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Karen A.Yarbrough  
Cook County Recorder of Deeds  
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**THIS DOCUMENT PREPARED  
BY AND AFTER RECORDING  
RETURN TO:**

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Chicago, Illinois 60601

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**DECLARATION OF PARTY WALL RIGHTS, COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR THE PROVENANCE TOWNHOMES**

**THIS DECLARATION OF PARTY WALL RIGHTS, COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR THE PROVENANCE TOWNHOMES** (this "Townhome Declaration") is made and entered into as of this 22<sup>nd</sup> day of December, 2015 (the "Effective Date"), by RSD MISSION HILLS, LLC, an Illinois limited liability company (as further defined in Section 1.1 hereof, "Declarant").

**RECITALS:**

- A. As of the Effective Date, Declarant is the owner of certain real property consisting of approximately 43.240 acres located in Cook County, Illinois (referred to herein as the "Property") and further described in Section 1.1).
- B. Declarant has caused a Plat of Subdivision (the "Plat") to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on November 18, 2015 as Document No. 1532229026, pursuant to which: (i) the Property was subdivided into seventy-three (73) lots (collectively referred to herein as the "Lots" and individually as a "Lot" and further defined in Section 1.1), and (ii) an adjacent parcel to the South of the Property of approximately 1.27 acres was dedicated for right-of-way purposes. On or about the Effective Date, Declarant also has caused that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Provenance to be recorded against the Property in the Recorder's Office (as amended from time to time, the "Master Declaration").
- C. Declarant, or an affiliate of Declarant, may construct or has caused to be constructed on the Property a development known as PROVENANCE and comprised of: (i) up to eighty-two (82) Townhome Units (as defined herein) on Lots 1 through 22, inclusive (as further defined in Section 1.1, a "Townhome Lot"); (ii) up to thirty-four (34) duplex homes on Lots 23 through 39, inclusive; (iii) up to twenty-one (21) free-standing single family homes on Lots 40 through 60, inclusive (Lots 1 through 60, inclusive being sometimes hereinafter referred to individually as a "Residential Lot" and collectively as the "Residential Lots," as further defined in Section 1.1); and (iv) certain common areas and facilities on Lots 61 through 73, inclusive, that will require continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in the Residential Property.
- D. Declarant has deemed it desirable for the efficient preservation of the values and amenities of the Townhome Property (as hereinafter defined) to create and authorize an entity for the administration and enforcement of the covenants and restrictions contained in this Townhome Declaration and for the maintenance and administration of the Townhome Units, Townhome Lot Open Space Areas, and Townhome Common Areas, including the Townhome Access Drives (all as hereinafter defined) in accordance with this Townhome Declaration. Accordingly, Declarant has caused or will cause the Townhome Association (as defined below) to be incorporated for the purpose of exercising the functions

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described in this **Recital D** and in this Townhome Declaration.

- E. Declarant also has deemed it desirable to subject the Property to the terms and provision of the Master Declaration, which Master Declaration has delegated certain matters relating to construction, maintenance, operation and common use of the Residential Property (as defined herein) to the Master Association (as defined herein). Declarant has deemed it desirable that the Townhome Association be a "Member Association" as provided for in the Master Declaration and in this Townhome Declaration.
- F. Declarant desires to establish for its own benefit and the mutual benefit of all future owners, tenants and occupants of the Townhome Property and any part thereof, certain easements or rights (in addition to those created by the Master Declaration and Plat) in, over, under, through, across, upon and along the Townhome Property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof.

NOW, THEREFORE, Declarant hereby declares that the Townhome Property is and shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for the Provenance Townhomes. Declarant does hereby further declare that the easements, covenants, restrictions, conditions, burdens, uses, privileges, duties, obligations, charges and liens established in this Townhome Declaration shall: (1) exist at all times hereafter amongst all parties having or acquiring any right, title or interest in any portions of the Townhome Property; (2) be binding upon and inure to the benefit of each Unit Owner (as hereinafter defined); and (3) run with the land subjected to this Townhome Declaration, which is to be held, sold and conveyed subject to this Townhome Declaration as hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS, CAPITALIZED TERMS, INTERIM PROCEDURES**

- 1.1 **Definitions.** All capitalized terms, words and phrases used in this Townhome Declaration shall have the definition set forth in this **Section 1.1** (including those definitions set forth in the Master Declaration and cross-referenced below), unless the context shall otherwise clearly indicate or provide.

**AAA:** As defined in **Section 7.18** hereof.

**Acceptable technological means:** includes, without limitation, electronic transmission over the Internet or other network, whether by direct connection, intranet, telecopier, or electronic mail.

**Act:** The Illinois Common Interest Community Association Act (765 ILCS 160/1-1 et. seq.) as amended from time to time.

**American Flag:** The flag of the United States (as defined in Section 1 of Chapter 1 of Title 4 of the United States Code and the Executive Orders entered in connection with that Section) made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but "American flag" does not include a depiction or emblem of the American flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

**Annual Board Meeting:** As defined in **Section 6.7**.

**Annual Member Meeting:** As defined in **Section 6.15**.

**Articles:** The articles of incorporation of the Townhome Association, as amended from time to time.

**Association:** The Provenance Townhome Association, an Illinois not-for-profit corporation, formed for the purposes described herein, and its successors and assigns.

**Association Costs:** As defined in **Section 5.1** hereof.

**Association Rules:** As defined in **Section 2.7** hereof.

**Benefitted Owners:** As defined in **Section 2.5** hereof.

**Board:** The board of directors of the Townhome Association as constituted at any time or from time to time, in accordance with the applicable provisions hereof.

**Board Meeting:** A meeting of the Board.

**Building:** An improvement on a Townhome Lot that consists of a structure containing one or more Townhome Units, including, without limitation, the structural components of such structure, the roofs, and other portions of the structure.

**Bylaws:** **Article VI** of this Townhome Declaration, as amended from time to time in accordance with the provisions hereof.

**County:** The County of Cook, an Illinois county.

**Declarant:** (i) RSD MISSION HILLS, LLC, an Illinois limited liability company until such time as it no longer owns any portion of the Property; or (ii) any person or entity (other than the Townhome Association) to whom or to which Declarant assigns its rights, interests and obligations as Declarant under this Townhome Declaration, which assignment shall occur only if the transferor-Declarant is conveying, to the transferee-Declarant, fee title to all or some portion of the Townhome Property then owned by the transferor-Declarant.

**Declarant Owned Units:** Townhome Units owned by Declarant, whether vacant or occupied, and whether completed or under construction.

**Declaration:** This Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for the Provenance Townhomes as first made by Declarant and recorded on or about the Effective Date in the Recorder's Office, as amended from time to time in accordance with its terms.

**Directors:** As defined in **Section 6.5**.

**Duplex Association:** The Provenance Duplex Association, an Illinois not-for-profit corporation, formed for the purposes described in the Duplex Declaration, and its successors and assigns.

**Eligible Mortgage Holder:** Each holder of a recorded first mortgage or deed of trust on a Townhome Unit that has requested in writing that the Townhome Association notify it of any proposed action that requires consent of a specified percentage of mortgage holders.

**Estimated Cash Requirement:** As defined in **Section 5.2(a)**.

**Extraordinary Expenditures:** As defined in **Section 5.1(c)**.

**Initial Member Meeting:** As defined in **Section 6.6(c)**.

**Insurance Policies:** As defined in **Section 2.7**.

**Insurer or Guarantor:** An insurer or guarantor of a recorded first mortgage or deed of trust on a Townhome Unit.

**Lot or Lots:** The 73 lots described in **Recital B**, together with all privileges, rights, easements, hereditaments, and appurtenances thereto belonging, including all right, title and interest of the titleholder thereof in and to any streets and other rights-of-way included therein or adjacent thereto (before or after the dedication or vacation thereof).

**Lot 73 Roadways:** As defined in the Master Declaration.

**Major Decision:** Any act or amendment to this Townhome Declaration or the Articles (except for amendments to the Bylaws or the Articles to make them consistent with this Townhome Declaration) that would have the effect of changing any of the following in a manner other than as expressly provided in this Townhome Declaration or as required by law: (i) the manner of appointing Directors to the Board; (ii) the relative number of Directors appointed by Members; (iii) the types of Association Costs or proportionate share of Association Costs paid by each Unit Owner; or (iv) suspension or termination of the legal status of the Townhome Association.

**Master Association:** The Provenance Master Association, an Illinois not-for-profit corporation formed for the certain purposes specified in the Master Declaration, as well as its successors and assigns.

**Master Association Common Lots**: As defined in the Master Declaration.

**Master Association Costs**: As defined in the Master Declaration.

**Master Association Rules**: As defined in the Master Declaration.

**Master Declaration**: As defined in **Recital B**.

**Material Amendment**: Any amendment to this Townhome Declaration (including the Bylaws) or the Articles that would change: (i) any provisions that expressly benefit Eligible Mortgage Holders, Insurers or Guarantors; or (ii) any of the following in a manner other than as expressly provided herein: voting rights in the Townhome Association; assessment liens; subordination of assessments liens; rights to, or use of, any portion of the Townhome Common Lots; or the legal status of the Townhome Association or the Townhome Property following substantial destruction or condemnation.

**Member Associations**: The Townhome Association and Duplex Association.

**Member Meeting**: A meeting of Members.

**Members**: The Members of the Townhome Association, being each Townhome Unit Owner, as further described in **Article VI**.

**Military Flag**: A flag of any branch of the United States armed forces or the Illinois National Guard made of fabric, cloth, or paper displayed from a staff or flagpole or in a window, but not include a depiction or emblem of a military flag made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component.

**Mission Brook**: Mission Brook Sanitary District, a unit of Local Government under Article VII of the Illinois Constitution and any successors and assigns to its rights and obligations concerning the Water Mains, Sewer Mains, and Townhome Property.

**Occupant**: Persons or entities other than the Unit Owner in possession of a Townhome Unit, whether such occupancy is through a lease or other occupancy agreement with the Unit Owner of such Townhome Unit.

**Officers**: As defined in **Section 6.9** hereof.

**Owner**: (i) each and every person or entity, including Declarant, who is record owner of a Townhome Unit (unless a tenant or purchaser qualifies as the Owner of such Townhome Unit in accordance with the terms of this definition); (ii) the beneficiary of a land trust holding fee simple title to a Townhome Unit (unless a tenant or purchaser qualifies as the Owner of such Townhome Unit in accordance with the terms of this definition); (iii) the holder of a leasehold interest initially in excess of forty (40) years in any Townhome Unit; or (iv) a purchaser of any Townhome Unit pursuant to an "installment contract," unless: (a) Declarant is the seller of such Townhome Unit; (b) such purchaser is not yet residing in the Townhome Unit; (c) the seller has expressly retained in writing all rights and obligations of ownership; or (d) the Master Association has not been given satisfactory evidence of such installment contract. The term "Owner" shall not mean or refer to any person or entity who holds only a lien or security interest as security for the performance of any obligation (including, but not limited to, any mortgagee or trustee or beneficiary under a mortgage or deed of trust) unless and until such party shall have acquired legal title of record through foreclosure or any proceeding in lieu of foreclosure.

**Plat**: As defined in **Recital B**.

**Prescribed Delivery Method**: Mailing, delivering, posting in a Duplex Association publication that is routinely mailed to all Members, electronic transmission, or any other delivery method that is approved in writing by the Member to receive the communication and authorized by the Declaration or Association Rules.

**Prime Rate**: A rate equal to the "corporate base rate" or similar rate of interest announced from time to time by Bank of America or its successors-in-interest.

**Property:** The real property described in **Recital A**, being Lots 1 through 73, inclusive, in the Provenance Subdivision in Section 18, Township 42 North, Range 12, East of the Third Principal Meridian, according to the Plat, together with all privileges, rights, easements, hereditaments, and appurtenances thereto belonging, including all right, title and interest of a titleholder thereof in and to any streets and other rights-of-way included therein or adjacent thereto (before or after the dedication or vacation thereof).

**Property Manager:** Any property manager engaged by the Townhome Association, whether such property manager is an individual person directly employed by the Townhome Association or a company with which the Townhome Association contracts.

**Recorder's Office:** As defined in **Recital B**.

**Reserved Areas:** As defined in **Section 4.5(a)**.

**Residential Lot or Residential Lots:** Lots 1 through 60, inclusive, together with all privileges, rights, easements, hereditaments, and appurtenances thereto belonging, including all right, title and interest of a titleholder thereof in and to any streets and other rights-of-way included therein or adjacent thereto (before or after the dedication or vacation thereof).

**Residential Property:** All portions of the Property other than those Lots or other portions of the Property that have been dedicated to, and accepted by, a governmental entity for right-of-way purposes, but including all privileges, rights, easements, hereditaments, and appurtenances thereto belonging, including all right, title and interest of a titleholder thereof in and to any streets and other rights-of-way included therein or adjacent thereto (before or after the dedication or vacation thereof).

**Responsible Owners:** As defined in **Section 2.5** hereof.

**Sanitary Sewer Lines:** Only those sanitary sewer lines connecting Sanitary Sewer Mains to one or more Townhome Units (as opposed to the definition of such term in the Master Declaration).

**Special Amendment:** As defined in **Section 7.2(b)**.

**Special Board Meeting:** As defined in **Section 6.7**.

**Special Member Meeting:** As defined in **Section 6.15**.

**Stormwater Management Facilities:** As defined in the Master Declaration.

**Townhome Access Drives:** Lots 67 through 71, inclusive, as improved with pavement, asphalt or similar materials, landscaping, driveways, paving and other roadway improvements, lighting, fencing, sidewalks, service walks and any other improvements located therein, but expressly excluding all of the following, whether or not dedicated: any Stormwater Management Facilities, Sanitary Sewer Mains and Water Mains located therein or thereunder.

**Townhome Association:** The Provenance Townhome Association, an Illinois not-for-profit corporation, formed for the purposes described in this Townhome Declaration, and its successors and assigns.

**Townhome Association Records:** As defined in **Section 6.17**.

**Townhome Common Areas:** (i) each Townhome Access Drive, unless and until such Townhome Access Drive is dedicated to and accepted by a governmental authority as public right-of-way to be owned and maintained by such governmental authority; (ii) the Townhome Lot Open Space Areas; (iii) the Water Lines; and (iv) the Sanitary Sewer Lines.

**Townhome Lot Open Space Areas:** Those areas of each Townhome Lot other than the Building on such Townhome Lot, including, without limitation, any landscaping, driveways, lighting, fencing, sidewalks, service walks and similar improvements located thereon, but expressly excluding all of the following, whether or not dedicated: any Stormwater Management Facilities, Sanitary Sewer Mains and Water Mains located therein or thereunder.

**Townhome Lots:** Lots 1 through 22, inclusive, together with all privileges, rights, easements,

hereditaments, and appurtenances thereto belonging; including all right, title and interest of a titleholder thereof in and to any streets and other rights-of-way included therein or adjacent thereto (before or after the dedication or vacation thereof). The term “Townhome Lot” shall include both the Townhome Lot Open Space Area and the Buildings or portions thereof located therein and thereon.

**Townhome Property:** The real property legally described on Exhibit A, which real property is comprised of all Townhome Lots, including the Townhome Common Areas, together with all privileges, rights, easements, hereditaments, and appurtenances thereto belonging, including all right, title and interest of a titleholder thereof in and to any streets and other rights-of-way included therein or adjacent thereto (before or after the dedication or vacation thereof).

**Townhome Unit:** Subject to the terms of Section 5.2(a)(ii) and Section 6.4(a), a single family attached residential housing unit consisting of one or more rooms that is designed or intended for the exclusive use as living quarters for one family and is located upon a portion of a Townhome Lot, even though such Townhome Unit shares a common exterior wall, roof or other structural or common component with one or more other Townhome Units, and any appurtenant land on a Townhome Lot included in the legal description of a Townhome Unit.

**Transfer Date:** The first to occur of:

- (i) the sixtieth (60th) day after Declarant has first conveyed at least seventy-five percent (75%) of the Townhome Units to Unit Owners other than Declarant (excluding, however any successor Declarant);
- (ii) three (3) years after the recording of this Townhome Declaration; or
- (iii) such earlier date as Declarant may, in its sole discretion, determine.

**Unit Owner:** All Owners of a Townhome Unit. The term “Unit Owner” shall include Declarant as to each Townhome Unit owned by Declarant, regardless of whether Declarant is also a contract seller of such Townhome Unit at the time in question.

**Village:** The Village of Northbrook, an Illinois municipal corporation.

**Water Lines:** Only those water lines connecting Water Mains to one or more Townhome Units (as opposed to the definition of such term in the Master Declaration).

## 1.2 **Declaration, Binding Effect, and Exceptions.**

- (a) **Binding Effect, Persons Subject to Declaration, and Duration.** This Townhome Declaration creates and imposes easements, restrictions, covenants, conditions and obligations and also creates, grants and conveys easements, rights, and benefits upon and for the Townhome Property and each portion thereof; the Townhome Association; and all present and future Unit Owners and Occupants, including their respective tenants, mortgagees, heirs, executors, administrators, legal representatives, successors and assigns. In accordance with the foregoing, the Townhome Property shall be held, occupied, managed, improved, used, sold and conveyed subject to the easements, restrictions, covenants and conditions of this Townhome Declaration, all of which: (i) are for the purpose of enhancing and protecting the development value, desirability and attractiveness of the Residential Property; (ii) shall run with the Townhome Property and shall be appurtenant to each portion thereof during the term hereof; and (iii) are binding on and shall inure to the benefit of all parties having any right, title or interest in the Townhome Property or any portion thereof. Each provision of this Townhome Declaration, including all easements, restrictions, covenants and conditions, are incorporated by express reference into any instrument conveying any portion of the Townhome Property or any interest therein following the Effective Date. This Townhome Declaration shall run with and bind the Townhome Property, and shall inure to the benefit of and be enforceable by the parties, for the term of fifty (50) years from the Effective Date, after which time, this Townhome Declaration shall automatically be extended for successive periods of ten (10) years, subject to amendment as set forth in Article VII. Any person accepting a deed of conveyance for all or any portion of the Townhome Property, entering into a lease for all or any portion of the

Townhome Property or otherwise acquiring any interest in the Townhome Property shall have agreed that he is subject to and shall comply with the provisions of this Townhome Declaration, including the Bylaws, as they may be amended from time to time, as though such provisions were recited and stipulated at length in each and every deed, lease or other instrument of conveyance. Each Townhome Unit shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

- (b) **Transfer of Owner's Interest.** If a Unit Owner sells, assigns, transfers, conveys or otherwise disposes of his Townhome Unit (other than as security for a loan to such Owner): (a) such Unit Owner shall be entirely freed and relieved of any and all covenants and obligations that arise under this Townhome Declaration and accrue from and after the date such Owner so sells, assigns, transfers, conveys or otherwise disposes of his Townhome Unit (with respect to the transferred Townhome Unit); and (b) the person or entity who succeeds to such Unit Owner's interest in his Townhome Unit shall be deemed to have assumed any and all of the covenants and obligations thereafter arising under this Townhome Declaration of such Unit Owner (with respect to the transferred Townhome Unit).
- (c) **No Third Party Beneficiary; No Partnership.** This Townhome Declaration is not intended to give or confer any benefits, rights, privileges, claims, actions or remedies to any person or entity, including the public, as a third party beneficiary or under any statutes, laws, codes, ordinances, rules, regulations, orders, decrees or otherwise. The Master Association and Member Associations shall not be deemed to be partners or joint venturers of one another.

1.2 **Master Declaration, Incorporation and Conflicts.**

- (a) **Incorporation.** The Townhome Association shall be governed by the Master Declaration. Each provision of the Master Declaration applicable or related to the Townhome Property, the Townhome Association and this Townhome Declaration is hereby incorporated by reference. Further, wherever any action under the Master Declaration requires the vote or concurrence of the Townhome Association, such vote or concurrence shall be exercised by the Townhome Association in accordance with the majority vote or other supermajority procedure as is expressly set forth in this Townhome Declaration.
- (b) **Conflicts.** To the extent of any conflict, ambiguity or contradiction between terms, definitions and provisions contained in this Townhome Declaration and those contained in the Master Declaration, those contained in the Master Declaration shall control and prevail in all instances other than those certain definitions set forth in **Section 1.1** where the definition in **Section 1.1** is expressly described as departing from the corresponding definition in the Master Declaration.

ARTICLE II  
**DEVELOPMENT OF PROVENANCE, COMMON FACILITIES  
AND TOWNHOME ASSOCIATION DUTIES**

- 2.1 **Dedications and Transfers.** Declarant hereby reserves to and for itself (for so long as Declarant holds legal title to any Townhome Common Areas) and hereby reserves for and on behalf of the Townhome Association (for so long as the Townhome Association holds legal title to any Townhome Common Areas) the right to dedicate or transfer all or any part of any Townhome Common Areas that it owns to any public agency, authority, or utility for such purposes and subject to such conditions as Declarant or the Board (as applicable) may agree. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the receiving agency, authority or utility; has been recorded; and, prior to such recording, has been signed by: (i) Declarant for so long as Declarant continues to exercise any of the votes allocated to the Class B membership or (ii) three-fourths (3/4) of the votes allocated to the Class A membership, once Class B membership has ceased. If any Townhome Common Areas are so dedicated, and the applicable public agency, authority or utility accepts such dedication and undertakes or assumes responsibilities for their maintenance, repair or replacement, then the party under this Townhome Declaration responsible for such maintenance, repair or replacement shall thereafter be relieved of its responsibility in that regard.

- 2.2 **Ownership of Townhome Common Areas.** The provisions of this **Section 2.2** shall not limit nor be deemed to limit the rights and powers of Declarant and the Townhome Association to dedicate any one or more Townhome Common Areas as set forth in **Section 2.1**. Declarant shall own the Townhome Common Areas until Declarant thereafter conveys such Townhome Common Areas to the Townhome Association or otherwise dedicates such Townhome Common Areas pursuant to **Section 2.1**. Declarant may cause such conveyance to occur in single or multiple transactions or phases, but shall complete the conveyance of all Townhome Common Areas (subject to **Section 2.1**) prior to the Transfer Date (if already constructed) or when completely constructed. Following conveyance of any Townhome Common Areas to the Townhome Association, such Townhome Common Areas shall be thereafter owned by the Townhome Association, subject to **Section 2.1**.
- 2.3 **Construction and Development by Declarant, Non-Interference.** Declarant will initially construct and develop the Townhome Common Areas with those improvements Declarant determines, in its sole discretion, to be necessary, appropriate or desirable or to be required by governmental laws, ordinances, regulations or approvals as shall be in effect during, and applicable to, the development of the Property. Neither the Townhome Association, the Board, nor any Unit Owner shall interfere with Declarant's construction and development of Townhome Units or the Townhome Common Areas, and no provision of this Townhome Declaration shall create or be deemed to create any right or cause of action relating to the manner or results of Developer's construction and development of the Townhome Units and Townhome Common Areas on the part of the Townhome Association, the Board, any Unit Owner, any Occupant, or any person deriving interests in the Townhome Property through any of the foregoing entities or persons.
- 2.4 **Further Improvement.** Subject to **Section 2.3** hereof in all respects, the Townhome Association, at its discretion, may further improve Townhome Common Areas following conveyance thereof to the Townhome Association: (i) in a manner consistent with the intent and purpose of this Townhome Declaration, the Plat, and applicable laws and governmental approvals, including the governing planned unit development for the Property; and (ii) with Declarant's prior written consent so long as Declarant hold title to any portion of the Property.
- 2.5 **Townhome Association Obligations.** The Townhome Association shall have the obligations set forth in this **Section 2.5**, both prior to and after the Transfer Date.
- (a) **Maintenance Generally.** The Townhome Association shall cause the Townhome Common Areas to be used and maintained in compliance with the Master Declaration, this Townhome Declaration and all applicable governmental ordinances, codes, regulations and approvals. Without limiting the generality of the foregoing, the Townhome Association shall keep, maintain, care for, conserve and operate the Townhome Common Areas (expressly including, but not limited to any emergency access areas) as required by this Townhome Declaration in a safe, clean, sightly, functional and first-rate manner, including timely operation, cleaning, lighting, inspection, testing, repair, replacement and renewal thereof and including mowing, watering, weeding, fertilizing, and replanting of landscaped areas.
- (b) **Sanitary Sewer Lines and Water Lines.** From and after conveyance to the Townhome Association of any segment of Sanitary Sewer Lines and Water Lines, the Townhome Association shall own, operate, maintain, inspect, test, repair, replace and renew such segments in accordance with all applicable governmental and Mission Brook standards.
- (c) **Damaged Decks and Patios.** In the event exercise by a governmental authority, the Master Association, any quasi-governmental agency, or any utility service provider of any right such party has under the Plat results in the disassembly of, or damage to, any deck or patio appurtenant to a Townhome Unit (which disassembly or damage is not repaired or restored by the party exercising such right), the Townhome Association shall restore such deck or patio to the condition it was in prior to such disassembly or damage.
- (d) **Snow, Ice and Debris Removal.** As part of its obligations with respect to the Townhome Common Areas, the Townhome Association shall be responsible for keeping each Townhome



Access Drive (so long as such Townhome Access Drive is part of the Townhome Common Areas) and each driveway and service walk within the Townhome Lots, at all times, free and clear of all obstructions, including snow, ice, vehicles (other than fire and police emergency vehicles), debris of any kind and temporary and permanent structures; provided, however, the Townhome Association shall not be responsible for clearing snow and ice from: (i) driveways, sidewalks or pedestrian paths within the Townhome Common Areas to the extent the Master Declaration delegates such obligation to the Master Association; or (ii) service walks within gated, private patio areas, if any, located on the Townhome Lots. The Townhome Association shall dispose of and store all snow that it removes on appropriate areas of the Townhome Common Areas and on the Master Association Common Lots, if done in a fashion so as to not damage any improvements or landscaping thereon or violate the Master Declaration. The Townhome Association's failure to remove snow, ice obstructions, debris of any kind, and temporary and permanent structures from Lot 71 (so that Lot 72 can function as an emergency access connecting Techny Road with the Lot 73 Roadways) may result in the Master Association undertaking such work and charging the Townhome Association for the cost to perform such work, together with fines and penalties in accordance with the Master Declaration.

- (e) **Payment of Taxes and Master Association Costs.** The Townhome Association shall pay all taxes and other governmental impositions levied upon the Townhome Common Areas or any part thereof owned by the Townhome Association, as agent and on behalf of the Unit Owners, and out of the funds furnished to the Townhome Association by the Unit Owners for such purpose. The Townhome Association also shall pay the Townhome Association's proportionate share of Master Association Costs as required by and in accordance with the Master Declaration. In connection with Townhome Common Areas to which the Townhome Association holds legal title, the Townhome Association, acting through the Board, shall have the power to: (i) seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, that are assessed and levied on real property; and (ii) charge all expenses incurred in connection therewith as Association Costs.
- (f) **Maintenance of Building Exteriors and Townhome Lot Open Space Areas.** The provisions of this **Section 2.5(f)** govern the Townhome Association's undertaking of maintenance, repair and replacement for exteriors of the Buildings and Townhome Lot Open Space Areas to address natural or ordinary wear and deterioration. The Townhome Association shall determine, in its sole discretion, what maintenance, repair and replacement is necessary or desirable under this **Section 2(f)**. The Townhome Association also shall determine, in its sole discretion, the timing and manner for carrying out or causing to be performed such maintenance, repair and replacement. Subject to the foregoing qualifications, the Townhome Association shall maintain, repair and replace the exteriors of the Buildings and Townhome Lot Open Space Areas, including, without limitation, building and garage exteriors, including outdoor lighting fixtures (but not including garage doors or any exterior doors, windows, or lightbulbs in outdoor light fixtures), roofs (including sky-lights), siding and trim, building foundations, service walks and entry walkways, entry stairs and stoops, window wells, vertical and horizontal components of patios, decks and railings, all party wall ("privacy") fences separating the rear yards of Townhome Lots, if any, gutters and downspouts, and all landscaping on Townhome Lot Open Space Areas. The foregoing is in addition to and not limitation of the Townhome Association's responsibility for the proper maintenance, repair and replacement of all landscaping, private driveways, entry walkways, entry stairs and stoops, and service walks located on other Townhome Common Areas. The Townhome Association also shall determine the need for, and carry out or cause to be performed, all maintenance, repair and replacement of those gas, telephone, electrical, sanitary sewer and water lines incorporated in and forming a part of one or more Townhome Units as originally constructed that pass through one or more other Townhome Units to provide such service. Maintenance, repair and replacement by the Townhome Association shall not include the maintenance, repair and replacement of any furnaces, water heaters; stoves; refrigerators; washing machines or household appliances; sump pumps; glass surfaces; garage doors; any exterior door, window, fixture or side light; fireplaces and the interiors

of chimneys; air conditioners and compressors; any other portion of a Townhome Unit that serves only that Unit; or the interior of any Townhome Unit or portion thereof (except as otherwise expressly set forth above).

(g) Notwithstanding any other provision of this Townhome Declaration to the contrary, if the Board determines in its sole discretion that the need for maintenance, repair and replacement has been caused through the willful or negligent act of a Unit Owner (other than Declarant), his family, Occupants, guests or invitees, then the cost of such maintenance, repair and replacement shall be added to and become a part of the assessment to which such Townhome Unit is subject, all at the discretion of the Board (the Unit Owners of such Townhome Units being referred to herein as the “**Responsible Owners**”). In addition, and also at the sole discretion of the Board, the Board may assess the cost for maintenance, repair and replacement to the exteriors of particular Buildings, in whole or in part, to the one or more Unit Owners benefited thereby (the “**Benefitted Owners**”). Also at the sole discretion of the Board, the Board may direct such Responsible Owners or Benefitted Owners (as applicable), in the name and for the account of such Responsible Owners or Benefitted Owners (as applicable), to arrange for such maintenance, repairs, and replacements pursuant to standards set by the Board, to pay the cost thereof with the funds of the Responsible Owners or Benefitted Owners (as applicable), and to procure and deliver to the Board such lien waivers and contractor’s or subcontractor’s sworn statements as may be required to protect the Property from all mechanics’ or materialmen’s lien claims that may arise therefrom.

(h) **Related Obligations.** The Townhome Association’s obligations as set forth in this **Article II** and elsewhere in this Townhome Declaration shall be deemed inclusive of the Townhome Association’s obligations to: (i) acquire or obtain, directly or indirectly, the associated materials, equipment, supplies, labor, utilities, governmental permits, licenses, and approvals, and insurance; (ii) pay Master Association Costs in accordance with the Master Declaration; and (iii) build, maintain and replenish adequate reserves for capital repairs and replacements of Townhome Common Areas not covered by special assessments, all in accordance with the requirements of this Townhome Declaration, the Plat, and applicable governmental laws, ordinances, regulations and approvals.

2.6 **Agreement with Third Parties.** Whenever possible, the Townhome Association, acting through the Board, shall perform its functions and carry out its duties by entering into written agreements for the performance thereof with persons and business entities determined by the Board to be regularly engaged in performing generally similar functions and duties. The written agreements by and between the Townhome Association and such persons or business entities shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine; provided, however, that if the Townhome Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Property before the Transfer Date, each such agreement shall provide that it is terminable by the Townhome Association at any time after the Transfer Date, without cause, without payment of any penalty, and without advance notice of termination of more than ninety (90) days. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Property or any part thereof. The Townhome Association itself shall also have power to perform its functions and carry out its duties. Any costs incurred pursuant to this **Section 2.6** shall be paid from the assessments collected pursuant to **Article V** hereof.

2.7 **Additional Powers and Duties of the Townhome Association.** In addition to the specific powers, rights, responsibilities and obligations provided for in this Townhome Declaration (including but not limited to this **Article II**), the Townhome Association shall have all powers now or hereafter granted by the General Not-For-Profit Corporation Act of the State of Illinois that shall be consistent with the purposes specified in this Townhome Declaration. Without limiting the foregoing, the Townhome Association, to the extent the Board deems necessary and appropriate, and subject to the other terms of this Townhome Declaration, shall have the following powers:

(a) to serve as the Member Association under the Master Declaration in accordance with its terms and to generally serve as liaison to the Unit Owners and residents of the entire Property;

- (b) to perform maintenance, repair and replacement as required pursuant to this Townhome Declaration;
- (c) to pay the costs of the foregoing from assessments collected hereunder;
- (d) to buy real and personal property, and to own, sell, transfer and mortgage real and personal property then owned by the Townhome Association, for such purposes and subject to such conditions as may be agreed to by the Members, and further subject to the dedication and transfer restrictions set forth in Section 2.1;
- (e) to grant easements and licenses with respect to the Townhome Common Areas;
- (f) to borrow and repay funds;
- (g) to open, maintain and close bank accounts;
- (h) to take such action, legal or otherwise, necessary to enforce this Townhome Declaration as herein provided (provided, however, the statute of limitations for any actions in law or equity the Board may bring shall not begin to run until the Members have elected a majority of the Directors, in accordance with the Act);
- (i) to obtain, maintain and utilize such policies of insurance concerning the Townhome Association, Board and Townhome Property, including the Townhome Common Areas (collectively, the “Insurance Policies”) as the Board shall from time to time deem prudent, and in such amounts as the Townhome Association shall deem desirable (including but not limited to earthquake risk and Workman’s Compensation and Employer Liability insurance); provided, however, the Townhome Association shall at all times obtain and maintain carry the following policies of insurance:
  - i. comprehensive general liability insurance, including liability for injuries to, and death of, persons and property damage in combined single limit amount not less than One Million and no/100 Dollars (\$1,000,000.00) per occurrence, including non-owned and hired automobile liability;
  - ii. master liability insurance coverage in an amount not less than Two Million and no/100 Dollars (\$2,000,000.00) and other liability insurance as it may deem desirable, insuring Townhome Association from liability in connection with the use of the Townhome Common Areas and the Sanitary Sewer Lines and Water Lines serving individual Townhome Units;
  - iii. insurance for the Townhome Common Areas against loss or damage by fire and such other hazards contained in a customary “Special Form” policy;
  - iv. Directors and Officers Liability insurance; and
  - v. if any portion of the Townhome Property falls within the Flood Zone A category, flood risk insurance,

and the Insurance Policies shall: (a) provide that they may not be cancelled or substantially modified without at least thirty (30) days’ prior written notice to the Townhome Association and all mortgagees of record of the Townhome Units; (b) provide that mortgagees of record of the Townhome Units shall have the right to pay overdue insurance premiums and to obtain new coverage in the event the existing insurance policy lapses; (c) provide for coverage in the amount of one hundred percent (100%) of current full replacement value (determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverage); (d) contain standard mortgage clause endorsements in favor of the mortgagee(s) of the Townhome Units, as their respective interests may appear; (e) be valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Illinois and holding a current Policyholder’s Alphabetic and Financial Size Category Rating of not less than A/VIII according to Best’s Insurance Reports-International Edition or a substantially equivalent rating from a nationally-recognized insurance rating service; (f) name, as insureds: the Townhome Association, Board, Master Association, the County, the Village of Northbrook, the Mission Brook

Sanitary District, any other governmental entity providing services to the Townhome Property, and their respective agents, officers and employees, the Townhome Association's agents, officers, employees, and each Unit Owner; and (g) have deductibles no greater than the lesser of \$1,000.00 (\$5,000.00 with respect to a flood insurance policy) or one percent (1%) of the face amount of the Insurance Policy to which such deductible applies;

- (j) upon the failure of any Unit Owner to procure and maintain the insurance required in Article III hereof or, in the event the Board determines in its sole discretion that the Townhome Unit is underinsured, to procure such insurance and/or additional insurance, as the case may be (in which case the costs thereof shall become a lien upon said Townhome Unit in the same manner as provided in Article V hereof for nonpayment of maintenance assessments);
- (k) to undertake and complete the following, which shall be both a power and an obligation of the Townhome Association: to procure and maintain a fidelity bond insuring the Townhome Association, Board and Unit Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Townhome Association or its management agent or of any other person handling the funds of the Townhome Association, Board or Unit Owners in such amounts as the Board shall deem necessary but not less than one hundred and fifty percent (150%) of the annual operating expenses of the Townhome Association, including reserves, which bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression and provide that it may not be cancelled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to all Eligible Mortgage Holders;
- (l) to employ, modify or terminate the services of a Property Manager and to employ employees directly or through the Property Manager (including any Property Manager, contractors, agents or employees who are related to or affiliated with Declarant, a Member Association, an Owner, or any Director) and to enter into contracts for architectural, engineering, construction, repair, maintenance, legal, accounting, consulting, and other professional services in furtherance of its other powers and duties; provided, however:
  - i. the Townhome Association may not enter into a contract with a current Director, or with a corporation, limited liability company, or partnership in which a Director or a member of his or her immediate family (meaning the Director's spouse, parents, siblings, and children) has twenty-five percent (25%) or more interest, unless notice of intent to enter into the contract is given to Members within twenty (20) days after a decision is made to enter into the contract, and the Members are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Membership, for an election to approve or disapprove the contract; such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition; and
  - ii. certain contracts, leases, or other agreements that are made prior to the Members' election of a majority of the Board and that extend for a period of more than two (2) years from the Effective Date may be subject to cancellation by Members cast at a Special Member Meeting pursuant to Section 1-50(e) of the Act, and the Board (or, if the Board is still under Declarant control, Declarant) shall send notice to every Member (in accordance with the deadlines to do so under 765 ILCS/1-50(e)) notifying them of 765 ILCS/1-50(e); of what contracts, leases, and other agreements are affected; and of the procedures for calling a Member Meeting or Board action to terminate such contracts, leases or other agreements; and
  - iii. contracts with any Property Manager entered into prior to the Transfer Date shall be terminable by the Townhome Association, with or without cause, without payment of any penalty, and without requiring more than ninety (90) days advance written notice;
- (m) to adopt and amend such policies, rules and regulations for the use, administration, management, operation, maintenance, conservation or beautification of the Townhome Common Areas or for the health, comfort, safety or general welfare of the Unit Owners and Occupants (as so adopted and

amended from time to time in accordance with the terms hereof, the “Association Rules”), provided that: (i) Association Rules shall only become effective if and when approved through a written resolution of the Board; (ii) no Association Rule may conflict with any provision of the Master Declaration, this Townhome Declaration or any applicable governmental law, ordinance, code, regulation or approval, including but not limited to the Act; and (iii) the Board shall provide all Unit Owners with timely written notice of Association Rules prior to their effective date; and

(n) to otherwise do that which the Board determines necessary to protect or defend the Townhome Association, Townhome Property and any associated property owned by the Townhome Association or for which the Townhome Association is responsible from loss or damage by suit or otherwise; including, without limitation, levying and collecting reasonable fines from Members for violations of this Townhome Declaration or the Association Rules.

2.8 **Management Company Funds.** All management companies responsible for funds held or administered by the Townhome Association shall maintain and furnish to the Townhome Association a fidelity bond for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody of the management company at any time. The Townhome Association shall bear the cost of the fidelity insurance and fidelity bond, unless otherwise provided by contract between the Townhome Association and management company. A management company holding reserve funds of the Townhome Association shall at all times maintain a separate account for the Townhome Association, unless otherwise authorized by contract with the Board for investment purposes. With Board consent, the management company may hold all operating funds of associations the management company manages in a single operating account, but shall at all times maintain records identifying all moneys of the Townhome Association in such operating account. Such operating and reserve funds held by the management company for the Townhome Association shall not be subject to attachment by any creditor of the management company. The management company shall maintain separate, segregated accounts for the Townhome Association. The funds shall not, in any event, be commingled with funds of the management company, the firm of the management company, or any other common interest community association. The maintenance of these accounts shall be custodial, and the accounts shall be in the name of the Townhome Association.

### ARTICLE III

#### TOWNHOME PROPERTY RESTRICTIONS AND MINIMUM STANDARDS

3.1 **Flags.** Notwithstanding any provision in this Townhome Declaration, Association Rules, or other instruments of the Townhome Association or the Board's construction of any of those instruments, the Board may not prohibit the display of the American Flag or a Military Flag, or both, on or within the limited common areas and facilities of a Unit Owner or on the immediately adjacent exterior of the Building in which the Townhome Unit of a Unit Owner is located. The Board may adopt reasonable Association Rules, consistent with Sections 4 through 10 of Chapter 1 of Title 4 of the United States Code, regarding the placement and manner of display of the American Flag and may adopt reasonable Association Rules regarding the placement and manner of display of a Military Flag. The Board may not prohibit the installation of a flagpole for the display of the American Flag or a Military Flag, or both, on or within the limited common areas and facilities of a Unit Owner or on the immediately adjacent exterior of the Building in which the Townhome Unit of a Unit Owner is located, but may adopt Association Rules regarding the location and size of flagpoles.

3.2 **Restrictions on Townhome Common Areas.** Without limiting **Section 3.1** hereof or any provisions and restrictions applicable to the operation, use and enjoyment of the Townhome Common Areas set out elsewhere in this Townhome Declaration: (a) each Unit Owner, each Occupant, and each of their respective tenants, guests, agents and invitees shall be prohibited from modifying or altering the Townhome Common Areas or improvements located therein without prior written Board approval; and (b) no noxious, offensive or illegal activity shall be carried in or on any portion of the Townhome Common Areas, nor shall anything be done therein or thereon either willfully or negligently that may be or become an annoyance or a nuisance to the Unit Owners or Occupants.

3.3 **Mandatory Unit Owner Insurance.** Each Unit Owner shall procure and maintain in full force at all

times insurance covering his Townhome Unit, consisting of, or providing all the protections afforded by, the insurance now generally described in a "Special Form" policy to one hundred percent (100%) of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than One Thousand and no/100 Dollars (\$1,000.00) and naming the Townhome Association as an additional insured on each policy. Such insurance shall be written by companies reasonably acceptable to the Townhome Association. A certificate of insurance evidencing such coverage shall be furnished to the Townhome Association, and new certificates evidencing the renewal of each expiring policy of insurance shall be furnished to the Townhome Association in each case at least ten (10) days prior to the expiration date of the expiring insurance. The following provisions of this **Section 3.3** are in addition to and not in lieu of the provisions of **Section 3.6** hereof. In the event a Townhome Unit or any portion thereof shall be damaged or destroyed by fire or other casualty and the Unit Owner thereof shall cause it to be repaired, restored or reconstructed, as the case may be, the repairs, restoration or reconstruction shall be in the same architectural style and design as was originally constructed and shall conform in all respects to all applicable laws or ordinances in force at the time of such repair, restoration or reconstruction. In the event of the total or substantial destruction of all of the Townhome Units, the architectural design of the Townhome Units to be rebuilt and the materials to be used in constructing the same shall be substantially similar in architectural design as the original Townhome Units and shall be constructed of comparable materials and quality of construction.

### **3.4 Unit Owner Obligations and Use Restrictions Concerning Townhome Lots and Units**

- (a) **Residential Purpose.** Each Townhome Unit shall be used only for residential purposes, as a private residence, and for such professional, business or commercial use as is not otherwise prohibited under the Master Declaration or applicable County land use ordinances and regulations governing the Property. Each Unit Owner shall have the right: (i) to maintain his personal professional library therein; (ii) to keep his personal, business or professional records or accounts therein; and (iii) to handle his personal, business or professional telephone calls or correspondence therefrom.
- (b) **No Nuisances.** A Unit Owner's use of a Townhome Unit shall not endanger the health or disturb the reasonable enjoyment of any other Unit Owner or Occupant, except that the foregoing restriction on disturbing reasonable enjoyment shall not be deemed to preclude or prohibit any of the rights or activities expressly reserved by or granted in this Townhome Declaration to Declarant. No Unit Owner shall do or permit to be done on his Townhome Unit or anywhere else in the Property any act or thing that will impair any easement or hereditament granted to any other party, nor shall any Unit Owner create or permit to exist on his Townhome Unit or anywhere else in the Property any condition that will adversely affect the use or enjoyment of the Property or any part or portion thereof by any party entitled to such use or enjoyment. Likewise, no Unit Owner or Occupant shall engage (or permit their respective tenants, guests, invitees and licensees to engage) in any noxious or offensive activity within his Townhome Unit or elsewhere in the Property, either willfully or negligently, that may be or become an unreasonable annoyance or nuisance to any Unit Owner or Occupant.
- (c) **Pet Limitations.** Except as permitted by this **Section 3.4(c)**, no animals, livestock or poultry of any kind shall be raised, bred, or kept in a Townhome Unit or on any Townhome Common Areas. Dogs, cats or other common household pets (not to exceed a total of three (3) pets for each Townhome Unit) may be kept; provided (i) the animals are not kept, bred, or maintained for any commercial purposes; and (ii) the animals are kept, bred and maintained as pets in accordance with Association Rules, including Association Rules regarding when and under what circumstances animals are permitted to be within Townhome Lot Open Space Areas and any other Townhome Common Areas.
- (d) **Trash Disposal.** All rubbish, trash, and garbage shall be: (i) kept in each Townhome Unit so as not to be seen from neighboring Townhome Units or rights-of-way within the Property, whether public or private; (ii) regularly removed from each Townhome Unit for collection and not allowed

to accumulate therein; and (iii) otherwise stored and removed in accordance with Association Rules.

- (e) **Outdoor Activities.** No barbecues shall be permitted to be used on the Townhome Property, except for gas barbecues used exclusively on the patio or deck of each Townhome Unit. Drying of clothes shall be confined to the interior of the Townhome Units. Parking areas and driveways shall be used for parking operable automobiles, pick-up trucks and trucks of similar size and nature, vans, campers, trailers, boats, snowmobiles and other vehicles, subject to the Association Rules, the Master Declaration and all applicable County ordinances. No parking of any vehicles shall be allowed in any portion of the Townhome Common Areas other than the driveway serving a particular Townhome Unit and those on-street and off-street guest parking areas established by the Master Association or Townhome Association (acting through their respective Boards). The Board may authorize vehicles parked in violation of the Association Rules to be towed away, and any such towing charge shall become a lien upon the Townhome Unit of the Unit Owner who owns such vehicle or of whom the owner of such vehicle is the guest, in the same manner as provided in this Townhome Declaration for nonpayment of assessments.
- (f) **Leasing.** Each Unit Owner that is not in default hereunder beyond applicable notice and cure periods shall have the right to lease its Townhome Units provided that: (i) the lease term shall be for no less than thirty (30) days; (ii) the lease shall be in writing and made expressly subject to the requirements, rights, covenants, conditions, restrictions and easements of this Townhome Declaration, the Master Declaration, and the Association Rules; and (iii) the Unit Owner shall provide the Board with a copy of the signed lease and with address information for both the Unit Owner and the lessee not later than the date of occupancy or ten (10) days after the lease is signed, whichever occurs first. If, following the Effective Date, this Townhome Declaration, or the Association Rules prohibit leasing, nothing in the Act, this Townhome Declarations or the Association Rules shall prohibit a Unit Owner incorporated under 26 USC 501(c)(3) that is leasing a Unit at the time of the prohibition from continuing to do so until such time that the Unit Owner voluntarily sells the Unit, and no special fine, fee, dues, or penalty shall be assessed against the Unit Owner for leasing its Unit.
- (g) **Townhome Unit Maintenance.** Each Unit Owner shall have the obligation to maintain in good condition and repair and replace all portions of its Townhome Unit that are not maintained by the Townhome Association pursuant to **Section 2.5(f)** hereof. Without limiting the generality of the foregoing, each Unit Owner shall be responsible for all of the following that are a part of, attached to, or exclusively serve its Townhome Unit: garage doors or any other exterior doors; windows; lightbulbs in outdoor light fixtures; furnaces, water heaters, air conditioners and compressors, stoves, refrigerators, washing machines or other household appliances; sump pumps; glass surfaces; fireplaces and the interiors of chimneys; and all electrical fixtures other than outdoor lights. Upon the failure of any Unit Owner to maintain, repair and replacement such areas, the Townhome Association, through its agents and employees, is hereby granted the right to enter upon the Townhome Lot Open Space Area and into the Townhome Unit to make such reasonable repairs, maintenance, or replacement thereof as may be necessary, and the costs thereof shall become a lien upon the Townhome Unit in the same manner as provided in **Article V** hereof for nonpayment of assessments. Unit Owners shall not modify or replace any landscaping on Townhome Lot Open Space Areas unless such modifications are: (i) approved by the Board; and (ii) in accordance with the standards in the planned unit development for the Residential Property and the Association Rules.

### 3.5 **Construction Restrictions**

- (a) No Buildings other than those originally constructed by Declarant shall be constructed on a Townhome Lot. Otherwise, or unless **Section 3.6** applies, no building, wall, or other structure or landscaping shall be commenced, erected or maintained upon the Townhome Property, nor shall any addition, change, alteration or restoration be made to the exterior portion of any Townhome Unit until: (i) the Unit Owner submits plans and specifications showing the nature, kind, shape, height, materials, and location of the proposed improvements, a grading plan and a landscape plan to the

- Board; and (ii) the Board or an architectural committee of three (3) or more persons appointed by the Board provides a written approval, which approval shall not be withheld, conditioned or delayed if the Board or committee, as applicable, determines that the external design and location of the proposed improvements will be in harmony relative to surrounding structures and topography. If the Board (or architectural committee, as applicable) fails to approve or disapprove such plans within forty (40) days after submission, and no lawsuit seeking to enjoin the improvements has been commenced, express approval will not be required, and the terms and conditions contained in this **Section 3.5(a)** shall be deemed fully satisfied. The Board or its architectural committee also shall have the right to reasonably approve the general contractor responsible for performing the work; the work shall be undertaken and completed in accordance with the approved project documentation; and no related work may be undertaken without the issuance of required approvals and permits from the County.
- (b) There shall be no change in any exterior color of any Townhome Unit from the color scheme in place at the time of its initial conveyance by Declarant without obtaining any required prior written approval of the Townhome Association and the County.
  - (c) Except for those fences, patios, and other similar improvements and architectural elements constructed by Declarant on each Townhome Lot Open Space Area, no fences, patios, decks or similar improvements shall be commenced, erected, or maintained upon any Townhome Lot Open Space Area without the Unit Owners on such Townhome Lot: (i) first obtaining prior written approval from the Board; and (ii) next, and only thereafter, seeking and obtaining issuance of any appropriate zoning approvals and permits from the County. No such improvements shall encroach upon any portion of the Townhome Common Areas except for those improvements constructed by Declarant thereon.
  - (d) Notwithstanding any other provision of this **Section 3.5**, Unit Owners may have television and radio antennae and television satellite dishes with a diameter not exceeding eighteen (18) inches on the exterior of any Townhome Unit or in a free-standing nature elsewhere on a Townhome Unit, subject to all applicable laws, ordinances and regulations.

**3.6 Mandatory Process for Addressing Damage to Townhome Units and Repairs.** In the event the exterior of any Townhome Unit (including shared or party walls) is damaged or destroyed, the repair, restoration or rebuilding thereof 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. The Unit Owners of the damaged or destroyed Townhome Unit shall fully cooperate with and abide by all instructions and directions of the Board in connection with such repair, restoration, and rebuilding, and shall cause any insurance proceeds to be utilized in restoring or rebuilding the Townhome Unit; provided, however, the Townhome Association, acting through the Board, shall have the authority to settle and adjust any claim under applicable insurance policies without the consent of the respective Unit Owner or mortgage holders. If the Board determines that a Unit Owner is not undertaking and completing the required repair, restoration or rebuilding in accordance with this **Section 3.6** or other applicable provisions of this Townhome Declaration, the Townhome Association (acting through the Board) shall cause such repairs or rebuilding to be furnished, provided and installed and shall charge and have a continuing lien against the Unit Owners of the damaged or destroyed Townhome Unit for: (a) the amount by which the Townhome Association's costs to complete such repairs or rebuilding exceed the insurance proceeds (if any) received by the Townhome Association; (b) interest at the Prime Rate plus two percent (2%) from the date of the Townhome Association's payment of such costs; and (c) reasonable attorney's fees and any court or other costs incurred by the Townhome Association in connection therewith, which lien shall bind such Townhome Unit until paid in full and released. If a Unit Owner does not fully repay the Townhome Association, the Townhome Association may foreclose the lien in the same manner as hereinafter provided in connection with its lien for unpaid assessments, provided, however, the Townhome Association's lien pursuant to this **Section 3.6** shall be subordinate to the lien of any Eligible Mortgage Holder.



**3.7 Signage and Marketing.**

- (a) Except for the activities of Declarant and its affiliates described in **Section 3.7(b)**, no signage of any type or description (including “For Rent” and “For Sale” signs), billboards, unsightly objects or nuisances shall be erected, placed or permitted on any portion of the Townhome Common Areas.
- (b) As part of the overall program of developing the Property into a residential community and to encourage the marketing and construction thereof, Declarant hereby reserves, for itself and for its contractors and their respective subcontractors, agents and employees, the right and easement of ingress and egress and of access and use in, on, over, through, upon, under and across each and every portion of the Townhome Common Areas, for sales, marketing, construction purposes and to perform service and warranty work, if any, as well as the right and easement of use of Declarant Owned Units, all Townhome Common Areas, and the facilities located therein, all without charge, during the entire sales, marketing, and construction period on the Property for such purposes, including, but not limited to an easement for purposes of advertising signs and banners and associated lighting in connection therewith, and other promotional facilities at such locations and in such forms as shall be determined by Declarant. All such advertising signs and banners shall comply with applicable governmental ordinances, laws, rules and regulations. Without limiting the generality of the foregoing, until Declarant and its affiliates have completed construction and sales activities for the Townhome Property in its entirety, Declarant and its affiliates shall have the right to maintain those vehicles and temporary facilities determined in their sole discretion to be necessary or convenient for such activities, including, without limitation, offices, storage areas, model units, garages, signs and sales, construction and storage trailers.

**ARTICLE IV  
EASEMENTS AND RESTRICTIONS**

**4.1 Easements Cumulative.** Declarant, for itself, its successors, grantees and assigns, hereby reserves, grants, creates, declares and conveys each easement described in this Townhome Declaration, including but not limited to this **Article IV**, and in addition to and not limitation of any easements granted, created and declared in the Plat or Master Declaration. Furthermore, each easement described in this **Article IV**, including each easement described in **Section 4.4** shall be cumulative and not in limitation of one another.

**4.2 County, Village, and Mission Brook.**

- (a) **Easement for Performance of Official Duties and Emergency Services.** An irrevocable license and non-exclusive easement is hereby granted to the County, the Village, Mission Brook, and their respective police, fire, water, public works, engineering, development, health and other authorized officials, employees and vehicles to go upon the Townhome Property, including the Townhome Common Areas, at any time and from time to time for the purpose of performance of official duties and emergency services; and for the purpose of inspecting for compliance with, and if necessary, implementing and enforcing this Townhome Declaration, all applicable County and Village ordinances, rules and regulations, the statutes of the State of Illinois and the United States; and any easements and/or rights granted to such governmental entity herein or on the Plat.
- (b) **Easement in Connection with Infrastructure.** In addition, the respective, duly-designated officials and employees of the County, the Village and Mission Brook are hereby granted a non-exclusive easement to enter upon, on or over the Townhome Common Areas for the purposes of installing, servicing, maintaining, repairing and reconstructing utilities or public infrastructure located in whole or in part within any portion of the Townhome Common Areas, provided, however, that such easement rights shall be exercised in accordance with the Plat and applicable laws only to the extent and for such period of time as is required to accomplish said tasks.
- (c) **No Obligation.** Neither the County, the Village, nor Mission Brook shall be under any obligation to exercise the rights herein granted.

**4.3 Construction, Maintenance and Inspection Easements for Declarant, Townhome Association and Master Association.** A non-exclusive, irrevocable and perpetual easement is hereby reserved to

Declarant and the Townhome Association for ingress and egress for persons, vehicles, materials and equipment in, on, over, under, across, from and through the Townhome Property for the purpose of exercising such party's rights and performing such party's obligations under this Townhome Declaration, including without limitation for the use, maintenance, repair, operation, improvement, replacement and reconstruction of the Townhome Common Areas. In furtherance and not limitation of the foregoing, each Townhome Unit is hereby declared to be subject to an easement and right to and in favor of the Master Association and Townhome Association and their respective Boards, employees and agents to temporarily enter and reasonably inspect the Townhome Units for the limited and express purpose of carrying out those obligations and functions concerning such Townhome Unit as are imposed upon or permitted by the Master Declaration or this Townhome Declaration.

#### **4.4 Utility Easements, Additional Easements, and Related Rights.**

**(a) Easement in Favor of Utility Companies and Authority to Grant Additional Easements.**

Subject to all limitations and restrictions set forth on the Plat: (a) to the extent not set forth on the Plat, SBC/Ameritech, ComEd, Nicor and all other suppliers of utilities serving the Townhome Property and any persons providing cable television or other similar entertainment to any Unit Owner or to the Townhome Property, are hereby granted the right to install, lay, construct, operate, maintain, renew, repair or replace, conduits, cables, pipes and wires and other equipment into, over, under, along and on any portion of the Townhome Property, including the Townhome Lot Open Space Areas and the Townhome Units, for the purpose of providing the Townhome Property and each portion thereof with utility and entertainment services, together with the reasonable right of ingress to and egress from the Townhome Property for such purpose; and (b) Declarant, Board or Townhome Association may hereafter grant other or additional easements for utility or entertainment purposes and for other similar purposes, including such easements as Declarant may from time to time request and including, but not limited to, such easements as may be required to construct, keep and maintain improvements upon the Townhome Property, for the benefit of all or any portion of the Townhome Property, over, under, along and on any portion of the Townhome Property, including the Townhome Lot Open Space Areas and the Townhome Units. Each Unit Owner hereby grants Declarant, the Board and Townhome Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing (provided that with respect to all easements granted hereby or pursuant hereto, no Unit Owner shall be deprived of, nor be subjected to material interference with, the use of such Unit Owner's Townhome Unit, or any Townhome Common Areas serving such Unit Owner's Townhome Unit, other than reasonably and temporarily). Each mortgagee of a Townhome Unit shall be deemed to consent to and be subordinate to any easement hereafter granted and also grants such power of attorney to Declarant, the Board and Townhome Association to effectuate the foregoing. Easements are also hereby declared and granted to the Board and Townhome Association and to the suppliers of utilities or cable television or entertainment lines described above in this Section 4.4 to install, lay, operate, maintain, repair and replace any pipes, wire, ducts, conduits, public utility lines, entertainment lines, components of the communications systems, if any, or structural components, which may run through the walls of a Townhome Unit, whether or not such walls lie in whole or in part within the Townhome Unit boundaries.

**(b) Additional Authority to Grant Easements.** At any time while Declarant holds title to any portion of the Property, regardless of the extent to which the Townhome Property has been conveyed to the Townhome Association or Unit Owners, Declarant shall have and hereby reserves the right, without having to obtain the consent of any other party, to grant and record such easements (in addition to the easements set forth and granted on the Plat) over, under, through, across, upon, in and on the Townhome Property or portion thereof for the provision of any utility service, fire protection service, landscaping, sprinklering, metering, buffering, ingress and egress, and such other purposes as Declarant, in its reasonable discretion, deems necessary, desirable or required by the final development plan or final engineering plans for the Property or by the "as-built" condition of the Property, or any part or portion thereof; provided, however, that such easements shall be subject to all approvals required by the Plat. Declarant hereby further grants and conveys to the Townhome

Association the right, without the necessity of having to obtain consent from any Unit Owner or mortgagee (other than Declarant while Declarant holds title to any portions of the Townhome Property), to grant, at any time and from time to time after title to a Townhome Common Area has been conveyed to the Townhome Association, utility easement(s) for sanitary and storm sewers, water, gas, electricity, telephone, cable television and any other necessary public or municipal service in, on, over, under, through, upon and across all or any such Townhome Common Area, all upon such terms and conditions as the Board deems necessary or appropriate.

- (c) **Rights to Adjust Utility Easements.** At any time while Declarant holds title to any portion of the Property, regardless of the extent to which the Townhome Property has been conveyed to the Townhome Association or Unit Owners, Declarant shall have and hereby reserves the right, without having to obtain the consent of any other party or person to record modifications and supplements to the Plat showing “as built” locations of utility or commercial entertainment conduits, cables, pipes, electrical wiring, transformers and switching apparatus and other equipment and granting, revoking or modifying the related easements so that the easement premises are within ten (10) feet on either side of the “as built” equipment. The foregoing right of Declarant shall be deemed fully transferred by Declarant and fully assumed by the Townhome Association on the date Declarant no longer owns any portion of the Townhome Property. A power coupled with an interest is hereby granted to Declarant and the Townhome Association, acting by and through their respective duly authorized officers, successors, assigns, agents and designees, and each of them singly without the other’s concurrence, as attorney-in-fact to exercise its respective rights under this **Section 4.4(c)**. The acceptance of each deed, mortgage, deed of trust or other instrument with respect to a Townhome Unit shall be deemed a grant of such power to each of such attorneys-in-fact, an acknowledgment of a consent to such power, and shall be deemed to reserve to each of such attorneys-in-fact the power to record any and all such supplements.
- (d) **Additional Utility Easements for Adjoining Townhomes or Townhomes in Same Building.** Each Townhome Unit is further declared to be subject to an easement in favor of any adjoining Townhome Unit to the extent necessary to permit the maintenance, supply, repair, and servicing of utility services to the various Townhome Units located thereon. Furthermore, inasmuch as the gas, water and electricity service for a Building may start at one end and may run through some or all of the Townhome Units, each Townhome Unit is hereby expressly subject to an easement in favor of all other Townhome Units in the Building in which said servient Townhome Unit is located for the location, operation, maintenance, supply, repair, replacement, metering and servicing of electricity, water and gas service and fire protection systems to all of the other Townhome Units in that Building. Each Unit Owner shall from time to time grant such additional easements and rights over, across, on, under and upon his Townhome Unit as Declarant (prior to the Transfer Date) or the Board determines to be necessary or appropriate in connection with the supply of any of the utilities or fire protection systems described herein to any part of the Property.

#### **4.5 Reserved Areas and Pedestrian Access Easement.**

- (a) Except as publicly-dedicated or as otherwise provided for herein, the portions of driveway, service walk, entry walkway, private patio and lawn areas on a Townhome Lot that are immediately adjacent, contiguous, appurtenant to a particular Townhome Unit and exclusively serve such Townhome Unit (“**Reserved Areas**”) shall be for the exclusive use and possession of that Townhome Unit’s Owners.
- (b) Every Unit Owner, every Occupant, and their respective tenants, guests and invitees shall have a non-exclusive right and easement of pedestrian ingress and egress in, on, over, upon, through, across and to, and use and enjoyment of, all portions of the Townhome Common Areas and sidewalks located therein (excluding the Reserved Areas), and the aforesaid non-exclusive rights and easements shall be appurtenant to and shall pass with the title to every Townhome Unit, further subject, however, to those reserved rights and easements in favor of others set forth in this **Article IV**.
- (c) Any Unit Owner may delegate, in accordance with this Townhome Declaration and the Association Rules, such Unit Owner’s right of ingress and egress to and from the Townhome Common Areas and the use of the open spaces and other common facilities from time to time located thereon to the

members of his family, Occupants, guests, invitees, tenants or contract purchasers who reside on the Property.

- 4.6 Adjoining Townhomes Easement.** Each Townhome Unit is hereby subjected to a permanent easement appurtenant to any adjoining Townhome Unit to permit the construction, existence, maintenance, repair and restoration of structures located on such servient adjoining Townhome Unit, including roof structures that overhang and encroach upon the servient Townhome Unit and entry stairs or stoop, mechanical equipment, patio, deck and other similar improvements or architectural elements serving or part of one Townhome Unit and located in the Townhome Unit adjoining said Townhome Unit, subject, however, to all conditions and limitations on such work as are provided for or referenced in this Townhome Declaration. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the servient tenement provided such entry occurs only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time, and not conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement that would unreasonably interfere with the rights of the owner of the dominant tenement granted by this **Section 4.6**. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement, Declarant or Board, notwithstanding any lapse of time since such improvements, material or other obstacle was placed in or over the easement area.
- 4.7 Encroachment Easement.** In the event any part of any Townhome Unit, including any roof overhangs or soffits, downspouts, scuppers and gutters, selected stone and brick masonry coursing and tile parapet copings, bays, window wells, roof canopies and brackets, railings, plumbing appurtenances (hose bibs, etc.), electrical appurtenances (electrical meters, etc.), mechanical appurtenances and equipment (gas meters, condensers, etc.), service walk, driveway, entry walkway, entry stairs or stoops, patio, deck or other similar improvement or architectural element appurtenant thereto, encroaches or shall hereafter encroach upon any part of any other Townhome Unit or upon one of the Townhome Common Areas, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner if: (i) such encroachment or use thereof is detrimental to, or interferes with, the reasonable use and enjoyment of another Unit Owner's Townhome Unit; or (ii) such encroachment occurred due to intentional or willful conduct or gross negligence of any Unit Owner, Occupant, or their respective tenants, guests or invitees. It is expressly understood that any such encroachment resulting from any act or omission of Declarant shall in no event be deemed to be detrimental or to interfere, or to constitute intentional or willful conduct or gross negligence.
- 4.8 Party Walls.** All dividing walls that straddle the boundary line between Townhome Units and that stand partly upon one Townhome Unit and partly upon another, and all walls that serve two or more Townhome Units (including, without limitation, the vertical fence/wall/railing of any decks that serve two or more Townhome Units), shall at all times be considered party walls. Each of the Unit Owners of Townhome Units upon which a party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for: (i) supporting said Townhome Units; (ii) supporting any Building constructed to replace the same; and/or (iii) dividing, or creating a boundary between adjoining Townhome Units. Each of the Unit Owners of Townhome Units upon which a party wall shall stand also shall have the right to maintain the pipes, ducts or conduits originally located in or on said party wall, subject to the restrictions hereinafter contained. No Unit Owner, nor its successors in interest, shall have the right to extend its party walls in any manner, either in length, height or thickness, to alter structurally said party wall (except as described in this **Section 4.8**), or to aesthetically alter its party walls to the extent they are visible from outside of the Townhome Unit. In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Unit Owner of any Townhome Unit upon which such party wall may rest shall have the obligation to repair or rebuild such wall, and the Unit Owner of each other Townhome Unit upon which such wall shall rest, be served or benefited by shall pay his relative portion of the cost of such repair or

rebuilding as allocated by the length of the party wall rather than the area of the Townhome Units involved. The Board's determinations shall control any and all disputes concerning repairs, rebuilding and reimbursements, including, without limitation, disputes as to which Unit Owner will undertake the work, the cost, timing, manner or results of the work, or the timing and relative shares or amounts for reimbursement. All such repair or rebuilding shall be done within a reasonable time, in a good and workmanlike manner with materials comparable to those used in the original wall and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall. The foregoing provisions of this **Section 4.8** notwithstanding, each Unit Owner or other interested party shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Unit Owner or other interested party to contribution from any other Unit Owner under this **Section 4.8** shall be appurtenant to the land and shall pass to such Unit Owner's or other applicable person's successors in title. The title of each Unit Owner to the portion of each party wall within such Townhome Unit is subject to a cross easement in favor of the adjoining Unit Owner for joint use of said wall.

- 4.9 Extension of Easements Hereby Reserved.** Each and every easement contained herein for the benefit of any Unit Owner shall be deemed to extend not only to such Owner, but also to any Occupant and any family member, guest, licensee or invitee of any Owner or Occupant (except as limited in **Section 4.5**). In any case when a Unit Owner or the Townhome Association enters onto a Residential Lot to exercise any rights granted under any easement set forth in, or to perform any obligation under, this Townhome Declaration, such person or entity shall: (i) provide reasonable advance notice (other than in cases of emergency); (ii) repair any damage caused by such entry; and (iii) restore the surface to its condition existing prior to such entry.
- 4.10 No Dedication.** Nothing contained in this Townhome Declaration shall be construed as or deemed to constitute a dedication, express or implied, of any part of the Townhome Common Areas for any public use or purpose whatsoever.
- 4.11 Temporary Interference with and Limitations On Use of Easement.** Declarant and the Townhome Association, in connection with performing their respective obligations under this Townhome Declaration, or to prevent a dedication of, or accruing of rights by the public in and to use of, any Townhome Common Areas, may temporarily obstruct, block, close off or impede the flow of pedestrian or vehicular ingress, egress or use over, across and through any one or more of the Townhome Common Areas, provided that no such temporary action shall prevent ingress and egress between any Townhome Unit and the Lot 73 Roadways.
- 4.12 Abandonment.** Easements described in this Townhome Declaration: (i) shall not be presumed abandoned by non-use, damage or destruction of the easement premises; and (ii) may only be terminated or abandoned with the written consent or written acknowledgment of the easement beneficiaries, which written instrument shall expressly state the effective date of the termination or abandonment.
- 4.13 Comprehensive Reservation.** Notwithstanding any provisions herein to the contrary, the easements and rights in the Townhome Common Areas herein created shall be subject to: (i) the right of Declarant to execute all documents and do all other acts and things affecting the Property that, in Declarant's sole opinion, are desirable in connection with Declarant's rights hereunder; (ii) the easements and covenants of record (or any recorded rights to grant additional easements) existing on the Effective Date, including any and all easements granted in the Master Declaration or on the Plat (which include, without limitation, the easements granted to the County, Village of Northbrook and Mission Brook Sanitary District and easements for serving the Townhome Common Areas and other properties with public utilities and municipal services as contained on the Plat); and (iii) easements and covenants that may hereafter be granted or modified by Declarant or the Townhome Association in accordance with **Section 4.4** hereof, including those easements to public utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water mains and pipes, or any other utility services serving any portion of the Property and to any provider of cable television service.

**ARTICLE V**  
**ASSOCIATION COSTS AND ASSESSMENTS**

**5.1 Association Costs.**

- (a) In addition to any other costs and expenses for which a Unit Owner may be responsible under this Townhome Declaration, each Unit Owner shall be responsible in accordance with this **Article V** to proportionately share in and contribute to paying the Townhome Association's overall costs of performing Townhome Association duties and exercising Townhome Association rights hereunder, including the costs of establishing and supplementing related reserves as described below (collectively referred to herein as the "**Association Costs**"). In accordance with the foregoing, the Townhome Association shall establish, levy and collect from the Unit Owners sufficient annual assessments, special assessments and reserves in order to comply with the Townhome Association's duties and exercise its rights hereunder. The funds levied and collected by the Townhome Association shall be used exclusively to promote the health, safety, and welfare of the Townhome Property, and, in particular, for: (i) providing the services and facilities for the use and enjoyment of the Townhome Property and Townhome Units described herein; and (ii) meeting the Townhome Association's obligations under the Master Declaration and this Duplex Declaration, including but not limited to the obligations to maintain and repair Building exteriors to the extent described herein and to repair, replace and maintain Townhome Common Areas (other than those elements maintained by the Master Association, a governmental authority or a utility company), including its grounds, landscaping, equipment and improvements therein, Sanitary Sewer Lines and Water Lines servicing more than one Townhome Unit, seating areas, pedestrian sidewalks, structures and appurtenances. The Association Costs shall include, without limitation, costs and charges the Board determines to be necessary or desirable to meet the foregoing purposes and any or all of the following incurred by the Townhome Association in the course of its duties:
- (i) all costs of material, equipment, supplies and labor (including any of the foregoing that are reimbursements to or salaries of a Property Manager);
  - (ii) utility costs (provided that if any utilities for which the Townhome Association is responsible are metered to a Unit Owner, such Unit Owner shall furnish copies of bills and meter readings to the Townhome Association within five (5) days of receipt or forego reimbursement);
  - (iii) costs of obtaining governmental permits, licenses, and approvals, including but not limited to fees and exactions imposed by the governmental authority issuing same;
  - (iv) management fees charged by third parties (including but not limited to fees, salaries, overhead and out-of-pocket expenses of any Property Manager);
  - (v) any personal or real property taxes, assessments or levies that are imposed, assessed or levied upon the Townhome Common Areas (as further detailed in **Section 5.1(g)**, below);
  - (vi) premiums and deductibles for the Insurance Policies;
  - (vii) overhead and other administrative costs and expenses of the Townhome Association in the fulfillment of its obligations or exercise of its rights under this Townhome Declaration, including, without limitation, attorneys' fees, accountants' fees and court costs; and
  - (viii) funding to establish and renew reserves as described in **Section 5.1(c)**.
- (b) **Covenant to Pay.** In furtherance and not limitation of **Section 5.1(a)**, each Unit Owner, by accepting a deed or conveyance of any Townhome Unit, whether or not it shall be so expressed in such deed or other conveyance instrument, is deemed to covenant and agree to pay to the Townhome Association the annual assessments and special assessments to be fixed, established and collected from time to time as hereinafter provided. These assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Townhome Unit against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, also shall be

the personal obligation of the person who was the Unit Owner of such Townhome Unit at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

- (c) **Reserves.** The Board shall build up and maintain a reasonable reserve fund for authorized capital expenditures, contingencies, replacements and deficits in the Townhome Association's operating account ("**Extraordinary Expenditures**") not originally included in any annual estimates. Among other things, funds necessary to cover any deductible amounts of the Insurance Policies shall be maintained as part of the Townhome Association's reserves. The Board may use all or portions of the reserve funds for Extraordinary Expenditures that arise. If such reserve fund proves inadequate for any reason, including non-payment of any Unit Owner's assessment, the Board may, at any time, levy a further assessment that shall be divided pro rata among the remaining installments for such fiscal year and assessed equally among the Unit Owners as described below. Provided the Board determines there is a surplus reserve, the Board may transfer a portion thereof fund any deficit in the Townhome Association's operating accounts.
- (d) **Cooperation.** The Townhome Association shall cooperate with the Master Association and Duplex Association in performing its obligations under this Townhome Declaration, such as selection of the same contractor or performance of work at the same time, so as to minimize costs and inconvenience to the other Associations in performance of their respective obligations under the other Declarations, to the extent possible. Notwithstanding the foregoing, no violation or alleged violation of the foregoing shall effect any Unit Owner's obligation hereunder to share in the Association Costs.
- (e) **Indemnity.** Each Unit Owner (on behalf of itself any each of its Occupants, agents, tenants, licensees, invitees and permittees) exercising any easement or other right granted hereunder does hereby and shall indemnify, defend and hold Declarant, the other Unit Owners, both Member Associations and the Master Association harmless from and against any loss, cost, damage, expense or liability (including reasonable attorneys' fees and litigation expenses) that may arise from such exercise, including damage to property and injury or death to persons, to the extent not covered by the indemnified party's insurance. Furthermore, the Board shall have the power, after notice and an opportunity to be heard, to levy and collect reasonable fines from Unit Owners for violations (by Unit Owner or by any its Occupants, agents, tenants, licensees, invitees and permittees) of this Townhome Declaration or the Association Rules. Notwithstanding the foregoing, no failure or alleged failure on the part of the Townhome Association or Board to enforce the provisions of this paragraph shall effect any Unit Owner's obligation hereunder to share in the Association Costs.
- (f) **Utility Services.** The Townhome Association, as implemented by the Board in its sole discretion, shall have the right and authority to: (i) establish and maintain a system of master metering of public utility services (including but not limited to waste collection services) that are not already separately metered or otherwise directly charged to individual Unit Owners and to collect payments in conjunction therewith, subject to the requirements of the Illinois Tenant Utility Payment Disclosure Act; and (ii) levy additional assessments against any Unit Owner to reimburse the Townhome Association for excessive use by its Townhome Unit of any utility service, the expense of which has been charged to the Townhome Association. Subject to the foregoing, at the Board's sole discretion, water service, whether or not separately metered or otherwise directly charged to individual Unit Owners, may be paid for by the Townhome Association from assessments, and the Townhome Association also shall have the right to draw water from the exterior taps of individual Townhome Units as required for the efficient performance of its duties hereunder without contribution or payment.
- (g) **Real Estate Taxes of Townhome Common Areas.** If real estate taxes are assessed separately as to the Townhome Common Areas, each Unit Owner shall contribute to payment of real estate taxes attributable to the Townhome Common Areas in accordance with the proportionate share of such Unit Owner as set forth in this **Article V**. If any Townhome Common Areas are not taxed as separate real estate tax parcels but are parts of tax parcels that include one or more other Lots, the

Board shall reasonably determine real estate taxes attributable to such Townhome Common Areas.

- (h) **Limitations on Authority.** Nothing contained in this **Article V**, in the **Article II** enumeration of Association powers, or in any other provision of this Townhome Declaration shall be construed to give the Townhome Association (or Board) authority to conduct an active business for profit on behalf of all of the Unit Owners or any of them. Furthermore, the Townhome Association, being a not-for-profit corporation, shall not distribute to its Members any sums in the nature of dividends upon its shares. To the extent the Board determines that funds are not required for current expenditures or reserves, the Board, in its sole discretion, may eliminate or reduce the upcoming monthly assessments. No such elimination or reduction shall prevent reinstatement of, or increase in, such assessments when required, but such reinstatement or increase shall not be retroactive.

## 5.2 **Budget and Assessments.**

### (a) **Budget Preparation and Estimated Cash Requirement.**

- (i) Each year, on or before November 1, the Board shall prepare an estimated budget covering all of the anticipated costs to pay for wages, materials, taxes, insurance, services and supplies during the upcoming calendar year, including an amount (if any) considered by the Board to be reasonable for maintaining the reserves. On or before December 15, the Board shall notify each Unit Owner in writing as to the amount of such estimate ("**Estimated Cash Requirement**"), with reasonable itemization thereof, excluding, however, costs arising under **Section 5.2(c)** hereof. Without limiting the foregoing, each Member shall receive through a Prescribed Delivery Method, at least thirty (30) days but not more than sixty (60) days prior to the adoption thereof by the Board, a copy of the proposed annual budget (based on the Estimated Cash Requirement), together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes. The budget and Estimated Cash Requirement also shall take into account any amounts by which assessments collected during the preceding year exceeded or were less than expenditures for the preceding year.
- (ii) The portion of the Estimated Cash Requirement associated with capital expenditures, the reserves, prepaid items or inventory items attributable to subsequent periods shall be assessed equally against the Townhome Units other than the Declarant Owned Units. The remaining portions of the Estimated Cash Requirement, *i.e.*, the portions associated with operating expenses shall be assessed equally against all Townhome Units, provided, however, as used in this **Article V** and for allocating assessments and Association Costs, no partially-built Townhome Unit or portion of land within the Townhome Property to be improved in the future with a Townhome Unit shall be deemed to be a Townhome Unit or a Declarant Owned Unit until Declarant has completed construction of the Townhome Unit for transfer (as determined in Declarant's reasonable determination).
- (iii) On or before January 1 of the ensuing calendar year, and on or before the first of each and every month of said year, each Unit Owner, other than Declarant, shall be obligated to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this **Section 5.2(a)**.
- (iv) The failure or delay of the Board to prepare an Estimated Cash Requirement or budget shall not constitute a waiver or release in any manner of the Unit Owner's obligation to pay assessments due hereunder, whenever the same shall be determined. In the absence of any annual Estimated Cash Requirement or budget, each Unit Owner (other than Declarant) shall continue to pay the assessment rate established for the previous period until the monthly maintenance payment that is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered. If an adopted budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding one hundred and fifteen percent (115%) of the sum of all regular and separate assessments payable during the preceding fiscal year, the Townhome Association, upon written petition by Members with twenty percent (20%) of the votes of the Townhome Association



delivered to the Board within fourteen (14) days of the Board action, shall call a Member Meeting within thirty (30) days of the date of delivery of the petition to consider the budget or separate assessment. Unless a majority of the total votes cast at the Member Meeting reject the budget or separate assessment, it shall be deemed ratified.

- (v) The Board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments, the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

(b) **Adjustments and Special Assessments.** If the Board foresees that Association Costs are exceeding or will soon exceed the budget, the Townhome Association shall disclose this variance to all Members and specifically identify the subsequent assessments needed to offset this variance in future budgets. If the Board foresees in advance during an assessment year that assessment collections or reserves are inadequate in amount or timing to meet its obligations, or, are far in excess of what is needed to meet its obligations, the Board may, upon written notice thereof to each Unit Owner, adjust the ongoing, scheduled assessment installment amounts and/or timing to address the net shortage or excess. The Townhome Association also shall have the right (without being subject to Member consideration or approval) to levy in any assessment year a special assessment applicable to that year only or for several specified years for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any improvement for which the Townhome Association is responsible hereunder, including fixtures and personal property related thereto. Special assessments may be levied notwithstanding the fact that the Townhome Association may then have accumulated a reserve. Without limiting the generality of the foregoing, separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Member consideration or approval. As used herein, "emergency" means a danger to or a compromise of the structural integrity of the Townhome Common Areas. "Emergency" also includes a danger to the life, health or safety of the Membership. In the event the Board levies any additional or special assessment pursuant to this **Section 5.2(b)**, the Board shall serve notice thereof on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment that is due more than ten (10) days after the delivery or mailing of such notice of further assessment. The additional and special assessments provided for in this **Section 5.2(b)** shall be fixed, assessed and collected in accordance with the allocations described in **Section 5.2(a)**.

(c) **Separate Assessments for Townhome Common Area Additions and Alterations.** Assessments for additions and alterations to the Townhome Common Areas not included in the adopted annual budget, shall be separately assessed against all Townhome Units other than Declarant Owned Units and are subject to approval of a simple majority of the total Members at a Member Meeting called for that purpose.

5.3 **Authority to Assess, Duty to Pay.** The Townhome Association is authorized to assess against each Unit Owner (other than Declarant), and each such Unit Owner shall pay to the Townhome Association, when due, his proportionate share of the Association Costs, plus any special assessments, plus reasonable reserves for costs of major maintenance, repair and replacement.

5.4 **Delinquent Assessments.** The Townhome Association shall furnish upon demand, at any time, a written certificate signed by an Officer or another agent of the Townhome Association setting forth whether the assessments on a specified Townhome Unit have been paid, or, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein. Any assessments or charges that are not paid when due shall be delinquent. If a Unit Owner fails to pay any assessment or charge within five (5) days of its due date, such Unit Owner shall be liable for a late payment and administrative expense charge equal to ten percent (10%) of the amount of the unpaid assessment or charge. If the assessment is not paid within thirty (30) days after the due date, then: (i) the amount of the assessment shall bear interest from the date of delinquency at the rate per annum that is the lesser of (a) eighteen percent (18%) and (b) the maximum rate allowed by law; and (ii)

in addition to said interest, the Townhome Association shall have the right, to be exercised in a non-discriminatory manner, to charge a delinquent Unit Owner a late fee of Fifty and no/100 Dollars (\$50.00), or higher amount as set forth in the Association Rules, for each month or portion thereof that said amount remains delinquent.

#### 5.5 Remedies and Lien Rights.

- (a) In addition to the rights set forth in Section 5.4, and in addition to all other legal and equitable rights and remedies, the Townhome Association may: (i) bring an action at law against the Unit Owner obligated to pay assessments or charges; (ii) enforce and foreclose the lien provided for herein by all methods generally available for the enforcement and foreclosure of liens, including by foreclosure through an action brought in a manner similar to the type of action instituted to foreclose the lien of a mortgage or deed of trust; (iii) collect in such action or through such proceeding the delinquent assessment or charge, the aforesaid late payment and administrative expense charge and the costs of collection and reasonable attorneys' fees and court costs of any such action or proceeding; and (iv) if applicable, exercise any and all remedies afforded a common interest community under the Illinois Code of Civil Procedure, as amended (735 ILCS 5/9-101 et seq.) or other applicable statutes. However, other than attorney's fees and court or arbitration costs, no fees pertaining to the collection of such Unit Owner's financial obligation to the Townhome Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of the Unit Owner's respective share of the Association Costs unless: (i) the managing agent fees relate to the costs to collect assessments for the Townhome Association; and (ii) the fees are set forth in a contract between the managing agent and the Townhome Association. The authority to add such management fees to the Unit Owner's respective share of the Townhome Association Costs is hereby specifically incorporated into this Townhome Declaration.
- (b) To insure payment of all amounts owed by a Unit Owner under this Article V or elsewhere in this Townhome Declaration: (i) the Townhome Association shall be entitled to a lien against Townhome Units, in the event the Unit Owner thereof fails to pay all assessments and charges due from it hereunder; (ii) the Townhome Association shall have the right (in addition to all other legal rights and remedies) to assert, record and foreclose against such lien against the interests in the Residential Property held by Unit Owners; and (iii) delinquent assessments, interest and all costs of collection shall be a continuing lien upon the Townhome Unit against which each such assessment or charge was made. Each Unit Owner, by his acceptance of a deed to a Townhome Unit, hereby expressly vests in the Townhome Association, or its agents, the right and power to bring all actions against such Unit Owner personally for the collection of such assessments and charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Townhome Association in a like manner as a mortgage or deed of trust lien on real property. The lien provided for under this Section 5.5 shall secure the payment of the amounts owed, the applicable late payment and administrative expense charges, and the costs and reasonable attorneys' fees described herein. Upon payment of such amount to the Townhome Association for which such Unit Owner may be liable, any lien arising against such Unit Owner's interests in the Residential Property (or portion thereof) on account of such claim shall be deemed released. At the written request of such party, the Townhome Association shall deliver an instrument releasing such lien at the Unit Owner's cost and expense. If the lien is asserted against a Townhome Unit subject to a leasehold or other non-fee interest by virtue of which the holder of the leasehold estate or other interest constitutes a "Unit Owner" as defined in Section 1.1, the Townhome Association shall be entitled to enforce such asserted lien not only against the leasehold estate or other non-fee interest therein, but also against the fee interest in such Townhome Unit. No Unit Owner may waive or otherwise avoid liability for an assessment or charge as provided for herein by nonuse of common areas, facilities or easements, or by abandonment or transfer of its portion of a Townhome Unit or other interest in the Residential Property.
- (c) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the Townhome Units and recorded prior to the due date of the delinquent

assessment, provided, however, such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Townhome Unit that became due and payable subsequent to the first to occur of the date the holder of said mortgage (i) takes possession of the Townhome Unit; (ii) accepts a conveyance of any additional interest in the Townhome Unit; and (iii) has a receiver appointed in a suit to foreclose his lien. The lien of the assessments shall not be affected by the sale or transfer of the corresponding Townhome Unit unless the sale or transfer is pursuant to the foreclosure of the first mortgage thereon. In such a case, the transfer of title pursuant to the foreclosure shall extinguish the lien. However, neither the personal obligation of the transferor, if any, nor the resulting pro rata share of the burden of such non-payment or non-enforcement, imposed through a subsequent assessment, shall be affected.

- 5.6 **Itemized Accounting.** On or before the date of each calendar year's Annual Member Meeting, the Board shall provide all Members with: (i) a reasonably detailed summary of the receipts, common expenses, and reserves for the preceding budget year (which itemized accounting shall indicate, among other things, maintenance and repair expenses, incurred and paid, a tabulation of the collected Assessments from Unit Owners (including Declarant), the net amount of collected Assessments relative to the actual expenditures, the balance of the Reserve Fund on the first and last day of the fiscal year, capital expenditures, and payments of real estate taxes and utility costs, showing the net excess or deficit of income over expenditures plus reserves); or (ii) a consolidated annual independent audit report of the financial status of all fund accounts within the Townhome Association.
- 5.7 **Budget for First Year.** When the first Board takes office, it shall determine the Estimated Cash Requirement, as hereinabove defined, for the period commencing on the first day of the month following the conveyance of the first Townhome Unit and ending on December 31 of the calendar year following said conveyance. The initial Estimated Cash Requirement shall be divided among the remaining months of such calendar year as monthly assessments and assessed equally among all Townhome Units other than Declarant Owned Units.
- 5.8 **Assessment Upon Acquisition of Unit, Start-Up Costs and Working Capital Funds.** A Unit Owner (other than Declarant) shall first be liable for payment of the full monthly assessment on the first (1st) day of the month following conveyance of title to him, in addition to the prorated portion of the monthly assessment that Unit Owner shall pay as of the date title to his Townhome Unit is conveyed. The purchaser of a Townhome Unit also shall be liable for payment of the amounts as described in this **Section 5.8** that are to be collected by the Townhome Association. The Townhome Association shall: (i) collect and pay to the Master Association an amount equal to one-sixth of the portion of the annual assessment to be collected from a Townhome Unit purchaser pursuant to the Master Declaration (which amounts shall not be refundable or applied against the subsequent assessments due from Unit Owners to the Master Association); and (ii) collect and deposit an amount equal to one-sixth of the portion of the annual assessment to be collected from a Townhome Unit purchaser pursuant to this Townhome Declaration (which amounts shall not be refundable or applied against the subsequent assessments due from Unit Owners to the Townhome Association).
- 5.9 **Declarant-Owned Townhome Units.** The total aggregate assessment due with respect to all Declarant Owned Units (if any) shall be limited to the amount (the "**Shortfall**") by which (a) the aggregate amount of actual operating expenses from time to time required to be paid with respect to the Townhome Property exceeds (b) the amount required to be paid by the Unit Owners (other than Declarant) for said actual operating expenses. For purposes of the foregoing calculation, in the event Declarant enters into a lease or installment contract for any Townhome Unit, then Declarant shall, as of the first day of occupancy under such lease or contract, be responsible for the payment of all assessments on those Townhome Units on the same basis as any other Unit Owner as provided in this **Article V** and consequently, said Townhome Unit shall no longer be deemed to be a Declarant Owned Unit hereunder. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Townhome Property and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, prepaid items or inventory items to the extent attributable to subsequent periods. The foregoing amounts owed by Declarant for Declarant Owned Units may be paid by Declarant on a monthly basis or, at Declarant's

option, paid to the Townhome Association at the close of each calendar year without interest. It is expressly understood and agreed that in no event shall Declarant's total obligation under this **Section 5.9** with respect to Declarant Owned Units ever exceed the amount of assessment due from each of the Unit Owners other than Declarant multiplied by the number of Declarant Owned Units from time to time. Further, in no event shall Declarant be required to pay a Shortfall in an amount greater than it would otherwise be liable for if it were paying assessments on unsold Townhome Units. The provision of this **Section 5.9** shall not be changed, amended or modified without the prior written consent of Declarant.

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

**ARTICLE VI**  
**BYLAWS OF THE PROVENANCE TOWNHOME ASSOCIATION**

- 6.1 **Incorporation.** Declarant has incorporated or will incorporate the Townhome Association under the General Not-for-Profit Corporation Act of the State of Illinois.
- 6.2 **Registered Office.** The Townhome Association shall have and continuously maintain in this State a Registered Office and a Registered Agent whose office shall be identical with such Registered Office. The Townhome Association may have other offices within or without the State of Illinois as the Board may from time to time determine.
- 6.3 **Principal Office.** The principal office of the Townhome Association shall be maintained in Cook County, Illinois or as otherwise determined by the Board.
- 6.4 **Membership in Association and Member Voting Rights.**
- (a) **Membership Appurtenant to Ownership of Townhome Unit, Interim Procedures Relating to Declarant.**
- (i) Every person or entity who is a record owner of a fee or undivided fee interest in any Townhome Unit, including a contract seller, shall be a member of the Townhome Association (a "**Member**"), and every Unit Owner (including Declarant) is hereby declared to be a Member of the Townhome Association subject to the limitations in this **Section 6.4**. Membership in the Townhome Association is appurtenant to, and shall not be separated from, ownership of such Unit Owner's Townhome Unit. By acceptance of a deed or other conveyance of a Townhome Unit, each Unit Owner automatically becomes a Member, whether or not this Townhome Declaration or such Membership is made a part of, incorporated by reference in, or expressed in such deed or conveyance. The foregoing is not intended to include, as Members, persons or entities who hold an ownership interest merely as security for the performance of an obligation, as further described herein. Nothing herein contained shall be interpreted to exclude Declarant from being a Member or holding one or more Memberships while it or its successors in interest, if any, owns one or more Townhome Units. Furthermore, for all purposes under this **Article VI**, each portion of the Townhome Property to be improved as a Townhome Unit (as depicted in the County-approved site plan for the Property) shall be deemed a completed Townhome Unit, *i.e.*, the total of all Townhome Units (including Declarant Owned Units) shall always equal eighty-two (82).
- (ii) This **Section 6.4(a)(ii)** shall supplement and not limit any other provisions of this Townhome Declaration in which Declarant has reserved rights and easements for itself and its successors and assigns. Except as modified in **Section 6.4(c)** hereof with respect to voting rights prior to the Transfer Date, Declarant hereby reserves and shall have all the rights and obligations of a

Unit Owner hereunder with respect to each Townhome Unit until Declarant has conveyed such Townhome Unit to another Unit Owner. Further, until such time as Declarant conveys title to a Townhome Unit, Declarant reserves the right to lease any such Townhome Units upon such terms and conditions as Declarant may, in its sole discretion, determine. Declarant's reserved powers also shall include the power to assess upon and collect from individual Unit Owners their respective proportionate shares of the funds required for the carrying out of all the duties and obligations of the Townhome Association.

(b) **One Membership and One Vote per Townhome Unit Owned.** Notwithstanding **Section 6.4(a)**, hereof, all Members associated with a single Townhome Unit shall collectively hold a single membership in the Townhome Association (the "**Membership**") for the purpose of exercising voting rights as described herein. No Townhome Unit shall have more than one Membership. Membership shall be appurtenant to and may not be separated from ownership of any Townhome Unit, and ownership of a Townhome Unit shall be the sole qualification of Membership. Accordingly, there shall be only one (1) vote, in Townhome Association elections and other votes, appurtenant to each Townhome Unit, and only one (1) of the Members owning a particular Townhome Unit may cast the vote in Townhome Association matters appurtenant to such Townhome Unit. In furtherance of the foregoing, while ownership of a Townhome Unit is in more than one person, or while an Owner is a trustee, corporation, partnership or other legal entity, then the individual who shall be the voting Member for Townhome Association matters as to such Townhome Unit shall be designated by such Owner or Owners in writing, and only that designated individual may cast the vote appurtenant to the applicable Townhome Unit. The Declarant, Townhome Association and Board: (i) shall be entitled to rely upon any written statement purporting to identify the voting Member allocable to each Townhome Unit; (ii) shall have no liability whatsoever for actions or inactions taken in reliance upon such written statements, however incorrect or false such statements may be; (iii) shall not be obligated to perform any independent research as to the ownership of such portion of the Townhome Property; (iv) shall be entitled, but not obliged, to disregard such written statements if it receives or otherwise possesses any written statement or evidence to the contrary; and (v) in accordance with Section 1-20 of the Act (765 ILCS 160/1-20), shall not require that all Owners of a Townhome Unit be present in order for that Resident's designated representative to vote. Also in accordance with the foregoing, each and every reference herein to any percentage "of the Membership" shall mean the percentage of votes in the Townhome Association. By way of example and not limitation, the phrase "twenty percent (20%) of the Membership" means and shall mean "Members entitled to cast and casting twenty percent (20%) of the votes in Townhome Association matters".

(c) **Membership Classes.** The Townhome Association shall have two classes of Membership for voting purposes:

**Class A.** Class A Members shall be the Members, as defined in this **Article VI**, provided that Declarant shall not be a Class A Member until the Transfer Date. Class A Members shall be entitled to one vote for each Townhome Unit in which they hold the interest required for Membership pursuant to this **Article VI**. As described in **Section 6.4(b)**, when more than one person holds such interest in a Townhome Unit, all such persons shall be Members, but that Townhome Unit shall have only one Membership and only one vote associated with that Membership. The one Membership vote for such Townhome Unit shall be exercised as the multiple owners among themselves determine, but in no event shall more than one vote be cast with respect to any Townhome Unit. All Members holding any interest in a single Townhome Unit shall together be entitled to cast only one vote for the Townhome Unit.

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

(d) **Mandatory Provisions.** The provisions of this **Section 6.4** hereof are and shall be mandatory.

No owner of any interest in any Townhome Unit shall have any right or power to disclaim, terminate or withdraw from his Membership or any of his obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such owner shall be of any force or effect for any purpose.

- (e) **Purchasers.** In accordance with the Act, upon proof of purchase, the purchaser of a Townhome Unit from a seller other than Declarant pursuant to an installment contract for purchase shall, during such times as he or she resides in the Townhome Unit, be counted toward a quorum for purposes of election of Directors at any Member Meeting called for purposes of electing Directors and shall have the right to vote for the Directors and to be elected to and serve as a Director unless the seller expressly retains in writing any or all of such rights.

#### 6.5 **Board of Directors.**

- (a) **Board and Interim Declarant Role.** The Master Association shall act through a Board composed of five (5) persons (hereinafter referred to as the “**Directors**”); provided, however, so long as the following is required under the Act, the same rights, titles, powers, privileges, trusts, duties, and obligations that are vested in or imposed upon the Board by the Act or in this Townhome Declaration or other duly recorded covenant shall be held and performed by Declarant until the initial election of the Board by the Members.
- (b) **Director Qualifications.** Directors shall be only those Members appointed or elected in the manner hereinafter provided. Each Director shall be one of the Unit Owners (including Declarant); provided, however, that in the event a Unit Owner is a corporation, partnership, trust, limited liability company, or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, manager, officer or member of such limited liability company, or manager or principal of such legal entity, shall be eligible to serve as a Director, and provided further that in the event a Director has entered into a contract to sell his Townhome Unit and vacates the Townhome Unit prior to the consummation of that transaction, such Director shall thereafter no longer be eligible to serve on the Board, and his term of office shall be deemed terminated. Furthermore, if there are multiple Owners of a Townhome Unit, only one of those multiple Owners shall be eligible to serve as a Director at any one time, unless the multiple Owners also own multiple Townhome Units.
- (c) **Board Actions.** Actions of the Board shall only be effective or taken by: (i) unanimous written consent of all Directors holding office; or (ii) an affirmative vote by a majority of the Directors who are present (whether in person or by telephone/video conferencing) at a Board Meeting having a quorum.

#### 6.6 **Director Appointment and Elections.** The Directors shall be appointed and elected, and shall serve or be removed, in the following manner:

- (a) **Appointment.** Prior to the Transfer Date, Declarant shall appoint five (5) Directors to serve on the Board. Subsequent vacancies in the Declarant-appointed Board that occur prior to the Transfer Date also shall be filled by Declarant in the same manner. The Members shall not, without the prior written consent of Declarant, have the right to amend, modify or change this Townhome Declaration to in any way diminish the authority of the Board during the period that Declarant has the right to appoint any Directors. Declarant may, from time to time, by written notice, voluntarily terminate its right to appoint one or more Directors, while continuing to retain and exercise its right to appoint the remaining Directors or until the Transfer Date. Election by Declarant to terminate its right to appoint any number of Directors or to terminate its control of the Board shall not affect Declarant’s rights to participate in the Townhome Association as a Member or Director to the extent Declarant is a Unit Owner of one or more Townhome Units.
- (b) **Election of Directors and Term Lengths.**
  - (i) Except as otherwise provided in this Duplex Declaration, the Directors comprising the Board shall be elected at the Initial Member Meeting described in **Section 6.6(c)** and then at all

subsequent Annual Member Meetings. In all elections for Directors, each Membership shall be entitled to vote, and the candidates receiving the highest number of votes shall be deemed to be elected. Directors elected at the Initial Member Meeting shall serve until the first Annual Member Meeting. Five (5) Directors shall be elected at the Initial Member Meeting. The three (3) persons receiving the highest number of votes at the Initial Member Meeting shall be elected to the Board for a term of two (2) years, and the two (2) persons receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. In the event of a tie vote, the sitting Directors shall determine which of the newly-elected Directors shall have the two (2) year terms and which newly-elected Directors shall have the one (1) year terms. Upon the expiration of the terms of office of the Directors elected at the Initial Member Meeting and thereafter, successors shall be elected for a term of two (2) years each. At any Annual Member Meeting, by a favorable vote of at least two-thirds (2/3) of the total votes of the Duplex Association, the Members may increase or decrease the term of the office of the Directors, provided: (i) the terms of at least one of the Directors shall expire annually; and (ii) no single term may exceed four (4) years. Regardless of term lengths, however modified, Directors may succeed themselves if elected. In all elections for Directors, each Member shall be entitled to the number of votes per Duplex Unit owned by such Member, subject (prior to the Transfer Date) to the provisions of **Section 6.4(c)**.

- (ii) If an election of Directors is not held within the time period specified herein, or within a reasonable amount of time thereafter not to exceed ninety (90) days, twenty percent (20%) of the Members may bring an action to compel compliance with the election requirements specified herein. If the court finds that an election was not held to elect Directors within the required period due to the bad faith acts or omissions of the Board, the Members shall be entitled to recover their reasonable attorney's fees and costs from the Duplex Association; provided, however, if the relevant notice requirements have been met, and an election is not held solely due to a lack of a quorum, this **paragraph 6.6(b)(ii)** does not apply.
- (c) **Special Provisions under the Act with Respect to the First Election of the Board.** Notwithstanding any other provision of this Townhome Declaration, the initial election of the Board by Members shall occur at a Member Meeting (the "**Initial Member Meeting**") held not later than the Transfer Date. Declarant shall give at least twenty-one (21) days' notice of the Initial Member Meeting and shall, upon request, provide each requesting Member, within three (3) working days of the request, the names, addresses, and weighted vote of each Member entitled to vote at the Member Meeting. Each Member requesting the same information for subsequent elections shall be provided such information (whether by Declarant or the Board) within ten (10) days of the request. If no election is held by the time established in this **subsection (c)**, Declarant shall continue "in office," as such term is used in the Act, for a period of thirty (30) days, whereupon written notice of his or her resignation shall be sent to all of the Unit Owners.
- (d) **Declarant Deliveries to Board.** Within sixty (60) days following the election of a majority of the Directors by the Members, Declarant shall deliver to the Board (unless previously delivered): (1) all documents recorded or filed pertaining to the Property, its administration, and the Townhome Association, such as this Townhome Declaration, the Articles of Incorporation, other instruments, annual reports, minutes, rules and regulations, and contracts, leases, or other agreements entered into by the Townhome Association; (2) a detailed accounting by Declarant, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance, and operation of the Townhome Property, copies of all insurance policies, and a list of any loans or advances to the Townhome Association that are outstanding; (3) Townhome Association funds, which shall have been at all times segregated from any other moneys of Declarant; (4) a schedule of all real or personal property, equipment, and fixtures belonging to the Townhome Association, including documents transferring the Townhome Property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills; and (5) a list of all litigation, administrative action, and arbitrations involving the Townhome Association, any notices of governmental bodies involving actions taken or that may be taken concerning the Townhome

Association, engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any other governmental authority, all governmental certificates, correspondence involving enforcement of any Townhome Association requirements, copies of any documents relating to disputes involving Members or Unit Owners. If originals of documents listed in this paragraph are unavailable, Declarant may provide a copy certified by affidavit of Declarant, or an officer or agent of Declarant, as being a complete copy of the original. If Declarant fails to fully comply with this **subsection (d)** within the sixty (60) days provided and fails to fully comply within ten (10) days after written demand mailed by registered or certified mail to his last known address, the Board may bring an action to compel compliance with this **subsection (d)**. If the court finds that any of the required deliveries were not made within the required period, the Board shall be entitled to recover its reasonable attorney's fees and costs incurred from and after the date of expiration of the 10-day demand.

- (e) **Director Vacancies Prior to Transfer Date.** After the Transfer Date, if there is a vacancy on the Board, the remaining Directors may fill the vacancy by a two-thirds vote of such Directors until the next Annual Member Meeting or until Members holding twenty percent (20%) of the votes of the Townhome Association request a Member Meeting to fill the vacancy for the balance of the term. A Special Member Meeting shall be called for such purpose no later than thirty (30) days following the filing of a petition, signed by Members holding twenty percent (20%) of the votes of the Townhome Association, and requesting such a Special Member Meeting.
- (f) **Director Removals.** Any Director may be removed from the Board by affirmative vote of the Members having at least two-thirds (2/3) of the total votes, at any Special Member Meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a removed Director may be elected by the Members at the same Special Member Meeting or any subsequent Member Meeting called for that purpose.

#### 6.7 **Board Meetings.**

- (a) **Initial Board and Annual Board Meeting.** The Board shall meet from time to time as necessary but in no event less than four (4) times per year. The initial Board Meeting shall be held at such time as may be designated upon thirty (30) days' written notice given by Declarant, provided that such initial Board Meeting shall be held no later than the Transfer Date. At such Initial Board Meeting, the Board shall elect its Officers to serve until the first Annual Board Meeting, which shall be held immediately following the first Annual Member Meeting at the same place. Thereafter, there shall be an annual Board Meeting (the "**Annual Board Meeting**") on the first Wednesday of May of each succeeding year, at 7:30 P.M., or such other date or time set by the Board. If the date for the Annual Board Meeting is a legal holiday, the Annual Board Meeting will be held at the same hour on the first day succeeding such date that is not a legal holiday.
- (b) **Quorum; Procedure.** Board Meetings shall be held at the principal office of the Master Association or at such other place in Cook County, Illinois as may be designated in any notice of a Board Meeting. A quorum will exist provided that a majority of the Directors entitled to vote on an issue are present at the Board Meeting, in person or telephone/video conferencing. Any Director, in writing, may waive notice of a Board Meeting, or may consent to any action of the Townhome Association without a Board Meeting. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of those Directors present at a Board Meeting when a quorum is present.
- (c) **Special Board Meetings.** Special meetings of the Board ("**Special Board Meetings**") may be called by any one or more Directors, at any time, for the purpose of considering matters that, by the terms of this Townhome Declaration, require the approval of all or some of the Directors, or for any other reasonable purposes. Not less than forty-eight (48) hours prior to the date fixed for said Special Board Meeting, all Directors entitled to vote on the subject matter of the Special Board Meeting, and Owners, shall receive written notice specifying the date, time and place of the Special Board Meeting and the matters to be considered.



- (d) **Open Meetings and Exceptions.** All Board Meetings shall be open to all Owners, except for the portion of any Board Meeting held: (i) to discuss litigation when an action against or on behalf of the Townhome Association has been filed and is pending in a court or administrative tribunal or when the Board finds such action is probable or imminent; (ii) to consider third party contracts or information regarding appointment, employment or dismissal of an employee; or (iii) to discuss violations of the Association Rules or an Owner's unpaid share of assessments. Any vote on these matters shall be taken at a Board Meeting or portion thereof open to any Members. The Board also must reserve a portion of each Board Meeting for comments by Members; provided, however, the duration and meeting order for the Member comment period is within the sole discretion of the Board.
- (e) **Notices of Board Meetings.** Notices of all Board Meetings required to be given herein may be delivered either personally or by mail to the Directors entitled to vote thereat, addressed to each such Director at the address given by him to the Board for the purpose of service of such notice and the Owners. Such notices shall state the specific purpose and the nature of the business for which the Board Meeting is called, as well as the date, time and location of such Board Meeting. No business may be transacted at any Board Meeting unless specified in the notice. The Board shall send Members notice of each Board Meeting at least forty-eight (48) hours prior to the Board Meeting by using a Prescribed Delivery Method or posting copies of the notice in entranceways, elevators, or other conspicuous places in the Townhome Association Common Lots at least forty-eight (48) hours prior to the Board Meeting (except where there is no common entranceway for seven (7) or more units, the Board may designate one or more locations in the proximity of these units for posting the notice). Without limiting the foregoing general rule, different notice procedures will apply in the following two circumstances. Notices required for each Annual Board Meeting shall be delivered no later than ten (10) days prior to the date of such Annual Board Meeting. The Board shall give Members notice of any Board Meeting, through a Prescribed Delivery Method, concerning the adoption of: (i) the proposed annual budget; (ii) regular assessments; or (iii) a separate or special assessment within 10 to 60 days prior to the Board Meeting, unless otherwise provided in Section 1-45 (a) or any other provision of the Act.

#### 6.8 **Powers of the Board.**

- (a) **Dispute Resolution.** Except as governed by **Section 7.18** or as subject to the jurisdiction of any applicable court of law, all matters of dispute or disagreement between Unit Owners and/or the Townhome Association with respect to interpretation or application of the provisions of this Townhome Declaration shall be determined by the Board, which determination shall be final and binding on the Townhome Association and all Unit Owners.
- (b) **Vesting of Association Powers, General Powers.** Except as expressly otherwise provided by the Articles or this Townhome Declaration, all power and authority to act on behalf of the Townhome Association both pursuant to this Townhome Declaration and otherwise is and shall be vested in the Board, and the Board shall exercise the powers and duties of the Townhome Association for the benefit of the Townhome Property and pay all costs required or permitted to be paid pursuant to this Townhome Declaration from assessments or charges levied in accordance with the terms hereof. Without limiting the foregoing or general powers that may be provided by law, or the specific powers delegated in this Townhome Declaration, the Board shall have the following general powers and duties:
- (i) to elect or remove Officers as provided herein;
  - (ii) to administer the affairs of the Townhome Association and the Townhome Property;
  - (iii) to appoint Committees and delegate to such Committees the Board's authority to carry out certain duties of the Board;
  - (iv) subject to the limitations on the Townhome Association, to engage, modify or terminate the services of a Property Manager and to delegate to such Property Manager appropriate maintenance, enforcement and collection obligations and powers of the Townhome Association

and Board powers, including the authority to approve payment vouchers;

(v) to adopt, revise and enforce the Association Rules; and

(vi) to estimate the amount of expenses, formulate budgets, and provide the manner of assessing and collecting from the Unit Owners their respective shares of such estimated expenses.

**6.9 Officers.**

(a) At each Annual Board Meeting, the Board shall elect from among its Directors, for the term of one (1) year, the following officers (herein "**Officers**"):

(i) a President who shall preside over the Member Meetings and Board Meetings, be the chief executive officer of the Townhome Association, and be designated to mail and receive all notices and execute all documents on behalf of the Townhome Association herein;

(ii) a Secretary who shall keep the minutes of all Board Meetings 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 Directors, with such duties as the Board shall specify or as may be authorized or conferred by law.

(b) Vacancies in any office shall be filled by the Board by a majority vote of the remaining Directors. Any Officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Officer he or she succeeds. Removal of an Officer may be effectuated by the Board with a majority vote of the remaining Directors.

**6.10 Execution of Instruments.** All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such Officers or agents of the Board and in such manner as the Board shall determine by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President and countersigned by the Secretary.

**6.11 Compensation.** Directors and Officers shall receive no compensation for their services, unless expressly allowed hereafter by the unanimous vote of all Directors, after notice to all Member Associations and Owners. However, any Director may be reimbursed for reasonable expenses incurred in the performance of his duties.

**6.12 Association and Board Liability.** The Townhome Association and Board shall not be personally liable to the Unit Owners or others for any mistake of judgment or for any acts or omissions made in good faith by the Townhome Association or Board. The Unit Owners shall indemnify and hold harmless the Townhome Association and Board from and against all contractual liability to others 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) arising out of contracts made by the Townhome Association or Board on behalf of the Unit Owners, unless any such contract shall have been made in bad faith or contrary to the provisions of this Townhome Declaration. The liability of any Unit Owner arising out of any such contract or out of the aforesaid indemnity in favor of the Townhome Association and Board, to the extent not covered by insurance, shall be limited to his proportionate share of the total liability thereunder. The provisions for the protection and indemnification of the Townhome Association and Board shall be deemed modified as and when necessary to comply with applicable laws, including the Act.

**6.13 Director And Officer Liability.** No Director, Officer or committee members shall be personally liable for any judgment or for any other acts or omissions of any nature whatsoever made, taken or omitted to be taken as such Directors, Officers or committee members except for claims for which such persons are not entitled to be indemnified as set forth below. The Townhome Association and each Unit Owner shall indemnify and hold harmless the aforesaid Directors, Officers and committee members and

their respective heirs, 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, any of said Directors, Officers or committee members, on behalf of the Townhome Association or Unit Owners or arising out of their status as Directors, Officers or committee members 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 Director, Officer or committee member may be involved by virtue of being or having been such Director, Officer or committee member; 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 Director, Officer or committee member; 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, Officer or committee member. The foregoing provision shall be in addition to and not in lieu of any other provision of law providing for limitation of liability of directors and officers of Illinois not-for-profit corporations. The liability of any Unit Owner under this **Section 6.13**, to the extent not covered by insurance, shall be limited to his proportionate share of the total liability hereunder. The provisions for the protection and indemnification of the Directors, Officers and committee members shall be deemed modified as and when necessary to comply with applicable laws, including the Act.

#### 6.14 **Committees.**

- (a) **Board Committees.** The Board, by resolution adopted by a majority of the Directors in office, may designate one (1) or more committees, each of which shall consist of one (1) or more Directors. Said committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Townhome Association; but the designation of such committees and the delegation thereof of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.
- (b) **Special Committees.** Other committees not having and exercising the authority of the Board in the management of the Townhome Association may be designated by a resolution adopted by a majority of the Directors present at a Board Meeting at which a quorum is present. Except as otherwise provided in such resolution, the President shall appoint the committee members, who shall only be individuals who are eligible to be Directors. Any committee member may be removed whenever in the Board's judgment the best interests of the Townhome Association shall be served by such removal.
- (c) **Term.** Each committee member shall continue as such until: (i) the next Annual Board Meeting; (ii) until his successor is appointed and qualified; (iii) the committee is terminated; or (iv) such member ceases to qualify as a committee member.
- (d) **Chairman.** The committee members shall appoint one such member to serve as chairman and may replace such chairman as the committee members determine is in the best interests of the Townhome Association. Vacancies in the chairmanship of any committee may be filled in the same manner as provided in the case of the original appointments.
- (e) **Quorum.** Unless otherwise provided in the resolution designating a committee, a majority of the whole committee shall constitute a quorum, and the act of a majority of the committee members present at a committee meeting at which a quorum is present shall be the act of the committee.
- (f) **Rules.** Each committee may adopt rules for its own governance not inconsistent with this Townhome Declaration or with Association Rules.

#### 6.15 **Member Meetings.**

- (a) **Annual and Special Member Meetings.** The Members shall hold annual meetings (the

“**Annual Member Meetings**”). Notice of any Member Meeting shall be given detailing the time, place, and purpose of such Member Meeting no less than ten (10) and no more than thirty (30) days prior to the Member Meeting through a Prescribed Delivery Method. Special meetings of the Members (“**Special Member Meetings**”) may be called for the purpose of considering matters that, by the terms of this Townhome Declaration, require the approval of all or some of the Members, or for any other reasonable purposes. Authorization for said Special Member Meetings shall be made by (i) the President; (ii) at least twenty-five percent (25%) of the Directors; or (iii) a petition submitted to the President by at least twenty percent (20%) of the Memberships.

**(b) Voting Methodology.**

- (i) Proxy limitations. Unless this Townhome Declaration, the Articles or a written proxy itself provides otherwise, proxies utilized for Member votes will not be valid for more than eleven (11) months after the date of the proxy’s execution. Further, proxy voting shall not be allowed for votes to elect Directors.
- (ii) Acceptable Means of Voting. Subject to the foregoing proxy limitations, compliance with the Act and compliance with **Section 6.15(b)(iii)**, each Member may vote by: (1) a qualifying proxy executed in writing by the Member or by his or her duly authorized attorney in fact and bearing the date of execution; (2) submitting a Townhome-Association-issued ballot in person at the Member Meeting; (3) submitting a Townhome-Association-issued ballot to the Townhome Association or its designated agent by mail or other means of delivery specified in this Townhome Declaration; or (4) by any electronic or acceptable technological means. Votes cast by any of the means described in this **Section 6.15(b)(ii)** are valid for the purpose of establishing a quorum.
- (iii) Electronic or Acceptable Technological Means. The Townhome Association, upon adoption of applicable Association Rules by the Board, may conduct elections by electronic or acceptable technological means (subject, however, to the aforementioned prohibition against Members voting by proxy in Board elections). Instructions regarding the use of electronic means or acceptable technological means for voting shall be distributed to all Members not less than ten (10) and not more than thirty (30) days before the Member Meeting at which an election occurs. The instruction notice must include the names of all candidates who have given the Board or its authorized agent timely written notice of their candidacy and must give the person voting through electronic or acceptable technological means the opportunity to cast votes for candidates whose names do not appear on the ballot. The Association Rules shall provide, and instructions provided to Members shall state, that Members who submit a vote using electronic or acceptable technological means may request and cast a ballot in person at the Member Meeting in which an election occurs, and thereby void any vote previously submitted by that Member.

6.16 Use of Technology. Any notice required to be sent or received or signature, vote, consent, or approval required to be obtained under this Townhome Declaration or any provision of the Act may be accomplished using the technology generally available at that time. This Section 6.16 governs the use of technology in implementing the provisions of this Townhome Declaration or the Act concerning notices, signatures, votes, consents, or approvals. The Townhome Association, Unit Owners, and Occupants may perform any obligation or exercise any right under this Townhome Declaration or any provision of the Act by use of any technological means that provides sufficient security, reliability, identification, and verifiability. A verifiable electronic signature satisfies any requirement for a signature under this Townhome Declaration or any provision of the Act. Voting on, consent to, and approval of any matter under this Townhome Declaration or any provision of the Act may be accomplished by electronic transmission or other equivalent technological means, provided that a record is created as evidence thereof and maintained as long as the record would be required to be maintained in non-electronic form. Subject to other provisions of law, no action required or permitted by this Townhome Declaration or any provision of the Act needs to be acknowledged before a notary public if the identity and signature of the person can otherwise be authenticated to the satisfaction of the Board. If any person does not provide

written authorization to conduct business using electronic transmission or other equivalent technological means, the Townhome Association shall, at its expense, conduct business with the person without the use of electronic transmission or other equivalent technological means. This Section 6.16 does not apply to any notices required under Article IX of the Code of Civil Procedure related to: (i) an action by the Townhome Association to collect a common expense; or (ii) foreclosure proceedings in enforcement of any lien rights under the Act.

#### 6.17 **Board Records.**

- (a) The Board shall maintain the Townhome Association Records and make them available for examination and copying by the Unit Owners, Eligible Mortgage Holder, Insurers, Guarantors (and representatives of the foregoing persons who have been duly authorized as such in writing) at those reasonable times during normal business hours as may be requested by such persons.
- (b) As used herein, "**Townhome Association Records**" shall mean:
- (i) copies of this Townhome Declaration as recorded, the Articles, other community instruments, annual reports, financial statements, Association Rules and any other records required to be kept by the Townhome Association per the Act (and, prior to the organization of the Board, Declarant shall maintain and make available the records set forth in this paragraph (i) for examination and copying);
  - (ii) detailed and accurate records in chronological order of the vouchers, receipts and expenditures affecting the Townhome Property, specifying and itemizing the maintenance and repair expenses of the Townhome Common Areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Board;
  - (iii) the minutes of all Board Meetings (which shall be maintained for not less than seven (7) years);
  - (iv) a written statement of a proper purpose, ballots and proxies related thereto, if any, for any election held for the Board and for any other matters voted on by the Members (which shall be maintained for not less than one (1) year);
  - (v) a written statement of a proper purpose, and such other records of the Board as are available for inspection by Members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986; and
  - (vi) the records provided to the Townhome Association with respect to Townhome Units owned by a land trust, a living trust, or other legal entity, whereby the trustee, officer, or manager of the entity has designated, in writing, a person to cast votes on behalf of the Member or Unit Owner (which designation shall remain in effect until a subsequent document is filed with the Townhome Association).
- (c) **Failure to Provide Records.** Where a request for records under **Section 6.17(a)** is made in writing to the Board or its agent, failure to provide the requested record or to respond within thirty (30) days shall be deemed a denial by the Board. A reasonable fee may be charged by the Board for the cost of retrieving and copying records properly requested. If the Board fails to provide records properly requested under **Section 6.17(a)** within the time period provided, the Member may seek appropriate relief and shall be entitled to an award of reasonable attorney's fees and costs if the Member prevails and the court finds that such failure is due to acts or omissions of the Board. The Board shall have standing and capacity to act in a representative capacity on behalf of the Members or Unit Owners as their interests may appear in relation to matters involving the Townhome Property, or more than one Unit.
- (d) **Statement of Account.** Upon not less than ten (10) days' prior notice to the Board, any Unit Owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessment or other charges due and owing from such Unit Owner. In addition, the Board shall provide for the preceding fiscal year, upon the written request of any Eligible Mortgage Holder, Insurer or Guarantor, any annual audited or unaudited financial statements that are prepared and

distributed by the Townhome Association to the Unit Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, fifty-one percent (51%) or more of the Eligible Mortgage Holders (by number) shall upon written request, be entitled to have such an audited statement prepared at their expense.

- (e) **Townhome Unit Resales.** In the event of any resale of a Townhome Unit, the Board shall make available for inspection to the prospective purchaser, upon demand, the following: (1) a copy of this Townhome Declaration, other instruments, and any rules and regulations; (2) a statement of any liens, including a statement of the account of the Townhome Unit setting forth the amounts of unpaid assessments and other charges due and owing; (3) a statement of any capital expenditures anticipated by the Townhome Association within the current or succeeding 2 fiscal years; (4) a statement of the status and amount of any reserve or replacement fund and any other fund specifically designated for Townhome Association projects; (5) a copy of the statement of financial condition of the Townhome Association for the last fiscal year for which such a statement is available; (6) a statement of the status of any pending suits or judgments in which the Townhome Association is a party; and (7) a statement setting forth what insurance coverage is provided for all Members or Unit Owners by the Townhome Association for common properties. The President or other Board-designated Officer shall furnish the above information within thirty (30) days after receiving a written request for such information. A reasonable fee covering the direct out-of-pocket cost of copying and providing such information may be charged by the Townhome Association or the Board to the selling Unit Owner for providing the information.

- 6.18 **Dissolution.** Upon any dissolution of the Townhome Association, its assets shall be transferred to another homeowner's association having similar purposes.

#### **ARTICLE VII MISCELLANEOUS**

- 7.1 **Eligible Mortgage Holder.** The provisions of this **Section 7.1** are intended for the benefit of each Eligible Mortgage Holder and shall control to the extent, if at all, they conflict with any other provisions of this Townhome Declaration.

- (a) Upon request in writing to the Townhome Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the unit number, the Townhome Association shall furnish each Eligible Mortgage Holder, Insurer or Guarantor a written notice of the default of any Unit Owner's obligations under this Townhome Declaration that is not cured within thirty (30) days. Any Eligible Mortgage Holder of a Townhome Unit who comes into possession of the said Townhome Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Townhome Association against the mortgaged Townhome Unit that become due prior to (i) the date of the transfer of title or (ii) the date on which the holder comes into possession of the Townhome Unit, whichever occurs first.
- (b) Upon request in writing, each Eligible Mortgage Holder, Insurer or Guarantor shall have the right:
- (i) to examine current copies of this Townhome Declaration, the Association Rules, and the Townhome Association's books and records during normal business hours;
  - (ii) to receive, without charge and within a reasonable time after such request, copies of such financial statements as are prepared by the Townhome Association at the end of each of its respective fiscal years;
  - (iii) to receive written notices of all Board Meetings and Member Meetings and to designate a representative to attend all such meetings;
  - (iv) to receive written notice of any decision by the Townhome Association or Unit Owners to make a Material Amendment to this Townhome Declaration, the Bylaws or the Articles;
  - (v) to receive written notice of any lapse, cancellation or material modification of any insurance

policy or fidelity bond maintained by the Townhome Association;

- (vi) to receive written notice of any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders; and
  - (vii) to receive written notice of any condemnation or casualty loss that affects either a material portion of the Townhome Property or Townhome Unit on which it holds, insures or guarantees the mortgage.
- (c) No provision of this Townhome Declaration, the Articles or any similar instrument pertaining to the Townhome Property or Townhome Units shall be deemed to give a Unit Owner or any other party priority over the rights of the Eligible Mortgage Holders pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Townhome Units, and/or the Townhome Common Areas, or any portion thereof or interest therein. In such event, the Eligible Mortgage Holders, Insurers or Guarantors of the Townhome Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.
- (d) Upon specific written request to the Townhome Association, each Eligible Mortgage Holder, Insurer or Guarantor of a Townhome Unit shall be furnished notice in writing by the Townhome Association to the extent the following are known by the Officer responsible for responding to such requests: (i) any damage to, destruction of, or taking of Townhome Common Areas exceeding Ten Thousand and no/100 Dollars (\$10,000.00), or (ii) any damage to a Townhome Unit exceeding One Thousand and no/100 Dollars (\$1,000.00).
- (e) If any Townhome Unit or portion thereof or the Townhome Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Eligible Mortgage Holder, Insurer or Guarantor of any affected Townhome Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition. No provisions of this Townhome Declaration will entitle the Unit Owner or another party to have priority over such Eligible Mortgage Holder with respect to the distribution of the proceeds of any award or settlement in respect of such Townhome Unit.
- (f) Each Unit Owner shall notify the Townhome Association of the name and address of the Eligible Mortgage Holder relating to his respective Townhome Unit.

**7.2 Additional Rights to Amend the Plat and this Townhome Declaration.**

- (a) Declarant hereby reserves to itself the right, subject to the approval of the County and Village, to re-record the Plat to correct any inaccuracies, errors or mistakes contained therein.
- (b) Declarant hereby reserves to itself the right and power, to be exercised without the consent of any the Townhome Association or any Unit Owner or Eligible Mortgage Holder, to record a special amendment to this Townhome Declaration or to the Plat (a "**Special Amendment**") at any time and from time to time for any of the following purposes:
  - (i) to cause this Townhome Declaration or the Plat to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity that performs (or may in the future perform) functions similar to those currently performed by such entities;
  - (ii) to induce any of the aforesaid agencies or entities to make, purchase, sell, insure, or guarantee mortgages covering a Townhome Unit;
  - (iii) to correct clerical or typographical errors in this Townhome Declaration or any Exhibit hereto or any supplement or amendment thereto; or

- (iv) to change, amend or modify any of the terms or conditions of this Townhome Declaration or the Plat (notwithstanding that such change or modification could otherwise be considered a Material Amendment) based upon Declarant's good faith determination that such change; amendment or modification is in the best interests of the Residential Property and is consistent with the intent and purposes of this Townhome Declaration and the Plat; provided, however, no change, modification, or amendment that could reasonably be inferred to affect any of the rights of governmental authorities hereunder shall be made without the written consent of the applicable governmental authorities.
- (v) In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, deed of trust, other evidence of obligation, or other instrument affecting a Townhome Unit, and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the Declarant's power to vote in favor of, make, execute and record Special Amendments. The right of Declarant to act pursuant to rights reserved or granted under this Section 7.2(b) shall terminate at such time as Declarant no longer holds title to any Townhome Unit.
- (c) Notwithstanding anything to the contrary contained in this Townhome Declaration (including, without limitation, Section 7.2(b)), this Townhome Declaration may not be amended, changed or modified without the express prior written consent of a governmental entity (such as the County, Village or Mission Brook) if such change or modification materially amends the terms and provisions concerning (i) such governmental entity's right of entry onto and maintenance of the Townhome Property or (ii) the obligation that Unit Owners comply with all applicable ordinances, codes and regulations of that governmental entity.
- (d) So long as Declarant holds title to a Townhome Unit (and therefore holds the rights reserved or granted under this Section 7.2), the President and each other Officer shall be obligated, at Declarant's written direction, to execute and record the Special Amendments.
- (e) As used in this paragraph, the phrase "**common elements**" or "**common areas**" shall mean the Townhome Common Areas, and "**common expenses**" shall mean the Association Costs. If there is an omission or error in this Townhome Declaration or another Townhome Association instrument, the Townhome Association may correct the error or omission by an amendment to this Townhome Declaration or such instrument, as may be required to conform it to the Act, any other applicable statute, or this Townhome Declaration. The amendment shall be adopted by vote of two-thirds of the Directors or by a majority vote of the Members at a Member Meeting called for that purpose, unless the Act or this Townhome Declaration specifically provides for greater percentages or different procedures. If, through a scrivener's error, a Townhome Unit has not been designated as owning an appropriate undivided share of the common areas or does not bear an appropriate share of the common expenses, or if all of the common expenses or all of the common elements have not been distributed in this Townhome Declaration, so that the sum total of the shares of common areas that have been distributed or the sum total of the shares of the common expenses fail to equal one hundred percent (100%), or if it appears that more than one hundred percent (100%) of the common elements or common expenses have been distributed, the error may be corrected by operation of law by filing an amendment to this Townhome Declaration, approved by vote of two-thirds of the Directors or a majority vote of the Members at a Member Meeting called for that purpose, which proportionately adjusts all percentage interests so that the total is equal to one hundred percent (100%), unless this Townhome Declaration specifically provides for a different procedure or different percentage vote by the Unit Owners and the Mortgagees thereon affected by modification being made in the undivided interest in the common areas, the number of votes in the Townhome Association or the liability for common expenses appertaining to the Townhome Unit. If a scrivener's error in this Townhome Declaration or other instrument is corrected by vote of two-thirds of the Directors pursuant to this paragraph, the Board, upon written petition by Members with twenty percent (20%) of the votes of the Townhome Association received within thirty (30)



days of the Board action, shall call a Member Meeting within thirty (30) days of the filing of the petition to consider the Board action. Unless a majority of the votes of the Members are cast at the Member Meeting to reject the action, it is ratified whether or not a quorum is present. Nothing contained in this paragraph shall be construed to invalidate any provision of a this Townhome Declaration authorizing Declarant to amend an instrument prior to the latest date on which the initial Member Meeting must be held, whether or not it has actually been held, to bring the instrument into compliance with the legal requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Department of Veterans Affairs, or their respective successors and assigns.

### 7.3 Additional Amendment Procedures.

- (a) In addition to Declarant's and Association's reserved rights to specially amend this Townhome Declaration pursuant to Section 7.2, this Townhome Declaration may be amended in whole or in part only if executed or otherwise agreed to in writing by the entities (if any) required to consent under Section 7.3(c) and by:
- (i) those Members (Class A and Class B) entitled to cast seventy-five percent (75%) of the total votes; and
  - (ii) Declarant, if the amendment is a Major Decision or if the amendment would, if enacted, adversely affect the rights of Declarant hereunder; and
  - (iii) Eligible Mortgage Holders representing at least fifty-one percent (51%) of the Townhome Units that are subject to mortgages held by Eligible Mortgage Holders, if the amendment is a Material Amendment that would, if enacted, adversely affect the rights of Eligible Mortgage Holders hereunder.
- (b) This Townhome Declaration also may be cancelled or amended by an instrument signed by sixty percent (60%) of Unit Owners executed and recorded within ninety (90) days of the expiration of any successive ten (10) year period of the term hereof, such cancellation or amendment to be effective on the date of commencement of the ten (10) year period in question, provided, however, that no termination or alteration of the legal status of the Townhome Association or the Townhome Property for reasons other than substantial destruction or condemnation of the Townhome Property shall be effective unless approval thereof is obtained from Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the Townhome Units that are subject to mortgages held by Eligible Mortgage Holders.
- (c) As a further procedural requirement and limitation upon the amendment procedures set forth in this Section 7.3, this Townhome Declaration may not be amended without the express prior written consent of the County, Village or Mission Brook if such change or modification materially amends the terms and provisions concerning (i) such governmental entity's right of entry onto and maintenance of the Residential Property or (ii) the obligation that Owners comply with all applicable ordinances, codes and regulations of that governmental entity. Further, anything to the contrary herein notwithstanding, in no event shall this Townhome Declaration be abrogated or cancelled without the prior written consent of both the County and Village.
- (d) Each amendment shall be evidenced by a document in writing, to be recorded in the Recorder's Office, or such other place as may be required by law at the time such document is recorded, the President of the Board shall execute and record such document in accordance with Section 1-20 of the Act (765 ILCS 160/1-20).

- 7.4 Rights and Remedies in the Event of a Default by a Unit Owner. In amplification of and in addition to the provisions contained elsewhere in this Townhome Declaration (including but not limited to Section 7.17 hereof), the Townhome Association, all other Unit Owners, the Master Association and those governmental authorities with jurisdiction thereover may and shall have all rights and remedies as shall otherwise be provided or permitted by law or in equity in the event of any default by any Unit Owner under this Townhome Declaration. Any Unit Owner found by a court of competent jurisdiction

to be in violation of this Townhome Declaration also shall be liable for reasonable attorney's fees incurred by Declarant, the Townhome Association, the Master Association and any applicable governmental authority in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Unit Owner's Townhome Unit, enforceable as other liens herein established.

- 7.5 **Validity, Severability, and Non-Waiver.** Violation of or failure to comply with any covenant, condition or restriction contained in this Townhome Declaration shall not affect the validity of any mortgage, deed of trust or other similar security instrument encumbering any Townhome Unit or other interest in the Townhome Property. Invalidation of any one or more of such covenants, conditions and restrictions, or any portions thereof, by a judgment or court order shall not affect any of the other provisions herein contained, which shall remain in full force and effect. In the event any provision of this Townhome Declaration requires an act that would violate any law, ordinance or regulation promulgated by the County or any other governmental entity having jurisdiction, then the action so required hereunder shall be excused, and such law, ordinance or regulation shall control. Failure by Declarant, Townhome Association, a governmental authority or any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 7.6 **Headings.** The headings contained in this Townhome Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Townhome Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.
- 7.7 **Notices.** Any notice required or desired to be given under the provisions of this Townhome Declaration (other than notices among the Townhome Association, Board, Directors and Members as governed by **Article VI**) shall be in writing and shall be deemed to have been properly given and received when hand delivered or when deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed: if to a Unit Owner, to the last address of such Unit Owner provided to the Townhome Association; and if to the Townhome Association, to its principal office. The Townhome Association shall provide the Master Association, by notice given or delivered to the Master Association, with a current name and address of the party authorized to receive notice on behalf of the Townhome Association and may from time to time change the name and address for notices by notice to the Master Association.
- 7.8 **Approvals.** No approval, consent or waiver by Declarant, Townhome Association, Board or any Unit Owner pursuant to the provisions hereof shall be effective unless in writing.
- 7.9 **Estoppel Certificate.** Upon written request of any Unit Owner, the Townhome Association shall state in an estoppel: (i) the total of any unpaid amounts, if any, owed by such Unit Owner; (ii) whether or not such Unit Owner is then in default for failure to perform any of its obligations under this Townhome Declaration; and (iii) whether or not a lien has been asserted against any Owner's Townhome Unit or other interest in the Townhome Property. The requesting party shall pay any reasonable charge (which may include any payment of reasonable attorney's fees) required by the Townhome Association as a condition to issuance of any such statement.
- 7.10 **Governing Law.** This Townhome Declaration shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of Illinois, including without limitation laws affecting title to all real property described herein and the Act.
- 7.11 **Rule Against Perpetuities.** If and to the extent any covenant, restriction, right, condition, term, provision, etc. contained in this Townhome Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities; (b) the rule restricting restraints on alienation; or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenant, restriction, right, condition, term, or other provision may be valid, then the covenant, restriction, right, condition, term, provision, etc. concerned shall continue and endure only until the expiration of a period of twenty-one (21) years after the death of the last to survive of the

class of persons consisting of all of the lawful descendants of William Jefferson Clinton, President of the United States in the year 2001, who are living at the date of this Townhome Declaration.

- 7.12 **Interpretation Provisions.** In the event of any conflict, contradiction or ambiguity between the terms, conditions and provisions of this Townhome Declaration and the terms, provisions and conditions of the Master Declaration, the Master Declaration shall, in all instances, control and prevail. Further, the Plat grants and reserves certain easements relative to use, access, maintenance, repair and operation of all or parts of Townhome Property for utility and other purposes. In the event of any conflict or ambiguity between the terms and conditions of the easements granted and reserved in the Plat with respect to the Townhome Property and the terms and conditions of the easements granted and reserved in this Townhome Declaration with respect to the Townhome Property, those terms and conditions that are more restrictive to the grantee or more specific and consistent with the intent and purposes of this Townhome Declaration and the Plat (whether set forth herein or therein) shall, in all instances, control and prevail over the less restrictive or less specific terms and conditions.
- 7.13 **Declarant's Approval.** Until Declarant (or any successor Declarant) no longer owns any portion of the Residential Property, neither the Townhome Association nor any Unit Owner shall seek in any way to amend, modify or abrogate any governmental approvals applicable to the Residential Property (including but not limited to zoning, subdivision and planned residential approvals from the County or Village) without having first secured Declarant's prior written approval. At all times when Declarant (and any successor Declarant) no longer owns any portion of the Residential Property:
- (a) No Unit Owner shall seek in any way to amend, modify or abrogate any governmental approvals applicable to the Residential Property without having first secured prior written approval from the Master Association and Townhome Association, and no such amendment, modification or abrogation may modify the legal rights or privileges appurtenant to any portion of the Residential Property not exclusively owned by such Owner; and
  - (b) The Townhome Association shall not seek in any way to amend, modify or abrogate any governmental approvals applicable to the Residential Property without having first secured prior written approval from the Master Association and Duplex Association.
- 7.14 **Lot Line Adjustments.** The lot lines for the Townhome Lots as set forth on the Plat have been established based upon Declarant's assumptions regarding which types and sizes of Townhome Units will be located on each Townhome Lot, but Declarant also expects that customer preferences during the sale and construction of Townhome Units may require a different lot line configuration. Accordingly, Declarant hereby expressly reserves to itself the right and power, to be exercised without the consent of the Townhome Association, Board, any Unit Owner or any mortgagee, to change, amend or modify the Plat by the recording of a plat of resubdivision (or other appropriate instrument) with respect to the portion or portions of the Townhome Property affected for purposes of changing, modifying or adjusting lot lines of Townhome Lots or boundaries of Townhome Units then owned by Declarant; provided, however, that the applicable governmental authorities (including without limitation the County and Village of Northbrook) shall approve any plat of resubdivision (or other appropriate instrument) prior to its being recorded.
- 7.15 **Re-Recording.** If at any time or times the Declarant or Board shall deem it necessary or advisable to rerecord this Townhome Declaration or any part hereof in the Recorder's Office, in order to avoid the expiration hereof or of any of the covenants, conditions, restrictions, rights, reservations, easements, agreements or other provisions herein contained under any statute or act relating to or governing marketable title, the Board shall submit the matter to a Member Meeting called upon not less than ten (10) days' prior written notice, and unless at least two-thirds (2/3) of the votes cast at such Member Meeting are against such rerecording, the Townhome Association shall have, and is hereby granted, the power to so rerecord this Townhome Declaration or such part thereof, and such rerecording shall be binding upon all Unit Owners in every way and with the full force and effect as though such action were taken by each of said Unit Owners and as though the rerecorded document was executed and acknowledged by each of them.

- 7.16 **Condemnation.** If all or any part of the Townhome Common Areas (but no part of any Townhome Unit) shall be taken through condemnation by any governmental authority having power so to do, the net proceeds of such taking shall be paid to and retained by the then owner of the Townhome Common Areas subject, however, to the rights of Eligible Mortgage Holders. If any part of one or more Townhome Units shall be taken by one or more concurrent condemnation proceedings, the entire net proceeds of such taking or takings, including (without limitation) all proceeds received on account of such taking of any part of the Townhome Common Areas, shall be divided equitably among, and retained by, the Unit Owners of the Townhome Units wholly or partially taken in such condemnation proceedings, subject to the rights of the Eligible Mortgage Holders. For purposes of this **Section 7.16**, the term “**condemnation**” shall include also any sale under threat of condemnation to any governmental authority having condemnation power.
- 7.17 **Parties and Persons Eligible to Enforce.** Declarant, the Townhome Association, the Master Association, the governmental bodies granted express rights hereunder, each Unit Owner, and their respective successors or assigns, each shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Townhome Declaration. In furtherance and not limitation of the foregoing, any aggrieved Unit Owner may enforce the provisions of this Townhome Declaration, by an action at law or in equity against the defaulting Unit Owner (or Occupant of his Townhome Unit). Declarant and Townhome Association shall use their best efforts to assist the Master Association and applicable governmental authorities in connection with the enforcement of any provisions hereunder, the violation of which shall also be considered a violation of the Master Declaration or any applicable governmental ordinance.
- 7.18 **Arbitration.** All disputes, claims, controversies or matter (hereinafter referred to as “**Matter**”) between the Townhome Association and Declarant, which shall not be resolved between the parties, shall be submitted for, or determined by, arbitration. Arbitration of any Matter shall be initiated by either the Board or Declarant by making a written demand by notice thereof to the other party and by filing a copy of such demand with the American Arbitration Association (the “**AAA**”). The AAA shall have jurisdiction upon receipt of such notice and the filing of such demand. Any such arbitration shall be held in Chicago, Illinois, and shall be conducted and completed in an expeditious manner and without delay. The Eligible Mortgage Holders shall be a party to any arbitration of any Matter that requires a consent or approval of the Eligible Mortgage Holders.
- (a) Unless otherwise agreed to in writing by the parties to the arbitration, within sixty (60) days after the notice demanding arbitration has been given, the parties shall jointly designate three (3) arbitrators to resolve the Matter. If the parties fail to designate the arbitrators within such time period, the arbitrators shall be appointed in accordance with the procedures set forth in the applicable AAA rules; provided, however, that, in any event, such arbitrators shall be experienced as to the design, construction and/or operation, as the Matter requires, of townhome structures similar to the Townhome Units. Except where contrary to the provisions of this Townhome Declaration, the rules of the AAA for arbitration shall apply to the arbitration of any Matter. During the sixty (60)-day time period referenced above, the parties may agree in writing to any additions, deletions or changes to the applicable arbitration rules.
- (b) The arbitrators shall commence a hearing within one hundred eighty (180) days of selection, unless the parties agree upon an expedited or delayed schedule of hearings. Prior to the hearings, any party to the arbitration may send out requests to compel document production from the other party. Disputes concerning the scope of document production and endorsement of the document requests shall be subject to agreement by such parties or may be ordered by the arbitrators to the extent reasonable. The arbitrators may obtain independent legal counsel or other professional consultants to aid in resolution of legal or other questions present in the course of arbitration, provided that it is economical to do so considering the financial consequences of the Matter. In rendering a decision, the arbitrators may base such decision only on the facts presented in the course of arbitration and shall not modify or amend the provisions of this Townhome Declaration. Subject to the other terms hereof, if either party fails or refuses to appear at and participate in an arbitration hearing after due

notice, the arbitrators may hear and determine the Matter upon evidence produced by the appearing party. The arbitration costs shall be borne equally by each party, except that each party shall be responsible for its own attorneys' fees and expenses. With respect to any Matter subject to arbitration under this **Section 7.18**, it is agreed that the arbitration provisions of this **Section 7.18** shall be the sole and exclusive remedy between the Townhome Association and Declarant. Notwithstanding any other provisions of this Townhome Declaration, the foregoing agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration with any person not named or described herein, provided that any arbitration proceeding initiated under the terms of this **Section 7.18** may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Matter and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrators shall be final and binding upon the parties to arbitration and the Eligible Mortgage Holders and judgment thereon shall be entered by any court having jurisdiction.



**EXHIBIT A**

**LEGAL DESCRIPTION**

**LOTS 1 THROUGH 22, INCLUSIVE, IN THE PROVENANCE SUBDIVISION IN SECTION 18, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF, RECORDED NOVEMBER 18, 2015 AS DOCUMENT NO. 1532229026, IN COOK COUNTY ILLINOIS**

PIN: 04-18-200-037-0000 (partial)