

THIS INSTRUMENT PREPARED  
BY AND RETURN TO: GARY L. PLOTNICK  
Schain, Burney, Ross and Citron, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601

SEP 09 2004



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**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR THE  
PALATINE COMMONS TOWNHOME OWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS (the "Declaration") is made this 12<sup>th</sup> day of April, 2004 by PALATINE COMMONS, LLC, an Illinois limited liability company (hereinafter referred to as "Declarant").

**P R E A M B L E S:**

A. Declarant is the owner in fee simple of a certain parcel of real estate in the Village of Palatine, County of Cook, State of Illinois, legally described in Exhibit "A" attached hereto and made a part hereof (the "Property"); and

B. Declarant and Developer (as hereinafter defined) desire to develop a residential townhome development on the Property (the "Development"); and

C. Declarant desires to submit the Property to the provisions of this Declaration.

**NOW, THEREFORE,** Declarant hereby declares that the Property is, and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions and restrictions hereinafter set forth.

**ARTICLE I**

**Declaration Purposes and Property  
Subjected to Declaration**

**Section 1.1. Purpose.** Declarant and Developer desire to create on the Property a single family attached townhome development for future owners of Lots (as hereinafter defined) for the following general purposes:

- 02-15-204-008 + 009
- 02-15-204-017 + 018
- 02-15-205-008 + 009
- 02-15-205-017 + 018
- 02-15-206-008 + 009
- 02-15-209-001 THRU 005
- 02-15-209-013 THRU 018
- 02-15-210-001 THRU 004
- 02-15-210-016 THRU 018

MAIL TO

Village Clerk's Office  
Village of Palatine  
200 E. Wood Street  
Palatine, IL 60067

(a) Declarant and Developer, by the imposition of covenants, conditions and restrictions, and the reservation of certain powers unto itself, do intend to provide for the Property a plan for development which is intended to enhance and to protect the values of the single family townhome residential community; and

(b) Declarant and Developer desire to provide for the maintenance of the Common Area (as hereinafter defined) to be used in common by the Owners of the Property.

**Section 1.2. Encumbrance.** To further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth.

## **ARTICLE II**

### **Definitions**

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

**Section 2.1.** "Association" shall mean and refer to Palatine Commons Townhome Owners Association, an Illinois not-for-profit corporation, its successors and assigns.

**Section 2.2.** "Board" shall mean and refer to the Board of Directors of the Association.

**Section 2.3.** "By-Laws" shall mean the By-Laws governing the Palatine Commons Townhome Owners Association, which is attached hereto and made a part hereof as Exhibit "B". The By-Laws are incorporated into this Declaration and, by this reference, will be consistent with and shall not modify the terms of this Declaration.

**Section 2.4.** "Common Area" shall mean all real property owned, to be owned or maintained by the Association for the common use and enjoyment of all members of the Association, except the Lots, including but not limited to all appurtenances thereto including streets, drives, sidewalks and associated landscaping, monument signs and grass areas located on Outlots A, B, C, D, E, F, G, H, I, J, K, L and M, as indicated on the Plat of Subdivision.

**Section 2.5.** "Contingency and Replacement Reserve" shall have the meaning set forth in Section 5.4 hereof.

**Section 2.6.** "Declarant" shall mean and refer to Palatine Commons, LLC, an Illinois limited liability company, and its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or a portion of the rights

of Declaration provided herein if designated as such by Declarant in any instrument recorded for such purposes as provided in Section 6.12 hereof.

**Section 2.7.** "Developer" shall mean and refer to Palatine Commons, LLC, an Illinois limited liability company.

**Section 2.8.** "Dwelling" shall mean any building located on a Lot and intended for the shelter and housing of a Single Family, as hereinafter defined. Dwelling shall include any improvement attached or adjacent to the Dwelling utilized for storage of personal property, tools and equipment.

**Section 2.9.** "Estimated Cash Requirement" shall have the meaning set forth in Section 5.5 hereof.

**Section 2.10.** "Improvements" shall mean and include any and all buildings, outbuildings, driveways, pedestrian walkways, fences, decks, patios, hedges, lawns, sidewalks, planted trees, shrubs and all other structures or landscaping improvements of every type and kind.

**Section 2.11.** "Limited Common Areas" shall mean and refer to a portion of the Common Area so designated in this Declaration as being reserved for the use of certain Lot or Lots to the exclusion of other Lots.

**Section 2.12.** "Lot" shall mean each part of the Property, the size and dimension of which shall be established by Declarant.

**Section 2.13.** "Member" shall mean and refer to every Person who holds membership in the Association.

**Section 2.14.** "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

**Section 2.15.** "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Except as provided herein, the term Owner shall include Declarant to the extent of the number of Lots owned by Declarant and also includes the interest of Declarant as a contract seller of any Lot.

**Section 2.16.** "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

**Section 2.17.** "Plat of Subdivision" shall mean and refer to the Plat of Subdivision for Palatine Commons Subdivision recorded in the Office of Recorder of Deeds of Cook County, Illinois as Document Number 0411219128

**Section 2.18.** "Property" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto and made a part hereof.

**Section 2.19.** "Single Family" shall mean one or more persons, each related to the other by blood, marriage or adoption or a group of not more than three (3) persons, not all so related, maintaining a common household in a Dwelling.

**Section 2.20.** "Turnover Date" shall have the meaning set forth in Section 4.3 hereof.

**Section 2.21.** "Village" shall mean Village of Palatine, Illinois, an Illinois municipal corporation.

### **ARTICLE III**

#### **GENERAL RESTRICTIONS**

**Section 3.1. Lots.** All Lots shall be used only for Single Family Dwellings. Each Owner shall maintain his Lot and all Improvements located thereon in a clean, sightly and safe condition and shall at all times cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from paved areas unless such snow and ice removal is provided by the Association as Assessments under the terms and conditions of this Declaration.

**Section 3.2. Noxious and Offensive Activity.** No noxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No plants or seed or other conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot.

**Section 3.3. Temporary Structures.** No temporary building, trailer, mobile home, recreational vehicle, tent, shack, storage container or other similar Improvement shall, except as otherwise herein provided, be located upon the Lots.

**Section 3.4. Waste.** No person shall accumulate on his Lot abandoned or junked vehicles, litter, refuse or other unsightly materials. Vacant Lots shall not be used for the purpose of raising crops thereon.

**Section 3.5. Trucks, Boats and Recreational Vehicles.** Trucks, boats, recreational vehicles or trailers shall at all times be parked in the garage of a dwelling located on a Lot. The repair or maintenance of any motorized vehicle shall not be permitted except within the confines of the garage of a dwelling.

**Section 3.6. Obstructions.** There shall be no obstruction in the driveways or other portions of the Common Area nor shall ready access to a garage or entrance to a Lot be obstructed or impeded in any manner.

**Section 3.7. Pets.** No animals, livestock or poultry of any kind shall be raised, bred, or kept upon any Lot, except that dogs and cats (not to exceed a total of four (4) such pets) or other common household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes; and provided further that any such pet kept in violation of rules and regulations adopted by the Board or causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon ten (10) days' written notice from the Board.

**Section 3.8. Ham Radio; Antennae.** The operation of a "ham" or other amateur radio stations or the erection of any communication antennae or similar devices (other than simple mast antennae located on the roof of a Dwelling) shall not be allowed unless completely screened from view from all streets and approved in writing in advance by the Developer prior to the Turnover Date or by the Board or the Architectural Control Committee (as hereinafter defined) thereafter.

**Section 3.9. Drainage.** All areas of the Lots designed or intended for the proper drainage or retention of storm water, including swale lines and ditches, shall be kept unobstructed and shall be mowed regularly. Trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other like improvements may not be planted, placed or allowed to remain in any such areas unless approved the Board. No Owner shall alter the rate or direction of flow of storm water from any Lot by impounding water, changing grade, blocking or redirecting swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that each drainage or detention area is for the benefit of the entire Property.

**Section 3.10. Increase in Insurance.** No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will increase the rate charged for or cause the cancellation of insurance carried by the Association on the Common Area improvements or contents thereof, or which would be in violation of any law, nor shall any waste be committed in the Common Area.

**Section 3.11. Window Coverings.** The covering of windows and other glass surfaces, whether by shades, draperies or other items visible from the exterior of any dwelling, shall be subject to the rules and regulations of the Board.

**Section 3.12. Personal Business.** The restriction in Paragraph 3.1 shall not, however, be construed in such a manner as to prohibit an Owner from: a) maintaining his personal professional library therein; b) keeping his personal business records or accounts therein; or c) handling his personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said paragraph.

**Section 3.13. Developer's and Declarant's Rights.** There is also reserved to the Developer and Declarant, their agents and prospective purchasers and lessees, without cost, the right of ingress and egress in and through the Common Area and to park in the

outdoor parking areas incident to such sales or leasing purposes designated by Developer and/or Declarant and, during construction by the Developer, the right of ingress and egress in and through the Common Area and Property in connection with such construction.

**Section 3.14. Alterations.** Nothing shall be altered in or removed from the Common Area except upon the written consent of the Board.

**Section 3.15. Advertising Signs.** Except with respect to the Developer and Declarant, no advertising signs (except one "For Sale" sign of not more than five (5) square feet to be only located within a Dwelling window), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any Lot, except as provided in Section 4.7 hereof.

**Section 3.16. Sales Activities.** The Declarant and/or the Developer may maintain without cost, in or upon such portions of the Property including a sold Lot or Dwelling, as Declarant and/or Developer shall determine, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, sales, construction and administrative offices, storage areas, model units, signs, temporary fencing, monuments and sales and construction trailers, or other items or improvements as otherwise required by Developer and/or Declarant.

**Section 3.17. Garbage.** All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Lots and streets; shall be regularly removed from the Property, and shall not be allowed to accumulate thereon; and shall be placed out for collection on the driveway of the Lot as designated by the Village or trash collection company and at no other location. Garbage shall be placed in appropriate covered containers and kept in the garage until the designated day of pick-up. Under no circumstance shall the container impede access to streets, alleys or driveways of other Owners.

**Section 3.18. Drying of Clothes.** Drying of clothes shall be confined to the interior of the Dwelling Units. No clothes, sheets, laundry, blankets or other articles of clothing shall be hung out in any portion of the Property.

**Section 3.19. Adversely Affect.** An Owner of a Lot shall do no act nor allow any condition to exist which will adversely affect the other Lots or their Owners.

**Section 3.20. Mailbox.** If Declarant or Developer shall install a mailbox on a Lot or for use by an Owner, the respective Owner shall be responsible for maintaining the mailbox, in good condition and repair, such Owner shall replace the mailbox if necessary, with a mailbox of exactly the same height, material and styling as originally installed, or a mailbox as approved by the Architectural Control Committee and Board, as such term is defined in this Declaration.

**Section 3.21. Vehicles.** All vehicles owned or maintained by occupant of a Lot, other than Developer or Declarant and other than temporary guests and visitors, shall be

parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars herein. Overhead garage doors must be kept closed on a consistent basis. Except for use by the Developer or the Declarant, no part of any of the Lots or Common Area shall be used for storage use, including storage of recreational vehicles or overnight parking of mobile homes, trailers, trucks, vans, buses, commercial vehicles, snowmobiles or boats except within the confines of a garage and further excepting the temporary parking of such vehicles for no more than forty eight (48) hours. No repair or body work of any motorized vehicle shall be permitted except within the confines of the garage. The Association is expressly authorized to enforce the provisions of this Section by ticketing and fining any Owner who violates this Section, and towing offending vehicles, trailers, boats, trucks, vans, buses or snowmobiles. All fines imposed and all expenses incurred by the Association in enforcing this Section, shall become an obligation owed by the subject Owner to the Association, and shall be a lien created and enforced as set forth in this Declaration. The Association is specifically authorized to enter into a contract with any local municipality or unit of government, or with any private firm or entity, to provide services reasonably required to enforce the terms and provisions of this Section.

**Section 3.22. Utility Lines.** No lines or wires for communication or the transmission of electric current or power shall be constructed, placed or permitted to be placed anywhere in the Property other than within buildings or structures or attached to their walls, unless the same shall be contained in conduits or approved cables constructed, placed and maintained underground.

**Section 3.23. Swimming Pools.** No swimming pools are permitted within the Property, except portable child's swimming pool not greater than six (6) feet in diameter may be maintained and situated within a Lot.

**Section 3.24. Flags.** A short, temporary flagpole may be attached to the front porch for the purpose of flying the American flag. All flag poles must be approved by the Board of Directors or Architectural Control Committee prior to placement. The only flag permitted is the American Flag or such other flags approved by the Board.

**Section 3.25. Limited Common Areas.** Except as otherwise provided herein, the Limited Common Areas shall consist of portions of the Common Area set aside and allocated for the restricted use of a particular Lot or Lots, including but not limited to patios and decks.

#### **ARTICLE IV** **Townhome Owners Association**

**Section 4.1. Not for Profit Corporation.** Developer shall form an Illinois not-for-profit corporation to be known as the Palatine Commons Townhome Owners Association which shall provide for maintenance and operation of the Common Area, enforce the standards set forth herein and in the By-Laws and, in general, maintain and promote the desired character of the Development.

**Section 4.2.**

(a) Board. The Association shall have a Board of not less than three (3) directors who shall be elected by the Members of the Association at such intervals as the corporate charter and By-Laws of the Association shall provide, except (i) that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the corporate charter or By-Laws; and (ii) that the first Board and subsequent Boards (until the Turnover Date) shall be appointed by Developer. Except for directors of the Board appointed by Developer, all directors shall be Members of the Association. Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more directors and continue to exercise its right to appoint the remaining directors of the Board until the Turnover Date.

(b) Officers. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the corporate charter or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The corporate charter and By-Laws of the Association may include such added provisions for the protection and indemnification of its officers and directors as shall be permissible by law. The directors and officers of the Association shall not be liable to the Owners or others for any mistake of judgment or any acts or omissions made in good faith as such directors or officers.

**Section 4.3. Turnover.** Developer shall, through the Board appointed by it in accordance with Section 4.2, exercise control over all Association matters, until the first to occur of the following dates:

(i) twenty (20) years from the date of this Declaration;

(ii) the sale and conveyance of legal title to one hundred percent (100%) of the Townhomes to Owners other than Declarant, or an assignee of Declarant, as provided in Section 6.12 hereof.; or

(iii) Declarant and/or Developer elects, voluntarily, to turn over to the Members the authority to appoint the Board, which election it shall evidence by directing Declarant to execute and record in the Office of the Recorder of Deeds



of Cook County, Illinois an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or subsequent to the Turnover Date, Declarant shall convey to the Association, (subject to inspection and approval by the Association for compliance with any plans or specifications relative to the Common Areas), the Common Area to be owned by the Association hereunder and the Association shall undertake to maintain the Common Areas pursuant to the terms hereof.

**Section 4.4.**

(a) Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it, or its successors in interest, if any, owns one or more Lots.

(b) Votes. From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by him or it on each matter submitted to a vote of Members; provided, that, where there is more than one (1) Owner of a Lot, such co-owners of a Lot shall only be entitled to one (1) vote.

**Section 4.5.** The Association, through the Board, shall have the following powers and duties:

(a) Own and Manage Common Area. Own, maintain and otherwise manage the Common Area, and all Improvements thereon (including but not limited to the right to dedicate all or any part of the Common Area for public easements or rights-of-way); and own, maintain and otherwise manage all other property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain the common walks located upon the Property and the retaining walls located within the right of ways within the Property. Furthermore, the Board may elect to provide snow and ice removal from the driveways and sidewalks located upon the Lots and, if so elected, the cost thereof shall be an Assessment under the terms and conditions of this Declaration.

(b) Management. Having the authority to employ a manager or other persons, and to contract with independent contractors or managing agents, to perform all or any part of the duties and responsibilities of the Association; provided, that any contract with person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same not later than ninety (90) days after the date of the initial meeting of the Members of the Association is held, as provided in the By-Laws;

(c) Working Capital and Contingency Fund. Establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

(d) Maintenance. Provide for the maintenance of the Common Area;

(e) Unimproved Portions of Property. At its option, mow, care for and maintain vacant and unimproved portions of the Property and remove rubbish from same and to do any other things necessary or desirable in the judgment of the Board to keep any vacant portions of the unimproved portions of the Property neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Declarant;

(f) Improvements. Make such improvements to the Common Area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its corporate charter and By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping the Development a highly desirable residential community;

(g) Enforcement. Enforce the provisions of this Declaration and the Articles of Incorporation, By-Laws and Rules and Regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at eighteen percent (18%) per annum, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his Assessment and constitute a lien on his Parcel and be enforceable as provided in Article V. If any Owner, or his guests, violates any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Parcel and be enforceable as provided in Article V.

(h) Other Powers. Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, the corporate charter or the By-Laws.

#### **Section 4.6. Insurance.**

(a) Fire Insurance. The Board shall have the authority to and shall obtain insurance for the Dwelling exteriors against loss or damage by fire and

such other hazards, as the Board may deem desirable, or as reasonably required by First Mortgagees, for the full insurable replacement cost of the Dwellings. Premiums for such insurance shall be paid by Association as part of the Estimated Cash Requirement (as defined below). Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Board as trustee for each of the Owners of the damaged Dwellings. All such policies of insurance (i) shall contain standard mortgage clause endorsements in favor of the First Mortgagees as their respective interests may appear, (ii) shall provide that the insurance, as to the interest of the Board, shall not be invalidated by any act of neglect of any Owner, (iii) shall provide that notwithstanding any provision thereof which gives the insurer an election to restore damage in lieu of making a cash settlement thereof, (iv) to the extent possible, shall provide that such policy shall not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' written notice to the First Mortgagee of each Lot, and (v) shall contain waivers of subrogation with respect to the Association, its directors, officers, employees and agents (including the managing agent), Owners, occupants of the Dwelling, First Mortgagees, the Declarant and the Developer or, alternatively, all such parties shall be named as additional insureds.

(b) Insurance Trustee/Use of Proceeds. The Board may engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of this Declaration. The fees of such corporate trustee shall be paid by Association as part of the Estimated Cash Requirement (as defined below). In the event of any loss in excess of \$50,000 in the aggregate, the Board shall engage a corporate trustee as aforesaid, or in the event of any loss resulting in the destruction of the major portion of one or more Dwellings, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or any Owner of any Dwelling so destroyed. The rights of First Mortgagees under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in this Declaration with respect to the application of insurance proceeds to the repair or reconstruction of the Dwellings. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of a release from the Board of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee.

(c) Other Insurance. The Board shall also have the authority to and shall obtain the following insurance:

(i) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by an Owner occurring in, on or about the Dwellings or upon, in or about the streets and passageways and other areas adjoining the Dwellings or the Common Area, in such amounts as the Board shall deem desirable (but not less than \$1,000,000 covering all claims for personal injury and or property damage arising out of a single occurrence).

(ii) Such workers' compensation insurance as may be necessary to comply with applicable laws.

(iii) Employer's liability insurance in such amount as the Board shall deem desirable.

(iv) Directors and Officers liability insurance.

(v) Such other insurance in such reasonable amounts as the Board shall deem desirable. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. To the extent possible, all of such policies shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Association and First Mortgagees who specifically request such notice. The premiums for such insurance shall be paid by Association as part of the Estimated Cash Requirement.

(d) Owner's Responsibility. Each Owner shall obtain his or her own insurance on the contents of his or her own Dwelling, the furnishings and personal property therein, and his or her personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the insurance obtained by the Association, as provided above, and the Board shall have no obligation whatsoever to obtain any such insurance coverage on behalf of the Owners. Each Owner shall promptly report, in writing to the Board, all additions, alterations or improvements to his Dwelling without prior request from the Board and shall reimburse the Board for any additional insurance premiums attributable thereto, and shall be responsible for any deficiency in any insurance loss recovery resulting from his or her failure to so notify the Board. The Board shall not be responsible for obtaining insurance on such additions, alterations or improvements unless and until such Owner shall make such report and request the Board in writing to obtain such insurance, and shall make arrangements satisfactory to the Board for such additional premiums; and upon the failure of such Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Dwelling to a condition better than the condition

existing prior to the making of such additions, alterations or improvements.

(e) Waiver of Subrogation. Each Owner hereby waives and releases any and all claims which he or she may have against any other Owner, the Association, its directors and officers, the Declarant, the Developer, the manager and the managing agent, if any, and their respective employees and agents, for damage to the Dwellings, or to any personal property located in the Dwellings, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance.

**Section 4.7 Repair or Reconstruction.**

(a) In the case of damage by fire or other disaster to a portion of a Dwelling (a "Damaged Improvement") where the insurance proceeds are sufficient to repair or reconstruct the Damaged Improvement, then the proceeds shall be used to repair or reconstruct the Damaged Improvement.

(b) In the event that the insurance proceeds are insufficient to repair or reconstruct the Damaged Improvement, then the Owner shall be responsible for the cost of repairing or reconstructing the Damaged Improvement in excess of the insurance.

**Section 4.8. Easement.** An easement is hereby granted to Declarant, Developer and the Association and their respective agents, employees and independent contractors, by the Owners to enter upon the Common Area and any Lot to the extent necessary for the purpose of constructing, maintaining, repairing and replacing the Common Area and any improvement on any Lot, as herein provided, for performing any of their respective obligations herein provided, or for providing emergency police, firefighting or rescue services. In any such case, Declarant, Developer and the Association, or any such agent, employee or independent contractor, shall not be in any civil or criminal action for trespass. This easement shall continue for the term described in Section 6.1 of this Declaration.

**Section 4.9. Additional Easements.** An easement is hereby declared and created over and upon the Common Area for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access to and ingress and egress on, over, across, in, upon and to the Common Area, and such right and easement shall be appurtenant to and shall pass with title to every Parcel, subject to the following provisions:

(a) The right of the Association, in accordance with its By-Laws to adopt rules and regulations governing the use, operation and maintenance of the Common Area.

(b) The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area.

(c) The right of the Association to suspend the use of facilities, except for the right of ingress and egress, by any persons who are delinquent in assessments against said person's unit.

**Section 4.10.**      **Utility Easements.** The authorized telephone company, ComEd, Peoples Gas Company, the Village and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housings for such equipment, into, over, under, on and through the Property and the Common Area for the purpose of providing utility services to the Property. The right is also reserved to Declarant to grant to said utilities and to cause to be recorded by separate instruments such easements. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Parcel for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Lot. Easements are also hereby declared and granted to the Developer or its assignee to install, lay, construct, operate, maintain, renew, repair and replace any conduits, cables, pipes, wires or other equipment or components of any utility system or of any community antenna television service system into, over, under, on and through the Common Area and any Lot for the purpose of providing such utility service or television service to any Lot, the Property, or to other property.

**Section 4.11.**      **Running with the Land.** All easements and rights described herein are easements and appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding upon any Owner, purchaser, mortgagee or other person having an interest in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees or trustees as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

**Section 4.12.**      **Grant of Additional Easements.** In addition to the foregoing, Declarant, Developer and the Association reserve the right to grant easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, operation and inspection of utility services over, under, across and through the Common Area, as they deem necessary or desirable, in order to effectuate the intent of this Declaration.

## ARTICLE V

### Assessments

**Section 5.1. Assessments.** Each Owner by reason of the acceptance of a deed, excluding the Declarant and Developer, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen expenses, to be collected from time to time, as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a lien upon the Property (except Property owned by Developer or the Declarant) against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation of an Owner shall not pass to his successors in title unless expressly assumed by them. Both annual and special assessments shall be fixed at a uniform rate for all Lots. The annual assessments or charges or special assessments shall be collected in one lump sum or in installments, as shall be approved and directed by the Board.

**Section 5.2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Property and, in particular, for the Development and maintenance of the Common Area. Such uses shall include, but are not limited to, the cost of all general real estate taxes for the Common Area, insurance, repair, replacement and maintenance and other charges required by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including the establishment and maintenance of a Contingency and Replacement Reserve (as hereinafter defined). Except as otherwise provided herein, the assessments provided for herein shall commence for all Lots upon recordation of this Declaration in the Office of the Recorder of Deeds of Cook County, Illinois. Each Owner, excluding Declarant and Developer, shall commence payment of assessments upon the Owner's acquisition of their Lot.

**Section 5.3. Budget.** Each year, on or before November 1, the Board will estimate the total amount of maintenance expenses necessary to pay the cost of wages, materials, taxes, insurance, services and supplies which will be required during the ensuing calendar year (January 1 - December 31) for the rendering of all services authorized by the Board, which may include a reasonable amount considered by the Board to be necessary for the Contingency and Replacement Reserve, and shall, on or before November 15, notify each Owner in writing as to the amount of such estimate ("Estimated Cash Requirement"), with reasonable itemization thereof. The Estimated Cash Requirement shall be assessed equally among all of the Owners and collected in one lump sum or in installments, as shall be approved and directed by the Board. On or before the date of the annual meeting of each calendar year, the Board shall supply to all the Owners an itemized accounting of the maintenance expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected from

the Owners, pursuant to assessments made during such year, and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall, upon demand at any time, furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein.

**Section 5.4.**

(a) Contingency and Replacement Reserve. The Board may build up and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvements and expenditures which may become necessary during the year shall be charged first against the Contingency and Replacement Reserve. Any expenditure from the Contingency and Replacement Reserve having a total cost in excess of five percent (5%) of the then approved Budget for the Association shall require the prior approval of the Members holding two-thirds (2/3) of the votes of the Association

(b) Inadequate Contingency and Replacement Reserve. If the Contingency and Replacement Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a special assessment which shall be assessed equally among the Owners, including Declarant. The Board shall serve notice of a special assessment of all such Owners by a statement in writing giving the amount and reasons therefor, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of such notice of assessment.

(c) Initial Deposit. Developer and/or Declarant shall collect from each initial purchaser of a Lot, at the closing of the sale of such Lot, the sum equal to two (2) months assessments to be used for the operating needs of the Association. The Initial Deposit shall not be construed as a prepayment of an Owner's assessments due under this Declaration.

**Section 5.5. Estimated Cash Requirement.** When the first Board, elected by the Members hereunder, takes office, it shall determine the Estimated Cash Requirement, as hereinabove defined, for the period commencing on the first (1st) day of the month following the Turnover Date and ending on December 31 of the calendar year of said conveyance. The initial Estimated Cash Requirement shall be assessed equally to all Owners of Lots, excluding Declarant and Developer.

**Section 5.6. No Waiver.** The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on an Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay his share of such Estimated Cash Requirement, as herein provided, whenever same shall be determined and, in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue



to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.

**Section 5.7. Books and Records.** The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Common Area specifying and itemizing the maintenance and repair expenses of the Common Area, and any other expenses incurred. Such records, and the vouchers authorizing the payments, shall be audited annually by an independent accountant or auditor retained by the Board and the audit report shall be made available for inspection by any Owner, or any representative of an Owner duly authorized in writing, or any holder of a Mortgage, at such reasonable time or times during the normal business hours as may be requested by the Owner or by the holder of said Mortgage. Upon five (5) days notice to the Board, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments, or other charges due and owing from such Owner.

**Section 5.8. Funds in Trust.** All funds collected hereunder shall be held and expended, for the purposes designated herein, and shall be deemed to be held in trust for the benefit, use and account of all the Owners. All funds not otherwise employed shall be deposited, from time to time, to the credit of the Association in such banks, trust companies or other depositories, as the Board may select.

**Section 5.9. Delinquent Assessments.** Any assessments or other charges which are not paid when due shall be delinquent. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments and interest, costs and fees, as above provided, shall be and become a lien against the Lot of said Owner, when payable, and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. If the assessment or charge is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the lesser of the rate of eighteen percent (18%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay same, or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. The directors of the Board, and their successors in office acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey same. Any court of competent jurisdiction is hereby authorized to restrain the defaulting Owner from reacquiring his interest at such foreclosure sale.

**Section 5.10. Additional Remedies.** In addition to the rights and remedies set forth in Section 5.9, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after notice to said Owner by the Board setting forth the amount of unpaid charges or assessments, together with a demand for payment thereof, the Board shall

have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Dwelling from said defaulting Owner, to put out the Owner, or any occupant or tenant claiming by, through or under the Owner, using such reasonable force as the Board shall deem necessary under the circumstances and to exercise any of the rights and remedies set forth in the Illinois Forcible Entry and Detainer Act, as amended from time to time.

**Section 5.11. Subordination.** The lien of assessments, provided for herein, shall be subordinate to the lien of any Mortgage now or hereafter placed on a Lot. In the event of the issuance of a deed, pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for assessment, provided herein, which shall have accrued prior to the date of recording of such deed.

## **ARTICLE VI**

### **General Provisions**

**Section 6.1. Term.** The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Board or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded in the Office of the Recorder of Deeds of Cook County, Illinois, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter provided.

**Section 6.2. Unlawful Provision.** If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (i) the rule against perpetuities; (ii) the rule restricting restraints on alienation; or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then said covenant shall continue and endure only until the expiration 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 George W. Bush, President of the United States, living at the date of this Declaration.

**Section 6.3. Recordation.** If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration, or any part hereof, in the Office of the Recorder of Deeds of Cook County, Illinois in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained under any of the provisions of the Marketable Title Act of the State of Illinois, or any other law or statute of similar purport, it shall submit the matter to a meeting of the Members of the Association called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such rerecording, the Board shall have, and is hereby granted, power to so rerecord this Declaration, or such part thereof, and such rerecording shall be binding upon all the Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said

Owners and the rerecorded document executed and acknowledged by each of them.

**Section 6.4. Acceptance of Deed.** Each Owner, by the acceptance of a deed of conveyance, and each Purchaser under any contract for such deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though said provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section 6.4 or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Lot as fully and completely as though such rights were recited fully and set forth in their entirety in such documents.

**Section 6.5. General Remedies.** Developer, Declarant and each Owner from time to time shall have the right, jointly and separately, to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants above set forth, or any of them in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Lot any Improvement which is and remains in violation of the covenants above set forth, or any of them for a period of thirty (30) days after delivery of written notice (in the manner provided in Section 6.13 hereof) of such violation from Developer, Declarant or the Association to the Owner of such Lot, then Developer, the Declarant or the Association shall have, in addition to the foregoing rights, the right to enter upon the Property where such violation exists and summarily to abate or remove same at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. In no event shall the failure of Developer, Declarant or the Owners to enforce any such covenants due to a particular violation be deemed to be a waiver of the right to do so as to such violation, or any subsequent violation.

**Section 6.6. Amendments.** Subject to the provisions of Section 6.7, the Owners may revoke, modify, amend or supplement, in whole or in part, any or all of the covenants and conditions contained in this Declaration and may release all or any part of the Property from all or any part of this Declaration. Any such revocation, modification, amendment or supplement shall be effective only if the Owners of at least two-thirds (2/3) of the Lots consent thereto and only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting Owners, certified by the Secretary of the Association and recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

**Section 6.7. Special Amendments.** Declarant and/or Developer reserve the right and power to record a special amendment (the "Special Amendment") to this Declaration at any time and from time to time which amends this Declaration:

(a) **Compliance.** 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 which performs (or may in the future perform) functions similar to those currently performed by such entities;

(b) **Inducement.** To induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages encumbering any Lot; or

(c) **Clerical/Typographical Error.** To correct clerical or typographical errors in this Declaration, or any exhibit hereto or any supplement or amendment thereto.

In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elects to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and irrevocably granted to Declarant to vote in favor of, make or consent to a Special Amendment on behalf of each Owner, as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot, and the acceptance thereof, shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to Declarant to vote in favor of, make execute and record Special Amendments. Subject to the provisions of Section 6.12 hereof, the right of Declarant to act pursuant to rights reserved or granted under this Section 6.7 shall terminate at such time as Declarant no longer holds title to any Lot. No amendment to this Declaration may be made which affects any right or obligation of Developer or Declarant without the prior written consent of the Declarant and Developer.

**Section 6.8. Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for development.

**Section 6.9. Land Trust.** In the event title to any Lot is conveyed to a titleholding trust, under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. No claim shall be made

against any such titleholding trustee personally for payment of any lien or, obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply, in whole or in part, against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.

**Section 6.10.**      Headings. All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine the feminine and neuter and vice versa.

**Section 6.11.**      Invalid or Unenforceable Provision. If a court of competent jurisdiction shall hold invalid or unenforceable any part of any covenant or provision contained in this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

**Section 6.12.**      Assignment by Developer or Declarant. Notwithstanding anything herein to the contrary, Declarant and/or Developer reserve the right to transfer, assign, mortgage or pledge any and all of either's respective privileges, rights, title and interest hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Cook County, Illinois. Upon such assignment, Declarant and/or Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor or assignee of the rights of Declarant and/or Developer shall have or incur any liability for the obligations or actions of any predecessor in interest.

**Section 6.13.**      Mailing Address. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that, if the Owner shall fail to so notify the Association, the mailing address for such Owner shall be the street address of the Lot owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mail, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant shall be sufficient and proper notice to such Owner and shall be deemed delivered on the third (3rd) day after deposit in the United States mail.

## ARTICLE VII

### Rights of First Mortgagees

In addition to all other rights of first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary:

**Section 7.01.**      Consent of First Mortgagees. Unless at least fifty-one percent

(51%) of the first mortgagees (based upon one vote for each first mortgage owned) of individual Lots ("First Mortgagees") have given their prior written approval, the Association shall not be entitled to:

(a) Amendment. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.

(b) Change in Determination of Assessments. Change the method of determining the obligations, assessments, dues, reserves for maintenance, repair and replacement of Common Area, or other charges which may be levied against a Lot and the Owner thereof as provided in Article V.

(c) Enforcement. By act or omission waive, abandon or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any dwelling or garage on a Lot, the exterior maintenance of any such dwelling or garage, the maintenance of party walls or driveways, or the upkeep of plantings on the Property.

(d) Insurance. Fail to maintain fire and extended coverage insurance on the insurable improvements to the Common Area in an amount not less than one hundred percent (100%) of the full insurable replacement cost.

(e) Use of Insurance Proceeds. Use hazard insurance proceeds for losses to any improvements to the Common Area for other than the repair, replacement or reconstruction of such improvements.

(f) Maintenance Responsibility. Change the responsibility for maintenance and repairs of the Common Area and/or Lots thereof as provided in Article IV.

(g) Self Management. Change to self-management when professional management had been required previously by an eligible mortgage holder.

(h) Change Interest in Common Area. Change the interests in the Common Area or rights to their use.

(i) Boundaries. Change the boundaries of any Lot.

(j) Voting Rights. Change the voting rights of any Member of the Association.

(k) Restrictions. Impose any restrictions on an Owner's right to sell or

transfer his or her Lot.

(l) Legal Status. By act or omission, seek to terminate the legal status of the Association after substantial destruction or condemnation.

Section 7.02. Books and Records. First Mortgagees shall have the right to examine the books and records of the Association at reasonable times during normal business hours.

Section 7.03. Rights of First Mortgagees. First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 7.04. Notice of Default. Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.

Section 7.05. Written Notice. First Mortgagees are entitled to timely written notice, if requested in writing of:

(a) Condemnation. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;

(b) Lot Delinquency. Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Lot on which it holds the mortgage;

(c) Lapse of Insurance. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Consent. Any proposed action that requires the consent of a specified percentage or eligible mortgage holders.

Section 7.06. Amendment. This Article VII may be amended only with the written consent of seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned).

## ARTICLE VIII

### PARTY WALLS

Section 8.01. Party Walls. Each wall which is built as a part of the original

construction of the Improvements upon the Property and placed on the dividing line between the Lots and/or serves two or more Dwellings, whether wall, ceiling, or floor, shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damages due to negligence or willful acts or omissions shall apply thereto.

**Section 8.02.**      **Shared Expenses.**      The cost of reasonable repair, maintenance and replacement of a party wall shall be shared equally by the Owners who make use of the wall except that the entire cost of repairing damage caused by the negligence or willful act or omission of one (1) Owner shall be paid for by that Owner. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the other Owners who shared the use of the wall shall contribute to the cost or restoration thereof equally without prejudice to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

**Section 8.03.**      **Negligence Acts.**      Notwithstanding any other provisions of this Article, an Owner who by negligence or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 8.04.**      **Contribution.**      The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and assigns in title.

## **ARTICLE IX**

### **Exterior Maintenance by Association and Owners**

**Section 9.01.**      **Association.**      In addition to other rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-Laws of the Association, the Association shall maintain, repair, replace and manage the Common Area and all facilities, improvements and equipment thereon, and pay for all expenses and services in connection therewith, including without limiting the generality of the foregoing the exterior landscaping and plants, snow removal from driveways and sidewalks and lawn mowing, comprehensive liability, hazard and other insurance (naming said Owner of a Lot as an additional insured), sidewalks, sidewalks for the Common Area as the Board deems to be in the best interests of the Association and its members. Any charge or expense in connection with expenditures for the Limited Common Areas shall be assessed only against that Lot to which such Limited Common Areas are assigned. In addition, the Association shall be responsible for the maintenance, repair, replacement, management and insurance of the exterior portions of the Dwellings, including but not limited to the roofs. Notwithstanding the foregoing, the Association shall not be responsible for the maintenance, repair, replacement and management of the windows, doors and garage doors with respect to the Dwelling, such



responsibility shall be the sole and absolute responsibility of the Owner of said Dwelling. In the event that the Board permits the installation of a fence, the Owner shall be responsible for the mowing of the lawn lying within the fenced area.

**Section 9.02.**      **Owner Responsibilities.** Except for that which the Association is to provide or is liable for as provided in this Declaration, each Owner, at his sole cost and expense, shall maintain, repair and replace his Lot, the residence located upon a Lot (including the interior thereof) and the improvements thereon, and shall keep the same sightly and in good condition and repair, including, without limitation, window washing and repair and garage door repair. The Board may elect to require that all plants and landscaping shall be the responsibility of the Owner of the Lot on which they are located. In the event any Owner shall fail to keep and maintain the Lot or the residence located upon a Lot as aforesaid, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternate remedies, shall have the right (but not the obligation), through its employees and agents or through independent contractors, upon reasonable notice or, in the case of an emergency, without notice, to enter upon any Lot and if required, into any residence located upon a Lot or garage, to repair and maintain the Lot, the residence located upon a Lot and the Improvements situated thereon. Each Owner, by acceptance of a deed for his Lot, hereby covenants and agrees to pay the Association the cost of such repairs and maintenance, upon demand, and the Association shall have a lien upon said Lot enforceable in the manner and to the extent herein set forth in this Declaration and the failure of such Owner to pay such costs shall carry with it the same consequences as the failure to pay any assessments levied hereunder when due, as herein provided. The Association shall be responsible for and shall repair any damage caused by it in the exercise of its rights hereunder.

## **ARTICLE X** **ARCHITECTURAL CONTROL**

**Section 10.01.**      **General Review and Approval.** Except for improvements constructed or installed by Developer and/or Declarant, either permanently or temporarily, no building, fence, wall, or other structure shall be commenced, erected or maintained upon the Property or upon any Lot, dwelling, garage or other improvement thereon, nor shall any exterior addition to or change or alteration therein be made, except such as are erected or approved by the Developer and/or Declarant, until written plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of the same and the approximate cost thereof shall have been submitted to and approved in writing by the Board or by an architectural committee composed of three (3) or more representatives appointed by the Board. Prior to the Turnover Date Developer shall have the right to exercise all matters with regards to the Architectural Committee.

**Section 10.02.**      **Television Antenna.** Notwithstanding the provisions of paragraph 10.1 herein, no outdoor television antenna shall be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot or upon any other portion of a Lot, or on any portion of the Common Area, except for a single

television mast antenna, without express written consent of the Board.

**Section 10.03.** Devices Designed for the Air Reception of Television Broadcast Signals. In compliance with Section 207 of the Telecommunications Act of 1996, and the rules and regulations promulgated thereby, devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution services or direct broadcast satellite services (collectively "Dishes") which promote a viewer's ability to receive video programming services, shall be permitted and may be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot; provided, however, Dishes shall be placed, to the extent feasible, in locations that are not visible from any street, provided, that this placement permits reception of any acceptable quality signal. Any and all Dishes permitted pursuant to this Section shall be installed in full compliance with all health, safety, fire and electrical codes, rules, regulations, ordinances, statutes and laws of the Federal Government, State of Illinois, Cook County and local municipalities and the Association (collectively "Health and Safety Laws"). All Dishes installed shall be properly grounded and installed in full compliance with all installation requirements of the manufacturer and all Health and Safety Laws. No Dishes shall be installed within the close proximity of any power lines. All Dishes installed, to the extent feasible, shall be painted or of such color so that the Dish blends into the background against which it is mounted, provided, however, said painting requirement does not prohibit or unreasonably interfere with the reception or signal received by the viewer. Notwithstanding anything contained herein to the contrary, the installation of any Dish shall be at the Owner's sole risk and sole cost and expense and, in the event the installation of any Dish causes any damage or destruction to any dwelling or other improvement installed by Developer or Declarant or any Lot or voids or impairs any warranty which runs for the benefit of the Developer or the Declarant, other Lot Owners or the Association, the Owner installing and owning said Dish shall be liable and responsible for and shall pay for any and all costs, expenses, fees and damages and shall repair any and all damage or destruction created thereby, including reasonable attorneys' fees and court costs. No Dish shall be affixed to, installed or placed upon the Common Area except upon the prior written consent of the Developer and the Declarant, not to be unreasonably withheld, and shall only be installed, affixed or placed upon the Common Area in conjunction with the Association's duly adopted rules and regulations. Notwithstanding anything contained herein to the contrary, any Owner installing and affixing any Dish to a Lot, improvement, dwelling or the Common Area hereby agrees to and shall indemnify, defend and hold Developer, Declarant and the Association harmless from and against any and all costs, expenses, suits, damages, destruction to any real property or any person, including attorneys' fees and court costs, caused by, either directly or indirectly, the installation, affixing and maintaining, whether by said Owner or a third party contractor, of a Dish pursuant to this Declaration. This Section 10.03 shall be binding upon and inure to the benefit of each Owner and his/her heirs, successors and assigns and shall be effective upon recordation in the Office of the Cook County Recorder of Deeds.

**Section 10.4.** Repair and Reconstruction. In the event of damage to or destruction of any dwelling, garage or other improvement installed by Developer or

Declarant on any Lot, the Owner or Owners from time to time of any such improvement covenant and agree that they will, within a reasonable time after such destruction, repair or rebuild the same in a substantial and workmanlike manner with materials comparable to those used in the original structure, and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as and of architectural design conformable with the exterior of such structure immediately prior to such damage or destruction. If an Owner fails to make the necessary repairs or reconstruction within thirty (30) days after written notice is sent, the Board may cause the same to be done and the cost thereof shall be charged to such Owner as his personal obligation and shall be a lien on his Lot.

## ARTICLE XI

### RIGHTS OF THE VILLAGE OF PALATINE

**Section 11.01. Easements.** The Village of Palatine is hereby granted an easement into, over, under, on and through the Common Areas and Lots for the purpose of repair, maintenance and replacement of the Common Areas. Such easement shall run with the land and shall remain in full force and effect.

**Section 11.02. Repair of Common Areas.** In the event the Association fails to maintain, repair and/or replace the Common Areas as set forth in this Declaration, the Village of Palatine ("Village") shall have the right, but not the obligation, to maintain, repair and replace the Common Areas. In the event the Village takes on the responsibility of repairing, maintaining or replacing any portion of the Common Areas, the Village shall have the right to charge the costs thereof back to the Association. In addition, the Village shall have the right to record a lien upon the Property with the Office of the Recorder of Deeds of Cook County, Illinois in the event the Association fails to pay or reimburse the Village for the costs expended by the Village in accordance with the terms and conditions of this Section. In addition, the Village shall have the right to collect its reasonable attorney's fees and court costs in enforcing the terms and conditions of this Declaration as well as charge interest on monies advanced by the Village at the rate of eighteen percent (18%) per annum from the date incurred through the date in which the Village has been fully reimbursed.

**Section 11.03. Amendments.** Notwithstanding anything contained in this Declaration to the contrary, this Declaration may not be modified or amended without the prior written consent of the Village, which consent shall not be unreasonably withheld or delayed.

## ARTICLE XII

### SPECIAL DEVELOPER AND DECLARANT RIGHTS

**Section 12.01**      Developer and Declarant as Association. Until the Turnover Date, the Developer and the Declarant shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized and empowered to take as herein provided. Prior to the Turnover Date, Developer and Declarant shall have the right to appoint all the members of the Board of Directors.

**Section 12.02**      Developer Maintains Common Area.      Until the Turnover Date, Developer and Declarant may, in their sole and absolute discretion, elect to maintain the Common Area and all signs and monuments located thereon and may pay all expenses and costs in connection with the Common Area, including without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area and such payments shall be credited against any amounts due the Association from Developer and/or the Declarant, including any Subsidy Payments (as hereinafter defined). To the extent that any real property taxes payable after the Turnover Date are attributable to the period prior to the Turnover Date, Developer and/or Developer shall reimburse the Association, on a pro rata basis, for such real property taxes. Declarant shall, not later than the Turnover Date, convey to the Association that portion of the Common Area to be owned by the Association.

**Section 12.03**      Developer and Declarant Use of Property.      Developer and Declarant shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests, invitees, to utilize roads, streets, Common Area and all other portions of the Property, excluding Lots conveyed to Owners, other than Declarant or Developer, for such purposes, at no cost and expense, until all Lots are sold. Developer and Declarant may at all times utilize, without cost, signage, lighting and establish temporary construction and sales offices, buildings and trailers and construct model homes to conduct its construction, sales and marketing of the Property.

**Section 12.04**      Developer Assessments Prior to Turnover Date.

Notwithstanding anything contained in this Declaration, prior to the Turnover Date, the Developer and the Declarant shall not be obligated to pay any amounts to the Association as an Assessment (either general or special). Prior to the Turnover Date, the Developer and/or Declarant may elect, but shall not be obligated, to pay to the Association payments ("Subsidy Payments") in an amount equal to the difference between the actual expenses incurred by the Association (not including reserves) and the amount of the Assessments paid by the Owners in accordance with the terms and conditions of this Declaration. The Declarant and/or the Developer may make Subsidy

Payments as needed, as determined by Developer and/or Declarant, during such period. A final accounting shall be made between Developer and/or Declarant and the Association with respect to the Subsidy Payments as soon as practicable after the Turnover Date. The Developer and the Declarant shall not be responsible for the payment of any amounts to the Capital Reserve. Upon the Turnover, the Developer and Declarant shall have no further obligation for payment of the Subsidy Payments.

### ARTICLE XIII

#### MAINTENANCE, MANAGEMENT AND USE OF AREAS RELATED TO U.S. ARMY CORPS OF ENGINEERS

**Section 13.01** U.S. Army Corps of Engineers. In addition to the provisions set forth in this Declaration, Declarant and Developer, and their successors and assigns, the Association, and subsequent Owners shall comply with, be bound and restricted by, and take subject to the U.S. Army Corps of Engineers ("Corps") requirements with respect to certain specific and defined areas within the Property, which are legally described on Exhibit "C", attached hereto and made a part hereof ("Conservancy Areas").

(a) The Conservancy Areas are subject to the Corps authorization and permit granted pursuant to application #200201115 ("Permit").

(b) The Conservancy Areas shall be transferred and conveyed to the Association subject to this Declaration upon completion of the work authorized under the Permit and the Association by acceptance of the conveyance shall be bound by the Permit and this Section 13.01.

(c) The Association shall be responsible for management, protection, and maintenance of the Conservancy Areas in compliance with the Permit and, in particular, shall be bound by and responsible for:

(i) The installation, reinstallation, and maintenance of appropriate signage, as permitted by the Village, which identifies the presence of the Conservancy Area as a Federally-protected wetlands and that the described activities in Article 13.01(d)(iii) are prohibited in these areas. The signs shall be located on the boundaries of the Conservancy Areas and shall be spaced every 300 feet or as otherwise prescribed by the Corps.

(ii) Any wetland areas created or preserved within the Conservancy Areas shall not be the subject of a future application to either the Corps or the Department of the Army except for the purposes of enhancing or restoring the mitigation area associated with the Permit.

(iii) All contractors undertaking any work authorized by the

Permit shall be aware of the terms and conditions of the Permit and a copy of the Permit shall be maintained at the location of the work during any such work.

(iv) The Association shall obtain and maintain as part of its books and records a copy of the final, as constructed, grading, planting, landscaping and utility plans ("Plans") which shall reveal the location of all remaining wetlands, created wetlands, adjacent upland buffers, and the Conservancy Areas as shown on the Plat of Subdivision.

(v) The Association shall receive and maintain as part of its books and records a copy of the project mitigation document and the 5 Year Enhancement Plan as referred to in Paragraph 10 of the Special conditions of the Permit. The 5-Year Enhancement Plan shall permit controlled burns in the Conservancy Areas.

(vi) The Association shall be responsible for the long-term maintenance and management of the Conservancy Areas consistent with the project mitigation document and the 5-Year Enhancement Plan, and shall be required to retain a qualified expert at the expense of the Association to conduct inspections of the Conservancy Areas, as required by the Corps, and to deliver a written report with the Association which describes with specificity that: (i) the Conservancy Areas are functioning as intended; (ii) there are no violations of the required signage or Plans; and (iii) no remediation or restoration work is required, or, if it is required, a description of the work required together with a cost estimate for the work.

(vii) The Association shall include in its budget specific line items and costs for the maintenance, monitoring, and restoration of the Conservancy Areas, including adequate reserves for meeting these obligations, which items and costs shall be included in the Assessments. Further, failure to collect such amounts from Owners so as to meet the obligations of the Association under this Section 13.01 shall constitute a breach of both this provision of this Declaration and the Permit.

(d) In addition to the foregoing provisions of this Section 13.01, the following conditions, restrictions, and grants shall also be applicable to the Conservancy Areas:

(i) The Corps will have the right to enforce by proceedings in law or equity the covenants, conditions, and restrictions set out herein and this right shall not be waived by one or more incidents of failure to enforce said right;

(ii) Employees of the Corps will have the right to view the

Conservancy Areas in its natural, scenic, and open condition and the right to enter at all reasonable times for the purpose of inspecting the Conservancy Areas to determine compliance with the covenants, conditions and restrictions herein;

(iii) Without prior express written consent from the Corps there shall be no:

(a) dredged or fill material placed on the Conservancy Areas except as necessary for completion of mitigation as provided pursuant to the Permit;

(b) commercial, industrial, agricultural, residential, developments, buildings, or structures, including but not limited to: signs, billboards, other advertising material, or other structures placed on the Conservancy Areas except as required or permitted under the Permit;

(c) removal or destruction of trees or plants, mowing, draining, plowing, mining, removal of topsoil, sand, rock, gravel, minerals, or other materials except as necessary for completion of mitigation as provided pursuant to the Permit and the associated special conditions;

(d) operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles, except as necessary for completion of mitigation as provided pursuant to the Permit;

(e) Application of insecticides or herbicides except as specified by the Permit or the Plans;

(f) Grazing or keeping of cattle, sheep, horses or other livestock;

(g) Hunting or trapping on the Conservancy Areas;

(h) Utility lines placed within the Conservancy Areas, including but not limited to: telephone or other communication lines, electrical, gas, water, or sewer. Existing lines may remain, but any maintenance work requiring intrusion into the Conservancy Areas shall require prior authorization by the Corps; or

(i) Modifications to the hydrology of the Conservancy Areas, either directly or indirectly, that would allow more water onto, or that would drain water away from, the Conservancy Areas.

Such prohibited modifications include, but are not limited to: ditching, changes to any water control structures, repairing of drainage tiles, or alterations to any naturally occurring structures.

This Section 13.01 of this Declaration may be changed, modified, or revoked only upon written approval of the Corps.

**[SIGNATURES APPEAR ON NEXT PAGE]**



IN WITNESS WHEREOF, Palatine Commons, LLC has caused its name to be signed to these presents by its Manager, as of the date and year first above mentioned.

**PALATINE COMMONS, LLC**, an Illinois limited liability company

By: InterCapital Commons, Inc.

Its: Manager

By: 

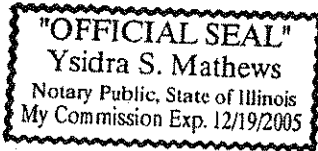
Name: Edward I. Biskind

Its: President

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Ysidra S. Mathews, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Edward I. Biskind, as President of InterCapital Commons, Inc., as Manager of **PALATINE COMMONS, LLC**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, on behalf of the company and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 22nd day of March, 2004.



Ysidra S. Mathews  
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

BEING A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IS DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF THE NORTHEAST 1/4 OF SECTION 15 AND THE WEST LINE OF THE NORTHEAST 1/4 OF SECTION 15; THENCE ON AN ASSUMED BEARING OF  $N00^{\circ}02'26''E$  ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SECTION 15, ALSO SAID LINE BEING THE WEST LINE OF CHESTNUT STREET A DISTANCE OF 243.11 FEET TO THE POINT OF BEGINNING; THENCE  $N00^{\circ}02'26''E$  ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SECTION 15 A DISTANCE OF 595.73 FEET; THENCE  $S89^{\circ}57'08''E$  A DISTANCE OF 1091.10 FEET; THENCE  $S00^{\circ}01'12''W$  A DISTANCE OF 146.21 FEET TO A POINT ON THE NORTH LINE OF MINNESOTA AVENUE; THENCE  $N89^{\circ}58'24''W$  ALONG THE NORTH LINE OF MINNESOTA AVENUE A DISTANCE OF 218.23 FEET; THENCE  $S00^{\circ}01'18''W$  A DISTANCE OF 198.12 FEET; THENCE ALONG AN ARC CONCAVE TO THE EAST WITH A RADIUS OF 60.00 FEET, AN ARC LENGTH OF 210.49 FEET AND A CHORD BEARING OF  $S16^{\circ}15'48''W$  TO A POINT ON THE WEST LINE OF CARTER STREET; THENCE  $S00^{\circ}01'18''W$  ALONG THE WEST LINE OF CARTER STREET A DISTANCE OF 17.38 FEET TO THE NORTHEAST CORNER OF LOT 5 OF BLOCK 10; THENCE  $N89^{\circ}59'42''W$  A DISTANCE OF 185.25 FEET TO THE NORTHWEST CORNER OF LOT 5 OF BLOCK 10; THENCE  $N00^{\circ}01'36''E$  A DISTANCE OF 60.00 FEET TO THE NORTHEAST CORNER OF LOT 15 OF BLOCK 10; THENCE  $N89^{\circ}59'38''W$  A DISTANCE OF 251.20 FEET TO A POINT ON THE WEST LINE OF COLFAX STREET; THENCE  $S00^{\circ}03'09''W$  ALONG THE WEST LINE OF COLFAX STREET A DISTANCE OF 120.00 FEET TO THE NORTHEAST CORNER OF LOT 6 OF BLOCK 9; THENCE  $N89^{\circ}59'53''W$  A DISTANCE OF 185.26 FEET TO THE NORTHWEST CORNER OF LOT 6 OF BLOCK 9; THENCE  $S00^{\circ}02'11''W$  A DISTANCE OF 60.00 FEET TO THE NORTHEAST CORNER OF LOT 12 OF BLOCK 9; THENCE  $89^{\circ}59'45''W$  A DISTANCE OF 218.29 FEET TO A POINT ON THE WEST LINE OF CHESTNUT STREET AND SAID POINT ALSO BEING THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT "B"

BY-LAWS OF THE  
PALATINE COMMONS TOWNHOME OWNERS ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the not-for-profit corporation is the Palatine Commons Townhome Owners Association ("Association"). The principal office of the Association shall be located at Palatine, Illinois, but meetings of members and directors may be held at such places within the State of Illinois, County of Cook as may be designated by the Board of Directors ("Board").

ARTICLE II

BOARD OF MANAGERS

Section 1. Administration of Property Prior to Election of Initial Board of Managers. Until the election of the initial Board of Managers, the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board of Managers by law and in the Declaration and By-Laws shall be held and performed by the Declarant. The election of the initial Board of Managers shall be held thirty (30) days after the occurrence of one of the following events:

- (a) Twenty (20) years from the date of the Declaration;
- (b) The sale and conveyance of legal title to all of the lots to owners other than Declarant or the Developer or an assignee of Declarant or the Developer; or
- (c) Declarant or Developer elect to voluntarily to turn over to the members the authority to appoint a Board.

Within sixty (60) days following the election of a majority of the Board of Managers other than the Declarant or the Developer, the Declarant and/or the Developer shall deliver to the Board of Managers:

- (1) All original documents pertaining to the Property (as defined in the Declaration) and its administration such as the Declaration, By-Laws, Articles of Incorporation, minutes and any rules or regulations governing the Property.

- (2) A detailed accounting by the Declarant and/or the Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Association;
- (3) Association funds, which shall have been at all times segregated from any other monies of the Declarant and the Developer;
- (4) A schedule of all personal Property, equipment and fixtures belonging to the Association, including documents transferring the Property;
- (5) Any contracts, leases, or other agreements made prior to the election of a majority of the Board of Managers other than the Declarant or Developer by or on behalf of Lot Owners.

Section 2. Board of Managers (Board of Directors).

(a) The Board of Directors, also known as the Board of Managers, shall consist of three (3) persons who shall be appointed or elected in the manner herein provided, or such greater number as may be determined by Board resolution. Prior to the Turnover Date the Board of Directors shall be appointed by Developer. Such members appointed by the Developer need not be a Property Owner. Each member of the Board shall be a Lot Owner and shall reside on the Property, provided, however, that in the event a Lot Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board, provided such person must reside on the Property unless he is a Board member nominated by the Developer.

(b) At the initial meeting, the Members of the Association shall elect three (3) Board Members. In all elections for members of the Board, each Voting Member shall be entitled to cumulate his votes in the manner provided by law and the candidates receiving the highest-number of votes with respect to the number of offices to be filled shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. The two (2) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the person receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. In the event of a tie vote, the members of the Board shall determine which members shall have the two (2) year terms and which member shall have the one (1) year term. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each, provided, however, Board members may succeed themselves. Members of the Board shall receive no compensation for their services, unless expressly authorized by the Board with the

approval of Voting Members having two-thirds (2/3) of the total votes. Vacancies in the Board prior to the Turnover Date and vacancies of Board Members appointed by the Developer shall be filled by appointment by the Developer. In all other cases, vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the next annual meeting or at a special meeting of the Voting Members called for such purpose. Except as otherwise provided in the Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present (at its meetings at which a quorum exists). A majority of the total number of the members of the Board shall constitute a quorum. Meetings of the Board may be called, held and conducted in accordance with such resolutions as the Board may from time to time adopt.

Section 3. Officers. The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall execute amendments to the Declaration and By-Laws; a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members, who shall mail and receive all notices, and who shall, in general, perform all the duties incident to the office of Secretary; a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. Provided, however, no officer shall be elected for a term of more than two (2) years. However, any officer may succeed himself in any office.

Section 4. Removal. Any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes, at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent annual meeting or special meeting called for that purpose, such meeting to be held within thirty (30) days after the special meeting which removed the Board-member.

Section 5. Meetings. The Board shall meet at least four (4) times annually, on the first Monday of February, May, August and November and at such other times as the Board deems necessary. Meetings of the Board shall be open to any Lot Owner. Notice of any such meeting shall be received at least forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice.

Section 6. General Powers of the Board. In addition to the duties and powers inherently charged to and possessed by the Association as an Illinois not-for-profit corporation and the duties and powers enumerated herein and in its Articles of Incorporation and Declaration, or elsewhere provided for, and without limiting the generality of the same, the Association shall have the following duties and powers:

(a) preparation, adoption and distribution of the annual budget for the Property;

- (b) levying of assessments;
- (c) collection of assessments from members;
- (d) owning, conveying, encumbering, leasing and otherwise dealing with Lots conveyed to or purchased by it;
- (e) keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;
- (f) to have access to each Lot from time to time as may be necessary for the maintenance, repair or replacement of the Common Area therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area or to other Lot or Lots;
- (g) to pay any amount necessary to discharge any mechanic's lien or other encumbrance against the Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Area, rather than merely against the interests therein of particular Lot Owners. Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred (including attorney's fees, if any) by the Board by reason of said lien or liens shall be specially assessed to said Lot owner or Lot Owners;
- (h) to maintain and repair any Lot if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Area or any other portion of the Property, and a Lot owner of any Lot that has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair mailed or delivered by the Board to said Lot Owner, provided that the Board shall levy a special assessment against such Lot Owner for the cost of said maintenance or repair;
- (i) The Board shall have the power to seek relief from or in connection with the assessment or levy of any general real estate taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful assessing body, which are authorized by law to be assessed and levied on the Common Area and to charge all expenses incurred in connection therewith to the Association.
- (j) the Board's powers hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Lots requiring an expenditure in excess of five percent (5%) of the then approved Budget for the Association, without in each case the prior approval of Voting Members having two-thirds (2/3) of the total votes;

(k) all agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board;

(l) the Board may adopt such reasonable rules and regulations, not inconsistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Lot Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all Lot Owners and Occupants and the Property shall at all times be maintained subject to such rules and regulations;

(m) the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board;

(n) nothing hereinabove contained shall be construed to give the Board, Association, or Lot Owners authority to conduct an active business for profit on behalf of all the Lot Owners or any one of them;

### ARTICLE III

#### COMMITTEES

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

Section 2. Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the members of the Board present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Lot owners, and the President of the Association, shall appoint the members thereof. Any member thereof may be removed whenever in the judgment of the Board the best interests of the Association shall be served by such removal.

Section 3. Each member of a committee shall continue as such until the next annual meeting of the Board or until his successor is appointed and shall have qualified



or until the Board shall relieve him from his role as a committee member, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

Section 4. One (1) member of each committee shall be appointed chairman.

Section 5. Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointment.

Section 6. Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with rules adopted by the Board.

#### ARTICLE IV

##### MEMBERSHIP MEETINGS

A. Meetings of the Lot Owners shall be held at the principal office of the Association or at such other place in the Village of Palatine, Illinois as may be designated in any notice of a Meeting, any Lot owners in writing may waive notice of a meeting or consent to any action of the Association without a Meeting.

B. Special Meetings of the Lot Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration or these By-Laws, require the approval of all or some of the Lot Owners, or for any other reasonable purpose. Said Meetings shall be called by written notice, authorized by a majority of the Board or by the Lot Owners having one-fourth (1/4) of the total votes, and delivered not less than five (5) days prior to the date fixed for said Meeting. The Notices shall specify the date, time and place of the Meeting and the matters to be considered.

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

#### ARTICLE V

##### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Lot owner and their

mortgagees. The Articles and the Declaration and By-Laws of the Association shall be available for inspection by any Lot Owner at the principal office of the Association, where copies may be purchased at reasonable cost. The Association shall also provide, upon written request by any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the Property, a copy of an audited financial statement for the preceding fiscal year.

#### ARTICLE VI

#### AMENDMENTS

Declarant and/or the Developer shall have the right to amend these By-Laws in accordance with its rights to amend the Declaration as set forth in Section 12.5 of the Declaration. These By-Laws may be amended or modified from time to time by action or approval of the Lot Owners entitled to cast two-thirds (2/3) of the total votes computed as provided in Section 3.1. Such Amendments shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

#### ARTICLE VII

#### INTERPRETATION

In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

EXHIBIT "C"

CONSERVANCY AREAS

THAT PART OF THE NORTHWEST ¼ OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND IS DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF THE NORTHEAST ¼ OF SECTION 15 AND THE WEST LINE OF THE NORTHEAST ¼ OF SECTION 15; THENCE ON AN ASSUMED BEARING OF N00°02'26"E ALONG THE WEST LINE OF THE NORTHEAST ¼ OF SECTION 15, ALSO SAID LINE BEING THE WEST LINE OF CHESTNUT STREET A DISTANCE OF 838.84 FEET TO THE POINT OF BEGINNING; THENCE S89°57'08"E A DISTANCE OF 1091.10 FEET; THENCE S00°01'12"W A DISTANCE OF 46.21 FEET; THENCE N89°58'48"W A DISTANCE OF 11.96 FEET, SAID POINT BEING THE NORTHEAST CORNER OF LOT 1-7; THENCE N89°58'24"W A DISTANCE OF 167.33 FEET TO THE NORTHWEST CORNER OF LOT 1-1; THENCE N80°11'32"W A DISTANCE OF 23.43 FEET TO THE NORTHEAST CORNER OF LOT 2-7; THENCE S80°41'59"W A DISTANCE OF 167.33 FEET TO THE NORTHWEST CORNER OF LOT 2-1; THENCE S57°47'44"W A DISTANCE OF 15.33 FEET TO THE NORTHEAST CORNER OF LOT 3-7; THENCE S77°32'15"W A DISTANCE OF 167.33 FEET TO THE NORTHWEST CORNER OF LOT 3-1; THENCE S65°49'48"W A DISTANCE OF 32.54 FEET TO THE NORTHEAST CORNER OF LOT 4-7; THENCE S 61°26'22"W A DISTANCE OF 101.09 FEET TO A POINT ON THE NORTH LINE OF LOT 4-1; THENCE N85°00'30"W A DISTANCE OF 24.81 FEET TO THE NORTHEAST CORNER OF LOT 7-7; THENCE N85°00'30"W A DISTANCE OF 167.33 FEET TO THE NORTHWEST CORNER OF LOT 7-1; THENCE N82°54'25"W A DISTANCE OF 16.88 FEET TO THE NORTHEAST CORNER OF LOT 8-7; THENCE N89°54'56"W A DISTANCE OF 126.83 FEET TO THE NORTHWEST CORNER OF LOT 8-1; THENCE S03°49'32"W A DISTANCE OF 100.22 FEET TO THE NORTHWEST CORNER OF FAIRVIEW CIRCLE; THENCE S00°02'39"W ALONG THE WEST LINE OF FAIRVIEW CIRCLE A DISTANCE OF 23.24 FEET TO THE SOUTHWEST CORNER OF FAIRVIEW CIRCLE; THENCE N89°57'34"W A DISTANCE OF 87.24 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST ¼ OF SECTION 15; THENCE N00°02'26"E A DISTANCE OF 280.21 FEET TO THE POINT OF BEGINNING, ALL ON COOK COUNTY, ILLINOIS.