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**DECLARATION OF  
COVENANTS, CONDITIONS  
AND  
RESTRICTIONS  
FOR THE  
EQUESTRIAN GROVE  
TOWNHOME ASSOCIATION,  
INC.**

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE EQUESTRIAN GROVE TOWNHOME ASSOCIATION, INC.

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE EQUESTRIAN GROVE TOWNHOME ASSOCIATION, INC.

This Declaration is made by CHB/FIC Builder, L.L.C. as Declarant.

### RECITALS

The Declarant holds title to the Development Area, which is located in the Village of Wheeling in Cook County, Illinois. Declarant intends to submit some or all of the Development Area to this Declaration. Initially, the Property shall consist of that portion of the Development Area which is legally described in Exhibit A, with all improvements thereon and appurtenances thereto.

The Association shall be responsible for the administration and maintenance of the Townhomes and Common Areas. Each Owner of a Dwelling Unit shall be assessed to pay his equal share of the Common Expenses required to operate the Association, all as more fully provided for in this Declaration.

The Declarant and Developer shall retain certain rights set forth in this Declaration with respect to the Townhome Property and the Association including, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, the right to come upon the Property in connection with efforts to promote the sale or rental of Dwelling Units and other rights reserved in Article Twelve.

NOW, THEREFORE, Declarant as record title holder of the Parcel and the Property, hereby declares as follows:

### **ARTICLE ONE** **Definitions**

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

**1.01 ACT.** The Illinois General Not For Profit Corporation Act.

**1.02 ASSOCIATION.** The Equestrian Grove Townhome Association, Inc., an Illinois not-for-profit corporation, its successors and assigns.

**1.03 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.

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- 1.04 **BY-LAWS**. The By-Laws of the Association, attached hereto as Exhibit "C."
- 1.05 **CHARGES**. The monthly assessment, any regular or 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.
- 1.06 **COMMON AREAS**. All portions of the Development Area other than the Lots and Garage Spaces designated in Exhibit "B" attached hereto, which are described together with all improvements located above and below the ground and rights appurtenant thereto. The Common Area shall generally consist of certain outlots or parcels of land or other common areas and which has been conveyed to the Association and has not been conveyed or dedicated to any public body.
- 1.07 **COMMON ASSESSMENT**. The amounts which the Association shall assess and collect from the Owners to pay the Common Expenses and accumulate reserves for such expenses, as more fully described in Article Six.
- 1.08 **COMMON EXPENSES**. The expenses of administration (including management and professional services), operation, maintenance, repair, replacement of, and snow removal from the Common Area; the cost of and expenses incurred for, the landscaping of each Townhome, as more fully provided in Section 3.04; 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 maintenance of the Common Area and the Townhomes for which the Association is responsible hereunder; the cost of furnishing any services which the Association is required to furnish pursuant to the provisions of Section 3.04(c); any expenses designated as Common Expenses by this Declaration; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.
- 1.09 **COUNTY**. Cook County, Illinois, or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the County as of the Recording of this Declaration.
- 1.10 **DECLARANT**. CHB/FIC Builder L.L.C.
- 1.11 **DECLARATION**. The initial instrument prepared by the Declarant, with all Exhibits thereto, as amended or supplemented from time to time, which submits the original subdivision to all of its terms and conditions.
- 1.12 **DEVELOPMENT AREA**. The real estate described in Exhibit "A" hereto, with all improvements thereon and rights appurtenant thereto, also known as the Subdivision.

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1.13 **GARAGE**. That part of the Townhome used for the parking of motor vehicles.

1.14 **LOT**. A lot which is designated on Exhibit "B" and upon which is constructed a building consisting of at least one (1) dwelling unit, and also referred to herein as a "Parcel".

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

1.16 **NON-OWNER**. A person other than an Owner or a Resident.

1.17 **OWNER**. A Record Owner, whether one or more persons, of fee simple title to a Parcel, including a contract seller, but excluding those having such interest merely as security for the performance of an obligation.

1.18 **PARCEL**. Each Lot shall be improved with a building containing one (1) dwelling unit.

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

1.20 **PREMISES**. Those portions of the Development Area which are legally described in Exhibit "B," with all improvements thereon and rights appurtenant thereto.

1.21 **RECORD**. To record in the office of the Recorder of Deeds for the County.

1.22 **RECREATION AREA**. Those portions of the Common Area designated as such by the Association.

1.23 **RESIDENT**. An individual who resides in a Townhome on a Parcel and who is either the Owner, a tenant of the Owner, a contract purchaser of the Parcel, or a relative of any such Owner, tenant or contract purchaser.

1.24 **SUBDIVISION**. See Development Area.

1.25 **TOWNHOME**. That portion of a Parcel which is improved with a dwelling unit (also referred to as Unit).

1.26 **TOWNHOME EXTERIOR**. With respect to each Parcel which has been improved with a Townhome which shall include the roof, foundation, steps, footings and outer surface of exterior walls.

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**1.27 TURNOVER DATE.** The date on which the rights of the Trustee to designate the members of the Board are terminated under Article Twelve.

**1.28 VILLAGE.** The Village of Wheeling, 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 Wheeling as of the recording of this Declaration.

**1.29 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.

**1.30 WALKS.** Such front, side and rear walks on the Common Areas and Units as may be installed or designated by the Association.

## ARTICLE TWO

### Scope of Declaration/Certain Easements

**2.01 REAL ESTATE SUBJECT TO DECLARATION.** Declarant, as the owner of fee simple title to the Parcel and Property, expressly intends to and, by Recording this Declaration, does hereby subject and submit the Parcel and the Property to the provisions of this Declaration. Declarant and/or Developer shall have the right to subject additional portions of the Development Area to the provisions of this Declaration as provided in Article Eight. Nothing in this Declaration shall be construed to obligate the Declarant or the Developer to subject to this Declaration any portion of the Development Area other than those portions which are part of the Parcel or which are added to the Parcel and Property by Supplemental Declarations Recorded by the Declarant or the Developer pursuant to Article Eight. None of the covenants, conditions, restrictions and easements contained in the Declaration shall burden any portion of the Development Area unless and until such portion is or becomes part of the Parcel and Property.

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

**2.03 DURATION.** Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens and charges, which are

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granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of thirty-five (35) 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 Parcels then subject to the Declaration.

**2.04 PARCEL CONVEYANCE.** There shall be no conveyance or transfer of a portion of any Parcel without the prior written consent of the Board.

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

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

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

**2.08 RULES AND REGULATIONS.** The use and enjoyment of the Common Area and Townhomes shall at all times be subject to reasonable rules and regulations duly adopted by the Board from time to time.

**2.09 UTILITY EASEMENTS.** The Village, Ameritech, Commonwealth Edison Company, Northern Illinois Gas Company, and all other public and private utilities

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(including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Common Area and Townhomes for the purpose of providing utility services to the Premises or any other portion of the Development Area.

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

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

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

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

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

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- (b) the chimney which serves the Townhome or the Parcel; and
- (c) balconies, steps, porches, door entries and patios which serve the Townhome or the Parcel.

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

## ARTICLE THREE

### Maintenance of the Common Area and Parcels

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

**3.02 OWNERSHIP OF COMMON AREA** Any undedicated portions of the Common Area shall be owned by the Association or such land owning trust wherein the Association shall serve as the beneficiary.

**3.03 MAINTENANCE, REPAIR AND REPLACEMENT OF THE COMMON AREA** Maintenance, repairs and replacements of the Common Area shall be furnished by the Association and shall include, without limitation, maintenance, repair and replacement of private driveways, private sidewalks, right of way islands, storm water retention area, existing fences and fences installed by the Developer, landscaping, added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and other landscaping, if any on the Common Area. The cost of any such maintenance, repairs and replacement shall be Common Expenses.

### **3.04 MAINTENANCE, REPAIR AND REPLACEMENT OF PARCELS**

(a) In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance and service upon each Unit subject to assessment, as follows: repair, replace and care for roofs, gutters, downspouts and exterior vinyl siding, mow and fertilize grass and snow removal from driveways. Such exterior maintenance and service shall not include glass surfaces and frames, perimeter doors and windows, garage doors and patio areas, nor shall such exterior maintenance include the replacement or repair of any portion of a Unit which replacement or repair is the result of damage caused by a hazard which is normally insured against under the Owner's homeowners insurance policy for damage or loss to the Dwelling Unit.

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(b) The Board may, if authorized by the affirmative vote of Voting Members, representing at least two-thirds (2/3) of the votes of all members, cause the association to furnish services not specifically provided for herein ("Additional Services") to the Townhomes. The cost of furnishing any additional services furnished pursuant to this subsection shall be Common Expenses hereunder.

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

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

(2) if the work is not done to the satisfaction of the Board, in its sole judgment, then the Board may seek injunctive relief, levy a fine and/or cause such work to be done and the cost thereof shall be a lien against such Owner's interest in the Unit.

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

**3.06 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMON AREA.** No alterations, additions or improvements shall be made to the Common Area without the prior approval of the Board. The Association may cause alterations, additions or improvements to be made to the Common Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than one-third (1/3) of the Common Assessment then in effect under the then current budget shall be approved in advance by a majority present at a special meeting of the Owners.

**3.07 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO TOWNHOMES.** No additions, alterations or improvements (including, without limitation, changes in the landscaping or exterior color of a Townhome) shall be made to any exterior or any part of the Townhome which is visible from outside the Townhome by an Owner without the prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement upon the Owner's

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agreement either: (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set; or (ii) if the addition, alteration or improvement is required to be maintained hereunder by the Association as part of the Common Expenses, to pay to the Association from time to time the additional cost of maintenance as a result of the addition, alteration or improvement. If an addition, alteration or improvement which requires the Board's consent hereunder is made to a Townhome 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 Townhome exterior to its original condition, all at the Owner's expense; and

(b) if the Owner refuses or fails to properly perform the work required under Subsection (a) above, 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.

The Board of Directors may appoint an Architectural Control Committee to review all proposals and make recommendations to the Board of Directors.

**3.08 PRIVACY AREA.** Certain portions of a Townhome exterior may be designated as being reserved for the exclusive use of the Residents of a particular Townhome as a garden, patio or other similar use ("Privacy Area"), as provided in this Section. The Board may designate portions of the Townhome exterior as Privacy Areas by so designating such portions. The Board shall maintain a record of all Privacy Areas and to which Townhome each Privacy Area is assigned. The right to use a Privacy Area which is assigned to a Townhome shall run with title to the Parcel of which the Townhome is a part. Subject to the provisions of Section 3.04, 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 judgment of the Board, to properly maintain his Privacy Area, then the Board, 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 Townhome 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 Townhome.

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## ARTICLE FOUR Insurance/Condemnation

**4.01 ASSOCIATION INSURANCE.** The Owner of each Townhome shall maintain in full force and effect an insurance policy insuring said Townhome Unit against the hazards normally insured against in a homeowner's insurance policy, including an amount no less than 80% of the full replacement cost of the Unit and building structure. The Board shall also have the authority to obtain insurance for the entire Development Area exclusive of interior additions, improvements and decorating made to the Townhomes by the Owners, against loss or damage by fire and such other hazards as the Board may deem desirable for the full insurable replacement cost of the entire Development Area. Such insurance shall be written in the name of, and the proceeds thereof, shall be payable to the Association, as the trustee for each of the Owners and the Mortgagees. The policy of insurance shall also contain an endorsement waiving subrogation rights by the insurer against individual Owners, if available. Premiums for such insurance shall be borne by the Association.

In order to convert from individual to master insurance, the Board shall call a special meeting of members. Upon the approval of 2/3rds of the Owners present at said meeting, in person or by proxy, the Board may convert the Association from individual to master insurance.

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

**4.03 LIABILITY INSURANCE.** The Board shall also have the authority to and shall obtain comprehensive public liability and directors and officers liability insurance covering the Board, its officers and committee members 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, Mortgagee, the Association, its officers, Board and employees, as the case may be, from liability in connection with the Development. The Owners shall be included as additional insureds but only with respect to that portion of the Premises not reserved for their exclusive use. Premiums for such insurance shall be borne by the Association. The Board shall also have the authority to and may obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable and the premiums therefor shall be borne by the Association.

**4.04 INSURANCE BY OWNERS.** Each Owner shall be responsible for his own insurance on the contents of his Townhome, his additions and improvements thereto, any decorating and furnishings and personal property therein, and his personal property stored elsewhere in the Development, and for his personal liability to the extent not covered by

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the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided.

**4.05 SUBROGATION AND WAIVER.** Each Owner agrees to a waiver of subrogation provision in any of the foregoing policies obtained and maintained by the Board, and further agrees to execute evidence thereof at the request of the Board or any insurer. Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Association, its officers, members of the Board and their Homes, or to any personal property located in the Development Area of Townhomes, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance carried to cover the loss or which is the responsibility of the Owners to carry hereunder.

**4.06 CONDEMNATION.** In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Common Area Capital Reserve being held for such part of the Common Area shall, in the discretion of the Board, either: (i) be applied to pay the Common Expenses; (ii) be distributed to the Owners and their respective mortgages, 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 Common Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Association and recorded.

## **ARTICLE FIVE** **The Association**

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

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

**5.03 VOTING MEMBERS.** Subject to the provisions of Section 9.05, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Parcel. The Voting Member or his proxy shall be the individual who shall be entitled to vote at

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meetings of the Owners. If the record ownership of a Parcel shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Parcel shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Parcel as the Voting Member for such Parcel.

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

**5.05 VOTING RIGHTS.** 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 (1) vote for each Parcel which the Voting Member represents. Any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

**5.06 DIRECTOR AND OFFICER LIABILITY.** Neither the directors nor the officers of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant and each of the directors and officers, their 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 DISSOLUTION.** To the extent permissible under applicable law, in the event of the dissolution of the Association, any Common 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 recreation, health, safety and welfare of Members of the Association, to administer the affairs of the Association, to pay the Common Expenses, and to accumulate reserves for any such expenses.

**6.02 COMMON ASSESSMENTS.** 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:

- (a) the estimated Common Expenses;
- (b) the estimated amount, if any, to maintain adequate reserves for Common Expenses including, without limitation, amounts to maintain the Capital Reserve;
- (c) the estimated net available cash receipts from the operation and use of the Common Area, plus estimated excess funds, if any, from the current year's assessments;
- (d) the amount of the "Common Assessment" payable by the Owners, which is hereby defined as the amount determined in Subsection (a) above, plus the amount determined in Subsection (b) above, minus the amount determined in Subsection (c) above;
- (e) that portion of the Common Assessment which shall be payable with respect to the ensuing calendar year by the Owner of each Parcel, which is subject to assessment hereunder, which shall be equal to the Common Assessment divided by the number of Parcels, so that each Owner shall pay equal Common Assessments for each Parcel owned. The Common Assessment shall be paid in periodic installments as determined from time to time by the Board, but no less frequently than once each year.
- (f) that portion of the Common Assessment which shall be allocated and put aside in an account established for capital reserves, plus any other reserve account the Board deems appropriate.

**6.03 PAYMENT OF COMMON ASSESSMENT.** On or before the 1st day of January of the ensuing calendar year, and on such dates thereafter as the Board shall designate until the effective date of the next annual or revised Common Assessment, each Owner of a Parcel which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Common Assessment which is payable by each

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Owner of a Parcel under Article Six, as applicable. Each Owner shall be responsible for the payment of any charges for collection of refuse or scavenger services, which will be directly billed to their Unit.

**6.04 REVISED ASSESSMENT.** If the Common 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 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 Common 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 Common Area, or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of the Parcels in equal shares. The Board shall serve notice of a special assessment on all Owners no less than ten (10) days prior to its effective date 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 Common Area and those portions of the Townhomes with respect to which the Association is responsible for repair and replacement (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Area, the portions of the Townhomes for which the Association is responsible and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Common Area, the portions of the Townhome exterior for which the Association is responsible and the purchase of other property to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the Common 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 Common Assessment paid by such Owner.

**6.07 INITIAL CAPITAL CONTRIBUTION.** At the closing of the first sale by the Declarant, the purchasing Owners must pay a one-time non-refundable capital contribution to the Association in an amount equal to two (2) months' Common Assessment at the rate in effect at the time of closing. Half of the amount will be collected and set aside by the

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Association for its working capital needs. The other half of the amount will be set aside and placed in the Association's reserve account. This amount must remain in the reserve account until turnover. No Owner is entitled to any portion of that fund nor shall any portion be refunded to any seller or credited to any purchaser.

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

**6.09 UNSOLD UNITS.** Until such time as all of the Units are sold and occupied, Declarant shall not be obligated to pay any assessment with respect to any Units which have not been sold for purpose of occupancy; provided, however, that during such time the Declarant shall, at its own expense, maintain and insure such unsold Units.

In addition, Developer is required to make up any deficit in the Association's operating account prior to turnover.

## ARTICLE SEVEN

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

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

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

**7.03 NON-PAYMENT OF CHARGES.** Any Charge which is not paid to the Association when due shall be deemed delinquent. Any charge which is delinquent for thirty (30) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the due date to the date when paid. The Association may: (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount nor the Charge and included in any judgment rendered in such action), (ii) enforce and foreclose any lien which it has or which may exist for its benefit or (iii) bring an action against the Owner in Forcible Entry and Detainer in order to terminate the Owner's right of possession. In addition, the Board may add a reasonable late fee to any installment of an assessment

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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 Common Area or by abandonment or transfer of his Parcel.

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

**7.05 SELF-HELP BY BOARD.** In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Townhome, 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, to enforce any of the provisions contained in this Declaration or any rules and regulations adopted hereunder, the Board may levy a fine or the Board may bring an action at law or in equity in the name of the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof, to recover sums due or payable (including fines) or to recover damages, and against the Parcel to enforce any lien created hereunder; and failure by the Association to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

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

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the defaulting Owner, and the Association shall have a lien for all the same, upon his Parcel as provided in Section 7.01.

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

## ARTICLE EIGHT Use Restrictions

**8.01 INDUSTRY/SIGNS.** No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area nor shall any "For Sale" or "For Rent" signs or any other advertising be maintained or permitted on any part of the Common Area or any Townhome exterior, except as permitted by the Board and Article XII of this Declaration.

**8.02 UNSIGHTLY USES.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Townhome exterior or the Common 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.

**8.03 ANTENNAE.** No television antenna, radio receiver or transmitter or other similar device shall be attached to or installed on any portion of any Townhome exterior or the Common Area. Without limiting the foregoing, the provisions of this paragraph shall not apply to the Association with respect to the installation of equipment necessary for a master antenna system, cable television system or other similar systems within the Premises.

**8.04 RESIDENTIAL USE ONLY.** Each Townhome shall be used only as a residence; provided that no Owner shall be precluded, with respect to his Townhome, 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.

**8.05 PARKING.** Unless expressly permitted by the Board, no boats, trucks, recreational vehicles, trailers or other similar vehicles shall be parked or stored on any portion of the Premises (other than a garage which is part of a Townhome).

**8.06 OBSTRUCTIONS.** Except as permitted under Section 9.03, there shall be no obstruction of the Common Area, and nothing shall be stored in the Common Area or Lot without the prior written consent of the Board.

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10.01 **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:

## ARTICLE TEN Mortgagees' Rights

9.01 **AMENDMENT.** Subject to Article Eleven, the provisions of this Declaration may be amended, abolished, modified, enlarged or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the total votes or by an instrument executed by Owners of at least seventy-five percent (75%) of the Parcels; except, that: (i) the provisions of this Section 9.01 may be amended only by an instrument executed by all of the Owners and 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 Parcel shall no longer have the legal access to a public way from his Parcel. No amendment shall become effective until properly recorded.

## ARTICLE NINE Amendment

8.10 **FENCES.** No fence, wall or barrier may be erected, placed or installed on any Lot, without the approval of the Board and applicable Village permits.

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

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

Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Premises upon three (3) days' written notice from the Board to the Owner of the Townhome containing such pet and the decision of the Board shall be final.

(b) use of the Common Area by pets including, without limitation, rules and regulations which require an Owner to clean up after his pet.

(a) keeping of pets in the Townhome, which may include prohibiting certain species of pets from being kept in the Townhome; and

8.07 **PETS.** No animal of any kind shall be raised, bred or kept in the Common Area. The Board may, from time to time, adopt rules and regulations governing the:

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(a) copies of budgets, notices of assessments, or any other notices or statements provided under this Declaration by the Association to the Owner of the Parcel 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 Common Area or the Parcel 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 Common Area or the Parcel subject to the Mortgagee's mortgage;

(g) notice of any default by the Owner of the Parcel 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 thirty (30) days of the date of 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 10.02 below; and

(j) a lapse, cancellation or material modification of any insurance policy maintained by the Association.

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

## **10.02 CONSENT OF MORTGAGEES.**

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of Mortgagee's holding, in the aggregate,

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the first mortgages on at least two-thirds (2/3) of the Parcels (by number) which are subject to first mortgages held by Mortgagees which specifically request to be treated as "Eligible Mortgagees" under Section 10.01(i) 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 Common Assessments or other Charges which may be levied against an Owner; (ii) changes Section 7.04 or Article Nine; (iii) changes this Article Ten or any other provision of this Declaration or the By-Laws which specifically grant 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 Parcel;

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

(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.

**10.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS.** In the event of: (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Common 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 Common 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 Parcel with respect to any such distribution to or with respect to such Parcel; provided that nothing in this Section shall be construed to deny to the Association the right to: (i) apply insurance proceeds to repair or replace damaged Common Area; or (ii) apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Four.

## ARTICLE ELEVEN

### Party Walls

**11.01 PARTY WALL.** Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Parcels or Garage Spaces shall constitute and be a "Party Wall," and the Owner of a Parcel or Garage Space 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.

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**11.02 RIGHTS IN PARTY WALL.** Each Owner of a Parcel or Garage Space, 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.

**11.03 DAMAGE TO PARTY WALL.**

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

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Parcel or Garage Space 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 Owner of the adjacent Parcel or Garage Space 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 Owner, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of a Townhome exterior with respect to which the Association is responsible for furnishing maintenance, repairs or replacements hereunder shall be paid by the Association as a Common Expense to the extent not covered by insurance.

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

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

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all damage caused to either of the adjacent Townhomes or Garage Spaces or improvements thereto.

**11.05 ARBITRATION.** In the event of a disagreement between Owners of Parcels or Garage Space 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 TWELVE** **Developer's Reserved Rights**

**12.01 IN GENERAL.** In addition to any rights or powers reserved or granted to the Developer and Declarant under the Act, this Declaration or the By-Laws, the Developer and Declarant shall have the rights and power set forth in this Article. In the event of a conflict between the provisions of this Article and any other provisions of this Declaration or the By-Laws, the provisions of this Article shall govern. Except as otherwise provided in this Article, the rights of Declarant or Developer under this Article reserved or granted shall terminate at such time as the Declarant and the Developer are no longer vested with or in control of title to any portion of the Development Area.

**12.02 PROMOTIONAL EFFORT(S).** Developer shall have the right, in its discretion, to maintain on the Property model Dwelling Units, sales, leasing, management and/or administrative offices (which may be located in a Dwelling Unit and/or a trailer), displays, signs and other forms of advertising and, to the extent not prohibited by law, to come upon any portion of the Property for the purpose of showing the Property to prospective purchasers or lessees of Dwelling Units, all without the payment of any fee or charge whatsoever other than the assessments payable by the Developer with respect to Dwelling Units owned by the Developer or Declarant. The Developer and Declarant shall each have a non-exclusive access easement over and across the roads and walkways located on the Property for ingress and egress to and from those portions of the Development Area which have not been made subject to this Declaration in order to exercise the rights reserved under this Article. Developer's rights herein shall continue until such time as Developer has sold 100% of the Dwelling Units.

**12.03 CONSTRUCTION.** Developer, its agents and contractors shall have the right to come upon the Property to construct improvements thereon and to make alterations, repairs or improvements to the Property or the portions of the Development Area not made part of the Parcel and shall have the right to store equipment and materials used in connection with such work on the Property or the portions of the Development Area which have not been made part of the Parcel without payment of any fee or charge whatsoever.

**12.04 CONTROL OF BOARD.** Until the initial meeting of the Owners, which shall be not later than sixty (60) days after the conveyance by the Trustee of 75% of the

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Townhomes, or three years after the recording of the Declaration, whichever is earlier and the election of the initial Board as provided for in the By-Laws, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board by the Act, this Declaration or the By-Laws shall be held and performed by the Developer. The Developer may hold and perform such rights and obligations through the Board which, prior to the Turnover Date, shall consist of three (3) individuals designated by the Developer from time to time. Prior to the Turnover Date the Developer may appoint from among the Owners three (3) non-voting counselors to the Board who shall serve at the discretion of the Developer.

## ARTICLE THIRTEEN

### Miscellaneous

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

**13.02 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.

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

**13.04 PERPETUITIES AND OTHER INVALIDITY.** If any of the options, privileges, covenants or rights created by this 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.

**13.05 TITLE HOLDING LAND TRUST.** In the event title to any Parcel is held by a title holding trust, under the terms of which all powers of management, operation and

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control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder, from time to time, shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Parcel. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Parcel and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Parcel.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed.

Dated: DECEMBER 4, 19 95

DECLARANT:

By: *Joseph W. Kertney*  
Title: *President*

ATTEST:

By: *Joseph W. Kertney*  
Title: *President*

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## EXHIBIT "A"

### The Development Area

That part of Section 2, Township 42 North, Range 11, East of the Third Principal Meridian described as follows: Beginning at the Northwest corner of Forest Edge Addition to Wheeling, a subdivision recorded December 1, 1953 as Document Number 15782079 being in the center line of Milwaukee Avenue; thence North 21 degrees 50 minutes West along the center line of Milwaukee Avenue 215.80 feet; thence North 88 degrees 20 minutes East 911.20 feet; thence South 21 degrees 50 minutes East and parallel with the center line of Milwaukee Avenue 190.08 feet to the Northeast corner of aforesaid Forest Edge Addition to Wheeling; thence West along the North line of said Forest Edge Addition to Wheeling to the point of beginning, in Cook County, Illinois.

All located in the Village of Wheeling, County of Cook, State of Illinois:

P.I.N. 03-02-201-032 and 03-02-201-033

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EXHIBIT "B"

Plat of Survey

THE PLAT OF SURVEY HAS ALREADY BEEN FILED WITH THE COOK COUNTY  
RECORDER OF DEEDS UNDER DOCUMENT NUMBER 96-761684 ON JULY 6, 1995

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## EXHIBIT "C"

### BY-LAWS FOR EQUESTRIAN GROVE TOWNHOME ASSOCIATION, INC. an Illinois not-for-profit Corporation

#### ARTICLE I NAME OF CORPORATION

1.01 **NAME:** The name of this corporation is EQUESTRIAN GROVE TOWNHOME ASSOCIATION, INC.

#### ARTICLE II PURPOSE AND POWERS

2.01 **PURPOSES:** The purposes of this Association are to act on behalf of its members collectively, as their governing body with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property and/or the promotion of the health, safety and welfare of the members of the Association, all on a not-for-profit basis.

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

2.03 **PERSONAL APPLICATION:** All present or future Owners, tenants, future tenants, and their agents and employees, and any other person that might use the facilities of the Townhome Property in any manner, shall be subject to the provisions of the Declaration and these By-Laws. The acquisition or rental of a Townhome Unit or the act of occupancy of a Townhome Unit will signify that the Declaration and these By-Laws are accepted, ratified and will be complied with.

#### ARTICLE III OFFICES

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

3.02 **PRINCIPAL OFFICE:** The Association's principal office shall be maintained on the Parcel or at the office of the managing agent engaged by the Association.

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## ARTICLE IV MEETINGS OF MEMBERS

**4.01 VOTING RIGHTS:** The Association shall have one class of membership. There shall be one individual with respect to each Townhome Unit who shall be entitled to vote at any meeting of the Owners (the "Voting Member"). If the Owner of a Townhome Unit is one individual then such individual shall be the Voting Member. If the Record ownership of a Townhome Unit shall be in more than one individual or if the Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member shall be designated by the Owner or Owners in writing to the Board, and if in the case of multiple individual owners no designation is given, then the Board may, at its election, recognize an individual Owner of the Townhome Unit as the Voting Member for such Townhome Unit. Any or all Owners may be present at any meeting of the Owners, but the voting rights shall be vested exclusively in the Voting Members; provided, however, that a Voting Member may vote either in person or by proxy executed in writing by the Voting Member or his duly authorized attorney-in-fact and filed with the secretary before the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. Each Voting Member shall have one vote for each Townhome Unit which he represents. No Voting Member may present more than three (3) proxies at any time.

**4.02 PLACE OF MEETING; QUORUM:** Meetings of the Owners shall be held on the Townhome Property or at such other place in the County in which the Townhome Property is located and convenient to the Owners as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in Roberts Rules of Order, as from time to time published. Voting Members holding ten percent (10%) of the votes, represented in person or by proxy, shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the Voting Members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the Voting Members, unless a greater proportion is required by the Act, the Declaration or these By-Laws. The affirmative vote of 75% of the votes entitled to be cast shall be required for the following action: (a) merger or consolidation of the Association; and (b) sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the property and assets of the Association. The affirmative vote of 75% of the votes entitled to be cast shall be required for the purchase or sale of land or of Townhome Units on behalf of all Owners.

**4.03 ANNUAL MEETINGS:** There shall be an annual meeting of the Owners in January of each year on a date, time and place as the Board shall designate.

**4.04 SPECIAL MEETINGS:** Special meetings of the owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by the President, a majority of the Board or by Voting Members representing at least twenty percent (20%) of the votes.

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4.05 **NOTICE OF MEMBERSHIP MEETINGS:** Written notice of any membership meeting shall be mailed or personally delivered, giving owners not less than ten (10) nor more than thirty (30) days notice of the time, place, and purpose of the meeting.

## **ARTICLE V** **BOARD OF DIRECTORS**

5.01 **IN GENERAL:** The affairs of the Association and the direction and administration of the Property shall be vested in the Board, which shall consist of three (3) persons ("Directors"). Each director shall hold office until the expiration of his/her term, or resignation, or removal or until his successor shall have been elected and qualified. Directors must be members of the Association and reside on the property. The Board shall have all of the powers granted to it under the Act, the Declaration, these By-Laws and the General Not For Profit Corporation Act of the State of Illinois.

5.02 **ELECTION:** At each election for members of the Board, each Voting Member for each Townhome Unit which he represents shall be entitled to the number of votes equal to the number of Directors to be elected and cumulative voting shall not be permitted; provided that a Resident who is a contract purchaser of a Townhome Unit from a contract seller other than the Declarant shall have the right to vote for Directors unless such contract seller expressly retains such right in writing. At the first annual meeting of the Owners after turnover of the Association from the Developer, a full Board of Directors shall be elected and the two (2) candidates receiving the highest number of votes shall each be elected to a two (2) year term and the one (1) candidate receiving the next highest number of votes shall be elected to a one (1) year term. At each subsequent annual meeting Directors shall be elected to replace those directors whose terms expire and each such Director shall serve a two (2) year term. Each Director shall serve until his term expires or is terminated or until his successor shall have been elected and qualified. A Director may succeed himself in office.

5.03 **ANNUAL MEETINGS:** The Board shall hold an annual meeting within ten (10) days after the annual meeting of the owners at such place as shall be fixed by the Directors at the annual meeting of the Owners, for the purpose of electing officers and such other purposes as the Board deems appropriate.

5.04 **REGULAR MEETINGS:** Regular meetings of the Board shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the Directors; provided, that, not less than four such meetings shall be held during each fiscal year.

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

5.06 **NOTICE OF BOARD MEETINGS:** Notice of each meeting of the Board shall be mailed or personally delivered to each Director at least forty-eight (48) hours prior

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to the meeting and notice of any meeting of the Board concerning the adoption of the proposed annual budget or any increase or establishment of an assessment shall be given to each owner in the same manner as provided in Section 4.05 of these By-Laws, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened.

**5.07 OPEN MEETINGS:** Each meeting of the Board, to the extent required by law, shall be open to any Owner and, if required under the Act, notice of such meeting shall be mailed or personally delivered at least 48 hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. The Board may adopt reasonable rules governing the conduct of Owners who attend meetings and Owners who do not comply with such rules may be removed from the meeting.

**5.08 ACTION TAKEN WITHOUT A MEETING:** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting, by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

**5.09 QUORUM:** A majority of the Directors serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present.

**5.10 COMPENSATION/REIMBURSEMENT FOR EXPENSES:** No Director shall be compensated by the Association for services rendered to the Association, except as expressly provided in a resolution duly adopted by the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Director shall be reimbursed by the Association for reasonable out-of-pocket expenses incurred in the course of the performance of his duties as a Director.

**5.11 REMOVAL OR RESIGNATION OF DIRECTOR:** Any Director may be removed from office, with or without cause, by action of the Voting Members at any annual meeting or at a special meeting called for such purpose. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Any Director may resign at any time by submitting his written resignation to the Board. Any Director may be removed by agreement between the remaining Directors if they miss three (3) consecutive meetings without good cause shown. If a Director ceases to be an owner or a Voting Member, he shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Director who resigns or is removed may be appointed by a majority of the remaining Directors at any regular meeting or at any special meeting called for such purpose and any successor so appointed shall serve the balance of his predecessor's term.

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5.12 **POWERS AND DUTIES OF THE BOARD:** The Board shall have all of the powers and duties granted to it or imposed upon it by the Act, the Declaration, these By-Laws, and the Illinois General Not For Profit Corporation Act, including, without limitation, the following powers and duties:

(a) Subject to the Declaration, to engage the services of a manager or managing agent to assist the Association in performing and providing such services as the Association is required to provide to its members under the Declaration;

(b) To provide for the designation, hiring and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper for the effective administration of the Association;

(c) To provide for any maintenance, repair, alteration, addition, improvement or replacement of the Common Areas for which the Association is responsible under the Declaration and these By-Laws;

(d) To estimate and provide each Owner with an annual budget as provided for in the Declaration;

(e) To set, give notice of, and collect assessments from the Owners as provided in the Declaration;

(f) To pay the Common Expenses;

(g) To adopt rules and regulations as provided in the Declaration;

(h) To enforce the covenants of the Declaration, By-Laws and Rules and Regulations on behalf of all the members of the Association, including but not limited to the levying of a fine for non-compliance;

(i) To delegate the exercise of its power to committees appointed pursuant to Section 7.01 of these By-Laws;

(j) To own, convey, encumber, lease, or otherwise deal with Townhome Units or other real property conveyed to or purchased by the Association; and

(k) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Townhome Property.

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## ARTICLE VI OFFICERS

6.01 **OFFICERS:** The officers of the Association shall be a President, a Secretary, a Treasurer, and such assistants to such officers as the Board may deem appropriate. All officers shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board. Officers may succeed themselves in office. The President, Secretary and Treasurer shall be Directors. The Board may appoint a Recording Secretary for purposes of taking minutes of the Board and Homeowners' meetings, who need not be either a director or owner.

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

6.03 **POWERS OF OFFICERS:** The respective officers of the Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers of an Illinois Not-For-Profit Corporation including without limitation, the following:

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

(b) The Secretary shall keep minutes of all meetings of the Owners and of the Board and shall have custody of the corporate seal of the Association and have charge of such other books, papers and documents as the Board may prescribe, and shall be responsible for giving and receiving all notices to be given to or by the Association under the Act, the Declaration or these By-Laws;

(c) The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Association books of accounts kept for such purpose. The Treasurer shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board.

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

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## ARTICLE VII COMMITTEES DESIGNATED BY BOARD

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

7.02 **NOMINATING COMMITTEE:**

(a) The Board shall appoint a nominating committee.

(b) The nominating committee shall personally interview each candidate in order to determine the qualifications and inclination as to why he/she wants to serve as a director of the Equestrian Grove Townhome Association and that the results of the selection shall be presented to the Equestrian Grove Townhome Association Board of Directors for their approval and then placed on the agenda for the annual meeting.

(c) No candidate may be stated unless such candidate receives endorsement of the nominating committee, as well as from the Association Board of Directors.

(d) No nominations may be made from the floor at the annual meeting.

7.03 **SPECIAL COMMITTEES:** Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Owners and the President of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Association shall be served by such removal.

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

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

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

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

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

## ARTICLE VIII

### INSTRUMENTS, CHECKS, DEPOSITS AND FUNDS

8.01 **EXECUTION OF INSTRUMENTS:** The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument (including amendments to the Declaration or these By-Laws which must be executed by the Association) in the name of and on behalf of the Association and such authority may be general or confined to specific instances. In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President and attested to by the Secretary of the Association.

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

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

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

## ARTICLE IX

### FISCAL MANAGEMENT

9.01 **FISCAL YEAR:** The fiscal year of the Association shall be determined by the Board and may be changed from time to time as the Board deems advisable.

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9.02 **ANNUAL STATEMENT:** Within a reasonable time after the close of each fiscal year the Board shall furnish each Owner with an itemized accounting of the Common Expenses for such fiscal year actually incurred or paid, together with an indication of which portion of the Common Expenses were incurred or paid for capital expenditures or repairs or the payment of real estate taxes, and with a tabulation of the amounts collected pursuant to the Annual Assessment budget, and showing the net excess or deficit of income over expenditures plus reserves.

9.03 **ASSESSMENT PROCEDURE:** Annual assessments and special assessments shall be made and collected as provided in the Declaration, and the provisions of the Declaration are incorporated herein by reference.

## **ARTICLE X BOOKS AND RECORDS**

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

## **ARTICLE XI SEAL**

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

## **ARTICLE XII AMENDMENTS**

These By-Laws may be amended or modified at any time, or from time to time at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy; provided, that no provision of these By-Laws may be amended or modified so as to conflict with the provisions of the Declaration or the Act. No amendment to these By-Laws shall become effective until Recorded.

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