

UNOFFICIAL COPY



1710306082

Doc# 1710306082 Fee \$142.00

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/13/2017 12:22 PM PG: 1 OF 53

ABOVE SPACE FOR RECORDER'S USE ONLY

189a
THIS INSTRUMENT PREPARED
BY AND SHOULD BE RETURNED
TO:

Brian Meltzer
MELTZER, PURTILL & STELLE LLC
1515 East Woodfield Road
Second Floor
Schaumburg, Illinois 60173-5431

1700 4162-WF

AMENDED AND RESTATED COMMUNITY DECLARATION FOR CLOCKTOWER POINTE OF COUNTRYSIDE

TABLE OF CONTENTS

| | | |
|-------------|---|---|
| ARTICLE ONE | Definitions | 2 |
| 1.01 | ASSESSMENT POINTS | 2 |
| 1.02 | BUILDING | 3 |
| 1.03 | CHARGES | 3 |
| 1.04 | COMMUNITY AREA | 3 |
| 1.05 | COMMUNITY ASSESSMENT | 3 |
| 1.06 | COMMUNITY ASSOCIATION | 3 |
| 1.07 | COMMUNITY DECLARATION | 3 |
| 1.08 | COMMUNITY EXPENSES | 3 |
| 1.09 | CONDOMINIUM ASSOCIATION | 3 |
| 1.10 | CONDOMINIUM DECLARATION | 3 |
| 1.11 | CONDOMINIUM PARCEL | 4 |
| 1.12 | CONDOMINIUM UNIT | 4 |
| 1.13 | CROSS EASEMENT AND COST SHARING AGREEMENT | 4 |
| 1.14 | COUNTY | 4 |
| 1.15 | DECLARANT | 4 |
| 1.16 | DECLARANT'S DEVELOPMENT PLAN | 4 |
| 1.17 | DEVELOPMENT AREA | 4 |
| 1.18 | DWELLING UNIT | 4 |
| 1.19 | FIRST MORTGAGEE | 4 |
| 1.20 | MANAGER | 4 |
| 1.21 | MUNICIPALITY | 5 |
| 1.22 | OPERATING AGREEMENT | 5 |
| 1.23 | OWNED UNIT | 5 |
| 1.24 | OWNER | 5 |
| 1.25 | PARCEL | 5 |
| 1.26 | PARKING PLAN | 5 |
| 1.27 | PERSON | 5 |
| 1.28 | PREMISES | 5 |
| 1.29 | RECORD | 5 |
| 1.30 | RENTAL PARCEL | 5 |

SV
P 53
S
SC
INT

UNOFFICIAL COPY

| | |
|---|-----------|
| 1.31 RESIDENT | 5 |
| 1.32 SUBJECT TO ASSESSMENT | 5 |
| 1.33 TOWNHOME | 6 |
| 1.34 TOWNHOME ASSOCIATION | 6 |
| 1.35 TOWNHOME DECLARATION | 6 |
| 1.36 TOWNHOME LOT | 6 |
| 1.37 TURNOVER DATE | 6 |
| 1.38 VOTING MEMBER | 6 |
| ARTICLE TWO Scope of Community Declaration/Certain Easements | 6 |
| 2.01 PROPERTY SUBJECT TO COMMUNITY DECLARATION | 6 |
| 2.02 CONVEYANCES SUBJECT TO COMMUNITY DECLARATION | 6 |
| 2.03 DURATION | 6 |
| 2.04 ACCESS EASEMENT | 7 |
| 2.05 RIGHT OF USE AND ENJOYMENT | 7 |
| 2.06 DELEGATION OF USE | 7 |
| 2.07 UTILITY EASEMENTS | 8 |
| 2.08 EASEMENTS, LEASES, LICENSES AND CONCESSIONS | 8 |
| 2.09 COMMUNITY ASSOCIATION'S ACCESS | 8 |
| 2.10 NO DEDICATION TO PUBLIC USE | 8 |
| 2.11 OWNERSHIP OF COMMUNITY AREA | 8 |
| 2.12 REAL ESTATE TAXES FOR COMMUNITY AREA | 8 |
| ARTICLE THREE Maintenance/Services/Alterations | 9 |
| 3.01 IN GENERAL | 9 |
| 3.02 MAINTENANCE BY COMMUNITY ASSOCIATION | 9 |
| 3.03 CERTAIN UTILITY COSTS | 10 |
| 3.04 DAMAGE BY RESIDENT | 10 |
| 3.05 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA | 11 |
| ARTICLE FOUR Insurance/Condemnation | 11 |
| 4.01 COMMUNITY AREA INSURANCE | 11 |
| 4.02 CONDEMNATION | 12 |
| ARTICLE FIVE The Community Association | 12 |
| 5.01 IN GENERAL | 12 |
| 5.02 MEMBERSHIP | 12 |
| 5.03 VOTING MEMBERS | 12 |
| 5.04 MANAGERS/ COMMITTEE MEMBERS | 13 |
| 5.05 VOTING RIGHTS | 13 |
| 5.06 MANAGERS LIABILITY | 13 |
| 5.07 MANAGING AGENT | 14 |
| 5.08 REPRESENTATION | 14 |
| 5.09 DISSOLUTION | 14 |
| 5.10 LITIGATION | 14 |
| 5.11 MERGER | 14 |
| ARTICLE SIX Assessments | 15 |
| 6.01 PURPOSE OF ASSESSMENTS | 15 |
| 6.02 ASSESSMENTS | 15 |
| 6.03 PAYMENT OF ASSESSMENT | 16 |
| 6.04 REVISED ASSESSMENT | 16 |
| 6.05 SPECIAL ASSESSMENT | 16 |
| 6.06 CAPITAL RESERVE | 17 |
| 6.07 INITIAL CAPITAL CONTRIBUTION | 17 |

UNOFFICIAL COPY

| | |
|--|----|
| 6.08 PAYMENT OF ASSESSMENTS | 18 |
| ARTICLE SEVEN Collection of Charges and Remedies for Breach or Violation | 18 |
| 7.01 CREATION OF LIEN AND PERSONAL OBLIGATION | 18 |
| 7.02 COLLECTION OF CHARGES | 18 |
| 7.03 NON-PAYMENT OF CHARGES | 18 |
| 7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES | 18 |
| 7.05 SELF-HELP BY MANAGERS | 19 |
| 7.06 OTHER REMEDIES OF THE MANAGERS | 19 |
| 7.07 COSTS AND EXPENSES | 19 |
| 7.08 ENFORCEMENT BY OWNERS | 19 |
| 7.08 BACKUP SSA | 19 |
| ARTICLE EIGHT Use Restrictions | 20 |
| 8.01 USE RESTRICTIONS | 20 |
| 8.02 INDUSTRY SIGNS | 20 |
| 8.03 OBSTRUCTIONS AND REFUSE | 20 |
| 8.04 PETS | 20 |
| 8.05 PROSCRIBED ACTIVITIES | 20 |
| 8.06 PARKING | 20 |
| 8.07 WATERING | 21 |
| ARTICLE NINE Declarant's Reserved Rights and Special Provisions Covering Development Period | 21 |
| 9.01 IN GENERAL | 21 |
| 9.02 PROMOTION OF PROJECT | 21 |
| 9.03 CONSTRUCTION ON PREMISES | 21 |
| 9.04 GRANT OF EASEMENTS AND DEDICATIONS | 22 |
| 9.05 DECLARANT CONTROL OF COMMUNITY ASSOCIATION | 22 |
| 9.06 OTHER RIGHTS | 22 |
| 9.07 ASSIGNMENT BY DECLARANT | 22 |
| 9.08 DESIGN AND MAINTENANCE CONTROLS | 22 |
| 9.08 MATTERS AFFECTING COMMUNITY AREA | 24 |
| ARTICLE TEN Amendment | 24 |
| 10.01 SPECIAL AMENDMENTS | 24 |
| 10.02 AMENDMENT | 25 |
| ARTICLE ELEVEN First Mortgagees Rights | 25 |
| 11.01 NOTICE TO FIRST MORTGAGEES | 25 |
| 11.02 CONSENT OF FIRST MORTGAGEES | 26 |
| 11.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS | 27 |
| ARTICLE TWELVE Annexing Additional Property | 27 |
| 12.01 IN GENERAL | 27 |
| 12.02 POWER TO AMEND | 28 |
| 12.03 EFFECT OF SUPPLEMENTAL DECLARATION | 28 |
| ARTICLE THIRTEEN Miscellaneous | 29 |
| 13.01 NOTICE | 29 |
| 13.02 CAPTIONS | 29 |
| 13.03 SEVERABILITY | 29 |
| 13.04 PERPETUITIES AND OTHER INVALIDITY | 29 |
| 13.05 TITLE HOLDING LAND TRUST | 29 |
| 13.06 WAIVER OF IMPLIED WARRANTY OF HABITABILITY AND OTHER WARRANTIES | 30 |

UNOFFICIAL COPY

AMENDED AND RESTATED COMMUNITY DECLARATION FOR CLOCKTOWER POINTE OF COUNTRYSIDE

This Amended and Restated Community Declaration ("Community Declaration") is made by Countryside 6, LLC, an Illinois limited liability company ("Declarant").

RECITALS

Declarant recorded Community Declaration for Clocktower Pointe of Countryside with the Cook County Recorder of Deeds on May 21, 2015, as Document No. 1514145062 (the "Original Declaration").

In Section 10.01 of the Community Declaration, Declarant reserved the right and power to record a Special Amendment to the Community Declaration to, among other things, reflect a change in the Declarant's Development Plan. Declarant desires to exercise the right and power reserved in Section 10.01 of the Original Declaration to amend the Original Declaration to reflect changes in the Declarant's Development Plan, including (i) the removal of Lot 7 in Clocktower Pointe Subdivision, Recorded as Document No. 0626427063 ("Original Subdivision"), (ii) the resubdivision of portions of what were Lots 1, 2, 5, 6 and 7 in the Original Subdivision, into Townhome Lots 1 through 23, both inclusive, and Community Area Lot 24 in the Clocktower Pointe of Countryside Resubdivision, Recorded as Document No. 1707329136 (the "Resubdivision"), and (iii) the reallocation of certain maintenance responsibilities among the Community Association and other association which administer portions of the Premises.

NOW THEREFORE, for the reasons set forth above, Declarant does hereby amend, restate and replace the Original Declaration, to be and read, in its entirety, as follows:

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 Clocktower Pointe of Countryside (the "Development"). As currently planned, the Development will be improved with six (6) buildings. Two (2) of the buildings (the "Midrise Buildings") will each contain eighteen (18) dwelling units, and each of the Midrise Buildings will be either (i) owned and administered as a non-condominium apartment building, or (ii) made subject to a condominium declaration and administered by a condominium association. Each of the remaining four (4) buildings will contain five (5) or six (6) townhome style dwelling units, and all 4 of townhome buildings will also be made subject to a townhome declaration which will be administered by a separate association.

With the Recording of the Original Declaration, Declarant subjected the real estate which is legally described in Exhibit B-1 hereto to the terms of the Community Declaration as part of the Premises. Upon the Recording of this document, the Premises shall be amended and supplemented and shall include all of the real estate which is described in Exhibit B-2 hereto. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Community Declaration as Added Premises, as more fully described in Article

UNOFFICIAL COPY

Twelve. Nothing in this Community Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Community Declaration. Those portions of the Development Area which are not made subject to the provisions of this Community Declaration as Premises may be used for any purposes not prohibited by law.

In order to provide for the orderly and proper maintenance of the Premises, the Declarant has organized the Community Association as a limited liability company under the laws of the State of Illinois. The Community Association will adopt budgets and fix assessments, from time to time, to pay the expenses incurred in connection with its duties. Each Owner of a Condominium Unit, a Townhome Lot or a Rental Parcel shall be a member of the Community Association and shall be responsible for paying assessments with respect to the Condominium Unit, Townhome Lot or Rental Parcel owned by such Owner.

Portions of the Premises made subject to this Community Declaration shall also be made subject to another declaration and (i) each Owner of a Condominium Unit shall be a member of both the Community Association and the Condominium Association which administers the property which is subject to the Condominium Declaration which created the Condominium Unit, and (ii) each Owner of a Townhome Lot shall be a member of both the Community Association and the Townhome Association which administers the property which the Townhome Lot is subject to. Nothing in this Community Declaration shall be construed as delegating the Community Association, or authorizing the Community Association to exercise, any rights or powers on behalf of any such association.

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Community Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to manage the affairs of the Community Association or to designate the Managers of the Community Association, as more fully described in Article Nine and in the Operating Agreement, and the right to come upon the Premises in connection with Declarant's efforts to sell Condominium Units, Townhome Lots and Rental Parcels and other rights reserved in Article Nine.

NOW, THEREFORE, the Declarant hereby declares as follows:

ARTICLE ONE Definitions

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

1.01 ASSESSMENT POINTS: Each Dwelling Unit shall have assigned to it "Assessment Points" depending upon whether the Dwelling Unit is a Condominium Unit, a Rental Unit or a Townhome Lot. Assessment Points shall be as follows:

| <u>Type of Dwelling Unit</u> | <u>Assessment Points</u> |
|------------------------------|--------------------------|
| Condominium Unit | 1 |

UNOFFICIAL COPY

| | |
|--------------|---|
| Rental Unit | 1 |
| Townhome Lot | 3 |

1.02 **BUILDING**: A portion of the Premises which consists of a structure which contains dwelling units.

1.03 **CHARGES**: The Community Assessment and any special assessment levied by the Community Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Community Declaration or the Operating Agreement.

1.04 **COMMUNITY AREA**: Those portions of the Premises which are designated in Part IV of Exhibit B, as Exhibit B may be amended from time to time, as "Community Area". The Community Area shall generally include, but shall not be limited to, detention areas, landscaped areas, walking paths, driveways, and may include a private road, guest parking spaces and/or a park.

1.05 **COMMUNITY ASSESSMENT**: The amounts which the Community 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 ASSOCIATION**: The Clocktower Pointe of Countryside Community Association, LLC, an Illinois limited liability company, its successors and assigns. As more fully provided in Section 5.11, the Association may be merged into an Illinois not for profit corporation, which would become the Association hereunder.

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

1.08 **COMMUNITY EXPENSES**: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping on the Community Area; the cost of maintenance, repair and replacement of improvements located on the Community Area; the cost of insurance for the Community Area, including; the cost of general and special real estate taxes, if any, levied or assessed against the Community Area owned by the Community Association; the cost of, and the expense incurred for, the maintenance, repair and replacement of personal property acquired and used by the Community Association in connection with the maintenance of the Community Area; and any expenses designated as Community Expenses by this Community Declaration. Notwithstanding the foregoing, Community Expenses shall not include any payments made out of Capital Reserves.

1.09 **CONDOMINIUM ASSOCIATION**: A condominium association established pursuant to a Condominium Declaration.

1.10 **CONDOMINIUM DECLARATION**: A condominium declaration Recorded with respect to a portion of the Development Area.

UNOFFICIAL COPY

1.11 CONDOMINIUM PARCEL: A subdivided lot in the Development on which a Building is constructed containing Condominium Units.

1.12 CONDOMINIUM UNIT: A condominium unit created pursuant to a Condominium Declaration and designated as a "Condominium Unit" in Section III of Exhibit B hereto.

1.13 CROSS EASEMENT AND COST SHARING AGREEMENT: A cross easement and cost sharing agreement, if any, between the Community Association and an owner of a portion of the Development which is not part of the Premises hereunder, but which is served by some or all of the Community Area hereunder.

1.14 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 a County as of the Recording of this Community Declaration.

1.15 DECLARANT: Countryside 6 LLC, an Illinois limited liability company, its successors and assigns.

1.16 DECLARANT'S DEVELOPMENT PLAN: Declarant's current plan for the Development. Declarant's Development Plan shall be maintained by the Declarant at its principal place of business and may be changed by the Declarant at any time or from time to time without notice.

1.17 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 Community Declaration as part of the Premises. Any portions of the Development Area which are not made subject to the provisions of this Community 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.

1.18 DWELLING UNIT: A portion of the Premises which is improved with a single family residential unit. A Dwelling Unit may be (i) Condominium Unit, (ii) a Townhome Lot which is improved, or planned to be improved with a Townhome, or (iii) an apartment unit in a Building constructed on a Rental Parcel (a "Rental Unit").

1.19 FIRST MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering an Owned Unit or Rental Parcel

1.20 MANAGER: The manager or managers from time to time as appointed or elected as provided in this Community Declaration or the Operating Agreement; provided, that if the

UNOFFICIAL COPY

Association is a not for profit corporation the Managers shall be the board of directors of the Association.

1.21 MUNICIPALITY: The City of Countryside, Illinois or its successors or assigns, 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 Community Declaration.

1.22 OPERATING AGREEMENT: The Amended and Restated Operating Agreement of the Community Association which is attached hereto as Exhibit C; provided, that, if the Association is a not for profit corporation, the term Operating Agreement as used herein shall mean the By-Laws of the Association.

1.23 OWNED UNIT: Each Condominium Unit and each Townhome Lot.

1.24 OWNER: A Record owner, whether one or more persons, of fee simple title to a Condominium Unit, a Townhome Lot or a Rental Parcel, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation.

1.25 PARCEL: A Condominium Parcel or a Rental Parcel hereunder.

1.26 PARKING PLAN: The Parking Plan attached hereto as Exhibit D.

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

1.28 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 Community Declaration as part of the Premises as more fully provided in Article Twelve.

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

1.30 RENTAL PARCEL: A portion of the Premises which is designated in Section II of Exhibit B attached hereto, from time to time, as a "Rental Parcel", on which a Building is constructed containing Rental Units.

1.31 RESIDENT: An individual who legally resides in a Dwelling Unit.

1.32 SUBJECT TO ASSESSMENT: A Dwelling Unit shall only be Subject to Assessment hereunder from and after such time as a temporary, conditional or permanent certificate of occupancy has been issued by the Municipality with respect to the Dwelling Unit; provided, however, that a model Dwelling Unit owned by the Declarant shall not be subject to assessment hereunder

UNOFFICIAL COPY

1.33 TOWNHOME: A portion of a Townhome Lot which is improved with a single, non-condominium, townhome-style unit.

1.34 TOWNHOME ASSOCIATION: A townhome association established pursuant to a Townhome Declaration.

1.35 TOWNHOME DECLARATION: A townhome declaration Recorded with respect to a portion of the Development Area.

1.36 TOWNHOME LOT: A subdivided lot which is designated in Section V of Exhibit B hereto as a "Townhome Lot"

1.37 TURNOVER DATE: The date on which the right of the Declarant to manage the affairs of the Community Association is terminated under Section 9.05.

1.38 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 Community Declaration/Certain Easements

2.01 PROPERTY SUBJECT TO COMMUNITY DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to and by Recording this Community Declaration, does hereby subject the Premises to the provisions of this Community Declaration. Declarant shall have the right from time to time to subject additional portions of the Development Area to the provisions of this Community Declaration as Added Premises, as provided in Article Twelve hereof. Nothing in this Community Declaration shall be construed to obligate the Declarant to subject to this Community 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 (as defined in Section 12.01) Recorded by Declarant pursuant to Article Twelve.

2.02 CONVEYANCES SUBJECT TO COMMUNITY DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Community 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 the premises, and their respective heirs, successors, personal representatives or assigns, regardless of whether the deed or other instrument which creates or conveys the interest makes reference to this Community Declaration.

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 Community 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 Community

UNOFFICIAL COPY

Declaration and for successive periods of ten (10) years each unless revoked, changed or amended as provided in Section 10.02.

2.04 ACCESS EASEMENT: Each Owner or Resident of a Dwelling Unit or Rental Parcel shall have a non-exclusive perpetual easement for ingress to and egress from his Dwelling Unit or Rental Parcel to a public way, over and across the driveways and service walks located on the Community Area, which easement shall run with the land, be appurtenant to and pass with title to every Dwelling Unit or Rental Parcel. The Municipality or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over and across 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 Community Association, its employees and agents, shall have the right of ingress to, egress from, and access over the Community Area, and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements as required or permitted to be furnished by the Community Association hereunder. The Townhome Association shall have a non-exclusive, perpetual easement for access over and across the Community Area for the purpose of furnishing repairs and replacements to driveways and sidewalks which serve the Townhomes, as required under the Townhome Declaration.

2.05 RIGHT OF USE AND ENJOYMENT:

(a) Except as otherwise provided in subsections (b) and (c) of this Section 2.05, each Owner and Resident shall have the non-exclusive right and easement to use and enjoy the Community Area.

(b) The right to use and enjoy the parking spaces which are designated on the Parking Plan as 1 through 18, both inclusive, is reserved for the Owners of, and Residents residing in, Dwelling Units located on Lot 3 in the Original Subdivision, and their guests and invitees, only.

(c) The right to use and enjoy the parking spaces which are designated on the Parking Plan as 19 through 36, both inclusive, is reserved for the Owners of, and Residents residing in, Dwelling Units located on Lot 4 in the Original Subdivision, and their guests and invitees, only.

(d) The rights and easements granted in this Section 2.05 shall run with the land, be appurtenant to and pass with title to every Owned Unit and Rental Parcel, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Community Declaration, the Operating Agreement, and the reasonable rules and regulations from time to time adopted by the Community Association.

2.06 DELEGATION OF USE: Subject to the provisions of this Community Declaration, the Operating Agreement, and the reasonable rules and regulations from time to time adopted by the Community Association, any Owner may delegate his right to use and enjoy the Community Area to Residents of the Owner's Dwelling Unit or Rental Parcel. An Owner shall delegate such rights to tenants and contract purchasers of the Owner's Dwelling Unit or Rental Parcel who are Residents.

UNOFFICIAL COPY

2.07 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. In addition, each Owner of an Owned Unit or Rental Parcel shall have a perpetual easement for the continued existence and use of water, sewer, electric, gas or other utility lines, and/or components of other systems which were originally installed by the Declarant or a utility company and which serve the Owner's Owned Unit or Rental Parcel, which utility lines or wiring may be located in other portion of the Premises, including, without limitation, under or through another Owned Unit, Rental Parcel or portion of the Premises.

2.08 EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Community 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 Manager deem to be in the best interests of the Owners and Residents and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Manager deem to be in the best interests of the Owners and Residents. Any and all proceeds from leases, easements, licenses or concessions with respect to the Community Area shall be used to pay the Community Expenses. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to an Owned Unit or Rental Parcel, shall be deemed to grant a power coupled with an interest to the Manager, 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 Managers and duly Recorded.

2.09 COMMUNITY ASSOCIATION'S ACCESS: The Community Association shall have the right and power to come onto any portion of the Premises for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder.

2.10 NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Sections 2.04, 2.07 and 2.08, nothing contained in this Community 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.

2.11 OWNERSHIP OF COMMUNITY AREA : The Community Area shall be conveyed to the Community Association free of mortgages no later than the Turnover Date; however any such area which is made subject to this Community Declaration after the Turnover Date shall be conveyed to the Community Association free of mortgages no later than ninety (90) days after such area is made subject to this Community Declaration, or the Turnover Date, whichever occurs later.

2.12 REAL ESTATE TAXES FOR COMMUNITY AREA: If a tax bill is issued with respect to Community Area which is made subject to this Community Declaration in the middle of a tax year (regardless of when it is conveyed to the Community Association), then the tax bill shall be prorated so that the Declarant shall be responsible for the payment of that portion of the

UNOFFICIAL COPY

tax bill from January 1st of the tax year to the date that such area is made subject to this Community Declaration, and the Community Association shall be responsible for the balance of the tax bill.

ARTICLE THREE

Maintenance/Services/Alterations

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 COMMUNITY ASSOCIATION:

(a) The following maintenance, repairs and replacements shall be furnished by the Community Association as a Community Expense:

(1) Grass cutting and added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Premises;

(2) Maintenance, repair and replacement of improvements located on the Community Area, including, without limitation, all storm water detention facilities, walking paths and other improvements from time to time located on the Community Area, if any; provided, however, that maintenance (other than snow removal), repair and replacement of the private driveways and walkways which serve the Townhomes and are located on portions of the Community shall not be furnished by the Community Association, but shall be furnished by the Townhome Association, as more fully provided in the Townhome Declaration;

(3) Maintenance (including snow removal), repair and replacement of (i) the private road which serves the Premises, (ii) parking spaces 1 through 42, both inclusive, as shown on the Parking Plan, and (iii) the driveway which serves parking spaces 12 through 21, both inclusive, as shown on the Parking Plan; and

(4) Snow removal from all driveways and walkways located on the Premises.

(b) The Community Association shall maintain the grass, shrubs, trees, and flowers, if any, installed by the Declarant on the Community Area ("Initial Plantings") in accordance with generally accepted landscape maintenance standards, including mowing, trimming, fertilization, pruning, re-mulching, applications of insect and disease control, as needed, and any other maintenance which will promote the health of the Initial Plantings. If the Community Association fails to maintain the Initial Plantings in accordance with generally acceptable landscape maintenance standards and Initial Plantings die or decline as a result of this failure, then, the Community Association shall be responsible for the replacement of the declining or dead Initial Plantings, including, but not limited to replacements required by the Municipality in connection with the Municipality's acceptance of the Initial Plantings. All expenses incurred under this subsection shall be Community Expenses.

UNOFFICIAL COPY

(c) In addition to the services required to be provided by the Community Association as provided in subsection (a) above, the Community Association may (at the request of an Owner of a Rental Parcel or a Condominium Association, which the Community Association can grant or deny in its discretion) furnish services relating to the use and maintenance of a Parcel or Parcels owned by the Owner of a Rental Parcel or administered by a Condominium Association, such as, for example, maintenance of landscaping on the Parcel and snow removal from driveways and service walks located on a Parcel and may charge the cost of providing such services to the Owner of the Rental Parcel or the Condominium Association which benefits from the service. The Managers may charge the Owner of each Rental Parcel or the Condominium Association which receives any such service for the reasonable cost of providing such service, which may be allocated in equal shares for each of the Parcels which is served, or on such other reasonable basis as the Managers may deem appropriate. Any amount charged to an Owner of a Rental Parcel or Condominium Association for services furnished pursuant to this Section shall be due and payable at such time or times as designated by the Managers and failure to pay any such amount shall give rise to a lien provided for in Section 7.01. No request from a Condominium Association for services to be provided by the Community Association shall be deemed to be a delegation of powers by the Condominium to the Community Association

3.03 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Premises may not be separately metered and billed to the Community Association. If the cost for any such utility is metered and charged to individual Dwelling Units or a Rental Parcel rather than being separately metered and charged to the Community Association, then the following shall apply:

(a) If in the opinion of the Managers, 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 Managers, the Owner is being charged disproportionately for costs allocable to the Community Area, then the Community Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Managers is properly allocable to the Community Area, and the amount thereof shall be Community Expenses not-reunder.

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

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

UNOFFICIAL COPY

3.05 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 Managers.

(b) The Community 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.

(c) If the Community Association shall alter, in any way, landscaping which was installed by the Declarant on the Community Area, and if the Municipality requires that the altered area be returned to its original state, then the Community Association shall be responsible for restoring the altered area in accordance with the plans approved by the Municipality and the cost thereof shall be a Community Expense.

ARTICLE FOUR Insurance/Condemnation

4.01 COMMUNITY AREA INSURANCE:

(a) The Community Association shall have the authority to and shall obtain fire and all risk coverage insurance covering the improvements, if any, to the Community Area and other improvements required to be maintained by the Community Association (based on current replacement cost for the full insurable replacement value) of such improvements.

(b) The Community Association shall have the authority to and shall obtain (i) 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 Community 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 on or in connection with, the Community Area, and (ii) Directors and officers liability insurance in such amounts as the Board shall deem desirable (but not less than \$1,000,000 covering all claims arising out of a single occurrence). In addition, 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.

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

UNOFFICIAL COPY

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

4.02 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area owned by the Community Association, the proceeds awarded in such condemnation shall be paid to the Community Association and such proceeds, together with any 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, based on the relative Assessment Points assigned to each Dwelling Unit, 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 Community Declaration. Any acquisition by the Community 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 Community Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Community Association and Recorded.

ARTICLE FIVE

The Community Association

5.01 IN GENERAL: Declarant has caused or shall cause the Community Association to be organized as a limited liability company under the laws of the State of Illinois. The Community Association shall be the governing body for all of the Owners for the administration, operation and maintenance, repair and replacement of the Community Area, as provided herein.

5.02 MEMBERSHIP: Each Owner shall be a member of the Community Association. There shall be one membership for each Owned Unit, and each Owner of a Rental Parcel shall have one membership for each Dwelling Unit which it owns. There shall be three (3) classes of membership. Each Owner of an Owned Unit (other than Declarant) shall be a "Class A Member"; each Owner of a Rental Parcel (other than Declarant) shall be a "Class B Member"; and the Declarant shall be a "Class C Member" with respect to each Dwelling Unit it Owns. Membership shall be appurtenant to and may not be separated from ownership of an Owned Unit or Rental Parcel. Ownership of an Owned Unit or Rental Parcel shall be the sole qualification for membership. The Community Association shall be given written notice of the change of ownership of an Owned Unit or Rental 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 Community Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Owned Unit and each Rental 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 an Owned Unit or Rental 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 Owned Unit or Rental Parcel shall be designated by such Owner or Owners in writing to the Managers and if in the case of multiple individual Owners no designation is given, then the Managers at its election may recognize an individual

UNOFFICIAL COPY

Owner of the Owned Unit or Rental Parcel as the Voting Member for such Owned Unit or Rental Parcel.

5.04 MANAGERS/ COMMITTEE MEMBERS: Subject to the rights retained by the Declarant under Section 9.05, the Managers shall consist of that number of members provided for in the Operating Agreement, 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 Community Association shall be vested exclusively in the Declarant and the Owners (other than Declarant) shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Community Association shall be vested in the Voting Members, and each Voting Member who represents a Class A Membership shall have the number of votes equal to the number of Assessment Points assigned to the Dwelling Unit which the Voting Member represents, each Voting Members who represents a Rental Parcel shall have one (1) vote for each Dwelling Unit in the Rental Parcel, and the Declarant, as the Class C Member, shall have ten (10) votes for each Dwelling Unit which it owns. 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 Operating Agreement) upon an affirmative vote of a majority of the votes represented by Voting Members and the Declarant present at such meeting, except as otherwise provided herein or in the Operating Agreement.

5.06 MANAGERS LIABILITY: None of the Managers, the committee members or the officers of the Community Association shall be personally liable to the Owners or the Community Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Managers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Community Association shall indemnify and hold harmless the Declarant and each of the Managers, the committee members and officers, his heirs, executors or administrators, against all contractual and other liabilities to the Owners, the Community Association or others arising out of contracts made by or other acts of the Managers on behalf of the Owners or the Community Association or arising out of their status as Managers 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 counsel selected by or in a manner determined by the Managers, 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, officer or committee member.

UNOFFICIAL COPY

5.07 MANAGING AGENT: Any management agreement entered into by the Community Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Community Association without payment of a termination fee on ninety (90) days written notice.

5.08 REPRESENTATION: The Community Association shall have the power and right to represent the interests of all of the Owners in connection with claims and disputes affecting the Community Area. Without limiting the foregoing, the Community Association shall have the power after the Turnover Date to settle warranty disputes or other disputes between the Community Association, the Owners, and the Declarant affecting the construction, use or enjoyment of the Community Area, and any such settlement shall be final and shall bind all of the Owners.

5.09 DISSOLUTION: To the extent permissible under applicable law, in the event of the dissolution of the Community Association, any Community owned by the Community Association shall be conveyed to the Owners of Owned Units and Rental Parcels as tenants in common. The Community Association shall not voluntarily dissolve without the prior written consent of the Municipality.

5.10 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the Community 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 Dwelling Units to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Community Association to enforce the provisions of this Community Declaration, the Operating Agreement or rules and regulations adopted by the Managers (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Community Association in proceedings instituted against it.

5.11 MERGER: Prior to the Turnover Date, the Declarant, or after the Turnover Date, the Managers, shall have the right, power and authority to (i) organize an Illinois not for profit corporation ("NFP Association"), and (b) merge the Association into the NFP Association, all as permitted under applicable laws of the State of Illinois ("Merger Transaction"). In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant and/or the Managers, as applicable, to make, consent to, and execute the Merger Transaction provided for above 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 and/or the Managers to make, consent to, and execute the Merger Transaction and take such other actions as the Declarant and/or the Managers deem necessary or appropriate to carry out the intent of Merger Transaction, including, without limitation, adopting By-Laws for the NFP Association and transferring Common Area, bank accounts, contracts and other property or assets to the NFP Association. From and after the Merger Transaction, the NFP Corporation shall be and become the Association hereunder.

ARTICLE SIX

UNOFFICIAL COPY

Assessments

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Community Association shall be exclusively for the purposes of administering the affairs of the Community Association, paying the Community Expenses and accumulating reserves for any such expenses.

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

- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Community Expenses;
- (c) The estimated net available cash receipts, if any, from sources other than Community Assessments, if any;
- (d) The amount of the "Community Assessment" payable by the Owners of Dwelling Units, which is hereby defined as the amount determined in (a) above, plus the amount in (b) above, minus the amount determined in (c) above;
- (e) That portion of the Community Assessment which shall be payable with respect to the ensuing calendar year by the Owner of each Dwelling Unit which is subject to assessment hereunder, which shall be equal to the Community Assessment multiplied by a fraction, the numerator of which shall be the Assessment Points assigned to the Dwelling Unit in question and the denominator of which shall be the total number of Assessment Points assigned to all Dwelling Units which are Subject to Assessment. The Community Assessment shall be paid in periodic installments as determined by the Board from time to time, but no less frequently than quarterly.

Anything herein to the contrary notwithstanding the following provisions shall apply with respect to the period prior to the Turnover Date. Any budget ("Stabilized Budget") prepared prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's Development Plan, and (ii) all proposed Dwelling Units have been sold and are occupied and are Subject to Assessment. Prior to the Turnover Date, each Owner (other than the Declarant) which is Subject to Assessment shall pay as the Owner's monthly share of the Community Assessment an amount equal to the budgeted Community Expenses as shown on the Stabilized Budget divided by the number of planned Dwelling Units as shown on the Declarant's Development Plan, divided by 12 so that each Owner (other than Declarant) which is Subject to Assessment will pay, with respect to each Dwelling Unit owned by the Owner, a monthly Community Assessment equal to what the Owner would be paying if the Development were fully constructed pursuant to the Declarant's Development Plan and all proposed Dwelling Units have been built and are occupied and are Subject to Assessment. Declarant shall not be obligated to pay any Community Assessments prior to the Turnover Date. However, if with respect to the period commencing on the date of

UNOFFICIAL COPY

the Recording of this Community Declaration and ending on the Turnover Date, the amount of Community Assessments billed to Owners (regardless of whether paid by Owners), plus working capital contributions under Section 6.07 payable by Owners (other than Declarant) less the portions thereof which are to be added to Reserves is less than the Community Expenses actually incurred with respect to such period, then the Declarant shall pay the difference to the Community Association. From time to time prior to the Turnover Date, the Declarant may (but shall not be obligated to) advance to the Community Association funds to be used by the Community Association to pay its expenses ("Advanced Funds"). A final accounting and settlement of the amount, if any, owed by Declarant to the Community Association shall be made as soon as practicable after the Turnover Date. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, are less than the amount owed by the Declarant to the Community Association pursuant to this Section, the Declarant shall pay the difference to the Community Association. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, exceed the amount owed by the Declarant to the Community Association pursuant to this Section, then the Community Association shall pay such excess to the Declarant.

6.03 PAYMENT OF 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 Assessments, each Owner of a Dwelling Unit which is Subject to Assessment shall pay to the Community Association, or as the Managers may direct, that portion of the Community Assessments which is payable by each Owner of a Dwelling Unit under Section 6.02.

6.04 REVISED ASSESSMENT: If the Community Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Managers may increase or decrease the assessments payable under Section 6.02 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: The Managers 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 Community 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 Community Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against the Dwelling Unit which are Subject to Assessment using the same procedure provided in Section 6.02(e). 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 and only those Owners of Dwelling Units against which the proposed special assessment shall be levied may vote on the question. The Managers 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 Managers. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be

UNOFFICIAL COPY

segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.06 CAPITAL RESERVE: The Community Association shall segregate and maintain special reserve accounts (the "Capital Reserve") to be used solely for making capital expenditures in connection with the repair and replacement improvements located on the Community Area and other areas required to be maintained by the Community Association ("Reserve Items"). The Managers shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Reserve Items and other property owned by the Community Association and periodic projections of the cost of anticipated major repairs or replacements to the Reserve Items and the purchase of other property to be used by the Community Association in connection with its duties hereunder. The Capital Reserve may be built up by separate or special assessments or out of the Community Assessments provided for in the budget. Special accounts set up for portions of the Capital Reserve to be used to make capital expenditures with respect to the Reserve Items shall be held by the Community Association as agent and trustee for the Owners of Dwelling Units with respect to which the Capital Reserve is held and such accounts shall be deemed to have been funded by capital contributions to the Community Association by the Owners. The budgets which will be adopted from time to time by the Managers appointed by the Declarant prior to the Turnover Date shall include reserve buildups which the Managers deems to be appropriate based on information available to the Managers. Managers elected by the Owners after the Turnover Date may use different approaches from those used by Managers appointed by the Declarant for the buildup of reserves or may choose not to provide for the buildup of reserves for certain capital expenditures or deferred maintenance for repairs or replacements of the Reserve Items. If the Managers chooses not to provide for the buildup of reserves for a particular anticipated expenditure or if the buildup of reserves that the Managers does provide for in its budgets does not result in sufficient funds to pay for the expenditure when the expenditure must be made, then (i) neither the Managers nor any of its past or present members shall be liable to the Community Association or the Owners for failing to provide for sufficient reserves and (ii) the Managers shall have the right and power to either levy a separate or special assessment to raise the funds to pay the expenditure or to borrow funds to pay the expenditure and repay the borrowed funds out of future Community Assessments, separate assessments or special assessment

6.07 INITIAL CAPITAL CONTRIBUTION:

(a) Upon the closing of the first sale of an Owned Unit by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Community Association in an amount equal to three (3) monthly installments of the then current Community Assessment, which amount shall be held and used by the Community Association for its working capital needs. In addition, the purchasing Owner of the Owned Unit shall make a payment to the Community Association in the amount of one hundred dollars (\$100.00) to be added to the Capital Reserve.

(b) Upon the closing of a Rental Parcel by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Community Association in an amount equal to three (3) monthly installments of the then current Community Assessment, multiplied by

UNOFFICIAL COPY

number of Dwelling Units contained in the Building constructed on the Rental Parcel, which amount shall be held and used by the Community Association for its working capital needs. In addition, the purchasing Owner of the Rental Parcel shall make a payment to the Community Association in the amount of one hundred dollars (\$100.00) multiplied by the number of Dwelling Units planned to be constructed on the Rental Parcel, which amount shall be added to the Capital Reserve.

6.08 PAYMENT OF ASSESSMENTS: Assessments levied by the Community Association shall be collected from each Owner by the Community Association and shall be a lien on the Owner's Owned Unit or Rental Parcel and also shall be a personal obligation of the Owner in favor of the Community 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 an Owned Unit or Rental 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 Community Association all Charges made with respect to the Owner or the Owner's Owned Unit or Rental Parcel, as applicable. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Owned Unit or Rental Parcel against which such Charge is made and also shall be the personal obligation of the Owner of the Owned Unit or Rental 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 Community Association.

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

7.03 NON-PAYMENT OF CHARGES: Any Charge which is not paid to the Community Association when due shall be deemed delinquent. Any Charge which is delinquent for fifteen (15) 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 Community 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 Managers 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 Owned Unit or Rental 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 Owned Unit or Rental 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,

UNOFFICIAL COPY

shall not be affected by any sale or transfer of an Owned Unit or Rental Parcel. Where title to an Owned Unit or Rental 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 Owned Unit or Rental Parcel shall be personally liable for his share of the Charges with respect to which a lien against his Owned Unit or Rental 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 Owned Unit or Rental Parcel, as provided in this Article.

7.05 SELF-HELP BY MANAGERS: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Community Declaration, the Operating Agreement, or rules or regulations of the Managers, where such violation or breach may be cured or abated by affirmative action, then the Managers, 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.

7.06 OTHER REMEDIES OF THE MANAGERS: In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Community Declaration or any rules and regulations adopted hereunder the Managers may levy a fine or the Managers may bring an action at law or in equity in the name of the Community 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 Owned Unit or Rental Parcel to enforce any lien created hereunder; and failure by the Community 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 Managers 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 Community Association shall have a lien for all the same, upon his Owned Unit or Rental Parcel as provided in Section 7.01.

7.08 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Community 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 an Owned Unit or Rental Parcel to enforce any lien created hereunder.

7.09 BACKUP SSA: The Municipality may establish a "Special Service Area" to serve as what is commonly referred to as a "Backup Special Service Area" to give the Municipality the power to levy taxes to pay the cost of maintaining the areas required to be maintained by the

UNOFFICIAL COPY

Community Association hereunder if the Community Association fails to do so and the Municipality chooses to furnish such services.

ARTICLE EIGHT Use Restrictions

8.01 USE RESTRICTIONS: Except as provided in Article Nine, no industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Community Area.

8.02 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, except as permitted by the Managers or as permitted under Article Nine.

8.03 OBSTRUCTIONS AND REFUSE: Except as permitted under Article Nine, there shall be no obstruction of the Community Area and nothing shall be stored on the Community Area without the prior written consent of the Managers. The Community Area shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon.

8.04 PETS: No animal of any kind shall be raised, bred or kept in the Community Area. The Managers may from time to time adopt rules and regulations governing the 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 Managers to the Owner of the Owned Unit or Rental Parcel containing such pet and the decision of the Managers shall be final.

8.05 PROSCRIBED ACTIVITIES: 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 unreasonable annoyance or nuisance to the Residents. There shall be no swimming, fishing, boating, ice skating or use of personal flotation devices in or on any lake or detention area on the Community Area (other than by the Community Association as required to provide the maintenance required to be provided by the Community Association hereunder), it being intended that such areas shall be aesthetic amenities only and shall not be used for active recreational purposes.

8.06 PARKING:

(a) Unless expressly permitted by the Managers, no boats, trucks, recreational vehicles, trailers, commercial vehicles or other similar vehicles shall be parked or stored on any portion of the Community Area.

(b) Parking spaces 1 through 18, both inclusive, as shown on the Parking Plan, are reserved for use by Owners and Residents of Dwelling Units located on Lot 3 of the Original Subdivision. Parking spaces 19 through 36, both inclusive, as shown on the Parking Plan, are

UNOFFICIAL COPY

reserved for use by Owners and Residents of Dwelling Units located on Lot 4 of the Original Subdivision, and their guest and invitees. Parking spaces 37 through 41, both inclusive, as shown on the Parking Plan, may be used by any Owner or Resident, and their guests and invitees.

8.07 WATERING: The Managers may adopt rules and regulations governing the watering of grass, shrubs, trees and other foliage on the Community Area. Without limiting the foregoing, the Managers may require the Owner of a particular Owned Unit or Rental Parcel to be responsible for watering specific portions of the Community Area.

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 Community Declaration or the Operating Agreement, the Declarant shall have the rights and powers set forth in this Article. Anything in this Community Declaration or the Operating Agreement to the contrary notwithstanding, the provisions set forth in this Article shall govern. Except as otherwise provided in this Article, the rights reserved to the Declarant in this Article shall terminate five (5) years from such time as the Declarant is no longer vested with or in control of title to any portion of the Development Area ("Declarant Rights Period").

9.02 PROMOTION OF PROJECT: The Declarant shall have the right and power, within its sole discretion, to (i) 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, (ii) 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 to use such model homes (including model homes which are sold by and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Dwelling Units on the Premises or at other properties in the general vicinity of the Premises which are being offered for sale by the Declarant or any of its affiliates, without the payment of any fee or charge whatsoever to the Community Association. 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 Dwelling Unit owned by it 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 Dwelling Units or to the Community Area which the Declarant deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or

UNOFFICIAL COPY

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 to any 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 or water lines, or any other utility services serving any Dwelling Unit.

9.05 DECLARANT CONTROL OF COMMUNITY ASSOCIATION: Prior to the Turnover Date, the Managers shall be the Declarant, or one or more entities or persons designated by the Declarant from time to time who need not be Owners or Voting Members. Initially the Declarant shall be the sole Manager. The rights and powers of the Declarant to manage the affairs of the Community Association and to designate the Managers of the Community Association shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any portion of the Development Area, (ii) the giving of written notice by Declarant to the Community Association of Declarant's election to terminate such rights, or (iii) fifteen (15) years from the date of Recording hereof. The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date". From and after the Turnover Date, the Managers shall be constituted and elected as provided in the Operating Agreement. 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 (other than Declarant) 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 Community Declaration.

9.07 ASSIGNMENT BY DECLARANT: All rights which are specified in this Community Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable, in whole or in part. 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.

9.08 DESIGN AND MAINTENANCE CONTROLS:

(a) The Declarant shall have the right and power from time to time to adopt reasonable rules, regulations, guidelines, and standards governing the design and exterior finish (including color) of all improvements or landscaping from time to time constructed, installed or proposed to

UNOFFICIAL COPY

be constructed, installed or modified on the Premises. Without limiting the foregoing, no earthmoving, filling, dredging, grading, excavating, installation of landscaping, alteration of landscaping, construction of a building, driveway, service walk, signs or other advertising or promotional devices or any other temporary or permanent improvement to any portion of the Premises or any modification, alteration, renovation, addition or removal of any of the foregoing, including change of exterior color ("Regulated Work") shall be commenced or maintained with respect to any portion of the Premises without the prior written consent of the Declarant to the plans therefor, which consent may be granted or withheld in Declarant's sole and absolute discretion. The Declarant reserves the right and power to promulgate and amend from time to time standards, policies, procedures and guidelines in order to implement the foregoing. If any Regulated Work which requires Declarant approval as provided above is commenced without obtaining the required written consent of the Declarant, then the Declarant may seek any remedy or take any action provided for herein or permitted at law or in equity in order to enforce the provisions hereof, including injunctive relief to stop work and/or restore the portion of the Premises to its condition prior to the commencement of the work. Declarant's decision to approve or disapprove Regulated Work in one instance shall not in any way create or establish a precedent for how the Declarant must respond to a request for Regulated Work subsequently made, it being understood that circumstances, situations and standards may change and the Declarant reserves the right and power to grant or deny requests as Declarant believes are appropriate in Declarant's sole and absolute discretion.

(b) The Declarant shall have the right and power from time to time to adopt rules, regulations, guidelines, and standards governing the maintenance and upkeep of portions of the Premises, including without limitation, improvements thereto, signs, advertising and landscaping thereon. Without limiting the foregoing, those portions of the Premises on which construction of improvements has not yet commenced shall at all times be maintained in a neat and clean condition and all weeds shall be periodically cut. If in the sole judgment of the Declarant a portion of the Premises is not being maintained in good condition and repair or the appearance of any such portion of the Premises is not of the character and quality of that of other portions of the Premises or is not in compliance with rules, regulations, guidelines, and standards adopted from time to time by the Declarant, then without limiting any rights or remedies available to the Declarant hereunder, at law or in equity, Declarant shall have the right to enter upon any such portion of the Premises and perform any maintenance or repair work which it deems necessary or appropriate. The cost of any such work shall be charged to the Owner or party responsible for maintenance of such portion of the Premises if different from the Owner, and shall be payable to the Declarant upon demand. In the event that the party charged for such work fails to make prompt payment of any such amount within thirty (30) days after demand, such amount shall become and continue to be a lien upon the portion of the Premises owned by such party until such time as payment is made in full; provided, that any such lien shall be subordinate to the lien of any First Mortgage on an Owned Unit or Rental Parcel Recorded prior to the date on which any such amount becomes a lien against an Owned Unit or Rental Parcel as provided above.

(c) Any one or more of the rights and powers of the Declarant under this Section may be delegated to one or more individuals or entities designated from time to time by the Declarant.

UNOFFICIAL COPY

(d). Subject as hereinafter provided, from time to time, the Declarant may enter into an agreement ("Transfer Agreement") with the Community Association whereby the Declarant assigns and transfers to the Community Association some or all of its rights and powers under subsections (a) and (b). Any Transfer Agreement shall be executed by both the Declarant and the Community Association and shall be recorded; provided, that the execution of the Transfer Agreement by the Community Association shall be approved in advance by action of the Voting Members at an annual meeting or special meeting of the Voting Members. A Transfer Agreement may include such terms as are agreed upon between the Declarant and the Community Association. From and after the recording of a Transfer Agreement, the rights and powers of the Declarant under subsections (a) and (b) which are transferred to the Community Association pursuant to the Transfer Agreement shall be administered as provided in the Transfer Agreement. Any rights and powers of the Declarant under subsections (a) and (b) which are not transferred to the Community Association pursuant to a Transfer Agreement shall expire and terminate at such time as (i) the Development has been fully developed and improved per Declarant's Development Plan and (ii) the Declarant no longer holds or controls title to any portion of the Development Area.

9.09 MATTERS AFFECTING COMMUNITY AREA: During the Declarant Rights Period, the Community Association shall not cause or permit a lien or encumbrance to be placed or imposed on any portion of the Community Area without the prior written consent of the Declarant. Any such lien or encumbrance placed or imposed on a portion of the Community Area without Declarant's consent shall be null and void. In order to reflect or conform to a change in the Declarant's Development Plan, any time prior to the end of the Declarant Rights Period, the Declarant shall have the right and power to (i) Record a Special Amendment pursuant to Section 10.01(vi) to withdraw and remove any portion or portions of the Community Area from the Premises, and (ii) require the Community Association to convey such portions of Community Area which are so withdrawn and removed from the Community Area to Declarant or its nominee, free and clear of any liens or encumbrances other than those created by or consented to by the Declarant pursuant to this Section.

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 Community Declaration at any time and from time to time which amends this Community Declaration (i) to comply with requirements of Fannie Mae, 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 Owned Units and Rental Parcels, (iii) to correct errors, omissions, ambiguities or inconsistencies in the Community Declaration or any Exhibit, (iv) to bring the Community Declaration into compliance with applicable laws, ordinances or governmental regulations, (v) to amend Exhibit A to include additional real estate, (vi) to amend Exhibit B to withdraw real estate from the Premises as provided for in Section 9.09, (vii) to

UNOFFICIAL COPY

amend Exhibit B to reflect the conversion of a Rental Parcel to a Condominium Parcel, (viii) to reflect a change in the Declarant's Development Plan, and/or (ix) to reflect the terms of a Cross Easement and Cost Sharing Agreement. 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 an Owned Unit or Rental 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 five (5) years from 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 Community 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 Dwelling Units representing at least seventy-five percent (75%) of the total votes; 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, (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, and (iii) the provisions of Sections 2.05(b), 2.05(c), 3.02(a)(iii) and 8.06(b) may not be amended without the prior written consent of all Owners of a portion of Lot 3 and Lot 4 in the Original Subdivision. No amendment which removes Premises from the provisions of this Community Declaration shall be effective if as a result of such removal, an Owner or Resident of a Dwelling Unit shall no longer have the legal access to a public way from his Dwelling Unit. No amendment which adversely and materially affects the rights of the Municipality hereunder shall become effective without the prior written consent of the Municipality. 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 Community Declaration by the Community Association to the Owner of the Owned Unit or Rental Parcel covered by the First Mortgagee's mortgage;

(b) Any audited or unaudited financial statements of the Community Association which are prepared for the Community 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 Community Association shall permit such party to have an audited statement for the preceding fiscal year of the Community Association prepared at such party's expense;

UNOFFICIAL COPY

- (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 Owned Unit or Rental 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 Owned Unit or Rental Parcel subject to the First Mortgagee's mortgage.
- (g) Notice of any default by the Owner of the Owned Unit or Rental Parcel which is subject to the First Mortgagee's mortgage under this Community Declaration, the Operating Agreement or the rules and regulations of the Community Association which is not cured within thirty (30) days of the date of the default;
- (h) The right to examine the books and records of the Community Association at any reasonable times;
- (i) In the case of a First Mortgagee, the right to be listed on the records of the Community Association as an "Eligible First Mortgagee" for purpose of Section 11.02 below; and
- (j) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Community 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 Community Association.

11.02 CONSENT OF FIRST MORTGAGEES:

(a) In addition to any requirements or prerequisites provided for elsewhere in this Community Declaration, the consent of First Mortgagees holding, in the aggregate, the first mortgages on at least two-thirds (2/3) of the Dwelling Units (by number) which are subject to first mortgages held by First Mortgagees which specifically request to be treated as "Eligible First Mortgagees" under Section 11.01(i) above will be required for the Community Association to do or permit to be done any of the following:

- (1) Adoption of an amendment to this Community Declaration which (i) changes Article Six or otherwise changes the method of determining the Community Assessments or other Charges which may be levied against an Owner; (ii) changes Section 7.04 or Article Ten, (iii) changes this Article Eleven, Article Twelve or any other provision of this Community Declaration or by Operating Agreement which specifically grants rights to First Mortgagees, (iv) materially changes insurance and fidelity bond requirements, (v)

UNOFFICIAL COPY

changes voting rights, or (vi) imposes a right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Owned Unit or Rental Parcel; or

(2) The withdrawal of the Premises from the provisions of this Community Declaration.

However, in no event shall the consent of Eligible First Mortgagees be required with respect to any action taken by Declarant pursuant to Article Twelve.

(b) Whenever required, the consent of an Eligible First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary, in writing, by the Eligible First Mortgagee within sixty (60) days after making the request for consent.

11.03 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 Community Area; 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 based on the relative Assessment Points assigned to each Dwelling Unit, and no Owner or other party shall be entitled to priority over the First Mortgagee of an Owned Unit or Rental Parcel with respect to any such distribution to or with respect to such Owned Unit or Rental Parcel; provided, that, nothing in this Section shall be construed to deny to the Community Association the right (i) to apply insurance proceeds to repair or replace damaged Community Area 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 fifteen (15) years from the date of Recording of this Community Declaration to annex, add and subject additional portions of the Development Area to the provisions of this Community Declaration as additional Premises by recording a supplement to this Community Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Development Area which is subjected to this Community Declaration by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Condominium Units shall be referred to as "Added Condominium Units"; any portion of the Added Premises which is made part of the Townhome Lots shall be referred to as "Added Townhome Lots"; any portion of any Added Premises which is made part of the Rental Parcel shall be referred to as "Added Rental Parcel"; any portion of any Added Premises which is made part of the Community Area shall be referred to as "Added Community Area". After the expiration of said fifteen (15) 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 Community Declaration, provided that the consent the Owners (by number) of two-thirds (2/3) of all Dwelling Units then subject to this Community Declaration is first obtained.

UNOFFICIAL COPY

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 Condominium Units, Added Townhome Lots, Added Rental Parcel and Added Community Area to this Community 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 Community Declaration applies to the Premises, and Persons having an interest or estate in the Premises, subjected to this Community Declaration prior to the date of the Recording of the Supplemental Declaration;

(b) Every Owner of an Added Condominium Unit, Added Townhome Lot or Added Rental Parcel shall be a member of the Community Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Condominium Units, Townhome Lots and Rental Parcels immediately prior to the Recording of such Supplemental Declaration;

(c) In all other respects, all of the provisions of this Community Declaration shall include and apply to the Added Premises (including the Added Condominium Units, Added Townhome Lots, Added Rental Parcel and Added Community Area, if any) made subject to this Community 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 Community 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 an Owned Unit or Rental 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 Community Declaration,

UNOFFICIAL COPY

plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

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

ARTICLE THIRTEEN

Miscellaneous

13.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Community Declaration or the Operating Agreement shall be deemed to have been properly sent if (i) mailed, postage prepaid, to his or its last known address as it appears on the records of the Community Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or e-mail address as either appears on the records of the Community Association at the time of such transmittal, or (iii) with respect to Owned Units, when personally delivered to his or its Owned Unit. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

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

13.03 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 Community Declaration which shall, and all other provisions, remain in full force and effect.

13.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Community 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 Community Declaration is Recorded.

13.05 TITLE HOLDING LAND TRUST: In the event title to any Owned Unit or Rental Parcel is held by a title holding trust, under the terms of which all powers of management, operation and control of the Owned Unit or Rental 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

UNOFFICIAL COPY

chargeable or created under this Community Declaration against such Lot. 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 Owned Unit or Rental 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 Owned Unit or Rental Parcel.

13.06 WAIVER OF IMPLIED WARRANTY OF HABITABILITY AND OTHER WARRANTIES: Illinois courts have held that every contract for the construction of a new home in Illinois carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. The courts have also held that this "Implied Warranty of Habitability" does not have to be in writing to be a part of the contract and that it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defect in workmanship which may not easily be seen by the buyer. However, the courts have also held that a seller-builder and buyer may agree in writing that the Implied Warranty of Habitability is not included as a part of their particular contract. Each buyer of an Owned Unit from Declarant agreed in the purchase contract that the Declarant has excluded and disclaimed the Implied Warranty of Habitability and all other implied warranties, whether created judicially, statutorily or by common law, including the implied warranty of fitness for a particular purpose. Such exclusion and disclaimer shall apply to and bind any subsequent Owner of an Owned Unit and, accordingly, no Owner of an Owned Unit shall have the right to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

[Signature page follows]

UNOFFICIAL COPY

CONSENT OF MORTGAGEE

Evergreen Bank, as holder of a mortgage dated July 17 2012, and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on July 23, 2012, as Document No. 122050405 with respect to the Parcel, hereby consents to the recording of this Condominium Declaration to which this Consent is attached and agrees that its mortgage shall be subject to the terms of this Condominium Declaration.

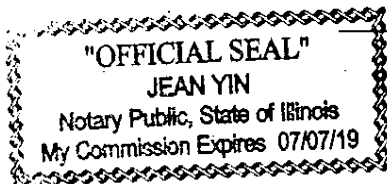
Dated: March 14, 2014

Carolyn Owen
By: CAROLYN A. OWEN
Its: VICE PRESIDENT

STATE OF ILLINOIS)
 DuPage) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County and State, do hereby certify that Carolyn A. Owen, the Vice President of Evergreen Bank (the "Bank"), and, as such, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument as his/her free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of March, 2014.



[Signature]
Notary Public

UNOFFICIAL COPY

EXHIBIT A TO AMENDED AND RESTATED COMMUNITY DECLARATION FOR CLOCKTOWER POINTE OF COUNTRYSIDE

The Development Area

All Lots in Clocktower Pointe of Countryside Planned Development of Lot 1 in Clocktower Pointe of Countryside, begin a consolidation of properties in the West Half of the Northeast Quarter of Section 20, Township 38 North, Range 12 East of the Third Principal Meridian, as per Plat of Clocktower Pointe Planned Development recorded September 21, 2006 as Document No. 0626427063, in Cook County, Illinois; and also

All Lots in Clocktower Pointe of Countryside Resubdivision Replat of Planned Development, in the West Half of the Northeast Quarter of Section 20, Township 38 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the plat thereof recorded in Cook County, Illinois on March 14, 2017, as Document No. 1707329136.

UNOFFICIAL COPY

EXHIBIT B -1 TO AMENDED AND RESTATED COMMUNITY DECLARATION FOR CLOCKTOWER POINTE OF COUNTRYSIDE

The Premises

I. Premises:

Lots 4 and 7 in Clocktower Pointe of Countryside Planned Development of Lot 1 in Clocktower Pointe of Countryside, being a consolidation of properties in the West Half of the Northeast Quarter of Section 20, Township 38 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the Plat of Clocktower Pointe Planned Development recorded in Cook County, Illinois on September 21, 2006 as Document No. 0625427063 ("Clocktower Pointe of Countryside").

II. Rental Parcel:

None at this time.

III. Condominium Units:

Units 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 501, 502, 503, 504, 601 and 602, created pursuant to Declaration of Condominium Ownership for Clocktower Pointe of Countryside Condominium No. 4, recorded immediately prior to the recording of this Community Declaration for Clocktower Point of Countryside.

IV. Community Area:

Lot 7 in Clocktower Pointe of Countryside.

UNOFFICIAL COPY

EXHIBIT B -2 TO AMENDED AND RESTATED COMMUNITY DECLARATION FOR CLOCKTOWER POINTE OF COUNTRYSIDE

The Premises

I. Premises:

Lots 3 and 4 in Clocktower Pointe of Countryside Planned Development of Lot 1 in Clocktower Pointe of Countryside, being a consolidation of properties in the West Half of the Northeast Quarter of Section 20, Township 38 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the Plat of Clocktower Pointe Planned Development recorded in Cook County, Illinois on September 21, 2006 as, Document No. 0326427063 ("Clocktower Pointe of Countryside").

Lots 1 through 24, both inclusive, in Clocktower Pointe of Countryside Resubdivision Replat of Planned Development, in the West Half of the Northeast Quarter of Section 20, Township 38 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the plat thereof recorded in Cook County, Illinois on March 14, 2017, as Document No. 1707329136 ("Clocktower Pointe of Countryside Resubdivision").

II. Rental Parcel:

Lot 3 in Clocktower Point of Countryside.

III. Condominium Units:

Units 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 501, 502, 503, 504, 601 and 602, created pursuant to Declaration of Condominium Ownership for Clocktower Pointe of Countryside Condominium No. 4, recorded in Cook County, Illinois on May 21, 2015, as Document No. 1514145063.

IV. Townhome Lots:

Lots 1 through 23, both inclusive, in Clocktower Pointe of Countryside Resubdivision.

V. Community Area:

Lot 24 in Clocktower Pointe of Countryside Resubdivision.

18-20-200-131-0000; 18-20-200-132-0000; 18-20-200-133-0000;
18-20-200-134-0000; 18-20-200-135-0000; 18-20-200-136-0000;
PINs: ~~To be inserted prior to recording.~~ 18-20-200-137-0000

Addresses: ~~To be inserted prior to recording.~~ 10765 CLOCKTOWER DRIVE, COUNTRYSIDE, IL
6531 WILLOW SPRINGS ROAD,
COUNTRYSIDE, IL

UNOFFICIAL COPY

EXHIBIT C TO AMENDED AND RESTATED COMMUNITY DECLARATION FOR CLOCKTOWER POINTE OF COUNTRYSIDE

Operating Agreement

AMENDED AND RESTATED OPERATING AGREEMENT OF CLOCKTOWER POINTE OF COUNTRYSIDE COMMUNITY ASSOCIATION, LLC

This Amended and Restated Operating Agreement is entered into as of _____, 20__ in Hinsdale, Illinois, between Clocktower Pointe of Countryside Community Association, LLC, an Illinois limited liability company (the "Community Association"), and Countryside 6, LLC, an Illinois limited liability company, its sole Member (sometimes referred to herein as the "Declarant").

A. Articles of Organization for the Community Association were filed with the Secretary of State of Illinois on May 6, 2015; and

B. Declarant desires to set forth the terms and conditions governing the management, operation and affairs of the Community Association.

THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

NAME OF COMMUNITY ASSOCIATION

The full legal name of the Community Association is Clocktower Pointe of Countryside Community Association, LLC.

ARTICLE II

PURPOSE AND POWERS

2.01 **PURPOSES:** The purposes of the Community 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, for the promotion of the health, safety and welfare and the common use and enjoyment thereof by Members of the Community Association. This Operating Agreement is subject to the provisions of the Amended and Restated Community Declaration for Clocktower Pointe of Countryside ("Community Declaration") recorded with the Office of the Recorder of Deeds for Cook County, Illinois, as amended or supplemented from time to time. All terms used herein (if not otherwise defined herein) shall have the meanings set forth in the Community Declaration.

UNOFFICIAL COPY

2.02 **POWERS:** The Community Association shall have and exercise all powers as are now or may hereafter be granted by the Illinois Limited Liability Company Act (the "Act"), the Community Declaration and this Operating Agreement.

2.03 **TAX STATUS.** It is intended that the Community Association shall be treated as an association taxable as a corporation and, to the extent determined from time to time by the Board (as hereafter defined), shall elect to be treated as a "homeowners association" under Section 528 of the Internal Revenue Code, or any successor provision thereto.

ARTICLE III OFFICES

3.01 **REGISTERED OFFICE:** The Community Association shall have and continuously maintain in the State of Illinois 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 Community Association's principal office shall be maintained on the Development Area or at the office of the managing agent employed by the Community Association, if any.

ARTICLE IV MEETINGS AND ACTIONS OF MEMBERS

4.01 **MEMBERSHIP.** Each Owner shall be a member of the Community Association. There shall be one membership for each Condominium Unit and each Townhome Lot, and each Owner of a Rental Parcel shall have one membership for each Dwelling Unit which it owns. There shall be three (3) classes of membership. Each Owner of a Condominium Unit (other than Declarant) and each Owner of the Townhome Lot (other than Declarant) shall be a "Class A Member"; each Owner of a Rental Parcel (other than Declarant) shall be a "Class B Member"; and the Declarant shall be a "Class C Member" with respect to each Dwelling Unit it Owns. Membership shall be appurtenant to and may not be separated from ownership of a Condominium Unit, Townhome Lot or Rental Parcel. Ownership of a Condominium Unit, Townhome Lot or Rental Parcel shall be the sole qualification for membership. The Community Association shall be given written notice of the change of ownership of a Condominium Unit, Townhome Lot or Rental Parcel within ten (10) days after such change.

4.02 **VOTING RIGHTS:** Prior to the Turnover Date, all of the voting rights at each meeting of the Community Association shall be vested exclusively in the Declarant and the Owners (other than Declarant) shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Community Association shall be vested in the Voting Members, and each Voting Member who represents a Class A Membership shall have the number of votes equal to the number of Assessment Points assigned to the Dwelling Unit which the Voting Member represents, each Voting Members who represents a Rental Parcel shall have one (1) vote for each Dwelling Unit in the Rental Parcel, and the Declarant, as the Class C Member, shall have ten (10) votes for each Dwelling Unit which it owns. From and after the

UNOFFICIAL COPY

Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the Operating Agreement) upon an affirmative vote of a majority of the votes represented by Voting Members and the Declarant present at such meeting, except as otherwise provided herein or in the Operating Agreement.. 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.

4.03 PLACE OF MEETING; QUORUM: Meetings of the Members shall be held at the principal office of the Community 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. Voting Members representing at least twenty percent (20%) of the total votes shall constitute a quorum, provided, however, that in the event quorum is not met for a particular meeting, the number of Voting Members required for quorum shall be reduced by fifty percent (50%) and shall continue to be reduced by fifty percent (50%) until such time as quorum is met and a meeting can be held. Unless otherwise expressly provided herein or in the Community Declaration, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of a majority of the Voting Members present at such meeting, including any matter which, under the Act, would otherwise require the unanimous consent of the Members.

4.04 ANNUAL MEETINGS: The first meeting of the Members ("First Meeting") shall be held upon not less than twenty-one (21) days' written notice given by the Declarant to the Members. If not called earlier by the Declarant the First Meeting shall be held no later than thirty (30) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Members ("Annual Meeting") on the anniversary of the First Meeting, or at such other reasonable time or date (not more than thirty (30) days before or after such date) upon not less than twenty-one (21) days written notice given by the Board to the Members.

4.05 SPECIAL MEETINGS: A special meeting of the Members may be called at any time for the purpose of considering matters which, by the terms of the Community Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. A special meeting shall be called by written notice to the Members by Declarant (prior to the First Meeting), a majority of the Board (after the First Meeting), or by twenty percent (20%) of the Voting Members (after the First Meeting), and delivered not less than twenty-one (21) 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.

4.06 NOTICE OF MEETINGS: Notices of meetings required to be given herein may be delivered either personally, by U.S. Mail or by E-mail to the Members, addressed to such Member at the address given by such Member to the Board for the purpose of service of such notice or to the Owned Unit or Rental Parcel of the Member, 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.

UNOFFICIAL COPY

4.07 NO DUTY OWED BY MEMBERS: Except as otherwise provided herein or in the Community Declaration, a Member who is not also a Manager (as hereafter defined) owes no duty to the Community Association or to the other Members solely by reason of being a Member.

4.08 NO SERVICES DUE FROM MEMBERS: No Member shall be required to perform any services for the Community Association solely by reason of being a Member. No Member shall be entitled to any compensation for any services performed by such Member for the Community Association unless otherwise determined by the Board.

4.09 INDEMNIFICATION: The Community Association shall indemnify each Member for all authorized acts performed by such Member in respect of the Community Association, to the full extent permitted by the Act, but in no event for a Member's material breach of this Operating Agreement, criminal conduct, gross negligence or any fraudulent act committed by the Member.

ARTICLE V BOARD OF MANAGERS

5.01 IN GENERAL: After the First Meeting, the affairs of the Community Association shall be vested in the board of managers (the "Board"), which shall consist of five (5) persons (each a "Manager" and, collectively, the "Managers"), or such other number of persons as shall be fixed from time to time by the affirmative vote of not less than fifty percent (50%) of the Voting Members.

5.02 DECLARANT AS MANAGER: Anything herein to the contrary notwithstanding, the Declarant shall be the sole Manager and sole member of the Board until the First Meeting.

5.03 DELIVERY OF DOCUMENTS: Within sixty (60) days of the First Meeting, the Declarant shall deliver to the Board:

(a) Original copies of the Community Declaration, this Operating Agreement and the Community Association's Articles of Organization and any other documents filed with the Secretary of State of the State of Illinois.

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

(c) All Community Association funds and bank accounts.

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

5.04 ELECTION: At the First Meeting, the Voting Members shall elect a full Board to

UNOFFICIAL COPY

replace the Declarant as the sole Manager. 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 Manager shall serve a two-year term. Each Manager shall hold office until his term expires or until his successor has been elected and qualified. Managers may succeed themselves in office. In all elections for Managers, the Voting Member for each Owned Unit or Rental Parcel shall be entitled to the number of votes equal to the number of Managers to be elected. Cumulative voting shall not be permitted.

5.05 BOARD MEETINGS: After the First Meeting, 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 Board, provided that (i) the Board shall hold a meeting within thirty (30) days of the Annual Meeting, and (ii) not less than three (3) Board meetings (in addition to the Annual Meeting) shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each Manager, 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 Members of such meetings.

5.06 SPECIAL MEETINGS: After the First Meeting, a special meeting of the Board may be called by the President or at least one-third (1/3) of the Managers then serving.

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

5.08 QUORUM: A majority of the Managers 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 Managers are present at said meeting, a majority of the Managers present may adjourn the meeting from time to time without further notice. Except as otherwise expressly provided herein or in the Community Declaration, any action may be taken upon the affirmative vote of a majority of the Managers present at a meeting at which a quorum is present ("Board Action").

5.09 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 Community Declaration, this Operating Agreement, and the Act, including, without limitation, the following powers and duties:

- (a) To engage the services of a 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

UNOFFICIAL COPY

its discretion, deem necessary or proper;

(c) To provide for any maintenance, repair, alteration, addition, improvement or replacement of the Common Area for which the Community Association is responsible under the Community Declaration and this Operating Agreement;

(d) To procure insurance as provided for under the Community Declaration;

(e) To estimate and provide each Member with an annual budget showing the Common Expenses;

(f) To set, give notice of, and collect from the Members, Common Assessments and other assessments, as provided in the Community Declaration;

(g) To pay the Common Expenses;

(h) Subject to the provisions of the Community Declaration, to own, convey, encumber or otherwise deal with any real property conveyed to or purchased by the Community 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 Common Area, and for the health, comfort, safety and general welfare of the Members and Residents. Written notice of any such rules and regulations or amendments thereto shall be given to all Residents affected thereby;

(j) To delegate the exercise of its power to committees appointed pursuant to Article Seven of this Operating Agreement;

(k) To borrow money and pledge the assets of the Community Association, including the right to receive future assessments, as collateral for repayment thereof; and

(l) To convey all or substantially all of the Community Association's assets to, or to merge with, another entity, including a not-for-profit corporation, to the extent permitted by law.

5.10 COMPENSATION/REIMBURSEMENT FOR EXPENSES: Managers shall receive no compensation, except as expressly provided in a resolution duly adopted by not less than 75% of the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Manager shall be reimbursed by the Community Association for reasonable out-of-pocket expenses incurred in the course of the performance of his or her duties as a Manager.

5.11 REMOVAL OR RESIGNATION OF A MANAGER: Prior to the First Meeting, the Declarant may not be removed as Manager without the Declarant's written consent. After

UNOFFICIAL COPY

the First Meeting, any Manager may be removed from office, with or without cause, by the affirmative vote of at least two-thirds (2/3) of the Managers then serving at any Annual Meeting or at a special meeting called for such purpose. Any Manager may resign at any time by submitting his written resignation to the Board. If after the First Meeting, a Manager ceases to be a Member or Voting Member, he or she shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Manager who resigns may be appointed by a majority of the remaining Managers at any regular meeting or a special meeting called for such purpose and any successor so appointed shall serve the balance of his or her predecessor's term.

5.12 NO EXCLUSIVE DUTY: Except as otherwise provided in this Operating Agreement, the Managers shall not be required to manage the Community Association as their sole and exclusive function and the Managers may have other business interests and engage in other activities in addition to those relating to the Community Association. Neither the Community Association nor any Member shall have any right to share or participate in such other investments or activities of the Managers or to the income or proceeds derived therefrom.

5.13 LIMITATION OF LIABILITY: The Managers shall perform the duties of the Manager in good faith, in a manner which the Managers believe to be in the best interests of the Community Association, and with such care as an ordinarily prudent individual in a like position would use under similar circumstances. See Section 5.06 of the Community Declaration for provisions concerning limitations on the liability of Managers and other indemnification provisions.

5.14 INDEMNIFICATION: The Community Association shall indemnify each Manager for all acts performed by the Manager in respect of the Community Association, to the full extent permitted by the Act, but in no event for fraud, deceit, theft, misappropriation, embezzlement, willful misconduct or gross negligence relating to the Community Association.

ARTICLE VI OFFICERS

6.01 OFFICERS: The officers of the Community 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 and shall hold office at the discretion of the Board. After the First Meeting, officers shall be Managers and shall be elected annually at the first Board meeting following the Annual Meeting.

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 Managers in office, either with or without cause. Any officer may resign at any time by submitting his or her written resignation to the Board. If after the First Meeting, an officer ceases to be a Member or Voting Member, he or she shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of an officer who resigns or is removed may be appointed by the Board at any regular meeting or a special meeting called for such purpose and any successor so appointed shall serve the balance of his or her predecessor's term.

UNOFFICIAL COPY

6.03 POWERS OF OFFICERS: The respective officers of the Community 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 Community Association and shall preside at all meetings of the Members and at all meetings of the Board and shall execute amendments to the Community Declaration and this Operating Agreement as provided in the Community Declaration and this Operating Agreement.
- (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 Members and of the Board and shall have charge of such other books, papers and documents as the Board may prescribe;
- (d) The Treasurer shall be responsible for Community Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Community 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 not less than 75% of the Voting Members.

ARTICLE VII COMMITTEES DESIGNATED BY BOARD

7.01 BOARD COMMITTEES: The Board may, by Board Action, designate one or more committees, each of which shall consist of two or more Managers, 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 Community Association; but the designation of such committees and delegation thereto of authority shall not operate to relieve the Board, or any individual Manager, of any responsibility imposed by law upon the Board or any individual Manager.

7.02 SPECIAL AND STANDING COMMITTEES: Other committees not having and exercising the authority of the Board in the management of the Community Association may be designated by a resolution adopted by Board Action. Except as otherwise provided in such resolution, members of each such special committee shall be Members or Voting Members and the President shall appoint the members of such special committee, as well as a Manager to act as the liaison between the special committee and the Board. Any member of such special committee may be removed by the President whenever in his or her judgment the best interests of the Community Association shall be served by such removal. The powers and the duties of any standing committee shall be as set from time to time by resolution of the Board. The President shall designate a Manager (who shall act as the liaison between the standing committee

UNOFFICIAL COPY

and the Board) to serve as the chairman of each standing committee, and the other members of the standing committee (who need not be Managers) 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 or her 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 CHAIRPERSON: Except as otherwise provided in Section 7.02, one member of each committee shall be appointed chairperson.

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 governance not inconsistent with the Community Declaration, this Operating Agreement 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 Community Association, in addition to the officers so authorized by this Operating Agreement, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Community 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 Community 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 Community Association shall be signed by such officer or officers, agent or agents of the Community 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 Community Association.

8.03 BANK ACCOUNTS: All funds of the Community Association not otherwise employed shall be deposited from time to time to the credit of the Community Association in

UNOFFICIAL COPY

such banks, trust companies or other depositories as the Board shall elect.

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

ARTICLE IX FISCAL MANAGEMENT

9.01 FISCAL YEAR: The fiscal year of the Community Association shall be established by the Community 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 Member with a statement of the income and disbursements of the Community Association for such fiscal year.

9.03 SPECIAL STATEMENT: Within ten (10) days after receipt of a written request from a Member, the Board shall provide the Member with a statement containing the following information:

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

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

ARTICLE X TRANSFER OF MEMBERSHIP

10.01 MEMBERSHIP: There shall be one membership per Owned Unit and each Owner of a Rental Parcel shall have one membership for each Dwelling Unit for which a certificate of occupancy has been issued by the Municipality. Membership shall be appurtenant to and may not be separated from ownership of an Owned Unit or Rental Parcel. Ownership of an Owned Unit or Rental Parcel shall be the sole qualification for membership. The Community Association shall be given written notice of the change of ownership of an Owned Unit or Rental Parcel within ten (10) days after such change. Any attempt to transfer membership in the Community Association separate from ownership of an Owned Unit or Rental Parcel shall be invalid, null and void, and of no force and effect.

10.02 NO VOLUNTARY DISSOCIATION: Except as otherwise provided by Section 10.01 above, a Member shall not be permitted to voluntarily dissociate from the Community Association.

UNOFFICIAL COPY

ARTICLE XI BOOKS AND RECORDS

The Community 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 Community Association a record including the following: (i) the names and last known address of the Members, setting forth the date on which each became a Member; (ii) a copy of the Articles of Organization of the Community Association, as amended or restated, together with executed copies of any powers of attorney pursuant to which any articles, applications, or certificates have been executed; (iii) copies of the Community Association's financial statements and federal, state, and local income tax returns and reports for the three (3) most recent years, where applicable; and (4) copies of the Operating Agreement and any amendments thereto. All books and records of the Community Association may be inspected and copied by any Member, or his or her mortgagee, agent or attorney, at any reasonable time. The Member shall reimburse the Community Association for all costs and expenses incurred by the Community Association in connection with that Member's inspection and copying of such records.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.01 GOVERNING LAW. This Operating Agreement shall be interpreted in accordance with the internal laws of the State of Illinois, without regard to its rules governing conflict of laws.

12.02 VALIDITY. The provisions of this Operating Agreement are intended to be interpreted and construed in a manner which renders them valid and enforceable. In the event that any provision of this Operating Agreement is found to be invalid or unenforceable, such provision shall be deemed excised from this Operating Agreement without affecting the validity or enforceability of any of the remaining provisions hereof.

12.03 JURISDICTION AND VENUE. All disputes arising under or in connection with this Operating Agreement shall be resolved and disposed of by the federal and state courts located in the County where the Community Declaration is recorded, and the Community Association, Managers, and Members irrevocably consent to the exclusive personal jurisdiction of such courts and venue therein.

ARTICLE XIII AMENDMENTS

This Operating Agreement may be amended or modified at any time, or from time to time, by the affirmative vote of two-thirds of the Managers then serving provided, that (i) no provision of this Operating Agreement may be amended or modified so as to conflict with the provisions of the Community Declaration or the Act, and (ii) no provision contained in this Operating Agreement which affects the rights of the Class C Member may be amended or

UNOFFICIAL COPY

modified without the written consent of the Class C Member.

[Signature page follows]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Operating Agreement as of the first date set forth above.

COMMUNITY ASSOCIATION:

Clocktower Pointe of Countryside Community Association, LLC, an Illinois limited liability company

By: Countryside 6, LLC, an Illinois limited liability company

By: _____
Its _____

MEMBER/DECLARANT:

Countryside 6, LLC, an Illinois limited liability company

By: _____
Its _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

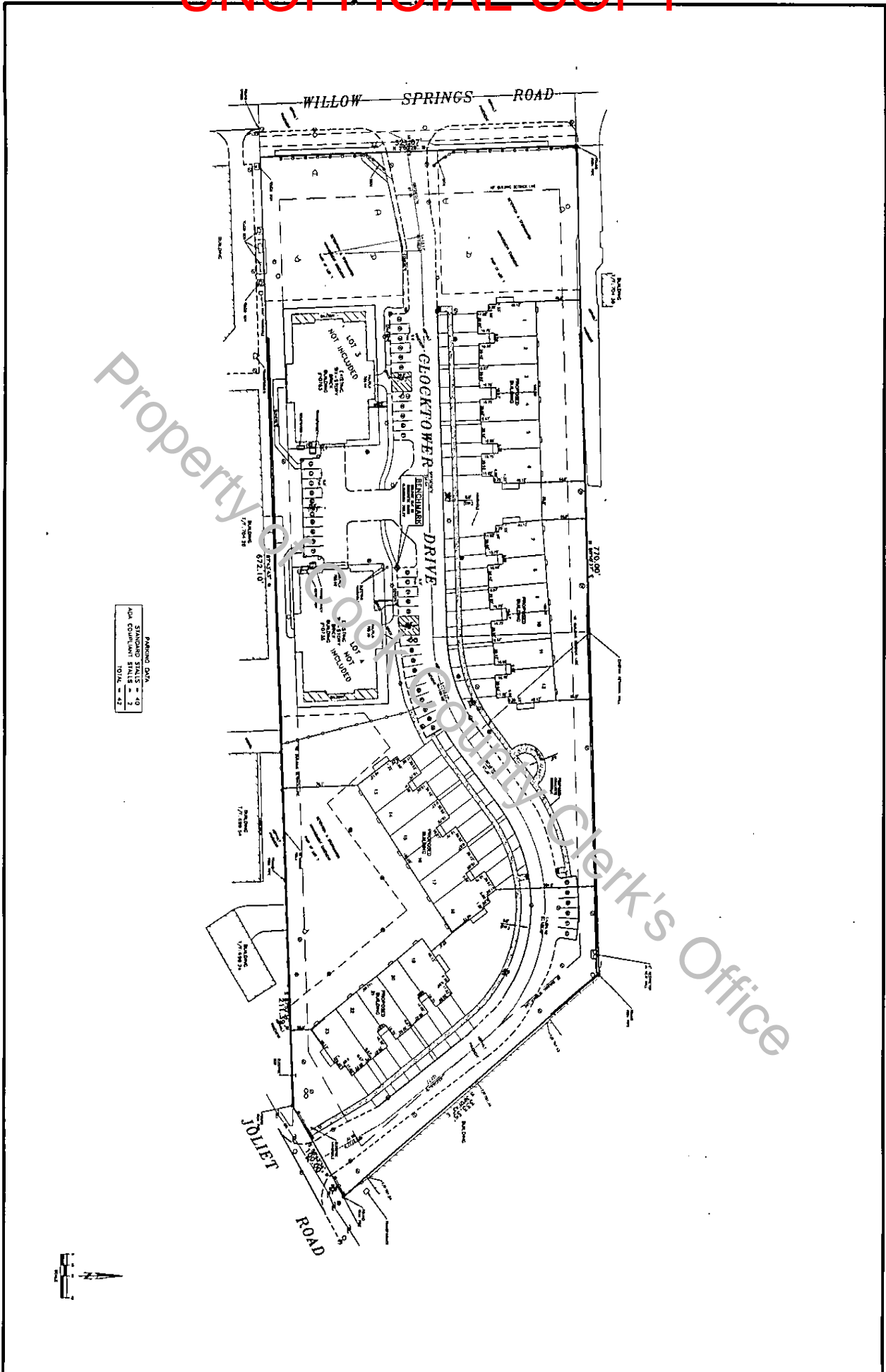
**EXHIBIT D TO AMENDED AND RESTATED
COMMUNITY DECLARATION FOR
CLOCKTOWER POINTE OF COUNTRYSIDE**

Parking Plan

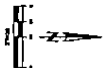
[See attached]

Property of Cook County Clerk's Office

UNOFFICIAL COPY



PARKING DATA
 STANDARD STALLS = 49
 ADA COMPLIANT STALLS = 4
 TOTAL STALLS = 53



| | | | | | |
|------------------------------------|---|---|---|---|---|
| SHEET C3.0 18-01-0580 | CLOCKTOWER POINT - TOWNHOMES 6531 S. WILLOW SPRINGS ROAD COUNTRYSIDE, IL GEOMETRIC PLAN | LANDMARK SURVEYING & ENGINEERING LLC 7908 WEST 103RD STREET PALM HILLS, ILLINOIS 60445-1529 Phone: (708) 586-3727 Fax: (708) 586-3281 | DATE 11/28/14 11/20/14 12/5/14 12/7/14 2/12/14 | REVISIONS ADD PARKING STALLS MODIFY PARKING STALLS MODIFY PARKING STALLS (P+20) OWNER COMMENTS REMOVED H.C. STALLS | REV. BY B.N. B.N. B.N. B.N. B.N. |
| | DRAWN BY: T.B. DESIGNED BY: B.N. CHECKED BY: M.A. | | DATE 11/28/14 | REVISIONS ADD PARKING STALLS | REV. BY B.N. |