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DECLARATION FOR CARRIAGE WAY CLUB

Table of Contents

ARTICLE ONE Definitions

Section	Page
1.01 Association or Townhome Association	2
1.02 Board	2
1.03 By-Laws	2
1.04 Charges	2
1.05 Community Area	2
1.06 Community Assessment	2
1.07 Community Expenses	2
1.08 County	3
1.09 Declaration	3
1.10 Development Area	3
1.11 Dwelling Unit	3
1.12 Dwelling Unit Exterior	3
1.13 Mortgagee	3
1.14 Owner	4
1.15 Person	4
1.16 Premises	4
1.17 Privacy Area	4
1.18 Record	4
1.19 Resident	4
1.20 Trustee	4
1.21 Turnover Date	4
1.22 Unadded Area	4
1.23 Village	4
1.24 Voting Member	4

ARTICLE TWO Scope of Declaration

2.01 Property Subject to Declaration	5
2.02 Conveyances Subject to Declaration	5
2.03 Duration	5
2.04 Dwelling Unit Conveyance	5
2.05 Easement for Encroachment	5

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ARTICLE THREE Covenants and Restrictions as to Use and Maintenance of the Community Area and Dwelling Units

Section	Page
3.01 In General	6
3.02 Ownership	6
3.03 Access Easement	6
3.04 Right of Enjoyment	6
3.05 Delegation of Use	6
3.06 Rules and Regulations	7
3.07 Utility Easements	7
3.08 Easements, Leases, Licenses and Concessions	7
3.09 Maintenance, Repair and Replacement of the Community Area	7
3.10 Damage by Resident	8
3.11 Alterations, Additions or Improvements to the Community Area	8
3.12 Maintenance, Repair and Replacement of Dwelling Units	8
3.13 Alterations, Additions or Improvements to the Dwelling Units	9
3.14 No Dedication to Public Use	9
3.15 Use Restrictions	9
3.16 Parking	10
3.17 Obstructions	10
3.18 Pets	10
3.19 Proscribed Activities	10
3.20 Structural Impairment	11
3.21 Lease of Dwelling Unit	11
3.22 Association's Access	11
3.23 Privacy Areas	11
3.24 Certain Utility Charges	12

ARTICLE FOUR Insurance/Condemnation

4.01 Community Area Insurance	12
4.02 Dwelling Unit Insurance	13
4.03 Rebuilding of Damaged Dwelling Unit	13
4.04 Owner Responsibility	14
4.05 Waiver of Subrogation	14
4.06 Condemnation	14

ARTICLE FIVE The Association

5.01 In General	15
5.02 Membership	15
5.03 Voting Members	15

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8 9 5 6 6 8 2 8

Section	Page
5.04 Board	15
5.05 Voting Rights	15
5.06 Director and Officer Liability	16
5.07 Managing Agent	16
5.08 Dissolution	16
ARTICLE SIX <u>Assessments</u>	
6.01 Purpose of Assessments	17
6.02 Community Assessment	17
6.03 Payment of Community Assessment	17
6.04 Revised Assessment	18
6.05 Special Assessment	18
6.06 Capital Reserve	18
6.07 Initial Capital Contribution	18
6.08 Assessments During Initial Development Period	19
6.09 Payment of Assessments	20
ARTICLE SEVEN <u>Remedies for Breach or Violation</u>	
7.01 Creation of Lien and Personal Obligation	20
7.02 Collection of Charges	20
7.03 Non-Payment of Charges	20
7.04 Lien for Charges Subordinated to Mortgages	20
7.05 Self-Help by Board	21
7.06 Other Remedies of the Board	21
7.07 Costs and Expenses	21
7.08 Enforcement by Owners	21
ARTICLE EIGHT <u>Annexing Additional Property</u>	
8.01 In General	22
8.02 Power to Amend	22
8.03 Effect of Supplemental Declaration	22
ARTICLE NINE <u>Trustee's Reserved Rights and Special Provisions Covering Development Period</u>	
9.01 In General	23
9.02 Promotion of Project	23
9.03 Construction on Premises	24

UNOFFICIAL COPY

8 9 5 6 6 3 2 3

Section	Page
9.04 Grant of Easements and Dedications	24
9.05 Trustee Control of Association	24
9.06 Other Rights	24
ARTICLE TEN <u>Amendment</u>	
10.01 Special Amendments	25
10.02 Amendment	25
ARTICLE ELEVEN <u>Mortgagees' Rights</u>	
11.01 Notice to Mortgagees	26
11.02 Consent of Mortgagees	27
11.03 Insurance Proceeds/Condemnation Awards	27
ARTICLE TWELVE <u>Party Walls</u>	
12.01 Party Wall	28
12.02 Rights in Party Wall	28
12.03 Damage to Party Wall	28
12.04 Change in Party Wall	29
12.05 Arbitration	29
ARTICLE THIRTEEN <u>The Property Owners Association</u>	
13.01 Property Owners Association Declaration	29
13.02 Participation in Property Owners Association	30
13.03 Non-Participation in Property Owners Association	31
ARTICLE FOURTEEN <u>Miscellaneous</u>	
14.01 Notices	31
14.02 Captions	31
14.03 Severability	31
14.04 Perpetuities and Other Invalidity	31
14.05 Assignment by Trustee	31
14.06 Title Holding Land Trust	32

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09/01/89

DECLARATION FOR CARRIAGE WAY CLUB

This Declaration is made by Chicago City Bank and Trust Company, as Trustee under Trust Agreement dated June 1, 1987 and known as Trust No. 11400 ("Trustee").

RECITALS

Trustee holds record title to the Development Area which is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased townhome development called "Carriage Way Club" (the "Development"). The Development shall include residential units, parking areas, green space, walkways, driveways, and other amenities.

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

Portions of the Premises, including, without limitation, walkways, driveways, open areas, including improvements located above and below the ground, shall be designated as "Community Area". The Community Area shall be maintained for the common use and enjoyment of all residents of the Development. Each Owner of a Dwelling Unit shall be assessed to pay his share of the cost of the maintenance and/or improvement of the Community Area.

In order to provide for the orderly and proper administration, maintenance, and improvement of the Community Area and for the architectural control of the Dwelling Units, the Trustee shall incorporate the Association under the Illinois General Not-For-Profit Corporation Act. The Association shall have the responsibility for administering, maintaining and improving the Community Area and shall set budgets and fix assessments to pay the expenses incurred in connection with such duties. The administration, maintenance and improvement of the Community Area by the Association shall at all times be subject to this Declaration and all of the rights and easements provided for the Owners in this Declaration. Each Owner of a Dwelling Unit shall be a member of the Association.

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

NOW, THEREFORE, the Trustee declares as follows:

ARTICLE ONE Definitions

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

1.01 ASSOCIATION OR TOWNHOME ASSOCIATION: Carriage Way Club Townhome Association, an Illinois not-for-profit corporation, its successors and assigns.

1.02 BOARD: The board of directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Five.

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

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

1.05 COMMUNITY AREA: Those portions of the Premises which are described and designated as "Community Area" in Exhibit B hereto, as Exhibit B may be amended or supplemented from time to time, together with all improvements located above and below the ground and rights appurtenant thereto. The Community Area shall generally include open space, a lake, private drives, parking areas, walkways and green areas, and shall not include any Dwelling Units. Trustee may make Added Community Area subject to this Declaration as provided in Article Eight below.

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

1.07 COMMUNITY EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement, landscaping and snow removal of the Community Area and the Dwelling Unit Exteriors; if not separately charged or metered to each Dwelling Unit the cost of water and sewer service to the Dwelling Units; the cost of insurance, water, waste removal and scavenger services, electricity, telephone and other necessary utility expenses for the Community Area; the cost of general

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and special real estate taxes and assessments levied or assessed against any portion of the Community Area owned by the Association; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the operation and maintenance of the Community Area and Dwelling Unit Exteriors; any expenses designated as Community Expenses by this Declaration; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

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

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

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

1.11 DWELLING UNIT: Each subdivided lot designated in Exhibit B hereto as a Dwelling Unit, together with all improvements thereon and thereto.

1.12 DWELLING UNIT EXTERIOR: The roof, foundation, steps, footings, outer surface of exterior walls and garage doors of the residential unit and attached garage unit comprising the Dwelling Unit and all portions, if any, of the Dwelling Unit which are not improved with the residence and garage, including, without limitation, the following:

(a) Driveways, walkways, patios, grass, shrubbery and other landscaping, if any; and

(b) Those portions of water, sewer, electric and other operating or utility systems which serve more than one Dwelling Unit (but not including those portions of such systems which serve only such Dwelling Unit).

1.13 MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Dwelling Unit.

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

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

1.16 PREMISES: That portion of the Development Area which is described in Exhibit B hereto, as Exhibit B may be amended from time to time, with all improvements thereon and rights appurtenant thereto. Trustee shall have the right, but not the obligation, to make additional portions of the Development Area subject to this Declaration as part of the Premises as more fully provided in Article Eight.

1.17 PRIVACY AREA: Those portions of the Community Area, if any, which are designed for the exclusive use of the Owner, as more fully described in Section 3.23.

1.18 RECORD: To record in the office of the Recorder of Deeds of Cook County, Illinois.

1.19 RESIDENT: An individual who resides in a Dwelling Unit and who is either the Owner, a tenant of the Owner, a contract purchaser of the Dwelling Unit, or a relative of any such Owner, tenant or contract purchaser.

1.20 TRUSTEE: Chicago City Bank and Trust Company, as Trustee under a Trust Agreement dated June 1, 1987 and known as Trust No. 11400 its successors and assigns.

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

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

1.23 VILLAGE. The Village of Burr Ridge, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Village of Burr Ridge as of the Recording of this Declaration.

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

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ARTICLE TWO Scope of Declaration

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

2.02 CONVEYANCES SUBJECT TO DECLARATION: All covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in any part of the Premises.

2.03 DURATION: Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by a Recorded instrument executed by the Owners of not less than three-fourths (3/4) of the Dwelling Units.

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

2.05 EASEMENT FOR ENCROACHMENT: In the event that, by reason of the construction, repair, reconstruction, settlement, shifting or incorrect conveyances of a Dwelling Unit, any facilities servicing any such Dwelling Unit, or any improvements to the Community Area, shall encroach upon any part of any Dwelling Unit or the Community Area, then, in any case, there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his agent. The Person who is responsible for the maintenance of any encroaching improvement for which an easement for continuance,

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

ARTICLE THREE

Covenants and Restrictions as to Use and Maintenance of the Community Area and Dwelling Units

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

3.02 OWNERSHIP: On or before the Turnover Date, the Community Area shall be conveyed to the Association free and clear of any mortgage or trust deed.

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

3.04 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area, except portions thereof which are designated as being part of a Privacy Area as more fully provided in Section 3.23. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Dwelling Unit, subject to and governed by the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association.

3.05 DELEGATION OF USE: Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations

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from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Community Area to Residents of his Dwelling Unit. An Owner shall delegate such rights to tenants and contract purchasers of the Dwelling Unit who are Residents.

3.06 RULES AND REGULATIONS: The use and enjoyment of the Community Area shall at all times be subject to reasonable rules and regulations duly adopted by the Association.

3.07 UTILITY EASEMENTS: Illinois Bell Telephone Company, Commonwealth Edison Company, Northern Illinois Gas Company, and all other public and private utilities serving the Premises are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Community Area and Dwelling Unit Exteriors for the purpose of providing utility services to the Premises or any other portion of the Development Area.

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

3.09 MAINTENANCE, REPAIR AND REPLACEMENT OF THE COMMUNITY AREA: Maintenance, repairs and replacements of the Community Area shall be furnished by the Association, and shall include, without limitation, the following:

(a) The maintenance (including street cleaning, waste removal and snow removal), repair and replacement of the private drives and roads, walks, paths, parking areas, access facilities, and of all other improvements on and through the Community Area; and

(b) Added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Community Area.

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The cost of the maintenance, repairs and replacement of the Community Area shall be Community Expenses. In the event that any of the improvements to the Community Area are damaged and such damage is covered by insurance carried by the Association under Section 4.01(a), then unless a resolution to the contrary is adopted by the affirmative vote of at least 75% of the Voting Members, the damaged improvements shall be repaired, replaced or reconstructed and the insurance proceeds shall be used first to pay the cost thereof, and any excess shall be used to pay the Community Expenses.

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

3.11 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA: No alterations, additions or improvements shall be made to the Community Area without the prior approval of the Board. The Association may cause alterations, additions or improvements to be made to the Community Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than Two Hundred Dollars (\$200) multiplied by the number of Dwelling Units then subject to this Declaration shall be approved in advance at a special meeting of the Owners.

3.12 MAINTENANCE, REPAIR AND REPLACEMENT OF DWELLING UNITS:

(a) Except as otherwise provided in this Section, each Owner shall be responsible for the maintenance, repair and replacement of his Dwelling Unit.

(b) The Association shall be responsible for the maintenance, repair and replacement of the Dwelling Unit Exteriors, including, without limitation, the following:

(i) maintenance, repair and replacement of the roof, outer surface of exterior walls, foundations, steps, footings, driveways, walkways and patios, including snow removal from driveways, but excluding window washing, the replacement of broken glass, and the repair of damage to garage doors;

(ii) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping, if any, on the Dwelling Unit Exteriors, but excluding those portions, if any, of the Dwelling Unit Exterior which are designated as a Privacy Area under Section 3.23;

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(iii) maintenance, repair and replacement of water, sewer, electrical and other systems which serve more than one Dwelling Unit (but not including those portions of such systems which serve only one Dwelling Unit, such as a garage door opener, air-conditioning unit, and electrical or plumbing fixtures).

3.13 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE DWELLING UNIT EXTERIORS: No additions, alterations or improvements shall be made to any Dwelling Unit Exterior by an Owner (including, without limitation, a change in the color of the Dwelling Unit Exterior, construction of fences or changes in the landscaping) without the prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement to a Dwelling Unit Exterior by an Owner upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Association from time to time the additional cost of maintenance of the Dwelling Unit Exterior as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made to a Dwelling Unit Exterior by an Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

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

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

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

3.14 NO DEDICATION TO PUBLIC USE: Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Community Area to or for any public use or purpose whatsoever.

3.15 USE RESTRICTIONS:

(a) No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises nor shall any "For Sale" or "For Rent" signs or any other advertising be maintained or permitted on any part of the Community Area or any Dwelling Unit Exterior, except as permitted by the Board or as permitted under Article Nine.

(b) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Dwelling

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Unit Exterior or the Community Area. The Premises shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

(c) Each Dwelling Unit shall be used only as a residence; provided that no Owner shall be precluded, with respect to his Dwelling Unit, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein or (iii) handling his personal business or professional calls or correspondence therefrom.

3.16 PARKING: The garage which is part of each Dwelling Unit and that portion of the driveway which is adjacent to and extends twenty (20) feet beyond the garage door (regardless of whether such portion is part of the Dwelling Unit or the Community Area) ("Unit Driveway") shall be used for parking only by the Resident of the Dwelling Unit and the Resident's guests. The garage shall at all times be available to park an automobile and shall not be used as living space or for storage of items which would prevent the parking of an automobile. Parking of vehicles on other portions of the Premises shall only be permitted pursuant to rules and regulations adopted by the Board, which rules and regulations may provide for the removal of any violating vehicles at the vehicle owner's expense or for liquidated damages for a violation of the rules and regulations. Without limiting the foregoing, unless expressly permitted by the Board, no boats, trucks, recreational vehicles, trailers or other vehicles shall be parked or stored on any portion of the Premises (other than a garage which is part of a Dwelling Unit) for more than twenty-four (24) hours at a time.

3.17 OBSTRUCTIONS: Except as permitted under Section 9.03 there shall be no obstruction of the Community Area, and nothing shall be stored in the Community Area without the prior written consent of the Board.

3.18 PETS: No animal of any kind shall be raised, bred or kept in the Community Area. The Board may from time to time adopt rules and regulations governing the (a) keeping of pets in the Dwelling Units, which may include prohibiting certain species of pets from being kept in the Dwelling Units and (b) use of the Community Area by pets, including, without limitation, rules and regulations which set aside certain portions of the Community Area as a "dog run" or which require an Owner to clean up after his pet. Any pet causing or creating an unreasonable disturbance shall be permanently removed from the Premises upon three (3) days written notice from the Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final.

3.19 PROSCRIBED ACTIVITIES: No noxious or offensive activity shall be carried on in the Premises nor shall anything be

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done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Residents.

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

3.21 LEASE OF DWELLING UNIT: Any Owner shall have the right to lease all (and not less than all) of his Dwelling Unit. No Dwelling Unit shall be leased for transient or hotel purposes, which are hereby defined as being for a period of less than thirty (30) days or for a period of more than thirty (30) days where hotel services normally furnished by a hotel (such as room service or mail service) are furnished. Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration.

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

3.23 PRIVACY AREAS: Certain portions of the Community Area and Dwelling Unit Exteriors may be designated as being reserved for the exclusive use of the Owner of a particular Dwelling Unit as a garden, patio or other similar use ("Privacy Area"), as provided in this Section. The Trustee may designate portions of the Community Area and Dwelling Unit Exterior as Privacy Areas by so designating such portions in Exhibit B. Alternatively, the Board may designate Privacy Areas pursuant to rules and regulations adopted from time to time by the Board. The Board shall maintain a record of all Privacy Areas and to which Dwelling Unit each Privacy Area is assigned. The right to use a Privacy Area which is assigned to a Dwelling Unit shall run with title to the Dwelling Unit. Subject to the provisions of Section 3.13, and any rules and regulations established by the Association, an Owner may landscape his Privacy Area, or otherwise improve his Privacy Area in a manner which compliments and enhances the aesthetic appearance of the development. The Owner shall be solely responsible, at his own expense, for the maintenance, repair, upkeep, planting and replanting of his Privacy Area and any improvements thereto. If the Owner fails, in the sole judgment of the Board, to properly maintain his Privacy Area, then the Association, in its discretion and at the Owner's expense, may (i) cause the Privacy Area to be properly maintained and the cost thereof shall be a Charge to the Owner, or (ii) cause the Privacy Area to be restored to its original state in conformity with the surrounding landscape, in which case such portion of the Community Area and/or Dwelling Unit Exterior shall no longer be deemed to be a Privacy Area and the Owner shall no longer have any rights under this Section with respect to such portion of the Community Area and Dwelling Unit Exterior.

3.24 CERTAIN UTILITY CHARGES: Certain utility charges incurred in connection with the use, operation and maintenance of the Community Area and Dwelling Unit Exteriors may not be separately metered and billed to the Association. Without limiting the foregoing, the Association shall have the right to use water from taps or spigots which are attached to buildings for the purpose of watering the green areas in the Community Area or Dwelling Unit Exteriors. If the charges for such water or other utilities are metered to individual Dwelling Units rather than being separately metered for the Community Area, then the following shall apply:

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

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

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

ARTICLE FOUR
Insurance/Condemnation

4.01 COMMUNITY AREA INSURANCE:

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

(b) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Trustee, the Trustee's beneficiary, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with, the Community Area. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance

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covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

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

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

4.02 DWELLING UNIT INSURANCE:

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

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

(c) No Owner shall cause or permit anything to be done or kept on the Premises which will result in the cancellation of insurance or an increase in the insurance premium for insurance on such Owner's Dwelling Unit, any other Dwelling Unit, or the Community Area, including Privacy Areas.

4.03 REBUILDING OF DAMAGED DWELLING UNIT:

(a) In the event of damage to or destruction of any Dwelling

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

(b) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in Subsection (a), to perform the necessary repair or rebuilding, then, the Board may secure the Dwelling Unit, and/or cause such repairs or rebuilding to be performed in the manner as provided in Subsection (a), and the cost thereof shall be a charge hereunder to such Owner as his personal obligation and until paid shall be a continuing lien on the Owner's Dwelling Unit, and against the proceeds payable under the Owner's insurance policy.

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

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

4.06 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds

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awarded in such condemnation shall be paid to the Association and such proceeds, together with any Community Area Capital Reserve being held for such part of the Community Area, shall, in the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Community Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Community Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this section and legally describes the real estate affected, is executed by the President of the Association and Recorded.

ARTICLE FIVE The Association

5.01 IN GENERAL: The Association has been or will be incorporated as a not-for-profit corporation under Illinois law. The Association shall be the governing body for all of the Owners for the administration and operation of the Community Area.

5.02 MEMBERSHIP: Each Owner shall be a member of the Association. There shall be one membership per Dwelling Unit. Membership shall be appurtenant to and may not be separated from ownership of a Dwelling Unit. Ownership of a Dwelling Unit shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Dwelling Unit within 10 days after such change.

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

5.04 BOARD: Subject to the rights retained by the Trustee under Section 9.05, the Board shall consist of that number of members determined under Section 5.01 of the By-Laws, each of whom shall be an Owner or Voting Member.

5.05 VOTING RIGHTS: All of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member shall have one vote; provided, that, prior to the Turnover Date all voting rights in the Association shall be vested in

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the Trustee and the Voting Members shall have no voting rights. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

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

5.07 MANAGING AGENT: The Association may employ a managing agent to assist the Board in administering the affairs of the Association. Any management agreement entered into by the Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable without cause or payment of a termination fee by either party on 90 days written notice. Prior to the Turnover Date, the Association may enter into a management agreement with the Trustee's beneficiary or an affiliate of Trustee's beneficiary.

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

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ARTICLE SIX Assessments

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

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

- (1) The estimated Community Expenses;
- (2) The estimated amount, if any, to maintain adequate reserves for Community Expenses including, without limitation, amounts to maintain the Capital Reserve;
- (3) The estimated net available cash receipts from the operation and use of the Community Area, plus estimated excess funds, if any, from the current year's assessments;
- (4) The amount of the "Community Assessment" payable by the Owners, which is hereby defined as the amount determined in (1) above, plus the amount determined in (2) above, minus the amount determined in (3) above;
- (5) That portion of the Community Assessment which shall be payable each month by the Owner of each Dwelling Unit which is subject to assessment hereunder, which shall be equal to one-twelfth of the Community Assessment divided by the number of Dwelling Units, so that each Owner shall pay equal Community Assessments for each Dwelling Unit.

Anything in this Section to the contrary notwithstanding, during the Initial Development Period the assessment procedure set forth in Section 6.08 shall apply and the budget provided for in the Section need not disclose the information called for in Subsection (5) above, although the budget shall disclose the portion of each Owner's share of the Community Assessment which shall be added to the Capital Reserve.

6.03 PAYMENT OF COMMUNITY ASSESSMENT: On or before the 1st day of January of the ensuing calendar year, and on or before the 1st day of each and every month thereafter until the effective date of the next annual or revised Community Assessment, each Owner of a Dwelling Unit which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Community Assessment which is payable by each Owner of a Dwelling Unit under Section 6.02(5).

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6.04 REVISED ASSESSMENT: If the Community Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 6.02(5) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

6.05 SPECIAL ASSESSMENT: The Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Community Area, or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget for periods after the Initial Development Period. Any special assessment shall be levied against all of the Owners, share and share alike. No special assessment shall be adopted without the affirmative vote of at least two-thirds (2/3) of the Voting Members who cast their votes on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

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

6.07 INITIAL CAPITAL CONTRIBUTION: Upon the closing of the first sale of a Dwelling Unit by the Trustee to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to three (3) months' Community Assessment at the rate in effect with respect to the Dwelling Unit as of the closing. Said amount shall be held and used by the Association for its working capital needs.

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6.08 ASSESSMENTS DURING INITIAL DEVELOPMENT PERIOD:

Anything herein to the contrary notwithstanding, from the date of the Recording hereof until the Turnover Date (the "Initial Development Period"), the assessment procedure set forth in this Section shall apply.

(a) **The Basic Assessment.** The basic assessment ("Basic Assessment") shall be \$194 per Dwelling Unit per month.

(b) **Cost of Living Increase.** If, as of the first day of any month after this Declaration is Recorded, the level of the most recently published Consumer Price Index--United States City Average--All Items (CPI-U) (1982-4=100) as published from time to time by the Bureau of Labor Statistics (the "Index"), is greater than 123 (the "Index Base Level"), then, at the option of the Board, the Community Assessment payable by each Owner (other than Trustee) for such month and months thereafter until next adjusted, shall be equal to the Basic Assessment then in effect multiplied by a fraction, the numerator of which shall be the level of the most recently published Index and the denominator of which shall be the Index Base Level. If the Index shall cease being published, such other standard or index selected by the Trustee, in its discretion, as shall most nearly approximate the measurements theretofore made by the Index shall be used as the Index hereunder, and the Index Base Level shall be adjusted accordingly.

(c) **Application of Assessments.** Each month each Owner (other than the Trustee) shall pay as his monthly Community Assessment the amount determined under (a) and (b) above. Out of each such payment, the Association shall add that portion of the payment which is designated in the budget as a capital contribution under Section 6.06 to the Capital Reserve. The balance of each such payment shall be used by the Association to pay the Community Expenses.

(d) **Trustee's Obligation.** During the Initial Development Period the Trustee shall not be obligated to pay any amounts to the Association as a Community Assessment except as provided in this Subsection. The Trustee shall pay to the Association the aggregate excess, if any, of the Community Expenses incurred and paid during the Initial Development Period over the aggregate amounts assessed to the Owners (other than Trustee) for use by the Association for the payment of Community Expenses under Subsection (c) during the Initial Development Period. The Trustee shall make such payments to the Association as needed during such period (but at least quarter-annually) and a final accounting shall be made between Trustee and the Association within 120 days after the end of the Initial Development Period. The Trustee shall not be responsible for the payment of any amounts to the Capital Reserve during the Initial Development Period.

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

ARTICLE SEVEN

Remedies for Breach or Violation

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

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

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

7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 7.01, shall be subordinate to the Mortgagee's mortgage on the Dwelling Unit which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due

prior to the date of the transfer of title. However, the transferee of the Dwelling Unit shall be personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Community Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Dwelling Unit, as provided in this Article.

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

7.06 OTHER REMEDIES OF THE BOARD: In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Declaration or any rules and regulations adopted hereunder may be by proceeding at law or in equity by the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof, to recover sums due or payable or to recover damages, and against the land to enforce any lien created hereunder; and failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

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

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

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ARTICLE EIGHT Annexing Additional Property

8.01 IN GENERAL: Trustee reserves the right at any time and from time to time prior to seven (7) years from the date of Recording of this Declaration to annex, add and subject additional portions of the Development Area to the provisions of this Declaration as additional Premises by recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Development Area which is subjected to this Declaration by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Community Area shall be referred to as "Added Community Area"; and any Dwelling Units contained in the Added Premises shall be referred to as "Added Dwelling Units". After the expiration of said seven (7) year period, Trustee may exercise the rights described herein to annex, add and subject additional portions of the Development Area to the provisions of this Declaration, provided that the consent of two-thirds (2/3) (by number) of the Owners of all Dwelling Units then subject to this Declaration is first obtained.

8.02 POWER TO AMEND: Trustee hereby retains the right and power to Record a Supplemental Declaration, at any time and from time to time as provided in Section 8.01, which amends or supplements Exhibit B. Exhibit B may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit B and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or parts of the Added Premises as the Trustee deems necessary or appropriate.

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

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

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

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(c) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Community Area or the Added Dwelling Units, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Premises were subjected to this Declaration at the time of the Recording hereof;

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

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

(f) Each Owner of an Added Dwelling Unit which is subject to assessment hereunder shall be responsible for the payment of the Community Assessment pursuant to Section 6.02(5) or Section 6.08, as the case may be, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Dwelling Unit became subject to assessment hereunder.

ARTICLE NINE

Trustee's Reserved Rights and Special Provisions Covering Development Period

9.01 IN GENERAL: In addition to any rights or powers reserved to the Trustee under the provisions of this Declaration or the By-Laws, the Trustee shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. If not sooner terminated as provided in this Article, the provisions of this Article shall terminate and be of no further force and effect from and after such time as the Trustee or Trustee's beneficiary is no longer vested with or controls title to any part of the Development Area.

9.02 PROMOTION OF PROJECT: In connection with the promotion, sale or rental of any improvements upon the Development Area: (i) the Trustee shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Trustee may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Dwelling Units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Trustee may deem advisable; and (ii) Trustee, Trustee's beneficiary and their respective agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to

use and enjoy the Community Area, at any and all reasonable times without fee or charge. The Trustee shall have the right and power to sell or lease any Dwelling Unit owned by it or the Trustee to any person or entity which it deems appropriate in its sole discretion and it need not comply with the provisions of Section 3.21.

9.03 CONSTRUCTION ON PREMISES: The Trustee is hereby granted the right and power to make such improvements to the Premises and improvements thereto (including landscaping) as the Trustee deems to be necessary or appropriate, provided, that, Trustee shall obtain such permits as may be required by the Village. In connection with the rights provided in this Section, the Trustee, Trustee's beneficiary and their respective agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

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

9.05 TRUSTEE CONTROL OF ASSOCIATION: The first and all subsequent Boards shall consist solely of three (3) persons from time to time designated by the Trustee, which persons may, but need not, be members under Section 5.02. Trustee's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Trustee no longer holds or controls title to any part of the Development Area, (ii) the giving of written notice by Trustee to the Association of Trustee's election to terminate such rights, (iii) five (5) years from the date of Recording hereof or (iv) within ninety (90) days of the consummation of the sale by Trustee of 32 Dwelling Units. The date on which the Trustee's rights under this Section shall terminate shall be referred to as the "Turnover Date". Prior to the Turnover Date, the Voting Members may elect that number of non-voting counselors to the Board as the Trustee may, in its sole discretion, permit. From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Trustee and the Owners shall have no voting rights.

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

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ARTICLE TEN Amendment

10.01 SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Trustee 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 Authority, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Dwelling Units, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Trustee to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Trustee to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as Trustee no longer holds or controls title to a portion of the Development Area.

10.02 AMENDMENT: Subject to Section 10.01 and Section 11.02, the provisions of this Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least Seventy-Five Percent (75%) of the total votes or by an instrument executed by Owners of at least Seventy-Five Percent (75%) of the Dwelling Units; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all Mortgagees, (ii) Article Eight, Article Nine or any other provisions relating to the rights of Trustee may be amended only upon the written consent of the Trustee, and (iii) no amendment to the Declaration which changes the ratio of assessments against Owners shall become effective without the consent of all Mortgagees. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Dwelling Unit shall no longer have the legal access to a public way from his Dwelling Unit. No amendment shall become effective until properly Recorded.

ARTICLE ELEVEN Mortgagees' Rights

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

- (a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Dwelling Unit covered by the Mortgagee's mortgage;
- (b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Owners; provided, that, if an audited statement is not available, then upon the written request of the holder, insurer or guarantor of a Mortgage, the Association shall permit such party to have an audited statement for the preceding fiscal year of the Association prepared at such party's expense;
- (c) Copies of notices of meetings of the Owners;
- (d) Notice of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees;
- (e) Notice of any substantial damage to any part of the Community Area or the Dwelling Unit subject to the Mortgagee's Mortgage;
- (f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Community Area or the Dwelling Unit Subject to the Mortgagee's Mortgage.
- (g) Notice of any default by the Owner of the Dwelling Unit which is subject to the Mortgagee's mortgage under this Declaration, the By-Laws or the rules and regulations of the Association which is not cured within 30 days of the date of the default;
- (h) The right to examine the books and records of the Association at any reasonable times;
- (i) In the case of a Mortgagee, the right to be listed on the records of the Association as an "Eligible Mortgagee" for purpose of Section 11.02 below;
- (j) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (k) The right to be designated as an Eligible Mortgagee hereunder.

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

11.02 CONSENT OF MORTGAGEES:

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of Mortgagees holding, in the aggregate, first mortgages on at least fifty-one percent (51%) of the Dwelling Units (by number) which are subject to first mortgages held by Mortgagees which specifically request to be treated as "Eligible Mortgagees" under Section 11.01(k) above will be required for the Association to do or permit to be done any of the following:

(1) Adoption of an amendment to this Declaration which (i) changes Article Six or otherwise changes the method of determining the Community Assessments or other Charges which may be levied against an Owner; (ii) changes Section 7.04 or Article Ten, (iii) changes this Article Eleven or any other provision of this Declaration or by By-Laws which specifically grants rights to Mortgagees, (iv) materially changes insurance and fidelity bond requirements, (v) changes voting rights, or (vi) imposes a right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Dwelling Unit;

(2) The abandonment, partition, subdivision, encumbrance, sale, or transfer of the Community Area owned, directly or indirectly by the Association (except for the granting of easements for public utilities or dedication for public purposes or for other purposes consistent with the intended use of the Community Area);

(3) The removal of a portion of the Community Area from the provisions of this Declaration;

(4) The withdrawal of the Premises from the provisions of this Declaration (except that this action shall require the consent of at least 67% of such Mortgagees);

provided, that, such consent of Eligible Mortgagees will not be required with respect to any action under (1) through (4) above which occurs as a result of (i) a taking of a portion or all of the Community Area by condemnation or eminent domain, or (ii) withdrawal of a portion of the Premises from the provisions hereof pursuant to Section 4.06, or (iii) any action taken pursuant to Article Eight.

(b) Whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary, in writing, by the Eligible Mortgagee within thirty (30) days after making the request for consent by certified or registered mail, return receipt requested.

11.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a

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result of damage to, or destruction of, any part of the Community Area or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Community Area, any such distribution shall be made to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the Mortgagee of a Dwelling Unit with respect to any such distribution to or with respect to such Dwelling Unit; provided, that, nothing in this Section shall be construed to deny to the Association the right (i) to apply insurance proceeds to repair or replace damaged improvements as provided in Article Three or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Section 4.06.

ARTICLE TWELVE
Party Walls

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

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

12.03 DAMAGE TO PARTY WALL:

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

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Dwelling Unit which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Dwelling Units to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that

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the cost of repairing or replacing any portion thereof which is part of a Dwelling Unit Exterior shall be paid by the Association as a Community Expense to the extent not covered by insurance.

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

12.04 CHANGE IN PARTY WALL: Any Owner of a Dwelling Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Dwelling Unit in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Dwelling Unit and the Board, in addition to meeting any other requirements which may apply.

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

ARTICLE THIRTEEN

The Property Owners Declaration

13.01 Property Owners Association Declaration. The Development Area is subject to that certain Declaration for Carriage Way Property Owners Association which was recorded in Cook County, Illinois on May 8, 1964 as Document Number 19121695 (the "Property Owners Declaration"). The Property Owners Declaration, by its terms, was originally intended to provide a mechanism by which payments could be made to the Hinsdale Sanitary District so that sanitary and storm sewer services could be furnished to the property which is subject to the Property Owners Declaration. Sanitary and storm sewer services are now furnished by the Village of Burr Ridge and therefore the primary reason for the recording of the Property Owners Declaration no longer applies. However, the Carriage Way Property Owners Association (the "Property Owners Association") which is provided for in the Property Owners Declaration continues to be an operating entity. Ordinance No. A-454-26-87, adopted by the Village on September 28, 1987 contains a provision requiring that the Development Area be made subject to the Property Owners Declaration. Trustee hereby acknowledges that the entire Development Area is subject to the Property Owners Declaration. However, the Property Owners Declaration is not clear as to how it would apply to homes constructed on the Development Area or the rights or obligations of the owners of such homes under the Property Owners Declaration. In order to clarify the

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application of the Property Owners Declaration and the powers of the Property Owners Association with respect to the Development Area, the Trustee hereby declares that, at the option of the Property Owners Association, the provisions of either Section 13.02 or 13.03 below shall govern.

13.02 Participation in Property Owners Association. If the Property Owners Association executes and records a document which references this Section and states that the Property Owners Association chooses to have the Owners of Dwelling Units participate in the Property Owners Association on the terms set forth below, then the owners from time to time of portions of the Premises shall be subject to the Property Owners Declaration and shall participate in the Property Owners Association on the following terms:

- (a) Annual assessments under the Property Owners Declaration shall only be payable with respect to a Dwelling Unit with respect to which a certificate of occupancy has been issued by the Village and which has been sold and conveyed to a bona fide purchaser for value by the Trustee or leased and occupied by a tenant;
- (b) The annual assessment payable under the Property Owners Declaration with respect to a Dwelling Unit shall be no greater than fifty percent (50%) of the annual assessment payable from time to time with respect to any of the 88 lots which were subject to assessment under the Property Owners Declaration as of May 1, 1989;
- (c) Each Owner of a Dwelling Unit which is subject to assessment under the Property Owners Declaration shall have the right to cast one-half vote for each such Dwelling Unit at each meeting of the Property Owners Association;
- (d) Neither the Property Owners Declaration nor the Property Owners Association By-Laws shall be amended so as to affect the Premises or the rights or obligations of the Owners of Dwelling Units without the prior written consent of the Townhome Association;
- (e) The Association shall have the exclusive right to administer the Premises as provided in this Declaration. As long as the Development Area is improved as permitted under Ordinance No. A-454-26-87 and pursuant to the site plan and engineering plan approved by the Village, as modified from time to time with Village approval (the "Village Documents"), and used as provided for or permitted under this Declaration, then neither the Property Owners

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Association nor any member or members thereof shall have any right to impose restrictions on, or object to the improvement and use of, the Development Area pursuant to the Declaration or the Village Documents.

13.03 Non-Participation in Property Owners Association If with the consent of the Village the Property Owners Association executes and records a document which references this Section and states that the Property Owners Association chooses not to have the Owners of Dwelling Units participate in the Property Owners Association, then none of the Owners of Dwelling Units and no owner of any other part of the Development Area shall be subject to the terms of the Property Owners Declaration including, without limitation, the payment of assessments thereunder or compliance with any restrictions therein or rules or regulations adopted by the Property Owners Association thereunder.

ARTICLE FOURTEEN Miscellaneous

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

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

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

14.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the President of the United States at the time this Declaration is Recorded.

14.05 ASSIGNMENT BY TRUSTEE: All rights which are specified in this Declaration to be rights of the Trustee are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee

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of, the rights of the Trustee hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of Trustee hereunder as fully as if named as such party herein. No such successor assignee of the rights of Trustee hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

14.06 TITLE HOLDING LAND TRUST: In the event title to any Dwelling Unit is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Dwelling Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Dwelling Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Dwelling Unit.

DATED: September 1, 1989

TRUSTEE:

Chicago City Bank and Trust Company, as
Trustee aforesaid

By: John L. Henrich

Its: Assistant Vice President

Attest:

Steven D. Lattrell

~~Secretary~~

Trust Officer
(SEAL)

See Exculpatory RIDER attached to
and made a part of this instrument.

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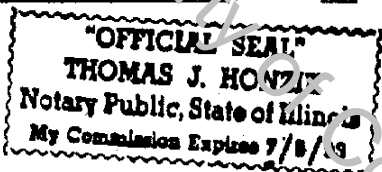
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public
in and for said County and State, do hereby certify that
John J. Hennigan and Steven D. Lattrell

Asst. (Vice) President and Trust Officer _____, respectively, of
Chgo. City Bank & Trust Co. (the "Trustee") and, as such Asst. Vice Pres.
and as such Trust Officer _____ of Trustee, appeared before me this
day in person and acknowledged that they signed, sealed and delivered
said instrument as their free and voluntary act, and as the free and
voluntary act of Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 13th day of
September, 1989.



Thomas J. Honzik
Notary Public

THIS INSTRUMENT PREPARED BY:

Brian Meltzer
Keck, Mahin & Cate
1515 East Woodfield Road
Suite 250
Schaumburg, Illinois 60173-5431
(312) 330-1200

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

This instrument is executed by CHICAGO CITY BANK AND TRUST COMPANY, not in any personal capacity, but solely as Trustee under and pursuant to that certain Trust Agreement herein described, and the Trustee does not obligate itself hereunder, anything herein contained to the contrary notwithstanding, to the performance of any of the terms, conditions and representations made and contained in the within instrument, it being specifically understood by any and all parties dealing with this instrument that it has affixed its signature hereto as such Trustee by direction in behalf of the beneficiary or beneficiaries under the said Trust without any intention of binding the said Trustee in its individual capacity. The Trustee has no knowledge of the factual matters herein contained and all agreements, conditions and representations are made solely upon direction in behalf of the beneficiary or beneficiaries as aforesaid, and no personal liability shall be asserted or be enforceable against said Bank by reason hereof or thereof, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, CHICAGO CITY BANK AND TRUST COMPANY, an Illinois Corporation, not personally but as Trustee under the provisions of a Trust Agreement dated June 1, 1987, and known as Trust Number 11400, has caused these presents to be executed, sealed and delivered this 1st day of June, A.D. 1989.

CHICAGO CITY BANK AND TRUST COMPANY,
 As Trustee, as aforesaid, and not personally

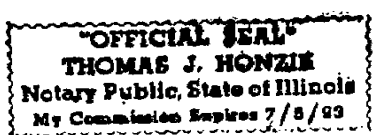
BY: *John J. Henry*
 (Assistant) Vice President

ATTEST: *Steven E. Lattrell*
 (Notary Public) Trust Officer

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, A Notary Public in and for said County, in the state aforesaid, DO HEREBY CERTIFY that the aforementioned (Assistant) Vice President of the CHICAGO CITY BANK AND TRUST COMPANY and that the aforementioned ~~Trust Officer~~ Trust Officer of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such (Assistant) Vice President and ~~Trust Officer~~ Trust Officer, 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 ~~Trust Officer~~ Trust Officer 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 13th day of September, 1989.



Thomas J. Honzik
 NOTARY PUBLIC

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THOMAS J. HAMONT
Cook County Clerk's Office
100 North LaSalle Street
Chicago, Illinois 60602

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EXHIBIT A TO
DECLARATION FOR
CARRIAGE WAY CLUB

The Development Area

Lots 1 through 39, both inclusive, of Carriage Way Club, being a Subdivision of part of the Southwest Quarter of Section 19, Township 38 North, Range 12 East of the Third Principal Meridian in Cook County, Illinois ("Carriage Way Club Subdivision").

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EXHIBIT B TO
DECLARATION FOR
CARRIAGE WAY CLUB

The Premises

I. Dwelling Units:

A. Lots 1 through 37, both inclusive, in Carriage Way Club
Subdivision.

II. Community Area:

A. Lot 39 in Carriage Way Club Subdivision

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