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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
RECIPROCAL RIGHTS AND EASEMENTS**

**HILLCREST COMMONS II DEVELOPMENT
SCHAUMBURG, ILLINOIS**

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RECIPROCAL RIGHTS AND EASEMENTS

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HILLCREST COMMONS II DEVELOPMENT SCHAUMBURG, ILLINOIS

This DECLARATION is made as of October 23, 1998 by Hillcrest II, L.L.C., an Illinois limited liability company (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the owner of approximately 17 acres of land situated in the Village of Schaumburg, County of Cook, State of Illinois (hereinafter referred to as the "Property") which is legally described as follows:

Lots 1, 2 and 3 in Hillcrest Commons II, being a subdivision of part of the southwest quarter of Section 7, and the northwest quarter of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois recorded on October 16, 1998 as Document No. 98931796.

A copy of the Hillcrest Commons II Plat of Subdivision is attached hereto as Exhibit A.

B. Declarant intends that the Property be developed pursuant to this Declaration and the applicable ordinances of the Village of Schaumburg.

C. Declarant, its successors and assigns, may hereafter sell, convey, lease, mortgage or otherwise transfer the Property, or various portions thereof, and it is the Declarant's desire that said sales, conveyances, leases, mortgages and other transfers be at all times subject to the covenants, conditions, restrictions, easements, benefits, duties and obligations set forth in this Declaration.

D. Declarant desires to establish and to impose upon the Property, and upon each and every portion thereof, and upon the use, occupancy and enjoyment thereof, the covenants, conditions, restrictions and easements established herein for the purpose of insuring the orderly, proper and attractive improvement and use of the Property and for the purpose of enhancing and protecting the value and desirability of the Property, all for the general welfare and common benefit of the present and future purchasers, owners, mortgagees, lessees and grantees of the Property, their respective successors and assigns.

E. Declarant further desires to grant, declare and establish certain easements, reciprocal rights and benefits for and to impose certain duties and obligations upon, the present and future

purchasers, owners, mortgagees, lessees and grantees of the Property, and upon all persons acquiring any interest therein.

F. Declarant desires to establish a not-for-profit corporation under the provisions of the Not-For-Profit Business Corporation Act of the State of Illinois for the purpose of maintaining and administering the Common Maintenance Areas, as herein defined, and administering and enforcing the covenants, conditions, restrictions, duties and obligations created and imposed by this Declaration, so as to insure preservation of the value, desirability and attractiveness of the Property.

G. The Property and the rights, obligations and duties established by this Declaration are subject and subordinate to the rights and easements granted in Document Nos. 85133409, 88250795 and 95385397 recorded with the Recorder for Cook County, Illinois. The Property and the rights, obligations and duties imposed by this Declaration are subject to the easements imposed and granted by the Hillcrest Commons II Plat of Subdivision, recorded with the Cook County Recorder of Deeds as Document No. 98931796.

H. The Property is subject to the Agreement dated July 15, 1991 by and between the Village of Schaumburg and LaSalle National Trust, N.A., a copy of which is attached hereto as Exhibit B, which *inter alia*, provides for the relocation of a paved private road known as the "North Access Road" within the Property (which is referred to in said Agreement as the "Unimproved Parcel") so as to provide access from the Property to Roselle Road at such time as a full interchange between Roselle Road and the Northwest Tollway (I-90) is completed.

NOW, THEREFORE, Declarant does hereby declare that the Property shall be held, sold, leased, occupied, mortgaged and conveyed subject to the covenants, conditions, restrictions, easements, privileges, duties and obligations hereinafter set forth.

ARTICLE I

INCORPORATION OF RECITALS

The foregoing Recitals are specifically incorporated into and made a part of this Declaration as though the same were fully set forth in this Article I.

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ARTICLE II

DEFINITIONS

The following words and phrases, when used in this Declaration, shall have the following meanings:

Section 2.01. "**Assessments**": levies against Owners for Costs of Maintenance and Direct Charges, as provided in Article VIII herein.

Section 2.02. "**Association**": an Illinois not-for-profit corporation to be known as the Hillcrest Commons II Owners Association, formed for the purpose of maintaining roadways and storm water control facilities within the Common Maintenance Areas and for such other purposes as are hereinafter set forth.

Section 2.03. "**Board**": the board of Directors of the Association, as established in Section 7.04 herein.

Section 2.04. "**Building**": any structure permanently affixed to the real estate comprising the Property designed or built for the enclosure, shelter, protection or occupancy of persons, chattels or other property of any kind or nature.

Section 2.05. "**Common Maintenance Areas**": those areas of the Property designated as "Ingress-Egress Easement", "Utility Easement", "Sidewalk Easement" and "Detention Easement" on the Hillcrest Commons II Plat of Subdivision, together with the parking lot setback areas on the perimeter of the Property.

Section 2.06. "**Costs of Maintenance**": costs incurred by the Association with regard to maintaining the Common Maintenance Areas, as provided in Section 6.02 herein.

Section 2.07. "**Declarant**": Hillcrest II, L.L.C. Declarant may delegate any or all of its rights, powers and privileges to any person, partnership, corporation, or other entity, including without limitation, Finch & Barry Properties, Ltd.

Section 2.08. "**Declaration**": this Declaration of Covenants, Conditions, Restrictions, Reciprocal Rights and Easements for the Property, as amended from time to time.

Section 2.09. "**Direct Charges**": damages and costs incurred by the Association with regard to enforcement of the provisions of this Declaration against an Owner, as provided in Sections 6.04, 6.05C and 10.03 herein.

Section 2.10. "**Directors**": individuals appointed to the Board by Owners in accordance with Section 7.04 herein.

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Section 2.11. **"Hillcrest Commons II Plat of Subdivision"**: the Plat of Subdivision of the Property recorded as Document No. 98931796 with the Recorder for Cook County, Illinois. A copy of the Hillcrest Commons II Plat of Subdivision is attached hereto as Exhibit A.

Section 2.12. **"Improvements"**: all structures or other improvements built or made on or to the Property, or any portions thereof, of any kind whatsoever, whether above or below grade, including, without limitation, Buildings, utility installations, storage, loading and parking facilities, roadways, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement and any exterior additions, changes or alterations thereto.

Section 2.13. **"Ingress/Egress Easement"**: the easement for ingress and egress of pedestrian and vehicular traffic created by Section 9.01A herein.

Section 2.14. **"Lot(s)"**: the subdivided lots making up the Property as designated on the Hillcrest Commons II Plat of Subdivision.

Section 2.15. **"Member"**: every person holding membership in the Association.

Section 2.16. **"Mortgagee"**: the holder of any mortgage or similar security interest of record encumbering the Property or any portion thereof.

Section 2.17. **"Occupant"**: any person legally entitled to occupy and use any part or portion of the Property.

Section 2.18. **"Owner"**: the record owner of fee simple title to any Lot, whether such owner shall be one or more Persons. Declarant shall be considered an Owner for all purposes of this Declaration to the extent that Declarant owns a Lot or Lots. Notwithstanding anything herein to the contrary, the Association shall not be considered an Owner for the purposes of this Declaration.

Section 2.19. **"Person"**: a natural person, or a firm, corporation, partnership, land trust or any legal entity, public or private.

Section 2.20. **"Property"**: the real estate legally described as follows:

Lots 1, 2 and 3 in Hillcrest Commons II, being a subdivision of part of the southwest quarter of Section 3, and the northwest quarter of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois recorded on October 16, 1998 as Document No. 98931796.

Section 2.21. **"Village"**: the Village of Schaumburg, its successors and the various departments and agencies thereof.

Section 2.22. **"Zoning Ordinances"**: the Zoning Ordinance of the Village of Schaumburg (Ordinance No. 163) as amended from time to time together with such ordinances of the Village of

Schaumburg granting special uses, exceptions and variations with regard to uses on and improvements to the Property

ARTICLE III

SCOPE OF THE DECLARATION

Section 3.01. **The Property.** The Property is, and shall at all times be, subject to the terms and provisions of this Declaration.

Section 3.02. **Declaration and Village Ordinances.** Where any conflict exists between any provision of this Declaration and any provision of the Zoning Ordinances applicable to the Property, the most rigid or restrictive requirements for use and development of the Property shall control.

ARTICLE IV

USE RESTRICTIONS

Section 4.01. **Use of the Property.** In order to insure the orderly and peaceful occupancy of the Property and to protect the value and the attractiveness of the development of the Property, the use of the Property shall be limited by the following provisions:

(a) The Property shall not be used for any purpose inconsistent with the terms and provisions of this Declaration;

(b) The Property shall be used only for such uses and purposes as are permitted by the Zoning Ordinances as said ordinances may be, from time to time, amended. Nothing herein shall be construed to prohibit the use of the Property for any use of purpose for which the Village has properly granted a special use, variation or other development authority. All applicable laws, ordinances, and regulations of all governmental and quasi-governmental agencies or authorities shall be observed, and violations of said restrictions shall be immediately corrected and/or removed by, and at the sole expense of, the Owner responsible for the same if said violation concerns any Lot;

(c) No nuisances shall be created, maintained or permitted to exist on the Property, or any Lot therein, and no noxious or offensive use or practice shall be conducted thereon which is a source of annoyance or which unreasonably interferes with the quiet and peaceful possession or use of the Property by the Owners and Occupants thereof, or which is in violation of the rules and regulations of the Association. Any dumping or placing of hazardous substances, fill or debris within the Common Maintenance Areas shall be deemed a nuisance. For the purposes of this Declaration, the term "hazardous substances" shall include, but not be limited to, any material classified or regulated as "hazardous" or "toxic" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund

Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, or the Toxic Substances Control Act of 1976, 15 U.S.C. 2601 *et seq.*

(d) No Owner, Occupant or the Association shall commit, suffer or fail to do any act in violation of insurance policies on the Common Maintenance Areas which may be procured and maintained by the Association, and no Owner, Occupant or the Association shall do or permit anything to be done, or keep or permit anything to be kept, or suffer any condition to exist, which might or which does (i) result in termination of any such policies; (ii) adversely affect any party's right of recovery thereunder; (iii) result in reputable insurance companies refusing to provide insurance as required or permitted by the rules and regulations of the Association; or (iv) result in an increase in the insurance rate or premium to be charged to the Association, unless, in the case of such increase, the Owner, Occupant or Association responsible for such increase shall immediately pay the same;

(e) No Owner, Occupant or the Association shall cause or allow any draining, dumping or other discharge of any hazardous substance upon any portion of the Property. Any violations of this provision shall be immediately corrected and/or removed by, and at the sole expense of, the Owner, Occupant or Association responsible for the same.

Section 4.02. Vehicles. No Owner, Occupant or the Association shall permanently or temporarily park or store (for a period of more than ten (10) consecutive days) on any portion of the Property, any boat, airplane, helicopter, house trailer, camper or recreational vehicle. Construction trailers may be parked on any Lot, but only during construction or renovation of Improvements located on or serving that Lot. No Owner, Occupant or the Association shall perform any maintenance on any vehicle upon the Property nor shall any vehicles be abandoned upon the Property or otherwise be permitted to create a nuisance upon the Property. Parking in parking areas of the Property shall be limited to conventional passenger automobiles, motorcycles, bicycles or other vehicles reasonably required for the transportation of the Owners and Occupants of the Property, their employees, agent and invitees (including passenger vans for hotel guests and employee car pools). No parking of vehicles of any kind shall be permitted within the Ingress/Egress Easement Area designated on Exhibit A hereto.

Section 4.03. Exterior Trash Storage and Burning. No Owner, Occupant or the Association shall accumulate, maintain, store or allow to exist in, on or around the Property any trash, garbage, waste disposal containers or similar items outside of any Building unless such items are screened from view (at grade level) by a fence or landscape material; provided, however, that construction debris and waste disposal containers may be maintained on or stored on any Lot, if done in a safe and secure manner, for so long as there is ongoing and continuous construction on such Lot.

or in the case of an improvement, for so long as there is ongoing repair, restoration or remodeling being undertaken. Notwithstanding the foregoing, no burning of rubbish or trash shall be permitted at any time on any portion of the Property.

Section 4.04. Materials Storage. No Owner, Occupant or the Association shall store, cause or allow materials, parts, machines, stock-in-trade or garbage to be stored upon the Property, other than inside a Building.

Section 4.05. Subdivision. No Lot may be subdivided without the express written consent of all Owners. The subdivided parts of a Lot shall be collectively considered a single, original Lot for the purposes of this Declaration.

Section 4.06. No Building Areas. No Building shall be constructed on those parts of the Property identified as "Restricted Area" on Exhibit C hereto. Said Restricted Areas may be improved with streets, driveways, parking areas, sidewalks, stormwater facilities, lighting fixtures, landscaping materials and ground signs. The purpose of said Restricted Areas is to preserve the visibility of the Building constructed on Lot 1 from the Northwest Tollway and the intersection of Hillcrest Boulevard and McLin Drive.

ARTICLE V

RESPONSIBILITY FOR CONSTRUCTION OF IMPROVEMENTS

Section 5.01. Owner Construction and Installation. Each Owner shall be wholly responsible for construction and installation of all Improvements on its Lot pursuant to building and development permits granted by the Village. Each Owner shall be responsible for construction of all potable water, sanitary sewer and storm water management facilities, improvements necessary or appropriate for the development on its Lot, provided that such improvements shall be constructed or installed on that Lot and within the Utilities and Detention Easement Areas designated on the Hillcrest Commons II Plat of Subdivision. Nothing in this Section 5.01 shall absolve Declarant of any obligations to construct or install Improvements pursuant to agreements to sell Lots or other undertakings separate and apart from this Declaration.

Section 5.02. Association Construction and Installation.

A. Relocation of North Access Road. In accordance with the Agreement attached hereto as Exhibit B, the Board of the Association, by unanimous vote, may cause the North Access Road referenced in said Agreement to be relocated and constructed within so as to provide a roadway between Roselle Road on the east and McLin Drive on the west which straddles the southerly property lines of Lots 1 and 2 and the northerly property line of Lot 3. Such relocation and construction shall take place only if an intersection of such road and Roselle Road is permitted by the governmental authority with jurisdiction over Roselle Road. The construction of such road shall be in accordance with plans and

specifications approved by the Village of Schaumburg Engineering Department. The cost for designing and constructing such road shall be paid by the then Owners of Lots 1, 2 and 3 of the Property in accordance with the proportionate share allocation stated in Section 6.04 herein. Upon the completion of such relocation, the then Owners of Lots 1, 2 and 3 shall jointly and mutually grant an ingress-egress easement over such roadway and shall record such easement as an amendment to this Declaration.

B. Traffic Signal Installation. At such time as the governmental body having jurisdiction over Hillcrest Boulevard mandates, or at such time as the Board of the Association, by unanimous vote, deems appropriate, the Association shall cause the construction and installation of a traffic signal at the intersection of Hillcrest Boulevard and McLin Drive. Such traffic signal installation shall be subject to the approval of the governmental entity having jurisdiction over Hillcrest Boulevard and shall be designed and constructed in a manner approved by such governmental entity. To the extent the cost of the design and installation of said traffic signal is not paid by any governmental entity, such cost shall be paid by the Owners of Lots 1, 2 and 3 of the Property in accordance with the proportionate share allocation set out in Section 6.04 herein.

(1) **Traffic Signal Installation Escrow.** Pursuant to the mandate of the Village, Declarant has deposited the amount of \$175,000.00 in an escrow account held by the Village's Director of Engineering to secure and pay the costs of installation of said traffic signal (the "Traffic Signal Installation Escrow"). Each Owner shall reimburse Declarant for its proportionate share of the costs of installation of said traffic signal. The amount of each Owner's reimbursement to Declarant shall be determined by multiplying each Owner's proportionate share, as set forth in Section 6.04 herein, by the amount in the Traffic Signal Installation Escrow at the time of reimbursement. Any amount due Declarant from an Owner pursuant to this Section 5.02.B(1) is hereby deemed a lien upon that Owner's Lot, which lien may be foreclosed by Declarant in the manner provided for mechanics' liens under Illinois law if reimbursement is not made. Upon receipt of an Owner's reimbursement in accordance with this Section 5.02.B(1), Declarant shall convey to such Owner a portion of Declarant's interest in the Traffic Signal Installation Escrow equal to such Owner's proportionate share, and shall convey a release of lien to such Owner.

C. Monument Directory Sign. The Association shall construct a monument directory sign within the Common Maintenance Area near the intersection of Hillcrest Boulevard and Roselle Road. Said sign shall be in compliance with the Village's Sign Ordinance. The Owner or primary Occupant of each Lot may, at its own expense, install an identification panel on said sign. Declarant may, in its sole discretion and at its sole expense, install an additional identification panel on said sign, provided such additional panel is below the panels installed by the Owners. The Owner of Lot 1 shall be entitled to top panel on said sign. The electrical supply to said sign need not be separately metered if the Owner of Lot

3 permits connection of said sign to the electrical service for Lot 3 and provides the Association with a reasonable estimate of the cost to provide electricity to said sign.

The Association may construct a monument directory sign within the Common Maintenance Area near the intersection of the North Access Drive and Roselle Road. Said sign shall be in compliance with the Village's Sign Ordinance. The Owner or primary Occupant of each Lot may, at its own expense, install an identification panel on said sign. Declarant may, in its sole discretion and at its sole expense, install an additional identification panel on said sign, provided such additional panel is below the panels installed by the Owners. The Owner of Lot 1 shall be entitled to the top panel on said sign. The electrical supply to said sign need not be separately metered if the Owner of Lot 1 permits connection of said sign to the electrical service for Lot 1 and provides the Association with a reasonable estimate of the cost to provide electricity to said sign.

The Association, and its agents and contractors, is hereby granted an easement on, across and over the Common Maintenance Areas to install and maintain the monument directory signs referenced herein. Each Owner and Declarant, and their agents and contractors, is hereby granted an easement on, across and over the Common Maintenance Areas to install and maintain their sign panels on the monument directory signs referenced herein.

Each Owner and Declarant may erect and maintain at its own expense up to three name and address plate signs within the Ingress-Egress Easement area designated on the Hillcrest Commons II Plat of Subdivision. Such signs shall be sized and located such that they qualify as "Exempt Signs" under Section 155.07-01 of the Village's Sign Ordinance. An Owner may have any number of Exempt Signs within its Lot.

ARTICLE VI

MAINTENANCE

Section 6.01. **Land to be Maintained.** Improvements and landscaping material within the Common Maintenance Areas shall be maintained as hereinafter set forth. The Association may, with the written consent of all affected Mortgagees and Owners: (1) designate, from time to time, additional portions of the Property to be included within the Common Maintenance Areas; and (2) exclude portions of the Property from the Common Maintenance Areas as it deems appropriate.

Section 6.02. **Association's Maintenance Obligations.**

A. The Association shall (i) maintain, repair, replace, renew, clean, and clear (including snow removal) all roadways (including curbs and gutters and lighting fixtures), existing or constructed within the Ingress-Egress Easement areas designated on the Hillcrest Commons II Plat of Subdivision; (ii) maintain, repair, replace, renew, clean, and clear

(including snow removal) all roadways (including curbs and gutters and lighting fixtures) existing or constructed within the Tollway Parcel depicted on Exhibit A, until such time as the Tollway Parcel is used for a Tollway interchange ramp; (iii) repair, replace, renew, clean and maintain of all storm water management facilities constructed by Declarant or Owners within the Common Maintenance Areas, including, but not limited to, storm sewer pipelines, culverts, ditches, drains, manholes, catch basins, restrictors, aerators, pumps, and detention and retention ponds; (iv) maintain, replace, repair and clean the monument directory sign(s) constructed pursuant to Section 5.02C herein; (v) maintain, repair, replace, renew, clean and clear (including snow removal) all sidewalks within the Sidewalk Easement area designated on the Hillcrest Commons II Plat of Subdivision; and (iv) secure and maintain public liability insurance over the Common Maintenance Areas containing limits of liability generally maintained by prudent owners or users of similar property, but in no event less than \$1,000,000.00 single limit, insuring the Declarant, all Owners and every Mortgagee.

B. The costs and expenses of performing the aforesaid maintenance, repair, replacement and renewal shall include, but not be limited to, all costs of materials, labor and supplies, overhead and administrative expenses (not to exceed ten percent (10%) of the cost of such materials), labor and supplies and the premiums for any policies of insurance on the Common Maintenance Areas which the Association shall deem necessary or appropriate (hereinafter collectively called the "Costs of Maintenance").

C. The Association shall be responsible for mowing, watering, fertilizing, weeding, pruning, replanting and replacing of any landscaping material within the Common Maintenance Areas (except the Utility Easement areas that are not within perimeter parking setback areas). The water supply for irrigation/sprinkling equipment installed in the Common Maintenance Areas need not be separately metered if the Owner of each Lot permits connection of such equipment to its water supply and provides the Association with a reasonable estimate of the cost to provide water to such equipment.

D. The Association shall be responsible for maintenance and replacement of aerators installed in the storm water detention/retention ponds within the Common Maintenance Areas. The electrical supply for said aerators need not be separately metered if the Owners of Lots 2 and 3 permit connection of said aerators to the electrical service for those Lots and provide the Association with a reasonable estimate of the cost of providing electricity to said aerators.

E. Declarant does hereby assign to the Association all rights and obligations imposed upon the owner of the Property by the Easement Agreement dated December 13, 1983 and recorded as Document No. 85133409, and by the Reciprocal Easement Agreement dated June 13, 1995 and recorded as Document No. 95385397, which Agreements provide ingress and egress easements to neighboring properties. The Association shall use its best efforts to obtain reimbursement from the owner of the parcel immediately west of the Property (Lot 1 in Hillcrest Commons Unit 1) for half the costs of maintaining McLin Drive,

in accordance with the Reciprocal Easement Agreement dated June 13, 1995 and recorded as Document No. 95385397.

Section 6.03. Easements for Common Maintenance. Perpetual non-exclusive easements for ingress and egress over, under, across, in and upon the Property are hereby declared, created and reserved by Declarant for the benefit and use of the Association and its contractors, agents and employees for reasonable access to the Common Maintenance Areas for the purposes of performing the maintenance required under the foregoing Section 6.02.

Section 6.04. Payment of the Costs of Maintenance. Every Owner shall pay to the Association its pro portionate share of the Costs of Maintenance in accordance with the following schedule:

Lot 1 - 25.4%
Lot 2 - 34.4%
Lot 3 - 40.2%

It is further provided that each Owner shall be responsible, at its sole cost and expense, and shall be directly assessed by the Association for any and all damages and costs incurred by the Association (a) in connection with any breach or violation of this Declaration which is a result of its own (or its agent's or agents') acts or omissions, or the acts or omissions of an Occupant (or such Occupant's agent or agents) of the Property owned by said Owner, and (b) as a result of its own (or its agent's or agents') negligent or wanton acts or omissions, or the negligent or wanton acts or omissions of an Occupant (or such Occupant's agent or agents) of the Lot owned by said Owner (hereinafter collectively called "Direct Charges"). The Costs of Maintenance and Direct Charges imposed pursuant to this Section 6.04 shall be assessed against and paid by the Owners subject to and in the manner provided by Article VIII hereof.

Section 6.05 Maintenance by Owner.

A. Each Owner shall be obligated to perform all maintenance obligations with respect to the Lot owned by said Owner, specifically including, but not be limited to, (i) the prompt removal of all paper, debris and refuse from all areas of its Lot; (ii) the repair, replacement, renewal, cleaning and painting of all visible exterior surfaces of all buildings located upon its Lot; (iii) the repair, replacement, cleaning and relamping of all exterior signs and lighting fixtures located upon its Lot; (iv) the mowing, watering, fertilizing, weeding, pruning, replanting and replacing of all landscaping material, including grass, ground cover plants, flowers, shrubs and trees, located in its Lot (other than landscaping material within the Common Maintenance Areas (except the Utility Easement areas that are not within perimeter parking setback areas); (v) the maintenance, repair and restoration of all parking areas located upon its Lot, including, without limitation, lighting, striping, clean-up, rubbish removal, maintenance and replacement of pavement,

curb and gutter, and replacement of light bulbs, all in a manner consistent with first-class developments similar to the Property, (vi) keep and maintain the sidewalks and bicycle paths on its Lot and within any road right-of-way and adjacent thereto (except as may be done by a governmental entity), and any and all improvements, lighting and landscaping associated therewith, in a proper state of maintenance and repair such that pedestrians can travel freely over such sidewalks and walkways at all times, and including any necessary replacements; (vii) perform removal of all snow and ice from the driveways, parking areas, sidewalks, and bicycle paths on its Lot and within any road right-of-way adjacent thereto; (viii) keep the driveways, parking areas and sidewalks and bicycle paths located on its Lot lit at a level as may be reasonably adequate for use and for security purposes, but not less than dusk to dawn, seven days a week; (ix) maintain and replace all storm water control facilities (including, but not limited to storm water pipes, culverts, man holes, catch basins, drains, pumps and ditches) on its Lot outside the Common Maintenance Area. Notwithstanding anything to the contrary herein, every Owner shall at all times be responsible for the maintenance, repair, restoration, replacement and renewal of the structural and roof components of the Buildings located upon its Lot and all other Improvements located upon its Lot so as to keep the same in a clean, sightly, safe and first-class condition consistent with its originally approved appearance and condition. Each Owner shall be responsible for the payment for all of the costs and expenses of performing the aforesaid maintenance responsibilities.

B. If any structural or roof component of any Building or any other Improvement is damaged or destroyed, the Owner of the Lot containing such Building or other Improvement shall promptly restore the same to the condition existing prior to such damage or destruction or, in the alternative, raze and remove such Building or Improvement and landscape its Lot pursuant to a plan of landscaping approved by the Association.

C. If any Owner obligated hereunder to perform the maintenance obligations described above shall fail to maintain the Building, Improvements and landscaping on its Lot as aforesaid, the Association may give notice to the Owner specifying the manner in which the Owner has failed to maintain its Building, Improvements and landscaping, and if said Owner refuses or fails to undertake, or to commence to undertake and thereafter diligently complete, said maintenance within ten (10) days following such notice, the Association may, but shall not be obligated to, enter upon said Owner's Lot and perform such maintenance. In the event the Association undertakes such maintenance, the Association shall not be liable or responsible to the Owner for any losses or damage thereby sustained by the Owner or anyone claiming by, through or under the Owner except for gross negligence or wanton or willful misconduct. In the event the Association undertakes the aforesaid maintenance, the cost therefor shall be deemed Direct Charges and assessed against and paid by the aforesaid Owner subject to and in the manner provided by Article VIII hereof.

ARTICLE VII

ASSOCIATION

Section 7.01. **Incorporation.** Declarant shall incorporate the Association under the Not-For-Profit Business Corporation Act of the State of Illinois.

Section 7.02. **Membership.** Every Owner, including Declarant to the extent that Declarant is the owner of any Lot, shall be a Member of the Association. Membership shall be appurtenant to, and may not be separate from, the ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership in the Association. Every Owner, by acceptance of a deed to a Lot, covenants and agrees to be a Member of the Association whether or not it shall be so expressed in any deed or other conveyance. In the event Owner is a land trust, the rights, privileges and benefits of membership in the Association and the duties and obligations associated therewith shall inure to the benefit of and be binding upon the beneficiaries of said land trust.

Section 7.03. **Transfer.** Membership in the Association shall not be transferable in any way except upon the conveyance of a Lot and then only to the successor in title to such Lot. Any attempt to transfer a membership in the Association in violation of the provisions hereof shall be null and void and of no force or effect.

Section 7.04. **Powers and Duties of Board of Directors.** A board of directors (hereinafter referred to as the "Board") composed of three (3) individuals (hereinafter referred to as the "Directors") shall exercise the powers and duties of the Association for the benefit of the Property. One Director shall be appointed by the Owner of each Lot. The Board shall meet from time to time as necessary, but in no event shall the Board meet less than once a year. Notice of all meetings of the Board shall be in writing and delivered to each Director personally or by certified mail, return receipt requested, not less than four (4) business days prior to the date of any scheduled meeting. No action of the Board shall be effective or taken except by majority vote of the Directors.

Section 7.05. **Powers and Duties of Officers.** The Board shall elect from among its members, to serve without compensation for services performed, (i) a president who shall preside over the Board's and the Association's meetings, who shall be the chief executive officer of the Association and who shall be designated to mail and receive all notices and execute all documents as provided herein; (ii) a secretary who shall keep the minutes of all meetings of the Board and of the Association and who shall, in general, perform all the duties incident to the office of the secretary, (iii) a treasurer who shall keep the financial records and books of account, and (iv) such additional officers as the Board shall see fit to elect from amongst its Members

Section 7.06. **Association's Obligations.** The Association shall perform the construction, installation and maintenance obligations set forth in Articles V and VI hereof.

Section 7.07. **Additional Powers of Association.** The Association, to the extent the Board deems necessary and appropriate to fulfill its duties and obligations pursuant to this Declaration, shall have the power to own personal property, to open bank accounts, to take such actions, legal or otherwise, necessary to enforce this Declaration as herein provided, to obtain policies of insurance

insuring the Association, the Board, the Common Maintenance Areas, to contract for legal, accounting and similar professional services, to borrow funds, to employ the services of a manager, to otherwise do that which it believes necessary to carry out its responsibilities, to protect and defend the Association and the Property from loss or damage by suit or otherwise and to pay the costs of the foregoing from assessments levied against the Owners in accordance Section 6.04 herein.

Section 7.08. Director, Officer and Association Member Liability. Neither the Declarant, the Directors nor the officers of the Association shall be personally liable to the Owners, the Declarant or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever made, taken or omitted to be taken as such Declarant, Directors or officers except for willful misconduct. The Association and its members shall indemnify and hold harmless the aforesaid Declarant, Directors and officers, their heirs, agents, personal representatives, successors and assigns from and against all contractual and other liabilities to others arising out of contracts made by, or acts or omissions of, the said Directors and officers on behalf of the Owners or the Association or arising out of their status as Declarant, Directors or officers and all costs and expenses (including, but not limited to, attorneys' 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 Declarant, Director or officer may be involved by virtue of being or having been such Declarant, 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 finally been adjudged in such action, suit or proceeding to be liable for malicious, illegal or willful misconduct or fraud in the performance of his duties as such Declarant, Director or officer; or (ii) any claim for malicious, illegal or willful misconduct or fraud that is settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is no reasonable ground for such person being adjudged liable for such malicious, illegal or willful misconduct or fraud in the performance of his duties as such Director or officer.

Section 7.09. Person to Receive Process. The president of the Association is hereby designated to receive service of process in any action which may be brought against the Association.

Section 7.10. Member Responsibility. All Members shall cooperate with and abide by the decisions of the Board. No Member can commit, bind or contract for the Association.

ARTICLE VIII

ASSESSMENT LEVIED BY THE ASSOCIATION

Section 8.01. Assessments. The Association may levy assessments against the Owners which shall be used to discharge the Costs of Maintenance and Direct Charges and for such other purposes as are authorized by this Declaration or deemed necessary and appropriate by the Association for the general maintenance and welfare of the Property and the improvements thereon, including, without limitation, discharging the costs incurred by the Association in exercising its rights

and powers and in performing its obligations hereunder, discharging the costs incurred by the Association in enforcing this Declaration and the by-laws and rules and regulations of the Association, and the costs incurred in securing and maintaining any insurance upon any portion of the Property ("Assessments"). Except as otherwise provided herein, Assessments for Costs of Maintenance shall be levied upon each Owner in accordance with the Owner's proportionate share schedule set out in Section 6.04 hereof. Assessments for Direct Charges shall be levied upon individual Owners in accordance with their liability under this Declaration.

Section 8.02. Personal Obligation for Assessments and Creation of Lien. Every Owner by the acceptance of a deed to a Lot, whether or not such obligation be so expressed in any such deed, for the Lot owned by said Owner, together with Declarant, hereby covenants and agrees, and shall be deemed to have covenanted and agreed, to pay to the Association all Assessments as are levied or charged by the Association pursuant to the provisions of this Declaration within thirty (30) days of the due date set by the Association. All Assessments together with the Late Payment Charge described in Section 8.06 hereof and the costs of collection, if any, shall be a continuing lien upon the Lot against which such Assessments are levied. Such Assessments as aforesaid, together with Late Payment Charges and costs thereof, shall, in addition, be the personal obligation of the Owner of the Lot at the time the Assessments were levied.

Section 8.03. Liability of Beneficiaries of Land Trust. In the event title to a Lot subject to Assessments is conveyed to a title holding trust under the terms of which all powers of management, operation and control remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder shall be responsible for the payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created for the purpose of the payment of the costs assessed against such Lot. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation created hereunder and such 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 such Lot and the obligation of the beneficiaries, of such trust, notwithstanding any transfer or attempted transfer of the beneficial interest in any such trust or any transfer or attempted transfer of title to such part or portion of the Property.

Section 8.04. Annual and Additional Assessment. The initial annual Assessments for Costs of Maintenance payable to the Association shall be fixed by the Association in its reasonable discretion, giving due consideration to the Costs of Maintenance for the prior twelve (12) month period. Commencing with the next fiscal year and for each year thereafter, the Board shall estimate its costs of operation for the coming year and same shall be assessed and paid annually in advance by every Owner or as the Board shall otherwise direct. Such Assessments shall take into consideration the cost of, or reserves for, any contemplated repair, replacement or renewal of Improvements within the Common Maintenance Areas maintained by the Association. The Board shall have the power to levy additional Assessments as provided in the rules and regulations of the Association. All Assessments for Costs of Maintenance and Direct Charges shall be a lien upon each Lot.

Section 8.05. **Proration of Assessments.** The Assessments provided for in this Article shall commence on or be prorated as of the date each Owner acquires title to its Lot and shall thereafter be due and payable as above provided.

Section 8.06. **Delinquent Assessments.** Any Assessments which are not paid when due shall be delinquent. If an Owner fails to pay any Assessment within thirty (30) days of its due date, said Owner shall be liable to the Association for such Assessment as well as a Late Payment Charge equal to (i) \$150.00 plus (ii) interest on such Assessment at the annual rate of one hundred fifty percent (150%) of the Prime Rate of Interest stated in the Money Rates Section of *The Wall Street Journal* thirty (30) days after the due date of the Assessment (referred to herein as "Late Payment Charge").

In addition to the foregoing and in addition to all other legal and equitable rights and remedies, the Association may (1) bring an action at law against the Owner personally obligated to pay the Assessments and (2) in an appropriate judicial proceeding, foreclose the lien created in favor of the Association by the provisions of the foregoing Section 8.02 and (3) collect in said action or through said proceeding the delinquent Assessments, together with Late Payment Charge and the costs of collection and reasonable attorneys' fees of any such action or proceeding. The lien provided for under Section 8.02 shall secure the payment of the Assessments, the aforesaid Late Payment Charge and the aforesaid costs and reasonable attorneys' fees. No Owner may waive or otherwise avoid liability for Assessments due as provided for herein by non-use of the Common Maintenance Areas or abandonment or transfer of its Lot.

Section 8.07. **Subordination of Lien to Mortgage.** The lien for any Assessments provided for in this Declaration (including without limitation the liens provided for in Sections 6.05, 6.04 and 8.02 hereof) shall be subordinate to the lien of the security interest held by any Mortgagee to the extent of all advances made thereunder; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such portion of the Property pursuant to or in lieu of foreclosure by the holder of such security interest. Such sale or transfer shall not relieve the Owner or Mortgagee of said portion of the Property from the lien for any Assessments thereafter becoming due nor from the lien of any subsequent Assessments. Any lien for unpaid Assessments which is subordinated in accordance with this Section 8.07 shall, to the extent that there are proceeds available subsequent to foreclosure, be paid.

ARTICLE IX

EASEMENTS

Section 9.01. **Declaration of Easements for Owners.** The following non-exclusive easements are hereby granted and reserved for the benefit and use of Owners, their beneficiaries, grantees, assigns, successors, mortgagees, tenants, guests, Occupants and all persons acquiring any interest in a part or portion of the Property now or hereafter:

A. **Ingress/Egress Easement.** An easement over, upon and across roadways and driveways constructed within those portions of the Property designated as "Ingress-Egress Easement" on the Hillcrest Commons II Plat of Subdivision attached hereto as Exhibit A for ingress and egress and access by vehicular and pedestrian traffic, and for use, maintenance, repair and replacement thereof.

B. **Storm Water Easement.** An easement upon, under and across those portions of the Property designated as "Utility Easement" and "Detention Easement" on the Hillcrest Commons II Plat of Subdivision for construction and use of storm water management facilities, including, but not limited to, storm sewer pipelines, culverts, man holes, catch basins, ditches, drains and storm water detention and retention areas for storm water drainage in compliance with all applicable federal, state and local government laws, ordinances, rules and regulations.

Section 9.02. **Declaration of Easement for Association.** The Association, and its agents and contractors, is hereby granted a non-exclusive easement over, upon and across the Common Maintenance Areas for the purpose of construction, maintenance and replacement of roadway and storm water management facilities in accordance with its responsibilities under this Declaration.

ARTICLE X

MISCELLANEOUS SECTIONS

Section 10.01. **Term.** This Declaration shall be perpetual in duration unless an instrument terminating this Declaration or amending this Declaration to provide otherwise is executed and recorded in accordance with the provisions of Section 10.02 hereof.

Section 10.02. **Amendment.**

(a) No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without Declarant's written consent.

(b) This Declaration may be amended by an instrument executed by all of the Owners provided that: (i) any amendment shall require the prior written consent of all Mortgagees having an interest in the Lots affected by said amendment; and (ii) no amendment shall become effective until recorded in the Office of the Recorder of Deeds for Cook County, Illinois and a copy thereof has been sent to the Clerk and Director of Community Development of the Village. Notwithstanding anything herein to the contrary, the Association shall at all times have the sole right to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto.

Section 10.03. **Enforcement - General.** The covenants, conditions, restrictions, easements, uses, privileges, charges and liens of this Declaration shall run with the land of the Property and be binding upon and inure to the benefit of all Persons having or acquiring any right, title or interest in the Property, including Declarant, the Association and every Owner, purchaser, lessee, mortgagee and grantee of any Lot, their respective heirs, personal representatives, successors and assigns. The enforcement of the provisions of this Declaration shall be vested in the Association and each Owner. A breach of any of the provisions of this Declaration shall give to the party entitled to enforce such provision the right to bring a proceeding in law or equity against the party or parties breaching or attempting to breach the Declaration for damages resulting from such breach and for an injunction enjoining such breach or attempted breach or ordering the remedying of such breach. A breach of this Declaration by an Owner relating to the use or maintenance of any part or portion of the Property is hereby declared to be and constitute a nuisance, and every public or private remedy allowed by law or equity for the abatement of a public or private nuisance shall be available to remedy such breach, including, without limitation, assessing said Owner for the costs of removing, correcting or abating said nuisance and securing the collection of said costs, which are hereby deemed Direct Charges, by the filing of a lien against the part or portion of the Property owned by said Owner and the foreclosure upon said lien in the manner provided for in Article VIII of this Declaration. In any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof, the party or parties against whom judgment is entered shall pay the attorneys' fees and costs of the party or parties for whom judgment is entered in such amount as may be fixed by the Court in such proceedings. All remedies provided under this Declaration including those at law or in equity shall be cumulative and not exclusive. The failure of a party having a right to enforce this Declaration to so do shall not be deemed a waiver of the right of any other party having such right nor a waiver of the right to enforce this Declaration in the event of a subsequent breach or the right to enforce any other provision of this Declaration. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration.

Section 10.04 **Conveyance and Leases.** Each grantee of the Declarant and each subsequent grantee by the acceptance of a deed of conveyance, and each purchaser under a purchase contract therefor, and each tenant under a lease for any Building, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land of the Property and shall bind any person having any interest or estate in the Property, and shall inure to the benefit of such grantee in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 10.05. **Enforcement and Easement Rights of the Village of Schaumburg and Public Utilities.** A perpetual, non-exclusive ingress and egress easement over the Property is hereby granted to the Village of Schaumburg and any public utility serving the Property for the purposes of providing police and fire protection and utility services to the Property and for the purpose of

performing the maintenance obligations herein described to the extent that the Village of Schaumburg or any such public utility undertakes the same. Such maintenance activities shall be limited to the Utility and Detention Easement areas designated on the Hillcrest Commons II Plat of Subdivision, and such areas within a Lot as the Owner of that Lot may allow.

Section 10.06. Responsibility of Owner. Every Owner shall be responsible for any breach of this Declaration which is a result of its own acts or omissions or the acts or omissions of an Occupant of its Lot.

Section 10.07. Compliance with Law. Every Owner and the Association shall at all times comply with all terms and provisions of this Declaration, all applicable federal, state, county and municipal laws, ordinances, rules and regulations, and with the applicable regulations of the local fire insurance rating organization having jurisdiction over the Property and of any other organization or board exercising a similar function with respect to the construction, maintenance, operation and use of such Owner's portion of the Property or the Improvements thereon. Subject to the provisions of Section 3.02 hereof, in the event of a conflict, ambiguity or inconsistency between the terms and provisions of this Declaration and the terms and provisions of federal, state or local law, the more restrictive terms and provisions shall govern.

Section 10.08. No Waivers. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 10.09. Estoppel Certificates. Upon the written request of an Owner or the holder of a security interest in any part or portion of the Property, the Association shall, within ten (10) business days of the request therefor, issue a certificate setting forth the amount of any delinquent Assessments with respect to said Owner's Lot or stating that all current obligations with respect to Assessments allocable to such Lot have been paid in full. A reasonable charge not to exceed one hundred dollars (\$100.00) may be required for issuance of said certificate.

Section 10.10. Severability. If any of the covenants, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or terms herein set forth shall remain valid and binding provided that in such event Declarant or all of the then Owners of the Property shall to the fullest extent possible modify such covenant, condition or term to the extent required to carry out the general intention of this Declaration and to impart validity to such covenant, condition or term.

Section 10.11. Owner's Liability, Subsequent Sale, Successor's Obligation. In the event that any Owner sells, transfers or otherwise conveys its Lot, said Owner shall have no liability for obligations relating to such part or portion of the Property accruing after the date of the aforesaid sale, transfer or conveyance; provided, however, that nothing contained herein shall affect the validity or enforceability of any lien therefore recorded against its Lot or arising pursuant to Sections 8.02

and 8.06 herein for previously incurred liabilities and nothing contained herein shall affect the liability of any Owner for any obligation incurred pursuant to this Declaration prior to the date of said sale, transfer or conveyance.

Section 10.12. Delay in Performance - Force Majeure. If the performance of any act or obligation under this Declaration is prevented or delayed by an act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lock-out, action of labor union, condemnation, threatened condemnation, requisitions, laws and orders of government or civil or military authorities or any cause whether similar or dissimilar to the foregoing not within the reasonable control of the Person required to perform such act or obligation, then such Person shall be excused from the performance of such act or obligation for so long as such Person is so prevented or delayed by reason thereof. This *force majeure* provision shall apply only to the non-monetary obligations created by this Declaration and imposed on the Association, Declarant and every Owner.

Section 10.13. Notice. Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person and receipted for or (ii) deposited in the United States Mail, certified mail, return receipt requested, postage prepaid, addressed, if to an Owner, to said Owner's address at the Property or last known address as shown on the records of or the Association at the time of such mailing or, if to the Association, to its President, Secretary or registered agent, or if to Declarant, addressed as follows:

Hillcrest II, L.L.C.
c/o Finch & Barry Properties, Ltd.
Attn: Mr. Leroy Finch
436 East State Parkway, Suite 222
Schaumburg, IL 60173

With copies to: Gregory L. Dose, Esq.
Ancel, Glink, Diamond, Cope & Bush, P.C.
140 South Dearborn Street - Suite 600
Chicago, IL 60603

and

David B. Aufrecht, Esq.
55 W. Monroe St., Suite 3550
Chicago, IL 60603

or such other address as the as the Association shall from time to time designate by notice to every Owner. Notices shall be deemed effective upon delivery, if personally delivered, or two (2) days after the date of postmarking, if mailed.

Section 10.14 **Captions - Singular, Plural, Gender.** The Article and Section headings herein are intended for convenience only and shall not be construed with any substantive effect in this Declaration. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.

Section 10.15. **Reservation of Easements and Obligations.** Reference to this Declaration in any deed of conveyance or any mortgage or trust deed or other evidence of obligation shall be sufficient to create and reserve all of the rights, benefits, burdens, duties and obligations contained herein to the respective grantees, mortgagees or trustees of all or any Lots as fully and completely as if the same were fully recited and set forth in their entirety in such instrument. The Property and this Declaration shall be subject to easements created and granted by Document Nos. 85133409, 88250795 and 95385397 recorded with the Recorder for Cook County, Illinois.

Section 10.16. **Construction.** Every Owner, by acceptance of title to any part of portion of the Property, specifically acknowledges and agrees that in the event of disagreement as to the precise meaning of any term or provision contained herein, the interpretation of Declarant or, if Declarant no longer owns any Lot, the Association, by a majority vote of its Board, shall be final. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property.

IN WITNESS WHEREOF, Hillcrest II, L.L.C. has caused this instrument to be executed on the date first above written.

HILLCREST II, L.L.C.

by Finch & Barry Properties, Ltd., an Illinois Corporation
Its: Manager

By: 
Leroy Finch
Its: President

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

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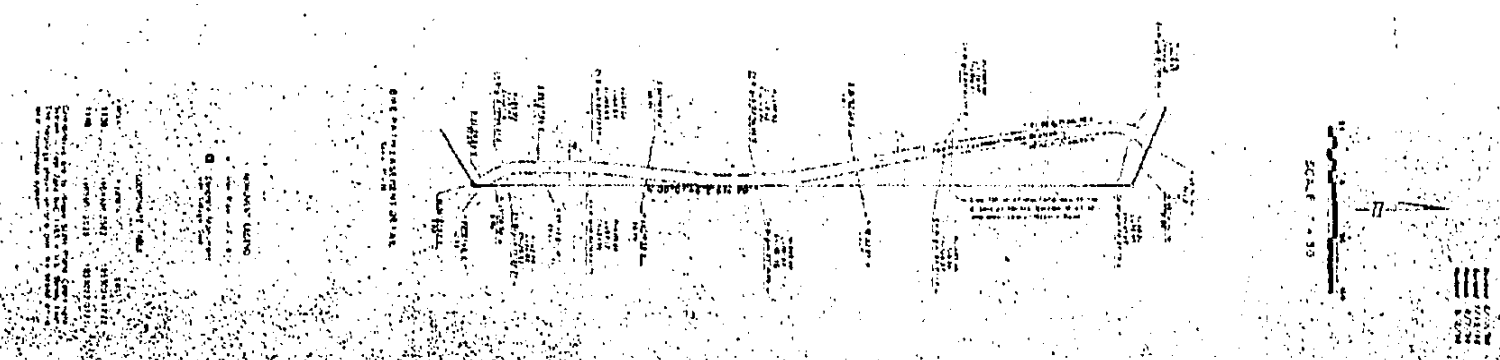
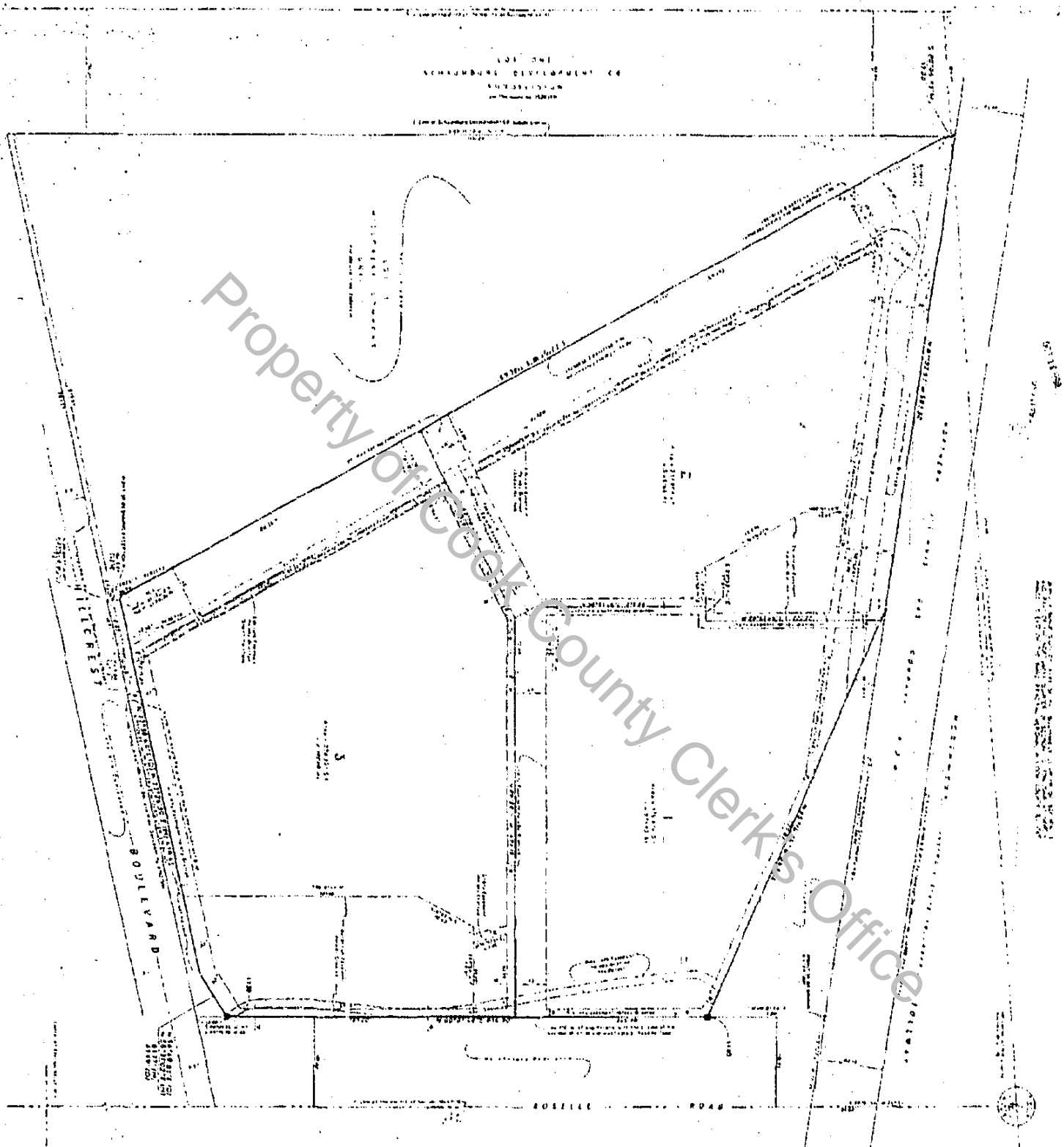
The undersigned, a Notary Public, in and for said county, in the state aforesaid, DO HEREBY CERTIFY that Leroy Finch, President of Finch & Barry Properties, Ltd., an Illinois corporation and Manager of Hillcrest II, L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said companies, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 22 day of October, 1998.



Sally E. Cycholl
Notary Public

Exhibit A



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Property of Cook County Clerk's Office

HILLCREST COMMONS II



Document 1: A page of text, likely a deed or contract, with a circular notary seal at the top left.



Document 2: A page of text, likely a deed or contract, with a circular notary seal at the top left.

Document 3: A page of text, likely a deed or contract, with a circular notary seal at the top left.

Document 4: A small, partially visible page of text at the bottom left.



Exhibit B

AGREEMENT

THIS AGREEMENT (this "Agreement") dated as of this 15th day of July, 1991 by and between the VILLAGE OF SCHAUMBURG, an Illinois municipal corporation located in Cook County and DuPage County, Illinois (the "Village"), and LASALLE NATIONAL TRUST, N.A., not personally but at Trustee under Trust Agreement dated August 1, 1980 and known as Trust No. 103128 (the "Owner").

W I T N E S S E T H:

WHEREAS, the Owner is the legal title holder of approximately 23.9 acres of land (the "Remaining Property") located at the Northwest corner of Hillcrest Boulevard and Roselle Road in the Village and which is legally described in Exhibit C attached hereto; and

WHEREAS, the Remaining Property consists of two parcels, Parcel One of which (the "Improved Parcel") contains approximately 7.8 acres of land located in the Southeasterly corner of the Remaining Property and is improved with four single-story commercial buildings, and Parcel Two of which (the "Unimproved Parcel") contains approximately 16.1 acres of land and is not yet improved with buildings; and

WHEREAS, there is presently located adjacent to the Westerly line of the Unimproved Parcel a paved private road ("McLinn Drive") providing, among other things, an easement for ingress and egress for the benefit of the Remaining Property and other real estate; and

WHEREAS, pursuant to Trustee's Deed dated as of July 15, 1991 (the "Deed"), the Owner conveyed to the Village approximately 0.85 acres of land (the "Tollway Property") located Northerly of and adjacent to the Unimproved Parcel and Westerly of and adjacent to Roselle Road and which is legally described in Exhibit A attached hereto; and

WHEREAS, there is presently located within the Unimproved Parcel and within the Tollway Property a paved private road (the "North Access Road") with an entrance on to Roselle Road providing, among other things, ingress and egress to the Improved Parcel from Roselle Road; and

WHEREAS, this Agreement is part of the consideration for the execution and delivery of the Deed;

NOW, THEREFORE, in consideration of the premises and other good and valuable considerations, the receipt and sufficiency

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of which is acknowledged by the parties, the Village and the Owner agree as follows:

1. The Village accepts the Deed and the terms and provisions thereof.

2. The Owner and its tenants and invitees may continue to use the Tollway Property, including that portion of the North Access Road located within the Tollway Property, until such date (the "Tollway Commencement Date") as the construction of tollway ramp facilities shall commence within the Tollway Property. The Village shall cause the Owner to receive notice of the anticipated Tollway Commencement Date (a) not less than 180 days prior to such date and not more than 210 days prior to such date, and (b) not less than 30 days prior to such date and not more than 45 days prior to such date. Provided that the Owner shall have received such notices, the Owner shall cause the Tollway Property to be vacated and shall cause the use of the portion of the North Access Road within the Tollway Property to be discontinued by the Tollway Commencement Date. Pending the Tollway Commencement Date, Owner's use of the Tollway Property shall be without cost or expense. Owner may abandon the North Access Road at any time and shall have no obligation at any time to remove the North Access Road improvements.

3. Upon notice from the Owner, the Village shall assist and cooperate in good faith, both with respect to requirements of the Village and with respect to requirements of other governmental authority regarding:

(a) the relocation of that portion of the North Access Road located within the Tollway Property at a different location within the Unimproved Parcel and the relocation of the entrance of the North Access Road on to Roselle Road at a place and in a manner that, compatible with traffic requirements, maximizes the area of the Unimproved Parcel remaining available for development. If the North Access Road is relocated, then the Owner of that portion of the Unimproved Parcel upon which the North Access Road is relocated shall be responsible for the cost of such relocation, it being acknowledged that the Village shall have no liability therefor; and

(b) the construction of traffic signals (and any other necessary traffic facilities) at the intersection of McLinn Drive and Hillcrest Boulevard so as to enable both right turns and left turns from McLinn Drive on to Hillcrest Boulevard; and

(c) the approval of all requirements for the development of the Unimproved Parcel (including, without limitation, zoning and building ordinance provisions

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concerning density, parking and set backs) as if the Tollway Property remained a part of the Unimproved Parcel.

4. All notices required hereunder shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by telex, telecopy, cable or via a reliable overnight courier such as Federal Express, and shall be deemed received upon the earlier of (i) if mailed, upon the date of receipt as disclosed on the return receipt; or (ii) if given by telex, telecopy or cable, when sent. Any notice, request, demand, direction or other communication sent by cable, telex or telecopy must be confirmed within forty-eight (48) hours better letter mailed or delivered in accordance with the foregoing.

To the Village: Village of Schaumburg
101 Schaumburg Court
Schaumburg, Illinois 60193
Attn: Village Manager
Fax: (708) 894-7806

To the Owner: Wachovia Bank of North Carolina,
National Association
301 North Main Street
Winston-Salem, North Carolina 27150
Attn: James C. Cook
Vice President
Fax: (919) 770-4568

Notice of change of address shall be given by written notice in the manner provided in this paragraph.

5. The Village acknowledges (a) that the contribution of the Tollway Property to the Village by the Owner satisfies all present requirements by the Village of the Owner including, without limitation, requirements arising with respect to Village approval of the North Access Road, (b) that the Letter of Credit previously delivered to the Village by the Owner shall expire without any draw thereon, and (c) that the Owner has no further obligation to the Village with respect to the delivery of any additional Letter of Credit.

6. This Agreement is binding upon and is for the benefit of the Owner and the Village, their successors and assigns, the owner or owners from time to time of the Remaining Property and of the Tollway Property.

7. This Agreement is executed by Owner, not personally but as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee (and Owner hereby warrants that it possesses full power and authority to execute this Agreement). It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations,

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covenants, undertakings, warranties and agreements herein made on the part of the Owner while in form purporting to be the representations, covenants, undertakings, warranties and agreements of Owner are nevertheless made and intended not as personal representations, covenants, undertakings, warranties and agreements by Owner or for the purpose or with the intention of binding Owner personally but are made and intended for the purpose of binding only the trust property, and this Agreement is executed and delivered by Owner not in its own right, but solely in the exercise of the power conferred upon it as said trustee; and that, except as otherwise expressly set forth herein, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against Owner on account of this Agreement or on account of any representations, covenants, undertakings, warranties or agreements of Owner in this Agreement contained either express or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written.

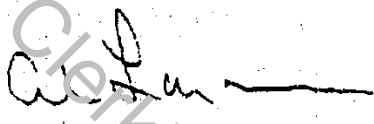
OWNER:


GRANTEE:


LASALLE NATIONAL TRUST, N.A.,
not personally but as
Trustee aforesaid

VILLAGE OF SCHAUMBURG

By: 
Title: VICE PRESIDENT

By: 
Title: Al Larson
Village President

Attest: 
Title: Notary Public
(seal)

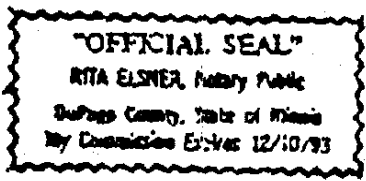
Attest: 
Title: Penny M. Dietrich
(seal)
Village Clerk

98958457

STATE OF ILLINOIS)
) SS:
COUNTY OF ~~ESSEX~~)

I, DuPage Rita Elsner, a Notary Public in and for said County in the STATE aforesaid, DO HEREBY CERTIFY that Al Larson as Village President of the Village of Schaumburg and Henry M. Dietrich as Village Clerk of said Municipal Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument a such Village President and Village Clerk of said Municipal Corporation, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Municipal Corporation, for the uses and purposes therein set forth; and said Village Clerk did then and there acknowledge that she, as custodian of the corporate seal of said Corporation, did affix the corporate seal to said instrument as the free and voluntary act of said Municipal Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 28th day of August, 1991.



Rita Elsner
Notary Public

My Commission Expires

DU PAGE COUNTY CLERK'S OFFICE

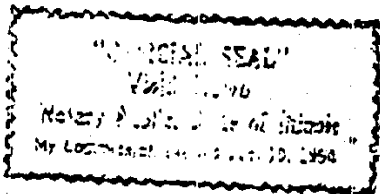
STATE OF ILLINOIS)

SS:

COUNTY OF COOK)

I, VICKI HOWE a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOSEPH W. CANE Assistant Vice President of LaSalle National Trust, N.A., and Corinne Jek Assistant Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Assistant Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered 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 said Assistant Secretary did also then and there acknowledged that he as custodian of the corporate seal of said Bank did affix 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 August A.D., 1991.



Vicki Howe
Notary Public

County Clerk's Office

EXHIBIT A

"Tollway Property"

That part of the Northwest Quarter of Section 10, Township 41, Range 10 East of the Third Principal Meridian in Cook County, described as follows:

Commencing at the intersection of the North line of the North West 1/4 of Section 10, Township 41, Range 10 East of the Third Principal Meridian and the East line of the aforesaid North West 1/4 of Section 10, Township 41, Range 10 East of the Third Meridian; thence south along said East line of the aforesaid North West 1/4 of Section 10, Township 41, Range 10 East a distance of 261.91 feet to a point, which point coincides with the intersection of the aforesaid East line of the North West 1/4, of Section 10, Township 41, Range 10 East and the South line of the Northern Illinois Gas Company right of way; thence Northwesterly along said South line of the Northern Illinois Gas Company right of way a distance of 111.35 feet to the point of beginning; thence continuing Northwesterly along said South line of the Northern Illinois Gas Company right of way a distance of 500.00 feet to a point; thence Southeasterly on a line with an angle of 15 degrees 48 minutes 43 seconds to the aforesaid South line of the Northern Illinois Gas Company right of way, a distance of 543.84 feet to a point on line, which line is 110.00 feet West of and parallel with the aforesaid East line of the North West 1/4 of Section 10, Township 41, Range 10 East of the Third Principal Meridian, and which line is also the West right of way line of Roselle Road; thence Northerly along said west right of way line of Roselle Road; a distance of 150.00 feet to the point of beginning, all in Cook County, Illinois.

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EXHIBIT C

"Remaining Property"

PARCEL ONE (the "Improved Parcel"):

Lot 1 in Hillcrest Commons Unit 1, being a subdivision of part of the North West 1/4 of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois

PARCEL TWO (the "Unimproved Parcel"):

That part of the South West 1/4 of Section 3, Township 41 North, Range 10 East of the Third Principal Meridian, together with that part of the North West 1/4 of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian, taken as a tract, lying South of the South line of the Northern Illinois Gas Company property, said South line being 82.50 feet Southerly of and measured perpendicular to the Southerly right of way line of the Illinois State Toll Road as per Document 16885123 and as corrected by Document Number 17907142, and lying East of the East line of Schaumburg Development Company subdivision as recorded October 25, 1979 as Document 25206099, and lying Northerly of the Northerly line of Parcel 'A' as per Plat of Annexation recorded May 31, 1966 as Document 19783367, and lying West of a line 110 feet West, as measured perpendicular to the East line of the North West 1/4 of said Section 10, all in Cook County, Illinois

EXCEPT

Lot 1 in Hillcrest Commons Unit 1, being a subdivision of part of the North West 1/4 of Section 10, Township 41 North, Range 10 East of the Third Principal Meridian;

AND EXCEPT

That part of the Northwest Quarter of Section 10, Township 41, Range 10 East of the Third Principal Meridian in Cook County, described as follows:

Commencing at the intersection of the North line of the NW 1/4 of Section 10, Township 41, Range 10 East of the Third Principal Meridian and the East line of the aforesaid North West 1/4 of Section 10, Township 41, Range 10 East of the Third Meridian; thence south along said East line of the aforesaid North West 1/4 of Section 10, Township 41, Range 10 East a distance of 261.91 feet to a point, which point coincides with the intersection of the aforesaid East line of the North West 1/4, of Section 10, Township 41, Range 10 East and the South line of the Northern Illinois Gas Company right

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of way; thence Northwesterly along said South line of the Northern Illinois Gas Company right of way a distance of 111.35 feet to the point of beginning; thence continuing Northwesterly along said South line of the Northern Illinois Gas Company right of way a distance of 500.00 feet to a point; thence Southeasterly on a line with an angle of 15 degrees 48 minutes 43 seconds to the aforesaid South line of the Northern Illinois Gas Company right of way, a distance of 543.84 feet to a point on said line, which line is 110.00 feet West of and parallel with the aforesaid East line of the North West 1/4 of Section 10, Township 41, Range 10 East of the Third Principal Meridian, and which line is also the West right of way line of Roselle Road; thence Northerly along said west right of way line of Roselle Road; a distance of 150.00 feet to the point of beginning, all in Cook County, Illinois.

Property of Cook County Clerk's Office
98958457

HILLCREST COMMONS II RESTRICTED VISIBILITY EXHIBIT

98958457

Exhibit C

98958457

SCALE: 1" = 160'

NORTHWEST (ILLINOIS STATE TOLLROAD) TOLLWAY

N 81°02'57"W 583.30
NORTHERN ILLINOIS GAS COMPANY P.O.W.
420' 14.02'

S 00°06'33"W
12.00

RESTRICTED AREA

S 88°58'16"E
37.01

2

Area = 237,909 S.F.
= 5.46164 AC.

N 65°14'16"W 543.84'

Area = 175,804 S.F.
= 4.03590 AC.

N 00°01'46"E 222.72'
208.97'

N 00°01'46"E 219.00'

A 2°51'18"W
29.75'

N 89°58'16"W 485.15'

N 62°08'42"E
759.01'

RESTRICTED AREA

3

Area = 278,391 S.F.
= 6.39098 AC.

S 27°51'18"E 196.45'

LOT 1
HILLCREST COMMONS
UNIT 1

HILLCREST BOULEVARD
N 77°38'40"E (D) N 77°26'30"E (M) 470.45'

N 55°48'01"E
N 56°31'02"E
61.77' (M)
61.99' (D)

ROSELLE ROAD

DL/CAD/9702DLX-Bx11.dwg

AA huoger and associates, Inc.
consulting engineers - land survey
18114 roselley road rolling meadows, Skokie 60076 tel: 547.594.8600 fax: 547.594.8601
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