTEES

7.1 **Board Committees.** The Board, by resolution adopted by a majority of the directors in office, may designate one (1) or more committees, each of which shall consist of one (1) or more directors; said committees, to the extent consistent with law and as provided in said resolution, shall have the power to make recommendations and give advice to the Board regarding various management policy decisions; however all final management decisions shall be exercised by the Board and the designation of such committees and the delegation thereto of authority to make recommendations and give advice shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it or such individual director by law.

7.2 **Special Committees.** Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Members of the Association, and the President of the Association shall appoint the members thereof. Any member thereof may be removed whenever in the Board's judgment the best interests of the Association shall be served by such removal.

7.3 **Term.** Each member of a committee shall continue as such until the next annual meeting of the Board and until his or her successor is appointed and shall have qualified, or until such member shall cease to qualify as a member thereof.

7.4 **Chairman.** One (1) member of each committee shall be appointed chairman.

7.5 **Vacancies.** Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointments.

7.6 **Quorum.** Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

7.7 **Rules.** Each committee may adopt rules for its own government not inconsistent with these By-Laws or with the rules adopted by the Board.

8

ARTICLE

AMENDMENTS

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These By-Laws may be amended or modified from time to time by action or approval of a majority of the votes cast by Voting Members voting at a meeting of the Voting Members and a copy thereof recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

9

ARTICLE

INTERPRETATION

In the case of any conflict between the articles of incorporation of the Association and these By-Laws, the articles of incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

10

ARTICLE

DEFINITION OF TERMS

The terms used in these By-Laws shall have the same definition as set forth in the Declaration to which these By-Laws are attached to the extent such terms are defined therein.

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CONSENT OF MORTGAGEE

Harris Bank and Trust Company, a national bank, holder of a Mortgage on the Premises dated _____, and recorded _____ as Document No. _____, hereby consents to the execution and recording of the foregoing Declaration of Covenants, Conditions, Restrictions, Easements and Party Wall Rights, and agrees that such Mortgage is subject to such Declaration.

IN WITNESS WHEREOF, Harris Bank and Trust Company, a national bank, has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf; all done at _____, _____ on this ___ day of _____, 2008.

HARRIS BANK AND TRUST COMPANY, a national bank

By: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, the _____ of Harris Bank and Trust Company, a national bank, as such _____, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument as his/her 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 notarial seal this ___ day of _____, 2008.

Notary Public _____

UNOFFICIAL COPY

CONSENT OF MORTGAGEE

Harris Bank and Trust Company, a national bank, holder of a Mortgage on the Premises dated _____, and recorded _____ as Document No. _____, hereby consents to the execution and recording of the foregoing Declaration of Covenants, Conditions, Restrictions, Easements and Party Wall Rights, and agrees that such Mortgage is subject to such Declaration.

IN WITNESS WHEREOF, Harris Bank and Trust Company, a national bank, has caused this Consent of Mortgagee to be signed by its duly authorized officers on its behalf; all done at _____, _____ on this ____ day of _____, 2008.

**HARRIS BANK AND TRUST
COMPANY**, a national bank

By: Lawrence Pham
Its: Vice President

STATE OF ILLINOIS)
) SS

COUNTY OF COOK)

I, MANNY M. LAPIDOS, a Notary Public in and for said County and State, do hereby certify that LAURENCE PHAM the VICE PRESIDENT of Harris Bank and Trust Company, a national bank, as such LAURENCE PHAM appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument as his/her 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 notarial seal this ____ day of _____, 2008.

Notary Public M

