

DECLARATION OF PARTY WALL RIGHTS,COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made and entered into on the date hereinafter set forth by the ESR Corporation, a California corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

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

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

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

WHEREAS, there has been incorporated under the laws of the State of Illinois, as a not-for-profit corporation, The Commons of Surrey Woods Homeowners' Association for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires to establish for its own benefit and the mutual benefit of all future owners, tenants and occupants of the aforesaid development and real estate and any part thereof, certain easements or rights in, over, under, upon and along said development and real estate and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

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

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

06-15-301-021

W.R.

This Instrument was prepared by Herbert A. Kessel  
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ARTICLE IDEFINITIONS

Section 1.01. "Association" shall mean and refer to The Commons of Surrey Woods Homeowners' Association, an Illinois not-for-profit corporation.

Section 1.02. "Property" shall mean and refer to that certain real estate described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 1.03. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members of the Association (except for those portions reserved for the exclusive use of certain Owners as hereinafter set forth) and such uses thereto by way of easement or other grant from the Declarant, the Association or others as may be granted to or by the Association for the common use and enjoyment of the Owners. The common area to be conveyed to and owned by the Association is hereinafter legally described in Exhibit "B" attached hereto and by this reference made a part hereof and such additions thereto as may hereafter be brought within the jurisdiction of, or conveyed to, the Association.

Section 1.04. "Townhouse Unit" shall mean a residential housing unit consisting of a group of rooms which may be attached to one or more other Townhouse Units by common party walls and which are designed or intended for the exclusive use as living quarters for one family, as hereinafter defined, as constructed by the Declarant upon the Property.

Section 1.05. "Adjoining Parcel" shall mean that portion of the additional lands immediately adjoining the Property, and legally described as Exhibit "C" attached hereto and by this reference made a part hereof which Declarant may elect to annex to the Property pursuant to the terms of Article XI hereof.

Section 1.06. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Declarant to the extent of the number of Lots owned by Declarant and also includes the interest of Declarant as contract seller of any Lot.

Section 1.07. "Member" shall mean and refer to any person or entity who holds membership in the Association.

Section 1.08. "Declarant" shall mean and refer to ESR Corporation, a California corporation, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 1.09. "Lot" shall mean and refer to a platted lot designated as such upon any recorded subdivision map of the Property and upon which lot a Townhouse Unit is constructed or to be constructed.

Section 1.10. "Board" shall mean the Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provision of Article III.

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Section 1.11. "Occupant" shall mean any person or persons other than the Owner in possession of a Townhouse Unit.

Section 1.12. "Family" shall mean one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, together with his or their domestic servants, maintaining a common household in a Townhouse Unit.

Section 1.13. "By-Laws" shall mean the By-Laws of The Commons of Surrey Woods Homeowners' Association, a copy of which is attached as Exhibit "D" hereto and by this reference made a part hereof.

Section 1.14. "Declaration" shall mean this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements.

Section 1.15. "Transfer Date" shall mean the date which is the earlier of: (i) the date on which seventy-five percent (75%) of the Lots have been conveyed to Owners other than the Declarant; and (ii) five (5) years after the first Lot is conveyed to an Owner other than the Declarant. For purposes of Section 1.15(i), the term "Lot" shall include all platted lots contained within the Property and the Adjoining Parcel.

Section 1.16. "Material Amendment" shall mean any amendment to the Declaration, By-Laws or the Association's articles of incorporation that would change any of the following in a manner other than as expressly provided herein: voting rights in the Association; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of the Common Area; responsibility for the maintenance and repair of the Common Area; allocation of interests in the Common Area, or rights to use the Common Area; boundaries of any Lot or Townhouse Unit; convertibility of Lots or Townhouse Units into Common Area, or vice versa; expansion or contraction of the Property, or the addition, annexation or withdrawal of property from the Property; insurance or fidelity bonds; leasing of Townhouse Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Lot or Townhouse Unit; a decision by the Association to establish self-management when professional management had previously been required by an Eligible Mortgage Holder; requirements for the restoration or repair of the Property; termination of the legal status of the Association or the Property following substantial destruction or condemnation; or any provisions that expressly benefit holders, insurers or guarantors of mortgages secured by portions of the Property.

Section 1.17. "Eligible Mortgage Holder" shall mean each holder of a first mortgage on a Lot or Townhouse Unit that has requested in writing that the Association notify it of any proposed action that requires consent of a specified percentage of mortgage holders.

## ARTICLE II

### MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including a contract seller, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to

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and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Lots. Voting rights with regard to each Member are set forth in Article III hereof.

### ARTICLE III

#### VOTING RIGHTS AND BOARD OF DIRECTORS

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

Class A. Class A Members shall be all those Owners as defined in Article II, provided that the Declarant shall not be a Class A Member until the Transfer Date. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article II, provided that the Class B membership shall cease and be converted to Class A membership on the Transfer Date.

Section 3.02. The provisions of Section 3.01 hereof shall be mandatory. No owner of any interest in any Lot shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of his obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such owner shall be of any force or effect for any purpose.

Section 3.03. The Association shall have a Board of five (5) Directors who shall be elected by the Members of the Association at such intervals as the corporate charter and By-Laws of the Association shall provide, except that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board or so provided by the corporate charter or By-Laws and that the first Board may be appointed by the Declarant (or its designee) and shall be three (3) in number. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the Association's articles of incorporation, this Declaration or the By-Laws, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of its Members. The corporation charter and By-Laws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

Section 3.04. The Association, being a not-for-profit corporation, shall not distribute to its Members any sums in the nature of dividends upon its shares. To the extent that funds shall not be required for current expenditures or for

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such reserves, the next monthly assessments may, in the discretion of the Board, be eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required, but such reinstatement or increase shall not be retroactive.

Section 3.05. Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time provided however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Property before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Property or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

Section 3.06. The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Lots and the use thereof.

Section 3.07. A copy of this Declaration, the By-Laws and the Association's books, records and financial statements to be kept by the Board shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder, insurer or guarantor of a first mortgage lien on a Lot at such reasonable time or times during the normal business hours as may be requested by the Owner or by the holder of said first mortgage lien.

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#### ARTICLE IV

##### PROVISIONS RELATING TO THE COMMON AREA

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

- (a) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast sixty-seven percent (67%) of the votes to the Class B membership, if any, has been recorded, agreeing to such dedication or transfer. In the event Class B membership has ceased, then sixty-seven percent (67%) of the votes to the Class A membership shall be required to make such dedication or transfer effective.
- (b) As part of the overall program of development of the Property and annexed land into a residential

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community and to encourage the marketing and construction thereof, the Declarant and its contractors, subcontractors, and their respective agents and employees shall, for sales and construction purposes only, have the right of use of certain Lots and the Common Area and facilities thereof without charge during the sales and construction period on the Property and annexed land to aid in its construction and marketing.

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

Section 4.02. Each Owner and their tenants, guests and invitees shall have a right and easement in, over, upon and to the sidewalks located in the Common Area for the purposes of pedestrian ingress and egress.

Section 4.03. There shall be upon the Common Area such driveways or portions thereof and walks as shall be necessary to provide ingress and egress to and from the Lots for the use and benefit of the Owners of the Lots and their guests and invitees, and such landscaping and walks, benches and spaces for the parking of motor vehicles as the Declarant shall from time to time determine and shall be in compliance with such governmental laws, ordinances and regulations as shall be in effect during the development of the Property. There may also be upon the Common Area such facilities for the housing of tools, vehicles and equipment, shelters for guards and such other structures and facilities as shall be reasonably necessary for the carrying out of the duties imposed upon the Association hereunder, or as the Association may determine to erect from time to time.

Section 4.04. There shall be surrounding the patio area of each Townhouse Unit fences of such design as the Association shall determine (each a "Patio Fence", and collectively the "Patio Fences" herein). No other fencing shall be placed on any Lot without the prior written approval of the Association.

Section 4.05. An easement is hereby granted to the Village of Streamwood (the "Village" herein) to go upon the Common Area for the purpose of providing police and fire protection services and maintaining and repairing those portions of the Common Area (sidewalks, sewer and water mains and lines) which the Village shall deem to require maintenance or repair for the purpose of keeping (a) the sidewalks thereon open at all times for the passing of fire, police and other emergency personnel and equipment from the date such notice is received; and (b) the sewer and water main lines functioning and for their intended purpose. Except in the event of emergency situations, the Village shall serve written notice upon the Association setting forth the manner in which the Association has failed to maintain or repair the sidewalks and sewer and water mains and lines in reasonable condition and said notice shall include a demand that such deficiency in maintenance or repair be cured within said 30 days from the date such notice is received. If such deficiency has not been cured within said 30 days or any extension thereof, the Village may exercise said easement by entering the Common Area and performing such maintenance or repair. The Association shall reimburse the Village from all expenses incurred by it in performing such maintenance or repair. If the Association has not reimbursed the Village in full for all such expenses incurred within 90 days after receipt of a bill detailing such expenses, then the cost of such maintenance or repair not so reimbursed shall be assessed in equal shares against the Lots, and shall become a

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lien upon such Lots. Said easement shall be exercised only to the extent and for such period of time that the maintenance or repair is required to accomplish the purpose hereinabove mentioned.

Section 4.06. Any Member may delegate, in accordance with the By-Laws, his right of ingress and egress to the Common Area to the members of his family, Occupants, guests, invitees, or contract purchasers who reside on the Property.

Section 4.07. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association prior to the conveyance of the first Lot as contained on Exhibit "A" attached hereto free and clear of any mortgage liens of record subject, however, to the provisions of Section 4.01(a) hereof. In addition, in the event any additional property is annexed pursuant to the terms of Article XI hereof, Declarant's covenant to convey title to the Common Area to the Association shall be applicable to each additional parcel so annexed so that title to the Common Area will be so conveyed prior to the conveyance of the first Lot contained in each additional parcel. Declarant shall reserve, upon conveyance to the Association of the Common Area, a perpetual and non-exclusive easement for egress and ingress in, to and from each Lot which it shall grant to each Lot upon the conveyance thereof.

Section 4.08. Declarant, its agents, employees, guests and invitees shall have the right and easement of ingress and egress in, over, upon, under and across the Common Area for sales and construction purposes until Declarant has conveyed all of the Lots to the purchasers thereof.

Section 4.09.

- (a) The Association shall have the right and duty to build, construct, reconstruct, repair and maintain the Common Area and the Entrance Island on Route 59 (the "Entrance Island") and all improvements and landscaping thereon.
- (b) The Association shall have the right of ingress and egress over and upon the Common Area for any and all purposes in connection with the use, maintenance, construction, operation, repair and reconstruction of the Common Area.
- (c) The Association, through resolutions of the Board, shall have the right to adopt rules and regulations governing the use, maintenance and administration of the Common Area and for the health, comfort, safety and general welfare of persons using the Common Area.

Section 4.10. Notwithstanding any provisions herein to the contrary, the easements hereinafter created shall be subject to:

- (a) The right of Declarant to execute all documents and do all other acts and things affecting the Property which, in the Declarant's sole opinion, are desirable in connection with Declarant's rights hereunder.
- (b) Easements of record on the date hereof, including those easements granted on the Plat of Subdivision recorded in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 86-544179 and any easements which may hereafter be granted by Declarant to any public utilities or governmental bodies for the installation and maintenance of

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electrical and telephone conduit and lines, gas pipes, sewers or water mains and pipes, or any other utility services serving any Lot.

Section 4.11. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

Section 4.12. The Common Area will be subject to utility easements for sanitary and storm sewers, water, gas, electricity, telephone and any other necessary utilities. If any such utilities are not installed or any easements not created for same prior to conveyance of the Common Area to the Association, the Association shall grant such easement or easements upon request of the Declarant. Alternatively, Declarant may elect to convey title to the Common Area subject to a reservation in favor of Declarant that it shall have the right thereafter to create such non-exclusive easements.

## ARTICLE V

### MAINTENANCE OF TOWNHOUSE UNITS

Section 5.01. The Association shall determine the need for and may carry out or cause to be performed all maintenance and repair to the exteriors of the Townhouse Units including, without limitation, all masonry walls, including the foundations thereof, front masonry steps, roofs, gutters and downspouts made necessary and desirable in the sole discretion of the Association as a result of natural or ordinary wear and deterioration. The Association shall also perform such maintenance, improvement and repair of the Patio Fences. The Association shall, in addition, determine the need for and shall carry out or cause to be performed all such maintenance and repair of all water, sewer, gas, telephone and electrical lines incorporated in and forming a part of the Townhouse Units as originally constructed that services more than one Townhouse Unit and shall not include the maintenance or repair of any furnaces, water heaters, stoves, refrigerators, washing machines or household appliances, sump pumps, glass surfaces, patio areas, windows and patio doors, front entry and garage doors, electrical fixtures, air conditioners and compressors, or any other portion of said unit which services only one Townhouse Unit or the interior of any Townhouse Unit or portion thereof. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Lot is subject. The Association shall, in addition, be responsible for the proper maintenance of all landscaping located on the Common Area and Entrance Island including, but not limited to, mowing the grass areas not enclosed by Patio Fences. The obligations of the Association as contained in this Section 5.01 shall be limited, however, to the extent that there are funds available in the Association's account from the assessments collected pursuant to Article VI hereof.

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

Section 5.03. Each Owner shall have the obligation to maintain in good condition and repair his glass surfaces, storage shed, windows, front entry and garage doors, electrical fixtures, patio, lawn area enclosed by his Patio Fence and walkways located on his Lot. Upon the failure of

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any Owner to maintain those areas not the maintenance responsibility of the Association, the Association, through its agents and employees, is hereby granted the right to enter upon the Lot and into the Townhouse Unit thereon and make such reasonable repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, and the costs thereof shall become a lien upon the Lot in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 5.04. The Association shall have the right to draw water from individual Townhouse Units as required for the efficient performance of its duties hereunder. The Association shall pay for all water bills incurred on the Property and each Owner shall be assessed for an equal share of said bills.

## ARTICLE VI

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 6.01. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments to be fixed, established and collected from time to time as hereinafter provided; and (2) special assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 6.02. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the Property and in particular for the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of such Common Area, and of the Townhouse Units situated upon the Property. Such uses shall include, but are not limited to, the cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area and the Entrance Island and of the maintenance of the exteriors of the Townhouse Units (except as otherwise provided herein) as may from time to time be authorized by the Board, and other facilities and activities including, but not limited to, mowing grass areas not enclosed by Patio Fences, caring for the grounds, landscaping, equipment, street lighting, if any, all sanitary and storm sewer and water lines, structures and appurtenances (other than those maintained by any governmental authority or utility company), Patio Fences and other charges required by this Declaration or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve fund for repair, maintenance, replacements, taxes, and other charges as specified herein. In addition, water, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners shall be paid for by the Association from the assessments levied hereunder. In the event any utilities which benefit the Common Area are directly charged to any Owner, the Association will reimburse such Owner for any such expense. The Board reserves the right to levy additional assessments

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against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund. At the time of closing of the sale of each Lot by the Declarant, the Owner shall pay (in addition to the first monthly assessment) to the manager or managing agent, or as otherwise directed by the Board, an amount equal to two (2) times the first full monthly assessment for such Owner, which amount shall be used and applied as a working capital fund in the manner herein provided.

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

Section 6.04. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement (including those items of maintenance and repair set forth in Section 5.01 hereof) of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, if any. However, no special assessment shall be valid unless the assent of at least sixty-seven percent (67%) of each class of Members is obtained at a meeting called for that purpose and attended after adequate notice by Owners or their proxies representing at least sixty percent (60%) of the Lots; provided, that if sixty percent (60%) do not attend, a second meeting may be called with the same notice and the quorum therefor shall be reduced to Owners or their proxies representing thirty percent (30%) of the Lots.

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

Section 6.06. The annual assessments provided for herein shall commence for all Lots within the Property on the first day of the month following the conveyance of the first Lot, except as otherwise provided in Section 6.09 hereof. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. The amount of the annual assessment to be fixed by the Board pursuant to this Section 6.06 shall not exceed one hundred five percent (105%) of the prior year's assessment unless the assent of at least sixty-seven percent (67%) of each class of Members is given at a meeting called for that purpose and attended after adequate notice by Owners or their proxies representing at least sixty percent (60%) of the Lots; provided, however, that if sixty percent (60%) do not attend, a second meeting may be called with the same notice and the quorum therefor shall be reduced to Owners or their proxies representing thirty percent (30%) of the Lots. Written notice of any changed amount of annual assessment shall be due on the first day of the month immediately preceding the effective date of the changed assessment. An Owner shall first be liable for payment of the full monthly assessment on the 1st day of the month following conveyance of title to him. This payment shall be in addition to the prorated portion of the monthly assessment which Owner shall pay as of the date title to his Lot is conveyed. The Association shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid and, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein.

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Section 6.07. Any assessments which are not paid when due shall be delinquent and shall be a continuing lien upon the Lot against which each such assessment was made. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the respective Lot and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property.

Section 6.08. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the Lots and recorded prior to the due date of the delinquent assessment provided, however, that such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Lot which became due and payable subsequent to the date the holder of said mortgage takes possession of the Lot, accepts a conveyance of any interest in the Lot or has a receiver appointed in a suit to foreclose his lien. The lien of the assessments shall not be affected by the sale or transfer of the corresponding Lot unless the sale or transfer is pursuant to the foreclosure of the first mortgage thereon.

Section 6.09. With regard to any Lots upon which Townhouse Units are being constructed or have been completed and title has not been conveyed by Declarant, the assessment respecting any such Lot shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Lot provided, however, that in the event Declarant enters into a lease or installment contract for any Lot, then Declarant shall be responsible for the payment of assessments on those Lots on the same basis as any other Owner as provided in Section 6.01 and Section 6.05 hereof. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Property and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, repair items or inventory items to the extent attributable to subsequent periods. The Declarant hereby agrees to satisfy any deficit or shortage in the Association's operating budget for any period in which the Declarant has paid reduced assessments pursuant to this Section 6.09, provided, however, that the Declarant's liability hereunder shall not exceed the amount by which the Declarant's assessments have been reduced below the assessments of each other Owner by reason of this Section 6.09. The assessments charged to the Declarant and the amount of the Declarant's liability hereunder to satisfy any deficit or shortage in the Association's operating budget shall be the personal obligation of the Declarant and shall be a continuing lien upon the Lots held by the Declarant, subject to all the provisions of this Declaration regarding assessment liens. Until such time as the Transfer Date has occurred, the assessments covering the Lots which have not been sold by the Declarant may be paid on a monthly basis or, at its option, paid to the Association at the close of each calendar year without interest.

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ARTICLE VIIINSURANCESection 7.01.

- (a) The Association shall be responsible for procuring and maintaining 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 other liability insurance as it may deem desirable, insuring the Association from liability in connection with the ownership and/or use of the Common Area. The Association shall be further responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable provided that such policies shall (i) provide that such policies may not be cancelled or substantially modified without at least thirty (30) days written notice to the Association and all mortgagees of record of the Common Area; (ii) provide that all mortgagees of record of the Common Area shall have the right to pay overdue insurance premiums and to obtain new coverage in the event the existing insurance policy lapses; (iii) provide for coverage in the amount of one hundred percent (100%) of full replacement value; and (iv) contain standard mortgage clause endorsements in favor of the mortgagee(s) of the Common Area, as their respective interests may appear.
- (b) The Association shall be responsible for procuring and maintaining a fidelity bond insuring the Association, the Board and the Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Owners in such amounts as the Board shall deem necessary but not less than 150% of the annual operating expenses of the Association, including reserves. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be cancelled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to all holders of first mortgages of record.
- (c) The Association may also obtain such other kinds of insurance as the Association shall from time to time deem prudent.

Section 7.02. Each Owner shall procure and maintain in full force at all times insurance covering his Townhouse Unit consisting of, or providing all the protections afforded by, the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief, to one hundred percent (100%) of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than five hundred dollars (\$500.00) and naming the Association as a co-insured on each policy. Such insurance shall be written by companies reasonably acceptable to the Association. A certificate of

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insurance evidencing such coverage shall be furnished to the Association and new certificates evidencing the renewal of each expiring policy of insurance shall be furnished to the Association in each case at least ten (10) days prior to the expiration date of the expiring insurance. In the event a Townhouse Unit or any portion thereof shall be damaged or destroyed by fire or other casualty and the Owner thereof shall cause it to be repaired, restored or reconstructed, as the case may be, the repairs, restoration or reconstruction shall be in the same architectural style and design as was originally constructed and shall conform in all respects to all applicable laws or ordinances in force at the time of such repair, restoration or reconstruction. In the event of the total or substantial destruction of all of the Townhouse Units, the architectural design of the Townhouse Units to be rebuilt and the materials to be used in constructing the same shall be agreed upon among the Owners thereof, and in the absence of agreement, the rebuilt Townhouse Units shall be substantially similar in architectural design as the original Townhouse Units and shall be constructed of comparable materials.

Section 7.03. Upon the failure of any Owner to procure and maintain the insurance required in Section 7.02 hereof or, in the event the Board, in its sole discretion, determines that the Townhouse Unit is underinsured, the Board shall have the authority to procure such insurance and/or additional insurance, as the case may be, and the costs thereof shall become a lien upon the Lots in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 7.04. All repair, restoration or rebuilding pursuant to the provisions of this Article VII shall be carried out under such supervision and direction as the Board shall deem appropriate in order to assure the expeditious and correct completion of the work concerned, and the Owner or Owners of each Townhouse Unit which shall have been damaged or destroyed shall fully cooperate with, and abide by all instructions and directions of, the Association in connection therewith.

Section 7.05. In the event of such damage or destruction of a Townhouse Unit, the holder of the mortgage encumbering said Townhouse Unit shall cause the proceeds of any insurance required pursuant to Section 7.02 hereof to be utilized in restoring the Townhouse Unit pursuant to the terms of this Article.

Section 7.06. In any case in which the Owner or Owners concerned shall fail to carry out and see to the repair, restoration or rebuilding required by the provisions of this Article VII, the Association shall cause such repairs or rebuilding to be furnished, provided and installed, in the manner as set forth in Section 7.03 hereof provided, however, that to the extent the insurance proceeds referred to in Section 7.02 are insufficient as to any Townhouse Unit, the particular Owner shall be responsible to the Association for such deficiency, and the Association shall have, and is hereby granted, a continuing lien on the Lot for which any such repairs or rebuilding are furnished by the Association in the aggregate amount of (a) the cost thereof, (b) interest at the rate of twelve percent (12%) per annum from the date of the Association's payment of such costs, and (c) reasonable attorney's fees and any court or other costs incurred by the Association in connection therewith, which lien shall bind such Lot in the hands of such Owner, his heirs, devisees, personal representatives, grantees and assigns. In the event such Owner does not forthwith fully repay the Association therefor, as aforesaid, such lien shall be foreclosed against the Lot by the Association in the same manner as hereinafter provided in connection with unpaid

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assessments. The Association's lien in this Section 7.06 provided for shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Lot.

Section 7.07. In the event of any damage or destruction to the exterior portion of a Townhouse Unit and the loss is covered by policies of insurance, the Board shall have the authority to settle and adjust any claim under such policies without the consent of the respective Owner.

## ARTICLE VIII

### INTERIM PROCEDURE

Section 8.01. Until each of the various Lots shall have been conveyed by the Declarant to the first Owner thereof (or to such Owner's nominee), the Declarant shall, with respect to each such unsold Lot, have all the rights granted to the Owners.

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

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

## ARTICLE IX

### RESTRICTIONS RELATING TO PROPERTY

#### Section 9.01.

- (a) The Owners shall comply with all ordinances of the Village in connection with the use of any Lot.
- (b) All buildings or structures on the Property shall be of new construction.

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

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

Section 9.04. No buildings other than Townhouse Units originally constructed by the Declarant shall be constructed on each Lot.

Section 9.05. Except as hereinafter provided in Section 9.07 hereof, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other

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outbuildings shall be used as a residence at any time, either temporarily or permanently.

Section 9.06. No advertising sign (except one "For Rent" or "For Sale" sign of not more than five square feet per Townhouse Unit), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Townhouse Unit except as provided in Section 9.07 hereof.

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

Section 9.08. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs, cats or other common household pets (not to exceed a total of two (2) pets) may be kept, provided, that they are not kept, bred, or maintained for any commercial purposes.

Section 9.09. All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Townhouse Units and streets, and shall be regularly removed from the Property, and shall not be allowed to accumulate thereon.

Section 9.10. Drying of clothes shall be confined to the interior of the Townhouse Units.

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

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

Section 9.13. There shall be no change in any exterior color of any Townhouse Unit from the color scheme selected by the Owner upon the initial conveyance of the Townhouse Unit from Declarant without the prior written approval of the Association.

Section 9.14. There shall be no fences commenced, erected, or maintained upon any Lot other than the Patio Fences without the prior written approval of the Association.

Section 9.15. No nuisance, noxious or offensive activity shall be carried on on the Property nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or Occupants.

Section 9.16. Each Lot is hereby declared to be subject to an easement and right to and in favor of the Association and each and all of its employees, agents and instrumentalities to go upon such Lot for reasonable inspection thereof from time to time and for the purpose of carrying out any and all of the obligations and functions with respect to such Lot and the Townhouse Unit located thereon as are herein imposed upon or permitted to the Association. Each Lot is further declared to be subject to an easement in favor of any adjoining Lot to the extent necessary to permit the maintenance, supply, repair, and

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servicing of utility services to the various Lots and Townhouse Units located thereon.

Section 9.17. The Owner of each Lot shall from time to time grant such additional easements and rights over, across, on, under and upon his Lot as may be reasonably necessary in connection with the supply of any of the utilities described in Section 4.16 hereof to any part of the Property.

Section 9.18. The Board may adopt such other rules and regulations from time to time governing the use and enjoyment of the Common Area and the use of the Lots as the Board, in its sole discretion, deems appropriate or necessary.

Section 9.19. Parking areas and driveways shall be used for parking operable automobiles only and shall not be used for campers, trailers, vans, snowmobiles, boats or for any other purpose. The Board may authorize such vehicles parked in violation of this provision to be towed away and any such towing charge shall become a lien upon the Lot of the owner of the vehicle in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 9.20. Each Lot and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Lot and any adjoining portion of the Common Area to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot or portion of the Common Area, including roof structures which overhang and encroach upon the servient Lot or Common Area, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the dominant tenement provided, however, that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section 9.20. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvements, material or other obstacle was placed in or over the easement area.

Section 9.21. No building, wall or other structure or landscaping shall be commenced, erected or maintained upon the Property except such as are installed or approved by the Declarant in connection with the initial construction of the Townhouse Units upon the Property, nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration made to the exterior portion of any Townhouse Unit, therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same, and the grading plan and landscape plan shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee of three (3) or more persons appointed by the Board. In the event the Board, or its architectural committee, fails to approve or disapprove such design and location within forty (40) days after said plans and specifications have been submitted to it, or in the event no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval

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will not be required and this Section 9.21 will be deemed to have been fully complied with. The Board or its architectural committee shall, in addition, have the right to approve the general contractor responsible for performing the work in connection with the restoration of the exterior portion of any Townhouse Unit in the same manner as approval of plans and specifications is obtained.

Section 9.22. Until such time as title to any Lot is conveyed to a bona fide purchaser, the Declarant reserves the right to lease such Lots upon such terms and conditions as the Declarant may, in its sole discretion, approve.

## ARTICLE X

### PARTY WALLS

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

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

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

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

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

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ARTICLE XIANNEXATION OF ADDITIONAL PROPERTIES

Section 11.01. The Declarant and its successors and assigns hereby reserve the right and option, at any time and from time to time within seven (7) years from the date of recording of this Declaration, to annex to the Property all or any portion of the Adjoining Parcel, although no provision hereof shall be construed as requiring the Declarant to do so.

Section 11.02. In the event the Declarant or its successors or assigns elects from time to time to annex to the Property all or any portion of the Adjoining Parcel, the portions of the Adjoining Parcel annexed to the Property shall be made expressly subject to all provisions of this Declaration and the Declarant shall record a Supplementary Declaration which shall contain but not be limited to the following:

- (a) The legal description of the additional portion of Property which is to become subject to this Declaration;
- (b) A legal description indicating that portion of the Property which is to be improved with Townhouse Units and that portion which is to become a part of the Common Area.

Section 11.03. Upon compliance with this Article XI all Supplementary Declarations and the real estate covered therein shall be subject to the following terms and conditions:

(a) The rights, easements, covenants, restrictions, burdens, uses and privileges set forth and described in this Declaration shall run with and bind the land of the Adjoining Parcel and inure to the benefit of and be the personal obligation of the owners of Lots thereon in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Property previously subjected hereto;

(b) Every person or entity who is or becomes an owner of any lot on the annexed property shall be a Member of the Association on the same terms and subject to the same qualifications and limitations as those members who are then Owners;

(c) In all other respects, all of the provisions of this Declaration shall include and apply to the additional portions of the Property included in any such Supplementary Declaration including any Lots and any additions to the Common Area situated therein, and the owners, mortgagees and lessees thereof, with equal meaning and of like force and effect.

Section 11.04. Anything herein to the contrary notwithstanding, whenever this Declaration or the By-Laws provide for the approval or consent of the Administrator of Veteran's Affairs ("Administrator"), such approval or consent shall not be required unless the Administrator (a) has issued its project approval of the Development and such project approval has not terminated, (b) has issued a guarantee of the first mortgage on at least one Townhouse Unit which guarantee is then outstanding, (c) is the owner or holder of a first mortgage on a Townhouse Unit or (d) is the owner of a Townhouse Unit. Such consent or approval shall be deemed given unless within thirty (30) days the person seeking the consent or approval is advised in writing to the contrary. The approval of the Administrator shall be required in the

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event the Association conveys or encumbers any portion of the Common Area. If in connection with the project approval of the Development the Declarant files a development plan with the Administrator, then the Declarant shall construct the Development in substantial conformance with the development plan and shall only alter the development plan with the Administrator's approval. However, the Administrator's approval shall not be a condition to the recording of a Supplement to this Declaration under this Article XI. Prior to the Transfer Date, any merger, consolidation or dissolution of the Association shall be approved by the Administrator.

## ARTICLE XII

### MISCELLANEOUS

Section 12.01. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Owner found to be in violation by a court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorney's fees incurred by the Association in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Owner's lot, enforceable as other liens herein established. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 12.02. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 12.03. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants and restrictions of this Declaration may be amended during the first fifty (50) year period or within any successive ten (10) year period by an instrument signed by those Members (Class A and Class B) entitled to cast seventy-five percent (75%) of the total votes as provided in Article III, Section 3.01 hereof and then properly recorded, provided, however, that, except as otherwise provided herein, no action to amend this Declaration, the By-Laws or the Association's articles of incorporation before the Transfer Date shall be effective unless approval thereof is obtained from the United States Veteran's Administration or its successor agency, if any, and provided further, that no Material Amendment to this Declaration, the By-Laws or the Association's articles of incorporation shall be effective unless approval thereof is obtained from Eligible Mortgage Holders representing at least fifty-one percent (51%) of the Lots and Townhouse Units that are subject to mortgages held by Eligible Mortgage Holders. These covenants and restrictions may also be cancelled or amended by an instrument signed by sixty percent (60%) of Owners executed and recorded within ninety (90) days of the expiration of any successive ten (10) year period, such cancellation or amendment to be effective on the date of commencement of the ten (10) year period in question, provided, however, that no termination or alteration of the legal status of the

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Association or the Property for reasons other than substantial destruction or condemnation of the Property shall be effective unless approval thereof is obtained from Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the Lots or Townhouse Units that are subject to mortgages held by Eligible Mortgage Holders. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of Recorder of Deeds of Cook County, Illinois, and a true, complete copy of such instrument shall be transmitted to each Owner promptly.

Section 12.04. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only after the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Roger Angell, American author, and Michael Ditka, coach of the Chicago Bears football team, living at the date of this Declaration.

Section 12.05. Any notices required under the provisions of this Declaration to be sent to any member, Owner, or to any holder, insurer or guarantor of a first mortgage secured by any portion of the Property shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member, Owner or holder, insurer or guarantor as it appears on the records of the Association at the time of such mailing.

Section 12.06. If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration or any part hereof in the Office of the Recorder of Deeds of Cook County, Illinois, in order to avoid the expiration hereof or of any of the covenants, easements, agreements or other provisions herein contained under any of the provisions of Chapter 83 of the Illinois Revised Statutes presently in force commonly known as the Marketable Title Act, or any other law or statute of similar purport, they shall submit the matter to a meeting of the Members called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of Members shall vote against such rerecording, the Association shall have, and is hereby granted, power to so rerecord this Declaration or such part thereof, and such rerecording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and rerecorded document executed and acknowledged by each of them.

Section 12.07. All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Property and their grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easement and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

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Section 12.08. In amplification of and in addition to the provisions contained in Article VI, Section 6.07, in the event of any default of any Owner, the Association may and shall have all rights and remedies as shall otherwise be provided or permitted by law, including the right to take possession of such Owner's interest and Lot for the benefit of all other Owners by an action for possession in the manner prescribed in the Forcible Entry and Detainer Act (Illinois Revised Statutes, Chapter 57).

Section 12.09. In the event that any part of any Townhouse Unit encroaches or shall hereafter encroach upon any part of any other Lot or the Common Area, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Townhouse Unit of another Owner and if it occurred due to the willful conduct of any Owner.

Section 12.10. Declarant reserves to itself the right to rerecord the Plat of Subdivision referred to in Section 4.14(b) hereof, to correct any inaccuracies, errors or mistakes contained therein.

Section 12.11. Any aggrieved Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board, by an action at law or in equity against the defaulting Owner (or occupant of his Townhouse Unit).

Section 12.12. No Owner shall lease or rent his or her Lot or Townhouse Unit for a term less than thirty (30) days. Every lease of a Lot or Townhouse Unit shall be in writing and shall be made expressly subject to the requirements, rights, covenants, conditions, restrictions and easements of this Declaration and of the By-Laws.

Section 12.13. The following provisions are intended for the benefit of each holder of a recorded first mortgage or trust deed encumbering a Lot or Townhouse Unit ("First Mortgagee") and to the extent if at all, that any other provisions of this Declaration conflict with the following provisions, the provisions of this Section 12.13 shall control:

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

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

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(i) to examine current copies of this Declaration, the By-Laws, rules and regulations and the books and records of the Association during normal business hours;

(ii) to receive, without charge and within a reasonable time after such request, an audited financial statement prepared by the Association at the end of each of its respective fiscal years;

(iii) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(iv) to receive written notice of any decision by the Association or Owners to make a Material Amendment to the Declaration, By-Laws or the articles of incorporation of the Association;

(v) to receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(vi) to receive written notice of any proposed action which would require the consent of a specified percentage of First Mortgagees; and

(vii) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Property or the Lot or Townhouse Unit on which it holds, insures or guarantees the mortgage.

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

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

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

Section 12.14. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class cooperative housing development.

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Section 12.15. If all or any part of the Common Area only shall be taken through condemnation by any governmental authority having power so to do, the net proceeds of such taking shall be paid to and retained by the then owner of the Common Area subject, however, to the rights of the holders of first mortgage liens on the Townhouse Units. If any part of the Property including one or more Townhouse Units shall be taken by one or more concurrent condemnation proceedings, the entire net proceeds of such taking or takings, including (without limitation) all proceeds received on account of such taking of any part of the Common Area, shall be divided equitably among, and retained by, the Owners of the Townhouse Units wholly or partially taken in such condemnation proceedings, subject to the rights of the holders of first mortgage liens on the Townhouse Units. If the effect of such condemnation shall be to isolate any part of the Property from the remainder of the Property, and if no residential structures shall then have been constructed or be situated within the portion of the Property so isolated, then all the Townhouse Units lying wholly or partly within the portion of the Property so isolated shall be deemed to have been and shall be removed from and released from all of the terms and provisions of this Declaration and this Declaration shall be of no further force or effect with respect thereto. For purposes of this Section 12.15, the term "condemnation" shall include also any sale under threat of condemnation to any governmental authority having condemnation power.

Section 12.16. Upon any dissolution of the Association, its assets shall be transferred to another homeowner's association having similar purposes.

Section 12.17. Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the 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, or guarantee first mortgages covering a Townhouse Unit or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 12.17 shall terminate at such time as the Declarant no longer holds or controls title to any Lot.

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IN WITNESS WHEREOF, the said ESR CORPORATION has caused its corporate seal to be affixed hereunto and has caused its name to be signed to these presents this 27 day of February, 1987.

ESR CORPORATION, a California corporation

By

Its: Edward J. Baggitt

ATTEST:

By

Its: Ronnie A. Boyd  
Assistant Secretary

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STATE OF

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COUNTY OF

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I, Charlene Wilcof, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Ed Bierbaum personally known to me to be a President of ESR CORPORATION, a California corporation, and Francine H. Bierbaum personally known to me to be a Secretary of said corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as President and Secretary and caused the Corporate Seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27 day of Feb., 1987.

Charlene Wilcof  
Notary Public

My Commission Expires:

6-29-88

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## CONSENT OF MORTGAGEE

NOW ALL MEN BY THESE PRESENTS, that The Chase Manhattan Bank, N.A., a National Banking Association, which is the owner and holder of a certain Note dated November 4, 1986, which is secured by a certain Mortgage of even date therewith recorded on December 8, 1986 in the Office of the Recorder of Deeds of Cook County, Illinois as Document No. 86584328 ("Mortgage"), and constituting a first and prior lien on the real estate legally described in the foregoing Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements ("Declaration"), does hereby consent to the execution and recording of the Declaration and agrees that the Mortgage is subject to the provisions of the Declaration.

The Chase Manhattan Bank, N.A.

By: Edward Shevlin, Jr.

Its: Edward Shevlin, Jr.

Vice President

Attest:

Thelma Pillepich  
Its: Thelma Pillepich  
Asst. Treasurer

## ACKNOWLEDGEMENT

STATE OF ~~ILLINOIS~~ New York  
COUNTY OF New York SS.

I, Francine M. LaRosa, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Edward Shevlin Jr., the Vice President of The Chase Manhattan Bank, N.A., a National Banking Association, and Thelma Pillepich, Assistant Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that he, as custodian of the corporate seal of said Bank, did affix the said corporate seal of said Bank to said instrument as his own free and voluntary act, and as the free and voluntary act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27<sup>th</sup> day of February, 1987.

Francine M. LaRosa  
NOTARY PUBLIC

FRANCINE M. LA ROSA  
Notary Public, State of New York  
No. 4846143  
Qualified in Kings County  
Commission Expires March 30, 1987

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EXHIBIT ATHE PROPERTYParcel 1

Lots 33-A, 33-B, 33-C, 34-A, 34-B, 34-C, 35-A, 35-B, 35-C, 35-D, 36-A, 36-B, 36-C, 36-D, 37-A, 37-B, 37-C, 37-D, 38-A, 38-B, 38-C, 38-D, 39-A, 39-B, 39-C, 40-A, 40-B, 40-C and 40-D, all in The Commons of Surrey Woods, being a subdivision in the South 1/2 of Section 15, Township 41 North, Range 9, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2

ALL that part of Outlot "G" lying Southerly of a line described as beginning at a point on the Northeasterly line of Ascot Lane, said point being a Southerly corner of Lot 32-D; thence North 44 degrees 39 minutes 42 seconds East along a Southeasterly line of said Lot 32-D, 17.50 feet to a corner of said lot; thence South 45 degrees 20 minutes 18 seconds East along a Southwesterly line of said Lot 32-D, 34.00 feet to a corner of said lot; thence North 44 degrees 39 minutes 42 seconds East along the Southeasterly line of Lots 32-A through 32-D, inclusive, 142.00 feet to a corner of said Lot 32-A; thence South 45 degrees 20 minutes 18 seconds East along the Southwesterly line of Lot 31-C, 24.40 feet to the most Southerly corner of said lot; thence North 44 degrees 39 minutes 42 seconds East along the Southeasterly line of Lots 31-A, 31-B and 31-C and said Southeasterly line extended Northeasterly, 121.97 feet to an intersection with the most Easterly line of said Outlot "G" and the terminus point of the hereindescribed line, all in The Commons of Surrey Woods, being a subdivision in the South 1/2 of Section 15, Township 41 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded November 17, 1986 as Document No. 86-544179, in Cook County, Illinois.

PIN: 06-15-301-021 WTD.

No\* Ascot Lane  
Streamwood, Illinois

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EXHIBIT BTHE COMMON AREA

All that part of Outlot "G" lying Southerly of a line described as beginning at a point on the Northeasterly line of Ascot Lane, said point being a Southerly corner of Lot 32-D; thence North 44 degrees 39 minutes 42 seconds East along a Southeasterly line of said Lot 32-D, 17.50 feet to a corner of said lot; thence South 45 degrees 20 minutes 18 seconds East along a Southwesterly line of said Lot 32-D, 34.00 feet to a corner of said lot; thence North 44 degrees 39 minutes 42 seconds East along the Southeasterly line of Lots 32-A through 32-D, inclusive, 142.00 feet to a corner of said Lot 32-A; thence South 45 degrees 20 minutes 18 seconds East along the Southwesterly line of Lot 31-C, 24.40 feet to the most Southerly corner of said lot; thence North 44 degrees 39 minutes 42 seconds East along the Southeasterly line of Lots 31-A, 31-B and 31-C and said Southeasterly line extended Northeasterly, 121.97 feet to an intersection with the most Easterly line of said Outlot "G" and the terminus point of the hereindescribed line, all in The Commons of Surrey Woods, being a subdivision in the South 1/2 of Section 15, Township 41 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded November 17, 1986 as Document No. 86-544179, in Cook County, Illinois.

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EXHIBIT CTHE ADJOINING PARCEL

The Commons of Surrey Woods, being a subdivision in the South 1/2 of Section 15, Township 41 North, Range 9, East of the Third Principal Meridian, in Cook County, Illinois, excepting therefrom the following property:

Parcel 1

Lots 33-A, 33-B, 33-C, 34-A, 34-B, 34-C, 35-A, 35-B, 35-C, 35-D, 36-A, 36-B, 36-C, 36-D, 37-A, 37-B, 37-C, 37-D, 38-A, 38-B, 38-C, 38-D, 39-A, 39-B, 39-C, 40-A, 40-B, 40-C and 40-D, all in The Commons of Surrey Woods, being a subdivision in the South 1/2 of Section 15, Township 41 North, Range 9, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2

ALL that part of Outlot "G" lying Southerly of a line described as beginning at a point on the Northeasterly line of Ascot Lane, said point being a Southerly corner of Lot 32-D; thence North 44 degrees 39 minutes 42 seconds East along a Southeasterly line of said Lot 32-D, 17.50 feet to a corner of said lot; thence South 45 degrees 20 minutes 18 seconds East along a Southwesterly line of said Lot 32-D, 34.00 feet to a corner of said lot; thence North 44 degrees 39 minutes 42 seconds East along the Southeasterly line of Lots 32-A through 32-D, inclusive, 142.00 feet to a corner of said Lot 32-A; thence South 45 degrees 20 minutes 18 seconds East along the Southwesterly line of Lot 31-C, 24.40 feet to the most Southerly corner of said lot; thence North 44 degrees 39 minutes 42 seconds East along the Southeasterly line of Lots 31-A, 31-B and 31-C and said Southeasterly line extended Northeasterly, 121.97 feet to an intersection with the most Easterly line of said Outlot "G" and the terminus point of the hereindescribed line, all in The Commons of Surrey Woods, being a subdivision in the South 1/2 of Section 15, Township 41 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded November 17, 1986 as Document No. 86-544179, in Cook County, Illinois.

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EXHIBIT D

## BY-LAWS OF

## THE COMMONS OF SURREY WOODS HOMEOWNERS' ASSOCIATION

## ARTICLE I

Purposes and Powers

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

## ARTICLE II

Offices

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

2.02. Principal Office. The principal office of the Association shall be maintained in Streamwood, Illinois.

## ARTICLE III

Membership

3.01. Voting Members. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to an assessment by the Association. Ownership of such Lot shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Lots. Voting rights with regard to each Member are set forth in Section 3.02 hereof.

3.02. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 3.01, provided that the Declarant shall not be a Class A Member until the Transfer Date. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 3.01. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 3.01; provided that the Class B membership shall cease and be converted to Class A membership on the Transfer Date.

**3.03. Meetings.**

(a) Quorum: Procedure. Meetings of the Members shall be held at the principal office of the Association or at such other place in Cook County, Illinois as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.02 above shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having a majority of the total votes present at such meeting. Any Member in writing may waive notice of a meeting, or consent to any action of the Association without a meeting.

(b) Initial and Annual Meeting. The initial meeting of the Members shall be held at such time as may be designated upon thirty (30) days' written notice given by the Declarant, provided that such initial meeting shall be held no later than one (1) year from the date the Declaration was recorded. Thereafter, there shall be an annual meeting of the Members on the first Tuesday of April of each succeeding year, at 7:30 P.M. If the date for the annual meeting of Members is a legal holiday, the meeting will be held at the same hour on the first day succeeding such date which is not a legal holiday.

(c) Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purposes. Said meetings shall be called by written notice, authorized by a majority of the Board or by the Members having one-half (1/2) of the total votes entitled to be cast by Class A Members, as provided in Section 3.02 above, and delivered not less than five (5) 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.

**3.04. Notices of Meetings.** Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Townhouse Unit of the Owner with respect to which such voting right appertains, if no address has been given to the Board. The notices required herein shall state the specific purpose and the nature of the business for which the meeting is called. At any meeting, no business may be transacted other than that specified in the notice.

**3.05 Proxies.** At any meeting of Members, a Member entitled to vote may either vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

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## ARTICLE IV

Board of Directors

4.01. Board of Directors. The direction and administration of the Property in accordance with the provisions of the Declaration shall be vested in the Board of Directors, consisting of five (5) persons who shall be elected in the manner hereinafter provided, except for the first Board of Directors appointed by the Declarant (or its designee) which shall be three (3) in number. The Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the number and term of the office of the Board members at any annual meeting, provided that such number shall not be less than five (5), and that the terms of at least two-fifths (2/5) of the persons on the Board shall expire annually. Each member of the Board, with the exception of the Board members initially appointed by the Declarant (or its designee) shall be one of the Owners (including the Declarant); provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a member of the Board and provided further that in the event a member of the Board has entered into a contract to sell his Townhouse Unit and vacates the Townhouse Unit prior to the consummation of that transaction, such member shall no longer be eligible to serve on the Board and his term of office shall be deemed terminated.

4.02. Determination of Board to be Binding. All matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of the Declaration or these By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Owners.

4.03. Election of Board Members At the initial meeting of the Members and at all subsequent annual meetings of the Members there shall be elected a Board of Directors. In all elections for members of the Board of Directors, each Member shall be entitled to vote on a non-cumulative basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. The initial Board of Directors designated by the Declarant pursuant to Section 4.01 hereof shall serve for a period commencing on the date the Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Members held as provided in Section 3.03(b) hereof. Members of the Board elected at the initial meeting shall serve until the first annual meeting. Five (5) Board Members shall be elected at the initial meeting. The three (3) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the two (2) persons receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. In the event of a tie vote, the members of the Board shall determine which members shall have the two (2) year term and which member shall have the one (1) year terms. Upon the expiration of the terms of office of the Board members so elected at the initial meeting and thereafter, successors shall be elected for a term of two (2) years each. Notwithstanding the aforesaid election procedure the Declarant or its designee or beneficiaries may appoint a Board which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members is held.

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4.04. Compensation. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Members having two-thirds (2/3) of the total votes. However, any director may be reimbursed for reasonable expenses incurred in the performance of his duties.

4.05. Vacancies in Board. Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.07 hereof, including vacancies due to any increase in the number of persons on the Board, shall be filled by the remaining members of the Board or by the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

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

4.07. Removal of Board Members. Any Board member may be removed from office by affirmative vote of the Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a Board member removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose.

4.08. Meeting of Board. The initial meeting of the Board shall be held immediately following the initial meeting of the Members and at the same place. At such meeting the Board shall elect its officers to serve until the first annual meeting of the Board which shall be held immediately following the first annual meeting of the Members and at the same place. All subsequent annual meetings of the Board shall be held without other notice than the By-Law immediately after, and at the same place as, the annual meeting of Members. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each member, delivered personally or by mail or telegram. Any member may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Board members shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of those present at its meetings when a quorum is present.

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

## ARTICLE V

### Powers of the Board

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5.01. General Powers of the Board. Without limiting the general powers which may be provided by law, the Declaration or these By-Laws, the Board shall have the following general powers and duties:

- (a) To elect the officers of the Association as hereinabove provided;
- (b) to administer the affairs of the Association and the Property;
- (c) subject to Section 5.04(b) below, to engage the services of a manager or managing agent who shall manage and operate the Property and the Common Area thereof;
- (d) to formulate policies for the Administration, management and operation of the Property, and the Common Area thereof;
- (e) to adopt administrative rules and regulations governing the administration, management, operation and use of the Property and the Common Area, and to amend such rules and regulations from time to time;
- (f) to provide for the maintenance, repair and replacement of the Common Area, the Entrance Island and the exterior portions of the Townhouse Units and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the manager or managing agent;
- (g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and legal counsel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Area, the Entrance Island and the exterior portions of the Townhouse Units and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be the employees of the managing agent);
- (h) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners of such lots which have been occupied for residential purposes, their respective shares of such estimated expenses, as hereinafter provided;
- (i) to mortgage or sell the Common Area or any portion for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage or sale shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Class B membership, if any, and signed by Members entitled to cast two-thirds (2/3) of the votes of the Class A Membership has been recorded, agreeing to such mortgage or sale;
- (j) to exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by the Articles of Incorporation, the Declaration or these By-Laws.

5.02 Capital Additions and Improvements. The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions or capital improvements to the Common Area (other than for purposes of replacing or restoring portions of the Common Area and the Entrance Island, subject to all the provisions of the Declaration) or to those portions of the

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Townhouse Units as set forth in Section 5.01 of the Declaration having a total cost in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of the Members holding two-thirds (2/3) of the total votes.

5.03. Tax Relief. In connection with the Common Area, the Board shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge all expenses incurred in connection therewith to the maintenance fund.

5.04. Rules and Regulations; Management.

(a) Rules. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and Occupants. Written notice of such rules and regulations shall be given to all Owners and Occupants, and the entire Property shall at all times be maintained subject to such rules and regulations.

(b) Management. The Declarant or the Board shall engage the initial management organization under contracts expiring not later than ninety (90) days after the date the initial meeting of Members is held. Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board, provided, however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Property before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Any management fees incurred pursuant to this Section 5.04(b) shall be paid from the assessments collected pursuant to Article VI hereof.

(c) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

5.05 Liability of the Board of Directors. The members of the Board and the officers of the Association shall not be personally liable to the Owners or others for any mistake of judgment or for any acts or omissions made in good faith by such officers or Board members. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers against all contractual liability to others arising out of contracts made by the Board or officers on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration. The liability of any Owner arising out of any such contract made by the Board or officers or out of the aforesaid indemnity in favor of the members of the Board or officers, to the extent not covered by insurance, shall be limited to his proportionate share of the total liability thereunder.

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## ARTICLE VI

Assessments - Maintenance Fund

6.01. Preparation of Estimated Budget. Each year on or before December 1, the Board will estimate the total amount necessary to pay the cost of wages, materials, taxes, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services authorized by the Board, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate ("Estimated Cash Requirement"), with reasonable itemization thereof. The Estimated Cash Requirement shall be assessed equally among all of the Owners other than the Declarant as provided in Section 6.09 of the Declaration. On or before January 1 of the ensuing calendar year, and the first of each and every month of said year, each Owner, other than Declarant, shall be obligated to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this Section 6.01. On or before the date of the annual meeting of each calendar year, the Board shall supply to all Owners an itemized accounting of the maintenance expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected from the Owners pursuant to assessments made during such year (including amounts collected from Declarant) and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein.

6.02. Extraordinary Expenditures. The Board shall build up and maintain a reasonable reserve fund for authorized capital expenditures, contingencies, replacements and deficits in the Association's operating account ("Extraordinary Expenditures") not originally included in the annual estimate. Extraordinary Expenditures which may become necessary during the year shall be charged against such reserve fund. If such reserve fund proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may, at any time, levy a further assessment, which shall be divided pro rata among the remaining installments for such fiscal year and assessed equally among the Owners. In the event, however, that the Board determines that there exists a surplus in the reserve for Extraordinary Expenditures, the Board shall have the authority to transfer such funds into the operating account to fund any deficit in said account. The Board shall serve notice of further assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All such Owners shall be obligated to pay the adjusted monthly amount. At the time of closing of the sale of each Lot by the Declarant, the Owner shall pay (in addition to the first monthly assessment) to the manager or managing agent, or as otherwise directed by the Board, an amount equal to two (2) times the first full monthly assessment for such Owner, which amount shall be used and applied for start-up costs and as a working capital fund in connection with initial operating expenses for the Common Area and held for future working capital needs.

6.03 Budget for First Year. When the first Board elected hereunder (or appointed by the Declarant) takes office, it shall determine the Estimated Cash Requirement, as hereinabove defined, for the period commencing on the first

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day of the month following the conveyance of the first Lot and ending on December 31 of the calendar year following said conveyance. The initial Estimated Cash Requirement shall be divided among the remaining monthly installments of such calendar year and assessed equally to all Owners, other than the Declarant.

6.04. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.05. Books and Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing or any holder, insurer or guarantor of a first mortgage secured by any portion of the Property at such reasonable time or times during normal business hours as may be requested by such Owner or his representative or such holder, insurer or guarantor. Upon ten (10) days' notice to the Board, any Owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessment or other charges due and owing from such Owner. In addition, the Board shall provide for the preceding fiscal year upon the written request of any holder, insurer or guarantor of a first mortgage secured by any portion of the Property any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, 51% or more of the First Mortgagees (by number) shall be entitled to have such an audited statement prepared at their expense.

6.06. Status of Collected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held in trust for the benefit, use and account of all the Owners, other than the Declarant. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

6.07. Remedies for Failure to Pay Assessments. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien or charge against the Lot of the

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Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against the real estate. Unless otherwise provided in the Declaration, the members of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed on the Lots provided, however, that such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Lot which became due and payable subsequent to the date the holder of said mortgage takes possession of the Lot, accepts a conveyance of any interest in the Lot or has a receiver appointed in a suit to foreclose his lien.

6.08. Forcible Entry and Detainer. In addition to the rights and remedies set forth in Section 6.07, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after notice to said Owner by the Board, setting forth the amount of unpaid charges or assessments together with a demand for payment thereof, the Board shall have the right to declare said default a Forcible Detainer of the Townhouse Unit and shall have the right, on behalf of the other Owners, to enter and take possession of the Townhouse Unit from said defaulting Owner, to put out the Owner, or any Occupant claiming by, through or under the Owner, using such reasonable force as the Board shall deem necessary under circumstances and to exercise any of the rights and remedies set forth in the Forcible Entry and Detainer Act, Chapter 57, Illinois Revised Statutes.

6.09. Exempt Lots. With regard to any Lots upon which Townhouse Units are being constructed or have been completed and title has not been conveyed by Declarant, the assessment respecting any such Lot shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Lot, provided, however, that in the event Declarant enters into a lease or installment contract for any Lot, then Declarant shall be responsible for the payment of assessments on those Lots on the same basis as any other Owner as provided in Section 6.01 hereof. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Property and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, prepaid items or inventory items to the extent attributable to subsequent periods. Until such time as the Transfer Date has occurred, the assessments covering the Lots which have not been sold by the Declarant may be paid on a monthly basis or, at its option, paid to the Association at the close of each calendar year without interest.

## ARTICLE VII

### Covenants and Restrictions as to Use and Occupancy

All Owners shall maintain, occupy and use their Townhouse Units and the Common Area only in accordance with the terms of the Declaration and any additional rules and regulations adopted by the Board or by the Members.

The Board shall have full authority to enforce all such rules and regulations by taking all action as may be necessary.

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## ARTICLE VIII

Committees

8.01. Board Committees. The Board, by resolution adopted by a majority of the directors in office, may designate one (1) or more committees, each of which shall constitute one (1) or more directors; said committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and the delegation thereof of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it or him by law.

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

8.03. Term. Each member of the committee shall continue as such until the next annual meeting of the Board and until his successor is appointed and shall have qualified, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

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

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

8.06. 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.

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

## ARTICLE IX

Interim Procedure

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

## ARTICLE X

Amendments

Subject to the provisions of Section 12.03 of the Declaration, these By-Laws may be amended or modified from time to time by action or approval of the Members entitled to cast three-fourths (3/4) of the total votes computed as provided in Section 3.02. Such amendments shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

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## ARTICLE XII

Definition of Terms

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

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## ARTICLE XII

Definition of Terms

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

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