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DECLARATION FOR THE PRESERVES TOWNHOMES

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## DECLARATION FOR THE PRESERVES TOWNHOMES

This Declaration is made by Lockport Development, Inc., ("Declarant"), with the consent of the Consenting Owners who have executed Consent of Consenting Owners attached hereto ("Consenting Owner").

### RECITALS

The Development Area is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called The Preserves (the "Development"). The Development shall include dwelling units and certain common areas.

Initially, the Declarant, with the consent of the Consenting Owner, shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as more fully described in Article Twelve. Nothing in this Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Declaration. Those portions of the Development Area which are not made subject to the provisions of this Declaration as Premises may be used for any purposes not prohibited by law.

Portions of the Premises are designated as Community Area hereunder. In order to provide for the orderly and proper administration and maintenance of the Premises and for the architectural control of the Homes, the Declarant has formed (or will form) the Association under the Illinois General Not-For-Profit Corporation Act. The Association shall have the responsibility for administering and maintaining the Community Area and certain portions of the Lots and Home Exteriors and shall set budgets and fix assessments to pay the expenses incurred in connection with such duties. Each Owner of a Parcel shall be a member of the Association and shall be responsible for paying assessments with respect to the Parcel owned by such Owner.

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Nine, the right to come upon the Premises in connection with Declarant's efforts to sell Homes and other rights reserved in Article Nine.

NOW, THEREFORE, the Declarant, with the consent of the Consenting Owner, hereby declares as follows:

ARTICLE ONE  
Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ASSOCIATION: The Preserves Townhome Association, an Illinois not-for-profit corporation, its successors and assigns.

1.02 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 Five.

1.03 BY-LAWS: The By-Laws of the Association.

1.04 CHARGES: The Community Assessment, any special assessment levied by the Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.05 COMMUNITY ASSESSMENT: The amounts which the Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article Six.

1.06 COMMUNITY AREA: All portions of the Premises, other than the Parcels.

1.07 COMMUNITY EXPENSES: The expenses of administration (including management and professional services) of the Association; the expenses of the operation, maintenance, repair, replacement of, the Community Area; the expenses of the maintenance, repair and replacement of Parcels and Home Exteriors which are designated as Community Expenses hereunder; premiums for insurance policies maintained by the Association hereunder; if not separately metered or charged to the Owners, the cost of waste removal, scavenger services, water, sewer or other necessary utility services to the Homes; the portion of the cost of maintaining Monument Sign Areas and/or Association Maintained Public Green Areas which is allocable to the Association pursuant to cost sharing agreements or declarations, if any, which bind the Association; and any expenses designated as Community Expenses hereunder.

1.08 COUNTY: Cook County, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the Recording of this Declaration.

1.09 DECLARANT: Lockport Development, Inc., its successors and assigns.

1.10 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.11 DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this Declaration as part of the Premises. Any portions of the Development Area which are not made subject to the provisions of this Declaration as part of the Premises may be developed and used for any purposes not prohibited by law, including, without limitation, as a residential development which is administered separate from the Development.

1.12 HOME: That portion of a Parcel which is improved with a dwelling unit.

1.13 HOME EXTERIOR: The roof, gutters, downspouts, foundation, footings, sidewalks, steps, decks, patios and outer surface of exterior walls and doors, including garage doors, of a Home.

1.14 LOT: A subdivided lot which is designated in Exhibit B as a Lot and upon which is constructed a building or a portion of a building consisting of at least two (2) dwelling units. Each Lot shall also include Community Area.

1.15 FIRST MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Parcel.

1.16 MUNICIPALITY: The Village of Orland Park, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Municipality as of the Recording of this Declaration.

1.17 NON-OWNER: A person other than an Owner or a Resident.

1.18 OWNER: A Record owner, whether one or more persons, of fee simple title to a Parcel, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Parcel owned by the Declarant.

1.19 PARCEL: Each Lot shall be improved with a building containing at least two (2) dwelling units. Each dwelling unit shall share a perimeter wall with at least one (1) other dwelling unit. The shared walls are defined as "Party Walls" in Section 13.01 hereof. Each Lot shall be divided into one (1) tract for each dwelling unit and an additional tract or tracts which shall be Community Area hereunder. Each tract on which a dwelling unit is constructed shall be legally described in the deed which conveys the tract to the first purchaser thereof from the Declarant and the tract so described, together with all improvements thereon, shall be a "Parcel" hereunder. Each tract which consists solely of Community Area shall be legally described in the deed which conveys the tract from the Declarant to the Association and the tract so described, together with all improvements thereon, shall be "Community Area" hereunder.



1.20 PERSON: A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.21 PREMISES: Those portions of the Development Area which are legally described in Exhibit B hereto, with all improvements thereon and rights appurtenant thereto. Declarant shall have the right, but not the obligation, to make additional portions of the Development Area subject to this Declaration as part of the Premises as more fully provided in Article Twelve.

1.22 RECORD: To record in the office of the Recorder of Deeds for the County.

1.23 RESIDENT: An individual who resides in a Home.

1.24 TURNOVER DATE: The date on which the rights of the Declarant to designate the members of the Board are terminated under Section 9.05.

1.25 UNADDED AREA: Those portions of the Development Area which from time to time have not been made subject to this Declaration as part of the Premises.

1.26 VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Five.

## ARTICLE TWO

### Scope of Declaration/Certain Easements

2.01 PROPERTY SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. Declarant shall have the right from time to time to subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as provided in Article Twelve hereof. Nothing in this Declaration shall be construed to obligate the Declarant to subject to this Declaration as Premises any portion of the Development Area other than those portions which are described in Exhibit B hereto or which are added to Exhibit B by Supplemental Declarations Recorded by Declarant pursuant to Article Twelve.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in any part of the Premises. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.



2.03 DURATION: Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part as provided in Section 10.02.

2.04 PARCEL CONVEYANCE: Once a Parcel has been conveyed by the Declarant to a bona fide purchaser for value, then any subsequent conveyance or transfer of ownership of the Parcel shall be of the entire Parcel and there shall be no conveyance or transfer of a portion of the Parcel without the prior written consent of the Board.

2.05 ACCESS EASEMENT: Each Owner of a Parcel shall have a non-exclusive perpetual easement for ingress to and egress from his Parcel to public streets and roads over and across the driveways and walkways located on the Community Area, which easement shall run with the land, be appurtenant to and pass with title to every Parcel. Any governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over roads and driveways located on the Community Area for police, fire, ambulance, waste removal, snow removal, or for the purpose of furnishing municipal or emergency services to the Premises. The Association, its employees, agents and contractors, shall have the right of ingress to, egress from, and parking on the Community Area, and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements of the Community Area and Home Exteriors, as required or permitted hereunder. The Owner from time to time of Unadded Area shall have a non-exclusive perpetual easement of access over roads and driveways from time to time located on the Community Area.

2.06 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area and the exclusive right to use and enjoy the Owner's Parcel, Home, and Home Exterior. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Parcel, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, including the right of the Association to come upon a Parcel to furnish services hereunder.

2.07 DELEGATION OF USE: Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Community Area and the Owner's Parcel, Home and Home Exterior to Residents of the Owner's Home. An Owner shall delegate such rights to tenants and contract purchasers of the Owner's Parcel who are Residents.

2.08 RULES AND REGULATIONS: The use and enjoyment of the Premises shall at all times be subject to reasonable rules and regulations duly adopted by the Association from time to time.

2.09 UTILITY EASEMENTS: The Municipality and all public and private utilities (including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Community Area for the purpose of providing utility services to the Premises or any other portion of the Development Area.

2.10 EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Community Area for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners. Any and all proceeds from leases, easements, licenses or concessions with respect to the Community Area shall be used to pay the Community Expenses. Also, the Association shall have the right and power to dedicate any part or all of the roads or parking areas located on the Community Area to the Municipality or other governmental authority which has jurisdiction over the Community Area. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Unit Ownership, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association and duly Recorded.

2.11 ASSOCIATION'S ACCESS: The Association shall have the right and power to come onto any Parcel, Home, or Home Exterior for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder.

2.12 NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Section 2.10, nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Community Area to or for any public use or purpose whatsoever.

2.13 EASEMENT FOR ENCROACHMENT: In the event that by reason of the construction, repair, reconstruction, settlement or shifting of an improvement to a Parcel, any improvement which is intended to service and/or be part of the Parcel shall encroach upon any part of any other Parcel or upon the Community Area or any improvement to the Community Area shall encroach upon any part of a Parcel, then there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner (other than Declarant), if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his agent. Without limiting the foregoing, the Owner of each Parcel shall have an easement appurtenant to his Parcel for the continuance, maintenance, repair and replacement of the following improvements, if any, which encroach onto another Parcel or the Community Area:

(a) the eaves, gutters, downspouts, fascia, flashings, and like appendages which serve the Home or the Parcel;

(b) the chimney which serves the Home on the Parcel;

(c) the air conditioning equipment which serves the Home on the Parcel; or

(d) balconies, steps, porches, door entries and patios which serve the Home on the Parcel.

The Person who is responsible for the maintenance of any encroaching improvement for which an easement for continuance, maintenance, repair and replacement thereof is granted under this Section shall continue to be responsible for the maintenance of such encroaching improvement and the Person who is responsible for the maintenance of the real estate upon which such improvement encroaches shall not have the duty to maintain, repair or replace any such encroaching improvement unless otherwise provided in this Declaration.

2.14 OWNERSHIP OF COMMUNITY AREA: The Community Area shall be conveyed to the Association free of mortgages no later than the Turnover Date or, if made subject hereto after the Turnover Date, no later than ninety (90) days after such portion is made subject hereto.

## ARTICLE THREE

### Maintenance

3.01 IN GENERAL: The restrictions and limitations contained in this Article shall be subject to the rights of the Declarant set forth in Article Nine.

### 3.02 MAINTENANCE BY THE ASSOCIATION:

(a) The Association shall furnish the following and the cost thereof shall be Community Expenses:

(i) Maintenance (including street cleaning and snow removal), repair and replacement of driveways located on the Premises; and

(ii) Subject to the provisions of Section 3.07, grass cutting and maintenance of grass and landscaping located on the Premises; however, the watering of grass, shrubs, trees and other foliage on the Premises shall be furnished by the Owners and/or Residents pursuant to rules, regulations and procedures adopted from time to time by the Board; and

(iii) Maintenance, repairs and replacement of monument signs and related landscaping on areas legally described and designated as "Monument Sign Areas" or "Association Maintained Public Green Areas" on Exhibit B hereto, pursuant to a cost sharing agreement or declaration, if any, which binds the Association.

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(b) The Association shall furnish all maintenance (including periodic painting), repairs and replacements to Home Exteriors, excluding, however, exterior window washing which shall be the responsibility of the Owner of each Home, and the cost thereof shall be Community Expenses.

(c) The Association shall furnish maintenance of those portions of the Premises, if any, which are designated as "Wetlands" by the United States Army Corps of Engineers ("Corps"), and, if applicable, pursuant to any permit issued by the Corps (the "Permit") which applies to the maintenance of the Wetlands on the Premises and the requirements of any management and monitoring plan adopted pursuant to the Permit. No Wetlands shall be altered without the prior written consent of the Board. The Board shall not permit, cause or authorize any modification, alteration or improvement to be made to any portion of the Wetlands without complying with applicable laws, rules and regulations governing the alteration of Wetlands, the Permit, if any, or the management and monitoring plan adopted pursuant to the Permit.

### 3.03 MAINTENANCE BY OWNER:

(a) Except as otherwise specifically provided for in this Declaration, each Owner shall be responsible for the maintenance, repair and replacement of his Parcel, Home and Home Exterior.

(b) If, in the judgment of the Board, an Owner fails to maintain those portions of the Owner's Home which the Owner is responsible for maintaining hereunder in good condition and repair or the appearance of such portions is not of the quality of that of other Homes in the Development or in compliance with rules and regulations adopted by the Board from time to time, then the Board may, in its discretion, take the following action:

(i) advise the Owner of the work which must be done and allow the Owner at least twenty (20) days (or less in the case of an emergency) to cause the work to be done; and

(ii) if the work is not done to the satisfaction of the Board, in its sole judgment, then the Board may seek injunctive relief, levy a fine and/or cause such work to be done and the cost thereof shall be a Charge payable by the Owner to the Association upon demand.

(c) Maintenance, repairs and replacements of windows, doors (including garage and storm doors) and screening on a Home (other than exterior painting) shall be the responsibility of the Owner of the Home; however, at the option of the Board, such work shall be furnished by the Association and the cost thereof charged to the Owner of the Home with respect to which the work is done based on actual cost, as determined by the Board in its reasonable judgement.

3.04 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Community Area and Home Exteriors may not be separately metered and billed to the Association. Without limiting the foregoing, the Association

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shall have the right to use water from taps or spigots which are located on a lot for the purpose of watering the green areas in the Community Area. If the cost for such water or other utilities is metered and charged to individual Homes rather than being separately metered and charged to the Association, then the following shall apply:

(a) If in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost for such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(b) If in the opinion of the Board, the Owner of a Home is being charged disproportionately for costs allocable to the Community Area and Home Exteriors, then the Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Board is properly allocable to the Community Area and Home Exteriors and the amount thereof shall be Community Expenses hereunder.

Any determinations or allocations made hereunder by the Board shall be final and binding on all parties.

**3.05 DAMAGE BY RESIDENT:** If due to the act or omission of a Resident of a Home, or of a household pet or guest or other authorized occupant or invitee of the Owner of a Parcel, damage shall be caused to the Community Area or a Home Exterior and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Community Expense, then the Owner of the Parcel shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance carried by the Association or an Owner.

**3.06 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA:**

(a) No alterations, additions or improvements shall be made to the Community Area without the prior approval of the Board.

(b) The Association may cause alterations, additions or improvements to be made to the Community Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than one-third (1/3) of the Community Assessment then in effect under the then current budget shall be approved in advance at a special meeting of the Owners.

**3.07 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO HOMES AND HOME EXTERIORS:** No additions, alterations or improvements (including without limitation, changes in the exterior color of a Home or construction of an outbuilding, fence, awnings, antenna, satellite dish or similar changes) shall be made to any Home Exterior or any part of the Home which is visible from outside the Home by an Owner without the prior written consent of the



Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement to a Home Exterior or Home which requires the consent of the Board upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) if the addition, alteration or improvement is required to be maintained hereunder by the Association as part of the Community Expenses, to pay to the Association from time to time the additional cost of maintenance as a result of the addition, alteration or improvement. If an addition, alteration or improvement which requires Board consent hereunder is made to a Home Exterior or Home by an Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

(a) Require the Owner to remove the addition, alteration or improvement and restore the Home Exterior to its original condition, all at the Owner's expense; or

(b) If the Owner refuses or fails to properly perform the work required under (a), the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or

(c) Ratify the action taken by the Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

## ARTICLE FOUR Insurance/Condemnation

### 4.01 ASSOCIATION INSURANCE:

(a) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence or in connection with, the Community Area or Home Exterior. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(b) Fidelity bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling funds of the Association may be obtained by the Association in such amounts as the Board may deem desirable.

(c) The premiums for any insurance obtained under this Section shall be Community Expenses.

#### 4.02 HOME INSURANCE:

(a) Each Owner of a Parcel shall be responsible for and shall procure fire and all risk coverage insurance upon such Owner's Home for not less than the full insurable replacement value thereof under a policy or policies of insurance with such company or companies, in such form, and for such premiums and periods as he may determine to be appropriate. Any such policy shall contain waivers of subrogation with respect to the Association and its directors, officers, employees and agents (including the managing agent), occupants of the Home, the Declarant or shall name such parties as additional insured parties, as their interests may appear. Each Owner shall also be responsible for his own insurance on the contents of his Home and furnishings and personal property therein.

(b) Each Owner shall deliver to the Board a certificate of insurance certifying that a policy of insurance covering such Owner's Home, as required under this Section, is in effect, and that said policy shall not be cancelled or materially changed except upon ten (10) days' prior written notice thereof to the Board. In the event an Owner fails to procure or keep in effect a policy of insurance, as required under this Section and provide proof thereof to the Board, then the Board may on behalf of and as agent for such Owner procure such insurance on the Owner's Home with a company, in a form, for a premium and period as determined by the Board to be appropriate and the cost thereof shall be a Charge hereunder payable by the Owner to the Association upon demand.

(c) No Owner shall cause or permit anything to be done or kept on the Premises which will result in the cancellation of insurance on such Owner's Home, any other Home, or the Community Area.

#### 4.03 REBUILDING OF DAMAGED HOME:

(a) In the event of damage to or destruction of any Home by fire or other casualty for which the Owner is required to carry insurance hereunder, the Owner thereof shall, within a reasonable time after such damage or destruction, repair or rebuild the Home in substantial and workmanlike manner with materials comparable to those used in the original structure, and in conformity in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. When rebuilt, the Home Exterior shall be substantially similar to, and its architectural design and landscaping shall be in conformity with, the surrounding Homes which are not so damaged or destroyed. The Owner shall not be relieved of his obligation to repair or rebuild his Home under this Subsection (a) by his failure to carry sufficient insurance or the fact that proceeds received by the Owner from his insurer are not sufficient to cover the cost thereof.

(b) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in Subsection (a), to perform the necessary repair or



rebuilding, then, the Board may cause such repairs or rebuilding to be performed in the manner as provided in Subsection (a) and the cost thereof shall be a Charge hereunder payable by the Owner to the Association upon demand.

4.04 OWNER RESPONSIBILITY: In addition to the coverage described in Section 4.02 above with respect to his Home, each Owner shall obtain his own personal liability insurance to the extent not covered by the liability insurance for all of the Owners obtained as part of the Community Expenses as above provided, and the Board shall have no obligation whatsoever to obtain any such individual insurance coverage on behalf of the Owners.

4.05 WAIVER OF SUBROGATION: The Association and each Owner hereby waives and releases any and all claims which it or he may have against any Owner, including relatives of an Owner, the Association, its directors and officers, Declarant, the managing agent, if any, and their respective employees and agents, for damage to the Homes, the Community Area, or to any personal property located in the Homes or the Community Area caused by fire or other casualty, to the extent that such damage is covered by fire or other forms of casualty insurance, and to the extent this release is allowed by policies for such insurance. To the extent possible, all policies secured by the Board under Sections 4.01(a) and (b) and by each Owner under Section 4.02 shall contain waivers of the insurer's rights to subrogation against any Owner, relatives of an Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents.

4.06 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Community Area Capital Reserve being held for such part of the Community Area, shall, in the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective First Mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Community Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Community 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 President of the Association and Recorded.

## ARTICLE FIVE The Association

5.01 IN GENERAL: Declarant has caused or shall cause the Association to be incorporated as a not-for-profit corporation under Illinois law. The Association shall be the governing body for all of the Owners for the administration and operation of the Community Area and to the maintenance repair and replacement of the Community Area and certain portions of the Home Exteriors as provided herein.

5.02 MEMBERSHIP: Each Owner shall be a member of the Association. There shall be one membership per Parcel. Membership shall be appurtenant to and may not be separated from

ownership of a Parcel. Ownership of a Parcel shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Parcel within ten (10) days after such change.

5.03 VOTING MEMBERS: Subject to the provisions of Section 9.05, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Parcel. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Parcel shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Parcel shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Parcel as the Voting Member for such Parcel.

5.04 BOARD: Subject to the rights retained by the Declarant under Section 9.05, the Board shall consist of that number of members provided for in the By-Laws, each of whom shall be an Owner or Voting Member.

5.05 VOTING RIGHTS: Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Declarant and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member shall have one vote for each Parcel which the Voting Member represents. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

5.06 DIRECTOR AND OFFICER LIABILITY: Neither the directors nor the officers of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant, Declarant and each of the directors and officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such director may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent

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counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer.

5.07 MANAGING AGENT: The Declarant (or an entity affiliated with the Declarant) may be engaged by the Association to act as the managing agent for the Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Association and the Declarant (or an entity controlled by the Declarant). Any management agreement entered into by the Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Association without payment of a termination fee on ninety (90) days written notice.

5.08 REPRESENTATION: The Association shall not have the power, right or authority to act in a representative capacity in relation to matters involving more than one Home, including without limitation, warranty claims.

5.09 DISSOLUTION: To the extent permissible under applicable law, in the event of the dissolution of the Association, any Community Area owned by the Association shall be conveyed to the Owners as tenants in common.

5.10 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the Parcels to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the By-Laws or rules and regulations adopted by the Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Association in proceedings instituted against it.

5.11 ATTENDANCE AT BOARD MEETINGS BY OWNERS: Owners may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion. It is not the intention that Owners shall have the right to attend meetings of the Board in the same manner as provided for members of condominium associations under the Illinois Condominium Property Act.

## ARTICLE SIX Assessments

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be exclusively to administer the affairs of the Association, to pay the Community Expenses, and to accumulate reserves for any such expenses.

6.02 COMMUNITY ASSESSMENT: Each year on or before December 1, the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year, which shall show the following with reasonable explanations and itemizations:

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- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Community Expenses including, without limitation, amounts to maintain the Capital Reserve;
- (c) The estimated net available cash receipts from the operation and use of the Community Area, plus estimated excess funds, if any, from the current year's assessments;
- (d) The amount of the "Community Assessment" payable by the Owners, which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above;
- (e) That portion of the Community Assessment which shall be payable by the Owner of each Parcel which is subject to assessment hereunder each month until the next Community Assessment or revised Community Assessment becomes effective, which monthly amount shall be equal to the Community Assessment, divided by the number of Parcels, divided by twelve (12), so that each Owner shall pay equal Community Assessments for each Parcel owned.

Anything in this Section to the contrary notwithstanding, during the Initial Development Period the assessment procedure set forth in Section 6.08 shall apply and the Stabilized Budget (defined in Section 6.08) need not disclose the information called for in Subsection (e) above, although the Stabilized Budget shall disclose the portion of each Owner's share of the Community Assessment which shall be added to the Capital Reserve.

**6.03 PAYMENT OF COMMUNITY ASSESSMENT:** On or before the 1st day of January of the ensuing calendar year, and on the first day of each month thereafter until the effective date of the next annual or revised Community Assessment, each Owner of a Parcel which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Community Assessment which is payable by each Owner of a Parcel under Section 6.02(e).

**6.04 REVISED ASSESSMENT:** If after the Initial Development Period the Community Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 6.02(e) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

**6.05 SPECIAL ASSESSMENT:** After the Turnover Date, the Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to

the Community Area, or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of Parcels in equal shares. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.06 CAPITAL RESERVE: The Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Community Area and those portions of the Home Exteriors with respect to which the Association is responsible for repair and replacement (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Area, the portions of the Home Exteriors for which the Association is responsible and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Community Area, the portions of the Home Exteriors for which the Association is responsible and the purchase of other property to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the Community Assessment which shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Association equal to such percentages multiplied by each installment of the Community Assessment paid by such Owner.

6.07 INITIAL CAPITAL CONTRIBUTION: Upon the closing of the first sale of a Parcel by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to two (2) months' Community Assessment at the rate which shall be effective with respect to the Parcel as of the closing. Said amount shall be held and used by the Association for its working capital needs.

6.08 ASSESSMENTS DURING INITIAL DEVELOPMENT PERIOD: Anything herein to the contrary notwithstanding, until the Turnover Date (the "Initial Development Period"), the assessment procedure set forth in this Section shall apply.

(a) Stabilized Budget. Each budget ("Stabilized Budget") prepared by the Board for a period during the Initial Development Period shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's plan for the Development and (ii) all proposed Homes have been sold and are occupied. The Declarant's plan for the Development shall be kept on file with the Association and may be modified from time to time by the Declarant.

(b) Owner's Obligation. Each month during the Initial Development Period each Owner (other than the Declarant) shall pay as the monthly Community Assessment with respect to each Parcel owned by the Owner, the amount provided for in the Stabilized



Budget from time to time in effect, divided by the number of proposed Homes then shown on the Declarant's plan for the Development. Out of each such payment, the Association shall add that portion of the payment which is designated in the Stabilized Budget as a capital contribution to the Capital Reserve (defined in Section 6.06). The balance of each such payment shall be used by the Association to pay the Community Expenses.

(c) Declarant's Obligation. During the Initial Development Period, the Declarant shall not be obligated to pay any amounts to the Association as a Community Assessment except as provided in this Subsection. With respect to each Parcel owned by the Declarant which is occupied as a residence ("Declarant Owned Occupied Unit"), the Declarant shall pay the same amount each month that each Owner (other than the Declarant) must pay with respect to a Parcel under Subsection (b). During the Initial Development Period, the Declarant shall also pay to the Association ("Subsidy Payments") an amount equal to the aggregate excess, if any, of (i) the Community Expenses incurred and paid over (ii) the aggregate amounts assessed (x) to the Owners (other than Declarant) under Subsection (b) and (y) to the Declarant for Declarant Owned Occupied Units. The Declarant shall make payments with respect to Declarant Owned Occupied Units monthly and shall make Subsidy Payments as needed during such period. A final accounting shall be made between Declarant and the Association with respect to the Subsidy Payments as soon as practicable after the end of the Initial Development Period. Except for the portions of assessments paid by the Declarant with respect to Declarant Owned Occupied Units which are added to the Capital Reserve, the Declarant shall not be responsible for the payment of any amounts to the Capital Reserve during the Initial Development Period.

6.09 PAYMENT OF ASSESSMENTS: Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Parcel and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Article Seven.

## ARTICLE SEVEN

### Collection of Charges and Remedies for Breach or Violation

7.01 CREATION OF LIEN AND PERSONAL OBLIGATION: The Declarant hereby covenants, and each Owner of a Parcel by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner or the Owner's Parcel. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Parcel against which such Charge is made and also shall be the personal obligation of the Owner of the Parcel at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

7.02 COLLECTION OF CHARGES: The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

7.03 NON-PAYMENT OF CHARGES: Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the due date to the date when paid. The Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Community Area or by abandonment or transfer of his Parcel.

7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 7.01, shall be subordinate to the First Mortgagee's mortgage on the Parcel which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Parcel. Where title to a Parcel is transferred pursuant to a decree of foreclosure of the First Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the First Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of the Parcel shall be personally liable for his share of the Charges with respect to which a lien against his Parcel has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Community Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Parcel, as provided in this Article.

7.05 SELF-HELP BY BOARD: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Home, judicial proceedings must be instituted before any items of construction can be altered or demolished.

7.06 OTHER REMEDIES OF THE BOARD: In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Board may levy a fine or the Board may bring an action at law or in equity in the name of the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof, to recover sums due or payable (including fines) or to recover damages, and against the



Parcel to enforce any lien created hereunder; and failure by the Association to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

7.07 COSTS AND EXPENSES: All costs and expenses incurred by the Board in connection with any action, proceedings or self-help in connection with exercise of its rights and remedies under this Article, including, without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a lien for all the same, upon his Parcel as provided in Section 7.01.

7.08 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Parcel to enforce any lien created hereunder.

7.09 ENFORCEMENT BY MUNICIPALITY: The Municipality is hereby granted the right, but shall not be obligated, to enforce covenants and obligations of the Association or the Owners hereunder. If the Association or one or more Owners fail to comply with any covenants and obligations hereunder, the Municipality shall have the right (but shall not be obligated) to give notice to the Association or the offending Owner or Owners of its, his or their failure to perform its, his or their obligations. If such notice is given and the Association or the offending Owner or Owners do not perform to the satisfaction of the Municipality within thirty (30) days after the giving of such notice, then the Municipality may (but shall not be obligated to) enter upon the Premises and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Municipality. The Association or the offending Owner or Owners shall, upon demand, reimburse the Municipality for the reasonable cost of such work and if payment is not made within thirty (30) days after demand, then the amount due shall become a lien on the property of the offending Owner or Owners or, in the case of the Association, the property of the Association; provided, however, that such lien shall be subordinate to the lien of any first mortgage on a Parcel Recorded prior to the date on which any such cost becomes a lien against the Parcel as provided above.

## ARTICLE EIGHT Use Restrictions

8.01 INDUSTRY/SIGNS: No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Community Area nor shall any "For Sale" or "For Rent" signs or any other advertising be maintained or permitted on any part of the Community Area or any Home Exterior, except as permitted by the Board or as permitted under Article Nine. Without limiting the foregoing, no more than one (1) sign may be placed in a window or on the front lawn of a Home, subject to the reasonable rules and regulations of the Board.

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8.02 UNSIGHTLY USES: No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Home Exterior or the Community Area. The Premises shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. The Board shall have the right to adopt reasonable rules and regulations concerning window treatment or other decorating within a Home which is visible from outside the Home.

8.03 SATELLITE DISHES/ANTENNAE: No television antenna, radio receiver or transmitter or other similar device shall be attached to or installed on any portion of any Home Exterior or the Community Area; provided, that, a satellite dish of eighteen inches or less in diameter may be installed in the rear or side yard of a Parcel as long as the satellite dish is not visible from the front of the Home. Without limiting the foregoing, the provisions of this paragraph shall not apply to the Association with respect to the installation of equipment necessary for a master antenna system, cable television system or other similar systems within the Premises.

8.04 RESIDENTIAL USE ONLY: Each Home shall be used only as a residence; provided that no Owner shall be precluded, with respect to his Home, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, (iii) handling his personal business or professional calls or correspondence therefrom, or (iv) conducting an in-home business not prohibited by ordinances of the Municipality.

8.05 PARKING: Unless expressly permitted by the Board, no boats, trucks, recreational vehicles, trailers, commercial vehicles or other similar vehicles shall be parked or stored on any portion of the Premises (other than a garage which is part of a Home) for more than twenty-four (24) hours at a time. Except for emergencies, no repairs or maintenance work shall be performed on any vehicle on the Premises (other than within a garage). The Resident of a Home shall have the exclusive right to park no more than two (2) automobiles overnight in the area which extends fifteen (15) feet into the Community Area from the garage door of the Home in which the Resident resides. Parking spaces on the Community Area owned by the Association ("Guest Parking Spaces") shall be unallocated and available on first come-first serve basis. Guest Parking Spaces shall not be used for overnight Resident parking.

8.06 OBSTRUCTIONS: Except as permitted under Section 9.03 there shall be no obstruction of the Community Area, and nothing shall be stored in the Community Area without the prior written consent of the Board. All rubbish and refuse shall be deposited in such areas and in such receptacles as shall be designated from time to time by the Board or the Municipality.

8.07 PETS: No animal of any kind shall be raised, bred or kept in the Community Area. The Board may from time to time adopt rules and regulations governing the (a) keeping of pets in the Home, which may include prohibiting certain species of pets from being kept in the Home, and (b) use of the Community Area by pets, including, without limitation, rules and regulations which require an Owner to clean up after his pet. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Premises upon three (3) days

written notice from the Board to the Owner of the Home containing such pet and the decision of the Board shall be final.

8.08 NO NUISANCE: No noxious or offensive activity shall be carried on in the Premises nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Residents.

8.09 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to any part of the Premises which would impair the structural integrity of any Home located thereon.

## ARTICLE NINE

### Declarant's Reserved Rights and Special Provisions Covering Development Period

9.01 IN GENERAL: In addition to any rights or powers reserved to the Declarant under the provisions of this Declaration or the By-Laws, the Declarant shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern.

9.02 PROMOTION OF PROJECT: In connection with the promotion, sale or rental of any improvements upon the Development Area: (i) the Declarant shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Declarant may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable; and (ii) Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Community Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any unit owned by it or the Declarant to any person or entity which it deems appropriate in its sole discretion.

9.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises, the Declarant, its agents and contractors, shall have the right, at the Declarant's 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 Homes or the Community Area which the Declarant 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 Declarant, its agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store dirt, construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

9.04 GRANT OF EASEMENTS AND DEDICATIONS: Declarant shall have the right to dedicate portions of the Community Area to the Municipality or other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over the Community Area to any governmental authority, public utility or private utility for the installation and maintenance of electrical and telephone conduit and lines, gas, sewer, water lines and cable television, or any other utility services serving any Parcel.

9.05 DECLARANT CONTROL OF ASSOCIATION: The first and all subsequent Boards shall consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not, be members under Section 5.02. Declarant's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as 80 Parcels (being 75% of the projected number of Parcels which will be made subject to this Declaration) have been sold and conveyed to bona fide purchasers for value, (ii) the giving of written notice by Declarant to the Association of Declarant's election to terminate such rights, (iii) five (5) years from the date of Recording hereof, or (iv) the date required under applicable law. The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date". During the period commencing Six (6) months after the Recording hereof and ending on the Turnover Date, the Declarant shall appoint at least two (2) Owners (other than representatives of the Declarant) from time to time to be and act as non-voting counselors to the Board; provided, that, if a petition executed by at least ten (10) Owners requests that a specific Owner be appointed as a non-voting counselor to the Board, then the Declarant shall appoint such person as one of the two (2) non-voting counselors. From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Declarant and the Owners shall have no voting rights.

9.06 OTHER RIGHTS: The Declarant shall have the right and power to execute all documents and do all other acts and things affecting the Premises which, in Declarant's opinion, are necessary or desirable in connection with the rights of Declarant under this Declaration.

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

## ARTICLE TEN Amendment

10.01 SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Declarant reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to

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comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, 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 Parcels, (iii) to correct omissions, errors or inconsistencies in the Declaration or any Exhibit, (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations; or (v) to amend Exhibit B to identify Monument Sign Areas and Association Maintained Public Green Areas. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as Declarant no longer holds or controls title to a portion of the Development Area.

10.02 AMENDMENT: Subject to Section 10.01 and Article Eleven, the provisions of this Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least Seventy-Five percent of the total votes or by an instrument executed by Owners of at least Seventy-Five Percent (75%) of the Parcels; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all First Mortgagees, and (ii) Article Nine, Article Twelve or any other provisions relating to the rights of Declarant may be amended only with the written consent of the Declarant. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Parcel shall no longer have the legal access to a public way from his Parcel. No amendment shall become effective until properly Recorded.

## ARTICLE ELEVEN First Mortgagees Rights

11.01 NOTICE TO FIRST MORTGAGEES: Upon the specific, written request of First Mortgagee or the insurer or guarantor of a First Mortgagee's mortgage, such party shall receive some or all of the following:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Parcel covered by the First Mortgagee's mortgage;

(b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Owners; provided, that, if an audited statement is not available, then upon the written request of the holder, insurer or guarantor of a Mortgage, the Association shall permit such party to have an audited



statement for the preceding fiscal year of the Association prepared at such party's expense;

- (c) Copies of notices of meetings of the Owners;
- (d) Notice of any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees;
- (e) Notice of any substantial damage to any part of the Community Area or the Parcel subject to the First Mortgagee's mortgage;
- (f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Community Area or the Parcel subject to the First Mortgagee's mortgage.
- (g) Notice of any default by the Owner of the Parcel which is subject to the First Mortgagee's mortgage under this Declaration, the By-Laws or the rules and regulations of the Association which is not cured within 30 days of the date of the default;
- (h) The right to examine the books and records of the Association at any reasonable times; and
- (i) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

The request of any such party shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association.

11.02 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Premises or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Community Area, any such distribution shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the First Mortgagee of a Parcel with respect to any such distribution to or with respect to such Parcel; provided, that, nothing in this Section shall be construed to deny to the Association the right (i) to apply insurance proceeds to repair or replace damaged improvements or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Four.

**ARTICLE TWELVE**  
**Annexing Additional Property**

12.01 IN GENERAL: Declarant reserves the right at any time and from time to time prior to seven (7) years from the date of Recording of this Declaration to annex, add and subject

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additional portions of the Development Area to the provisions of this Declaration as additional Premises by recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided; provided, that, if the Declarant is not the title holder of record of any such additional Premises, the title holder of record shall consent to such portion being annexed, added and made subject to the terms of this Declaration. Any portion of the Development Area which is subjected to this Declaration by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Community Area shall be referred to as "Added Community Area"; and any Parcels contained in the Added Premises shall be referred to as "Added Parcels". After the expiration of said seven (7) year period, Declarant may exercise the rights described herein to annex, add and subject additional portions of the Development Area to the provisions of this Declaration, provided that the consent the Owners (by number) of two-thirds (2/3) of all Parcels then subject to this Declaration is first obtained.

12.02 POWER TO AMEND: Declarant hereby retains the right and power to Record a Supplemental Declaration at any time and from time to time as provided in Section 12.01, which amends or supplements Exhibit B. Exhibit B may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit B and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or parts of the Added Premises as the Declarant deems necessary or appropriate.

12.03 EFFECT OF SUPPLEMENTAL DECLARATION: Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects Added Premises, Added Community Area, or Added Parcels to this Declaration, as provided in this Article, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Premises and inure to the benefit of and be binding on any Person having at any time any interest or estate in the Added Premises in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Premises, and Persons having an interest or estate in the Premises, subjected to this Declaration prior to the date of the Recording of the Supplemental Declaration;

(b) Every Owner of an Added Parcel shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Parcels immediately prior to the Recording of such Supplemental Declaration;

(c) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Community Area or the Added Parcels, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, First Mortgagees, and lessees thereof, with equal meaning and of like



force and effect and the same as if such Added Premises were subjected to this Declaration at the time of the Recording hereof;

(d) The Recording of each Supplemental Declaration shall not alter the amount of the lien for any Charges made to a Parcel or its Owner prior to such Recording;

(e) The Declarant shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved by the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(f) Each Owner of an Added Parcel which is subject to assessment hereunder shall be responsible for the payment of the Community Assessment pursuant to Section 6.02(e) or Section 6.08, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Parcel became subject to assessment hereunder.

## ARTICLE THIRTEEN

### Party Walls

13.01 PARTY WALL: Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Parcels shall constitute and be a "Party Wall", and the Owner of a Parcel immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.

13.02 RIGHTS IN PARTY WALL: Each Owner of a Parcel, which is adjacent to a Party Wall, shall have the right to use the Party Wall for support of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located thereon and all replacements thereof.

### 13.03 DAMAGE TO PARTY WALL:

(a) If any Party Wall is damaged or destroyed through the act or acts of any Owner of a Parcel which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Parcel.

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Parcel which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Parcels to as good a condition as in which such Party Wall existed prior to such

damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of a Home Exterior with respect to which the Association is responsible for furnishing maintenance, repairs or replacements hereunder shall be paid by the Association as a Community Expense to the extent not covered by insurance.

(c) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then, the Board may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Parcel.

13.04 CHANGE IN PARTY WALL: Any Owner of a Parcel who proposes to modify, rebuild, repair or make additions to any structure upon his Parcel in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Parcel and the Board, in addition to meeting any other requirements which may apply including, without limitation, those of the Municipality. In the event that a Party Wall is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Declarant concerning the structural integrity of the Party Wall or either of the Homes adjacent to the Party Wall shall be null and void and the Owner who alters the Party Wall shall be responsible for any and all damage caused to either of the adjacent Homes or improvements thereto.

13.05 ARBITRATION: In the event of a disagreement between Owners of Parcels adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding.

## ARTICLE FOURTEEN

### Miscellaneous

14.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent when (i) mailed, postage prepaid, to his or its last known address as it appears on the records of the Association at the time of such mailing or (ii) when delivered personally to his Parcel.

14.02 CAPTIONS: The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

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

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14.04 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 provision, (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 the President of the United States at the time this Declaration is Recorded.

14.05 TITLE HOLDING LAND TRUST: In the event title to any Parcel is held by a title holding trust, under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Parcel. No claim shall be made against any such title holding trustee personally 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 Parcel and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Parcel.

Dated: December 11, 1998

**DECLARANT:**

LOCKPORT DEVELOPMENT, INC.

By: Wendy Whitford  
Its: ASST. Secretary

ATTEST:

By: [Signature]  
Its: Vice President

(SEAL)

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STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF McHenry )

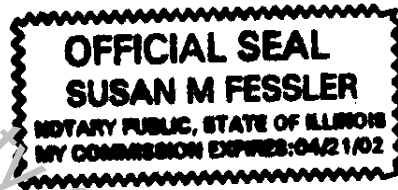
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I, Susan M Fessler, a Notary Public in and for said County and State, do hereby certify that Wendy Webster and Joe Atkin, Asst. Secretary and Vice President, respectively, of Lockport Development, Inc. (the "Declarant") and, as such Wendy Webster and Joe Atkin appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Declarant for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 11<sup>th</sup> day of December, 1998.

Susan M Fessler

Notary Public



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## CONSENT OF CONSENTING OWNER

The undersigned, MGM Construction<sup>Co.</sup>, Inc., as title holder of the Premises, which are legally described in Exhibit B to the Declaration to which this Consent is attached, hereby consent to the recording of the Declaration to which this Consent is attached, hereby consent to the recording of the Declaration to which this Consent is attached and hereby subject the Premises to the terms of the Declaration.

MGM CONSTRUCTION<sup>CO.</sup>, INC.

By: [Signature]  
President & Secretary

ATTEST:

\_\_\_\_\_

STATE OF ILLINOIS )  
  ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that JOHN J. MAYHER and President are Secretary and Secretary respectively, of MGM Construction<sup>CO.</sup>, Inc., a CO. who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary appeared before me this day in person and acknowledged that they signed, sealed and delivered instrument as their free and voluntary act and as the free and voluntary act of said bank for the uses and purposes herein set forth.

GIVEN under my hand and Notarial Seal this 11<sup>th</sup> day of December, 1998  
[Signature]  
Notary Public

OFFICIAL SEAL  
ANNE M. STARK  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 11-16-99

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EXHIBIT A TO  
DECLARATION FOR THE PRESERVES TOWNHOMES

The Development Area

All Lots and Outlots in The Preserve at Marley Creek - Phase 2, a Planned Unit Development, being a subdivision of part of the Southwest Quarter and part of the Southeast Quarter of Section 31, Township 36 North, Range 12 East of the Third Principal Meridian in Cook County, Illinois created by a plat thereof recorded as Document No. ~~98-728878~~ "The Preserve Subdivision"), plus any real estate within 1000 feet of the perimeter of the foregoing described real estate.

SW corner 17th St. + Wolf Road, Orland Park, IL  
PIN's: 27-31-400-002  
27-31-300-007

Property of Cook County Clerk's Office

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## EXHIBIT B TO DECLARATION FOR THE PRESERVES TOWNHOMES

### The Premises

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I. Lots:

The following described lots shall be divided into Parcels and Community Area, as described in Section 1.19 of the Declaration to which this Exhibit is attached:

Lots 226, 227, 228, 229, 230, 245, 246, 247, 248 and 249 in the Preserve Subdivision (defined in Exhibit A).

II. Community Area:

The following described outlots shall be Community Area hereunder:

None upon the Recording hereof.

III. Monument Sign Areas:

None upon the Recording hereof.

IV. Association Maintained Public Green Areas:

None upon the Recording hereof.



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THE BY-LAWS OF  
THE PRESERVES TOWNHOME ASSOCIATION  
AN ILLINOIS NOT-FOR-PROFIT CORPORATION

ARTICLE I  
NAME OF CORPORATION

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The name of this corporation is The Preserves Townhome Association.

ARTICLE II  
PURPOSE AND POWERS

2.01 PURPOSES: The purposes of this Association are to act on behalf of its members collectively, as their governing body, with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property and for the promotion of the health, safety and welfare and the common use and enjoyment thereof by members of the Association, all on a not-for-profit basis. These By-Laws are subject to the provisions of the Declaration for The Preserves Townhomes ("Declaration") recorded with the Office of the Recorder of Deeds for Cook County, Illinois on \_\_\_\_\_, 19\_\_\_\_, as Document No. \_\_\_\_\_. All terms used herein shall have the meanings set forth in the Declaration.

2.02 POWERS: The Association shall have and exercise all powers as are now or may hereafter be granted by the General Not-For-Profit Corporation Act of the State of Illinois, the Declaration and these By-Laws.

ARTICLE III  
OFFICES

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

3.02 PRINCIPAL OFFICE: The Association's principal office shall be maintained on the Development Area.

ARTICLE IV  
MEETINGS OF MEMBERS

4.01 VOTING RIGHTS: Any or all members may be present at any meeting of the members, but the voting rights shall be vested exclusively in the Voting Members; provided, that, prior to the Turnover Date, the voting rights shall be vested exclusively in the Declarant and the Voting Members shall have no voting rights. From and after the Turnover Date, each Voting

Member (other than those designated by Declarant) shall be entitled to one vote for each Home which the Voting Member represents and each Voting Member designated by the Declarant with respect to a Home owned by Declarant shall have three (3) votes for each Home which such Voting Member represents. The Voting Members may vote in person or by proxy. All proxies shall be in writing, revocable, valid only for eleven (11) months from the date of execution and filed with the Secretary.

4.02 PLACE OF MEETING; QUORUM: Meetings of the members shall be held at the principal office of this Association or at such other place in Cook County, Illinois as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in Roberts Rules of Order as from time to time published. Twenty percent (20%) of the Voting Members shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Owners at which a quorum is present upon the affirmative vote of a majority of the members present at such meeting.

4.03 ANNUAL MEETINGS: The initial meeting of the members shall be held upon not less than twenty-one (21) days written notice given by the Declarant. If not called earlier by the Declarant, the initial meeting of the Owners shall be held no later than thirty (30) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Owners on the anniversary thereof, 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 Owners not less than ten (10) days prior to the date fixed for said meeting.

4.04 SPECIAL MEETINGS: Special meetings of the members may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Owners or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, or by twenty percent (20%) of the Voting Members, and delivered not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time, and place of the meeting and the matters to be considered.

4.05 NOTICE OF MEETINGS: Notices of meetings required to be given herein may be delivered either personally or by mail to the members, addressed to such member at the address given by him to the Board for the purpose of service of such notice or to the Home of the Owner, if no address has been given to the Board. A notice of meeting shall include an agenda of business and matters to be acted upon or considered at the meeting.

ARTICLE V  
BOARD OF DIRECTORS

5.01 IN GENERAL: The affairs of the Association shall be vested in the board of directors (the "Board"), which shall consist of three (3) persons ("Directors") or such other number of persons as shall be fixed from time to time by the affirmative vote of 50% of the Voting Members. Each Director shall be an Owner or a Voting Member.

5.02 DEVELOPER DESIGNATED BOARDS: Anything herein to the contrary notwithstanding, until the first meeting of the members after the Turnover Date the Board shall consist of three (3) persons from time to time designated by the Declarant, who shall serve at the discretion of the Declarant. During such period the Owners may elect from among themselves that number of non-voting counselors to the Board as the Declarant may, in its sole discretion, permit.

5.03 BOARDS AFTER TURNOVER DATE: At the first meeting of the Owners (which shall be held no later than thirty (30) days after the Turnover Date) the Voting Members shall elect a full Board of Directors in the manner hereinafter provided to replace the Declarant designated Board established under Section 5.02. From and after such meeting, each member of the Board shall be an Owner or a Voting Member, or both. Within sixty (60) days after the election of a majority of the Board other than those designated by the Declarant, the Declarant shall deliver to the Board:

(a) Original copies of the Declaration, these By-Laws, the Association's Articles of Incorporation and the Association's minute book.

(b) An accounting of all receipts and expenditures made or received on behalf of the Association by the Declarant designated Boards.

(c) All Association funds and bank accounts.

(d) A schedule of all personal property, equipment and fixtures belonging to the Association including documents transferring the property to the Association.

5.04 ELECTION: At the initial meeting of the Owners, the Voting Members shall elect a full Board of Directors. The three (3) candidates receiving the greatest number of votes shall each serve a two year term and the two (2) candidates receiving the next greatest number of votes shall each serve a one year term. Thereafter, each Director shall serve a two year term. Each Director shall hold office until his term expires or until his successor shall have been elected and qualified. Directors may succeed themselves in office. In all elections for members of the Board, the Voting Member for each Home shall be entitled to the number of votes equal to the number of Directors to be elected (cumulative voting shall not be permitted).

5.05 ANNUAL MEETINGS: The Board shall hold an annual meeting within ten (10) days after the annual meeting of the members.

5.06 REGULAR MEETINGS: Regular meetings of the Board shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the Directors, provided that not less than four such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, at least two (2) days prior to the day named for any such meeting and such notice shall state the

time and place of such regular meeting and such notice shall be posted conspicuously on the Premises so as to inform the Owners of such meetings.

5.07 SPECIAL MEETINGS: Special meeting of the Board may be called by the President or at least one-third (1/3) of the Directors then serving.

5.08 ATTENDANCE AT MEETINGS BY OWNERS: Owners may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion. It is not the intention that Owners shall have the right to attend meetings of the Board in the same manner as provided for members of condominium associations under the Illinois Condominium Property Act.

5.09 WAIVER OF NOTICE: Before or at any meeting of the Board any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

5.10 QUORUM: A majority of the Directors serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board, provided, that if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present.

5.11 COMPENSATION/REIMBURSEMENT FOR EXPENSES: Directors shall receive no compensation, except as expressly provided in a resolution duly adopted by 75% of the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Director shall be reimbursed by the Association for reasonable out-of-pocket expenses incurred in the course of the performance of his duties as a Director.

5.12 REMOVAL OR RESIGNATION OF DIRECTOR: Any Director may be removed from office, with or without cause, by the affirmative vote of at least two-thirds (2/3) of the Directors then serving at any annual meeting or at a special meeting called for such purpose. Any Director may resign at any time by submitting his written resignation to the Board. If a Director ceases to be an Owner or Voting Member, he shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Director who resigns may be appointed by a majority of the remaining Directors at any regular meeting or a special meeting called for such purpose and any successor so appointed shall serve the balance of his predecessor's term.

5.13 POWERS AND DUTIES 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, and the

Illinois General Not- For-Profit Corporation Act, including, without limitation, the following powers and duties:

- (a) To engage the services of a manager or managing agent upon such terms and with such authority as the Board may approve;
- (b) To provide for the designation, hiring and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper;
- (c) To provide for any maintenance, repair, alteration, addition, improvement or replacement of the Community Area and the Home Exteriors for which the Association is responsible under the Declaration and these By-Laws;
- (d) To procure insurance as provided for under the Declaration;
- (e) To estimate and provide each Owner with an annual budget showing the Community Expenses;
- (f) To set, give notice of, and collect Community Assessments from the Owners as provided in the Declaration;
- (g) To pay the Community Expenses;
- (h) Subject to the provisions of the Declaration, to own, convey, encumber or otherwise deal with any real property conveyed to or purchased by the Association;
- (i) To adopt and, from time to time, to amend such reasonable rules and regulations as the Board may deem advisable for the use, enjoyment, administration, management, maintenance, conservation and beautification of the Community Area and the Home Exteriors, and for the health, comfort, safety and general welfare of the Owners. Written notice of any such rules and regulations or amendments thereto shall be given to all Owners affected thereby;
- (j) To delegate the exercise of its power to committees appointed pursuant to Article Seven of these By-Laws.

## ARTICLE VI OFFICERS

6.01 OFFICERS: The officers of the Association shall be a President, one or more Vice Presidents, a Secretary, Treasurer, and such assistants to such officers as the Board may deem appropriate. All officers shall be Directors and shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board.

6.02 VACANCY OF OFFICE: Any officer may be removed at any meeting of the Board by the affirmative vote of the majority of the Directors in office, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof.

6.03 POWERS OF OFFICERS: The respective officers of the Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers, including but not limited to, the following:

(a) The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the members and at all meetings of the Board and shall execute amendments to the Declaration and these By-Laws as provided in the Declaration and these By-Laws.

(b) The Vice President shall, in the absence or the disability of the President, perform the duties and exercise the powers of such office;

(c) The Secretary shall keep minutes of all meetings of the Owners and of the Board and shall have custody of the Association Seal and have charge of such other books, papers and documents as the Board may prescribe;

(d) The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Association books of accounts kept for such purpose.

6.04 OFFICERS' COMPENSATION: The officers shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the Voting Members.

ARTICLE VII  
COMMITTEES DESIGNATED BY BOARD

7.01 BOARD COMMITTEES: The Board, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two or more Directors, which committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.

7.02 SPECIAL AND STANDING 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 Owners or representative of Owners and the President of the Association shall appoint the



members of such committee and shall designate a Director to act as a liaison between such committee and the Board. Any member of such committee may be removed by the President of the Association whenever in his judgment the best interests of the Association shall be served by such removal. The powers and the duties of any such standing committee shall be as set from time to time by resolution of the Board. The chairman of each standing committee shall be a Director (who shall act as the liaison between the committee and the Board), and the other members of the committee (which need not be Directors) shall be appointed and removed from time to time by such chairman.

7.03 TERM: Each member of a committee shall continue as such until the next annual meeting of the Board and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member shall be removed from such committee, or unless such member shall cease to qualify as a member thereof.

7.04 CHAIRMAN: One member of each committee shall be appointed chairman.

7.05 VACANCIES: Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments to such committee.

7.06 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.

7.07 RULES: Each committee may adopt rules for its own government not inconsistent with the Declaration, these By-Laws or with rules adopted by the Board.

## ARTICLE VIII CONTRACTS, CHECKS, DEPOSITS AND FUNDS

8.01 CONTRACTS: The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances. In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President or a Vice President and attested to by the Secretary or an Assistant Secretary of the Association.

8.02 PAYMENTS: All checks, drafts, vouchers or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, agent or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such

determination by the Board such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Association.

8.03 BANK ACCOUNTS: All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board shall elect.

8.04 SPECIAL RECEIPTS: The Board may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Association.

ARTICLE IX  
FISCAL MANAGEMENT

9.01 FISCAL YEAR: The fiscal year of the Association shall be established by the Association and may be changed from time to time by a resolution adopted by two-thirds (2/3) of the Board.

9.02 ANNUAL STATEMENT: Within a reasonable time after the close of each fiscal year the Board shall furnish each Owner with a statement of the income and disbursements of the Association for such fiscal year.

9.03 SPECIAL STATEMENT: Within ten (10) days after receipt of a written request from an Owner (together with payment of a reasonable fee, if any, set by the Board) the Board shall provide the Owner with a statement containing the following information:

- (a) The status of the Owner's account and the amount of any unpaid assessments or other charges due and owing from the Owner; and
- (b) The status and amount of any and all Capital Reserves.

9.04 ASSESSMENT PROCEDURE: Community assessments and special assessments shall be made and collected as provided in the Declaration.

ARTICLE X  
BOOKS AND RECORDS

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, the Board, and committees having any of the authority of the Board, and shall keep at the registered or principal office of the Association a record giving the names and addresses of the members. All books and records of the Association may be inspected by any Owner, or his mortgagee, agent or attorney, for any proper purpose at any reasonable time.

ARTICLE XI  
SEAL

The Board may provide for a corporate seal which shall be in the form of a circle and shall have inscribed thereon the names of the Association and the words "Corporate Seal, Illinois".

ARTICLE XII  
AMENDMENTS

These By-Laws may be amended or modified at any time, or from time to time by the affirmative votes of Directors having more than two-thirds (2/3) of the total votes, provided that prior to the Turnover Date, Section 5.02 and this Article XII may not be amended without the written consent of the Declarant, and provided further, that no provision of these By-Laws may be amended or modified so as to conflict with the provisions of the Declaration.

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