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**PREPARED BY AND AFTER  
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**DECLARATION OF PARTY WALL RIGHTS, COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR CHESAPEAKE COMMONS**

**THIS DECLARATION is made and entered into this 22 day of March, 1990 by HARRIS BANK ST. CHARLES, not personally but solely as Trustee under the provisions of a Trust Agreement dated June 12, 1990 and known as Trust No. LT-2009 (hereinafter referred to as the “Declarant”).**

**WITNESSETH:**

WHEREAS, the Declarant is the owner and legal title holder of certain real estate in the City of Geneva, County of Kane and State of Illinois which real estate is legally described in Exhibit “A” attached hereto and by this reference made a part hereof; and

WHEREAS, Fox Development Group, Ltd., an Illinois corporation (the “Developer”) presently intends to construct on the Real Estate Townhouse Units and Common Areas (as those terms are hereinafter defined), which will require uniformity and continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in the Townhouse Units; and

WHEREAS, the Developer has deemed it desirable for the preservation of the values and amenities of the Real Estate, the Townhouse Units and the Common Areas (collectively referred to as the “Development”) to create an organization to which shall be delegated and assigned the powers of maintaining and administering the Common Areas and administering and enforcing the covenants and restrictions hereinafter contained and created; and

WHEREAS, there has been incorporated under the laws of the State of Illinois, as a not-for-profit corporation, the Chesapeake Commons Homeowners Association (the “Association”) for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires to establish for its own benefit and the mutual benefit of all future owners, tenants and occupants of the Development and any part

thereof, certain easement or rights in, over, under, upon and along the Development and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

WHEREAS, the Declarant may, from time to time for the purposes hereinafter enumerated, convey certain portions of the Development to the Association, as well as to various Owners (as hereinafter defined);

NOW, THEREFORE, the Declarant hereby declares that the Real Estate and such additions thereto as may hereinafter be made is and shall be transferred, held sold, conveyed and accepted subject to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements. The Declarant does hereby further declare that the following easements, covenants, restrictions, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquired right, title or interest in any portions of the Real Estate; (2) be binding upon and inure to the benefit of each Owner; and (3) run with the land subjected to this Declaration, to be held, sold and conveyed subject thereto.

## ARTICLE I

### DEFINITIONS

Section 1.01 "Association" shall mean and refer to the Chesapeake Commons Homeowners Association, an Illinois not-for-profit corporation.

Section 1.02 "Real Estate" shall mean and refer to that certain real estate described in Exhibit "A".

Section 1.03 "Common Areas" shall mean all portions of the Real Estate except for the Townhouse Units (including those portions reserved for the exclusive use of certain Owners as hereinafter set forth). The Common Areas shall be for the common use and enjoyment of all Owners (except for those portions reserved for the exclusive use of certain Owners as hereinafter set forth), and such uses thereto by way of easement or other grant from the Declarant, the Association or others as may be granted to or by the Association for the common use and enjoyment of the Owners.

Section 1.04 "Townhouse Unit" shall mean one (1) of two hundred twenty-eight (228) residential housing units, and that portion of the Real Estate underneath it which extends to the vertical plane of the surface of the exterior walls, which Townhouse Unit may be attached to one or more other Townhouse Units by common party walls and which are designed or intended for the exclusive use as living quarters.

Section 1.05 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Townhouse Unit, including contract

sellers, but excluding those having such interest merely as a mortgage. The term “Owner” shall include the Developer to the extent of the number of Townhouse Units owned by Declarant and also includes the interest of the Developer or of the Declarant as contract seller of any Townhouse Unit.

Section 1.06 “Member” shall mean and refer to any person or entity who holds membership in the Association.

Section 1.07 “Declarant” shall mean and refer to Harris Bank St. Charles, solely as Trustee aforesaid, its successors and assigns.

Section 1.08 “Board” shall mean the Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provisions of Article III.

Section 1.09 “Occupant” shall mean any person or persons other than the Owner in possession of a Townhouse Unit.

Section 1.10 “By-Laws” shall mean the By-Laws of the Chesapeake Commons Homeowners Association, which shall be adopted by the initial Board appointed by the Declarant.

Section 1.11 “Declaration” shall mean this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for Chesapeake Commons.

Section 1.12 “Transfer Date” shall mean the date which is the earlier of (a) the date on which one hundred seventy-one (171) of the Townhouse Units have been conveyed to Owners other than the Declarant; or (b) five (5) years after the first Townhouse Unit is conveyed to an Owner other than the Declarant. For purposes of this Section 1.12 (a), the term “conveyed to Owners” shall not include any conveyance to a mortgagee pursuant to or by reason of the terms and conditions of a mortgage which is or becomes a lien upon any portion of the Real Estate or the Development.

Section 1.13 “Material Amendment” shall mean any amendment to the Declaration, By-Laws or the Association’s articles of incorporation that would change any of the following in a manner other than as expressly provided herein: voting rights in the Association; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of the Common Areas; responsibility for the maintenance and repair of the Common Areas; allocation of interests in the Common Areas, or rights to use the Common Areas; boundaries of any Townhouse Unit; additions to or deletions from the Common Areas; expansion or contraction of the Development, or the addition, annexation or withdrawal of property from the Development; insurance or fidelity bonds; leasing of Townhouse Units; imposition of any restrictions on an Owner’s right to sell or transfer his or her Townhouse Unit;

requirements for the restoration or repair of the Development; or termination of the legal status of the association or the Development following substantial destruction or condemnation.

Section 1.14 “Developer” shall mean Fox Development Group, Ltd., an Illinois corporation, its successors and assigns.

Section 1.15 “City” shall mean the City of Geneva, Illinois, its elected and appointed officials, officers, and agents and employees.

Section 1.16 “Additional Real Estate” means the real estate legally described on Exhibit “B” attached hereto.

## **ARTICLE II**

### **MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee interest in any Townhouse Unit, including a contract seller, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Townhouse Unit merely as a mortgagee. Membership shall be appurtenant to and may not be separated from ownership of any Townhouse Unit. Ownership of a Townhouse Unit shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Townhouse Units. Voting rights with regard to each Member are set forth in Article III hereof.

## **ARTICLE III**

### **VOTING RIGHTS AND BOARD OF DIRECTORS**

Section 3.01 The Association shall have two classes of voting membership:

Class A. Class a Members shall be all those Owners defined in Article II, provided that the Declarant shall not be a Class A Member. Class A Members shall be entitled to one vote for each Townhouse Unit in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Townhouse Unit, all such persons shall be Members. The vote for such Townhouse Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Townhouse Unit. All Members holding any interest in a single Townhouse Unit shall together be entitled to cast only one vote for the Townhouse Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall initially be entitled to six hundred eighty-four (684) votes provided that the number of votes of the Declarant shall be reduced by three (3) votes for each Townhouse Unit conveyed by the Declarant to an Owner other than the Declarant.

Section 3.02 The provisions of Section 3.01 hereof shall be mandatory. No Owner of any interest in any Townhouse Unit shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of his obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any Owner shall be of any force or effect for any purpose.

Section 3.03 The Association shall have a Board of five (5) 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 that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board by majority vote if so provided by the articles of incorporation or By-Laws and that the first Board may be appointed by the Declarant (or its beneficiary or designee) and shall be three (3) in number. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the Association's articles of incorporation, this Declaration or the 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 any requirements of approval on the part of its Members. The articles of incorporation and By-Laws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

Section 3.04 The Association, being a not-for-profit corporation, shall not distribute to its Members any sums in the nature of dividends upon its shares. To the extent that funds shall not be required for current expenditures or for such reserves, the next monthly assessments may, in the discretion of the Board, be eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required, but such reinstatement or increase shall not be retroactive.

Section 3.05 Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly

interested in the Development or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

Section 3.06 The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Townhouse Units and the Common Areas and the use thereof provided, however, that no rule or regulation shall conflict with the Declarations or any applicable laws, ordinances or codes.

Section 3.07 A copy of this Declaration, the By-Laws and the Associations books, records and financial statements to be kept by the Board shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or the City, at such reasonable time or times during the normal business hours as may be requested by the Owner or the City.

## **ARTICLE IV**

### **PROVISIONS RELATING TO THE COMMON AREAS**

Section 4.01 Every Owner shall have a right and easement in, over and to the Common Areas for purposes of vehicular and pedestrian ingress and egress and use of the open spaces, the clubhouse, the swimming pool and other common facilities and the Common Areas shall be held for the use and benefit of each Owner, and such easement shall be appurtenant to and shall pass with the title to every Townhouse Unit subject to the following provisions:

a). The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication shall or transfer shall be effective unless an instrument signed by the Owners entitled to cast sixty-seven percent (67%) of the votes to the Class B membership, if any, has been recorded, agreeing to such dedication or transfer. In the event Class B membership has ceased, then sixty-seven percent (67%) of the votes to the Class A membership shall be required to make such dedication or transfer effective.

b). As part of the overall program of development of the Development into a residential community and to encourage the marketing and construction thereof, the Developer and its contractors, subcontractors, and their respective agents and employees shall, for sales and construction purposes only, have the right of use of certain portions of the Real Estate and the Common Areas without charge during the sales and construction period of the Development to aid in its construction and marketing.

- c). All decks and patios, if any, shall be a part of Common Areas and not a part of any Townhouse Unit; HOWEVER, each Owner shall be entitled to the exclusive use and possession of the deck and patio direct access to which is provided from his respective Townhouse Unit. Until such time as the Board determines to the contrary, each Owner shall be responsible for repair, maintenance and appearance of the decks and patios at his own expense, including, without limitation, responsibility for breakage, damage, malfunction and ordinary wear and tear. An Owner shall not paint or otherwise decorate or adorn, or change the appearance of any such deck or patio, in any manner contrary to such rules and regulations as may be established by the Board.
- d). Each Owner shall be entitled to the exclusive use and possession of one (1) garage parking space and one (1) open parking space which shall initially be assigned by the Declarant and shall thereafter be automatically transferred to the grantee of the Townhouse Unit.
- e). The deck or patio and designated parking spaces shall be deemed to be limited Common Areas and the right to the exclusive use thereof is hereby declared and established for the benefit of each Owner to whom the same has been assigned by the Declarant. The limited Common Areas so designated shall not thereafter be separated from such Townhouse Unit. Each deed, lease or other mortgage or other instrument which affects title to the Townhouse Unit shall be deemed to include the exclusive use of the limited Common Areas even though not mentioned therein. Subject to the foregoing, the Board may prescribe such Rules and Regulations with respect to limited Common Areas as the Board may deem fit, including the right to make special allocations of expenses relative thereto or the requirement that Owners clean and maintain the same.
- f). All parking spaces which have not been specifically assigned to Owners shall remain available generally for the Owners or their guests and invitees, and no Owner shall have the exclusive use or right to use such unassigned parking spaces.

Section 4.02 There shall be as part of the Common Areas:

- a). a system of driveways and parking lots to provide for ingress and egress from public roads and the parking of motor vehicles;
- b). a system of pedestrian walks to provide for ingress and egress to the Townhouse Units;
- c). a clubhouse, swimming pool and other recreational facilities as may be established by the Association from time to time; and
- d). landscaped areas, benches and other open areas.

Section 4.03 An irrevocable license and easement is hereby granted to the City and police, fire, water, health and other authorized officials, employees and vehicles of the City, to go upon the Common Areas at any time and from time to time for the purpose of performance of official duties and for the purpose of enforcing this Declaration and all City ordinances, rules and regulations, and the statutes of the State of Illinois and the United States. In addition, duly designated officials and employees of the City are hereby granted an easement to enter upon, on and over the Common Areas for purposes of maintaining, except as otherwise provided hereunder, any storm water detention area, drainage systems, storm and sanitary sewers, water mains, streets, sidewalks and any other utility or public service and to correct or eliminate nuisances or violations resulting from the failure to exercise maintenance responsibilities by the Developer or its successors and assigns, any Owner or the Association. Except in the event of emergency situations, the City shall serve written notice upon the Association setting forth the manner in which the Association has failed to comply with its obligations under this Declaration. Said notice shall include a demand that such deficiency be cured within said thirty (30) days from the date such notice is received. If such deficiency has not been cured within said thirty (30) days or any extension thereof granted by the City, the City may exercise said easement by entering the Common Areas and performing such maintenance or repair. The Association shall reimburse the City for all expenses incurred by it in performing such maintenance or repair. Said easement shall be exercised only to the extent and for such period of time that the maintenance or repair is required to accomplish the purpose hereinabove mentioned. It is the intention of this Section 4.03 to provide that the obligation for maintenance and repair of those main utility lines which service the Development (water, storm sewer and sanitary sewer) shall be born by the City and that the obligation for maintenance and repair of all other portions of the Common Areas, including those lines which service individual Townhouse Units (storm sewer, sanitary sewer and water) shall be borne by the Association. The City shall be under no obligation to exercise the rights herein granted except as it shall determine to be in its best interest. No failure to exercise any right herein granted to the City shall be construed as a waiver of that or any other rights.

Section 4.04 Any Owner may delegate, in accordance with the By-Laws, his right of ingress and egress to the Common Areas to the members of his family, Occupants, guests, invitees, or contract purchases who reside in a Townhouse Unit.

Section 4.05 the Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common areas to the Association on or before the Transfer Date, subject, however, to the provisions of Section 4.01 (a) hereof. Declarant shall reserve, upon conveyance to the Association of common Areas, a perpetual and non-exclusive easement for egress and ingress in, to and from each Townhouse Unit which it shall grant to each Townhouse Unit upon conveyance thereof.

Section 4.06 Declarant, the Developer and their respective agents, employees, guests and invitees shall have the right and easement of ingress and egress in, over, upon,



under and across the Common Areas for sales and construction purposes until Declarant has conveyed all of the Townhouse Units to the purchasers thereof.

Section 4.07

- a). The Association shall have the right and duty to build, repair and maintain the Common Areas.
- b). The Association shall have the right of ingress and egress over and upon the Common Areas for any and all purposes in connection with the use, maintenance, construction, operation, repair and reconstruction of the Common Areas.
- c). The Association, through resolutions of the Board, shall have the right to adopt rules and regulations governing the use, maintenance and administration of the Common Areas and for the health, comfort, safety and general welfare of persons using the Common Areas.

Section 4.08 Notwithstanding any provisions herein to the contrary, the easements herein created shall be subject to:

- a). The right of the Declarant to execute all documents and to all other acts and things affecting the Development which, in the Declarant's sole opinion, are desirable in connection with the Declarant's rights hereunder.
- b). Easements of records on the date hereof, including those easements granted on the Plat of Subdivisions recorded in the Office of those Recorder of Deeds of Kane County, Illinois as Document No. \_\_\_\_\_, and any easement which may hereafter be granted by the Declarant or the Association to any public utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water mains and pipes, or any other utility services serving any Townhouse Unit and to any provider of cable television service.

Section 4.09 Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Areas, to or for any public use or purpose whatsoever.

Section 4.10 Easements for serving the Common Areas and other properties with public utilities and municipal services are hereby granted to Commonwealth Edison Company, Northern Illinois Gas Company, Illinois Bell Telephone Company, the City, and all other suppliers of utilities serving the Common Areas and the respective successors and assigns, jointly and severally to install, lay, construct, renew, operate, maintain or remove, from time to time, conduits, cables, pipes, wire transformers,

switching apparatus and other facilities and appurtenances used in connection with serving the Common Areas and adjacent property with telephone communications, electric, sewer, gas, water, drainage, cable television, or other municipal services, upon, across and under the Common Areas; provided, however, that all such public utilities shall be installed underground. Notwithstanding any code or ordinance provisions which may provide otherwise, no public utility shall be installed over the ground and nothing herein shall be deemed or construed as permitting over the ground utilities.

Section 4.11 All areas of and facilities upon the Common Areas, including, but not limited to, the clubhouse, swimming pool, garages, any detention areas, all open spaces, all driveways, parking areas, pedestrian walks and all landscaping shall be maintained by the Association in such a manner as to ensure the proper use and functioning of such areas as facilities as originally designated and/or constructed.

Section 4.12 Any open space which is required to be dedicated to the Geneva Park District shall be a passive area and shall not be maintained by either the Association or the Geneva Park District as an active recreation area.

#### **ARTICLE V**

#### **MAINTENANCE OF TOWNHOUSE UNITS AND THE COMMON AREAS**

Section 5.01 The Association shall determine the need for and may carry out or cause to be performed all maintenance and repair to the exteriors of the Townhouse Units including, without limitations, exteriors, roofs, foundations, siding and trim, gutters and downspouts, fences, if any, porches, patio areas and wooden decks located on or serving a Townhouse Unit made necessary and desirable in the sole discretion of the Association as a result of natural or ordinary wear and deterioration. The Association shall, in addition, determine the need for and shall carry out or cause to be performed all such maintenance and repair of all gas, telephone and electrical lines incorporated in and forming a part of the Townhouse Unit as originally constructed that service more than one Townhouse Unit, shall maintain and repair all water, storm sewer and sanitary lines which service only one Townhouse Unit and such maintenance and repair shall not include the maintenance or repair of any furnaces, water heaters, stoves, refrigerators, washing machines or household appliances, sump pumps, glass surfaces, windows and patio doors, doors, electrical fixtures, air conditions, and compressors, or any other portion of said unit which services only one Townhouse Unit or the interior of any Townhouse Unit or portion thereof. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Townhouse Unit is subject. The Association shall, in addition, be responsible for the proper maintenance of all landscaping located on the Common Areas including, but not limited to, mowing the grass areas and the proper maintenance of all access roads and streets including the snowplowing of all sidewalks, parking areas and driveways located within the Common Areas and the storage of such snow on the Common Areas. The Association shall be responsible for the maintenance and repair of the exterior and

interior of the parking garages, clubhouse and swimming pool, including but not limited to the foundations, floors, walls, ceilings, roofs, utility lines, plumbing, heating, cooling and lighting fixtures, and any furniture, equipment and decorating. The obligations of the Association as contained in this Section 5.01 shall be limited, however, to the extent that there are funds available in the Association's account from the assessments collected pursuant to Article VI hereof. The Association shall have the right to assess each and every Owner for any costs incurred in connection with the maintenance and repair of the patio areas and/or wooden decks. The Association shall be responsible for maintenance and repair of any underground sprinkling system located in the Development.

Section 5.02 The Association shall pay, as agent and on behalf of the Owners and out of the funds furnished to it by them for such purpose, all tax and other governmental impositions, utility bills and insurance premiums levied upon the Common Areas or any part thereof.

Section 5.03 Each Owner shall have the obligation to maintain in good condition and repair his glass surfaces, windows, front entry doors, and electrical fixtures. Upon the failure of any Owner to maintain those areas that are not the maintenance responsibility of the Association, the Association, through its agents and employees, is hereby granted the right to enter into the Townhouse Unit thereon and make such reasonable repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, and the costs thereof shall become a lien upon the Townhouse Unit in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 5.04 There shall be no open trash or open refuse stored in any part of the Common Areas.

## **ARTICLE VI**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 6.01 The Declarant, for each Townhouse Unit owned within the Development, hereby covenants, and each Owner of any Townhouse Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments to be fixed, established and collected from time to time as hereinafter provided; and (b) special assessments to be fixed, established and 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 charge on the land and shall be a continuing lien upon the Townhouse Unit against which each such assessment is made. Each such assessment, together with such interests, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Townhouse Unit at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 6.02 The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Development and in particular for the improvement and maintenance of the Development, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, and of the Townhouse Units. Such uses shall include, but are not limited to, the costs to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Areas and of the maintenance of the exteriors of the Townhouse Units (except as otherwise provided herein) as may be from time to time authorized by the Board, and other facilities and activities including, but not limited to, caring for the grounds, landscaping, clubhouse, swimming pool, garages, parking areas and driveways, equipment, storm water management system, street lighting, if any, subdivision signage at the entrance to the Development in accordance with applicable City code, all sanitary and storm sewer and water lines which service individual Townhouse Units, structures and appurtenances (other than facilities and activities maintained by any governmental authority or utility company), and other charges required by this Declaration or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve fund for repair, maintenance, replacements, taxes and other charges as special herein. In addition, water, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners shall be paid for by the Association from the assessments levied hereunder. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund. At the time of closing of the sale of each Townhouse Unit by the Declarant, the Owner shall pay (in addition to the first monthly assessment) to the manager or managing agent, or as otherwise directed by the Board, an amount equal to three (3) times the first full monthly assessments for such Owner, which amount shall be used and applied as a working capital fund in the manner herein provided.

Section 6.03 The Board shall be authorized to fix the annual assessment in an amount sufficient to meet the costs and expenses as contained in Section 6.02.

Section 6.04 In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, maintenance or replacement (including those items of maintenance and repair set forth in Section 5.01 hereof) of a described capital improvement upon the Common Areas, including the necessary, fixtures and personal property related thereto, if any.

Section 6.05 Both annual and special assessments must be fixed at a uniform rate for all Townhouse Units, except as otherwise provided herein, and shall be collected on a monthly basis or as otherwise directed by the Association.

Section 6.06 The annual assessments provided for herein shall commence for all Townhouse Units on the first day of the month following the conveyance of the first Townhouse Unit, except as otherwise provided in Section 6.09 hereof. The Board shall fix the amount of the annual assessment against each Townhouse Unit at least thirty (30) days in advance of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of annual assessment shall be due on the first day of the month immediately preceding the effective date of the changed assessment. An Owner shall first be liable for payment of the full monthly assessment on the first day of the month following conveyance of title to him. This payment shall be in addition to the prorated portion of the monthly assessment which the Owner shall pay as of the date title to his Townhouse Unit is conveyed. The Association 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 Townhouse Unit have been paid and, if not paid, the amount of any such deficiency. Such certificates shall be conclusive of payment of any assessment therein.

Section 6.07 Any assessments which are not paid when due shall be delinquent. Such assessments, interest and all costs of collection shall be a continuing lien upon the Townhouse Unit against which each such assessment was made. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a rate equal to four percentage points over the prime rate announced from time to time by the First National Bank of Chicago, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the respective Townhouse Unit and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Townhouse Unit, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a foreclosure of a mortgage or deed of trust lien on real property.

Section 6.08 The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the Townhouse Units and recorded prior to the due date of the delinquent assessment, provided, however, that such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Townhouse Unit which became due and payable subsequent to the date the holder of said mortgage takes possession of the Townhouse Unit, accepts a conveyance of any interest in the Townhouse Unit or has a receiver appointed in a suit to foreclose his lien. The lien of the assessment shall not be affected by the sale or transfer of the corresponding Townhouse Unit unless the sale or transfer is pursuant to the foreclosure of the first mortgage thereon. In such a case, the transfer of title pursuant to the foreclosure shall extinguish the lien. However, neither the personal obligation of the transferor, if

any, nor the resulting prorated share of the burden of such non-payment or nonenforcement, imposed through a subsequent assessment, shall be affected.

Section 6.09 With regard to any Townhouse Units which are being constructed or have been completed and title has not been conveyed by the Declarant, the assessment respecting any such Townhouse Unit shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Townhouse Unit, provided, however, that in the event the Declarant enters into a lease or installment contract for any Townhouse Unit, then the Declarant shall, as of the first day of such lease or contract, be responsible for the payment of all assessments on those Townhouse Units on the same basis as any other Owner as provided in this Article. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Development and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, repair items or inventory items to the extent attributable to subsequent periods. The Declarant hereby agrees to satisfy any deficit or shortage in the Association's operating budget for any period in which the Declarant has paid reduced assessments pursuant to this Section 6.09, provided, however, that the Declarant's liability hereunder shall not exceed the amount by which the Declarant's assessments have been reduced below the assessments of each other Owner by reason of this Section 6.09. Until such time as the Transfer Date has occurred, the assessments covering the Townhouse Units which have not been sold by the Declarant may be paid on a monthly basis or, at its option, paid to the Association at the close of each calendar year without interest.

## **ARTICLE VII**

### **INSURANCE**

#### **Section 7.01**

a). The Association shall be responsible for procuring and maintaining comprehensive public liability insurance, including liability for injuries to and death of persons in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring the Association from liability in connection with the ownership and/or use of the Common Areas. The Association shall be further responsible for maintaining such policies of insurance for the Common Areas against loss or damage by fire and such other hazards contained in a customary "all risk" policy provided that such policies shall (i) provide that such policies may not be cancelled or substantially modified without at least thirty (30) days written notice to the Association and all mortgagees of record of the Common Areas; (ii) provide that all mortgagees of record of the Common Areas shall have the right to pay overdue insurance premiums and to obtain new coverage in the event the existing insurance policy lapses; (iii) provide for coverage in the amount of one hundred percent (100%) of

current full replacement value; and (iv) contain standard mortgage clause endorsements in favor of the mortgagee(s) of the Common Areas, as their respective interests may appear.

Replacement cost shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverage. The liability policy shall also name as insureds the Association's agents, officers, employees and each Owner.

b). The Association shall be responsible for procuring and maintaining a fidelity bond insuring the Association, the Board and the Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Owners in such amounts as the Board shall deem necessary but not less than one hundred fifty percent (150%) of the annual operating expenses of the Association including reserves. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be cancelled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to the Association.

c). The Association may also obtain such other kinds of insurance as the Association shall from time to time deem prudent in such amounts as the Association shall deem desirable including, but not limited to the following: earthquake and flood risk, directors and officers liability; worker's compensation and employer liability, and non-owned or hired automobile insurance.

Section 7.02 Each Owner shall procure and maintain in full force at all times insurance covering his Townhouse Unit consisting of, or providing all the protections afforded by, the insurance now generally described in an "all risk" policy to one hundred percent (100%) of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than One Thousand Dollars (\$1,000.00) and naming the Association as an additional insured on each policy. Such insurance shall be written by companies reasonably acceptable to the Association. A certificate of insurance evidencing such coverage shall be furnished to the Association and new certificates evidencing the renewal of each expiring policy of insurance shall be furnished to the Association in each case at least ten (10) days prior to the expiration date of the expiring insurance. In the event a Townhouse Unit or any portion thereof shall be damaged or destroyed by fire or other casualty and the Owner thereof shall cause it to be repaired, restored or reconstructed, as the case be, the repairs, restoration or reconstruction shall be in the same architectural style and design as was originally constructed and shall conform in all respects to all applicable laws or ordinances in force at the time of such repair, restoration or reconstruction. In the event of the total or substantial destruction of all of the

Townhouse Units, the architectural design of the Townhouse Units to be rebuilt and the materials to be used in constructing the same shall be agreed upon among the Owners thereof, and in the absence of agreement, the rebuilt Townhouse Units shall be substantially similar in architectural design as the original Townhouse Units and shall be constructed of comparable materials and quality of construction.

Section 7.03 Upon the failure of any Owner to procure and maintain the insurance required in Section 7.02 hereof or, in the event the Board, in its sole discretion, determines that the Townhouse Unit is underinsured, the Board shall have the authority to procure such insurance and/or additional insurance, as the case may be, and the costs thereof shall become a lien upon the Townhouse Units in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 7.04 All repairs, restoration or rebuilding pursuant to the provisions of this Article VII shall be carried out under such supervision and direction as the Board shall deem appropriate in order to assure the expeditious and correct completion of the work concerned, and the Owner or Owners of each Townhouse Unit which shall have been damaged or destroyed shall fully cooperate with, and abide by all instructions and directions of, the Association in connection therewith.

Section 7.05 In the event of such damage or destruction of a Townhouse Unit, the holder of the mortgage encumbering said Townhouse Unit shall cause the proceeds of any insurance required pursuant to Section 7.02 hereof to be utilized in restoring the Townhouse Unit pursuant to the terms of this Article.

Section 7.06 In any case in which the Owner or Owners concerned shall fail to carry out and see to the repair, restoration or rebuilding required by the provisions of this Article VII, the Association shall cause such repairs or rebuilding to be furnished, provided and installed, in the same manner as set forth in Section 7.03 hereof, provided, however, that to the extent the insurance proceeds referred to in Section 7.02 are insufficiency as to any Townhouse Unit, the particular Owner shall be responsible to the Association for such deficiency, and the Association shall have, and is hereby granted, a continuing lien on the Townhouse Unit for which any such repairs or rebuilding are furnished by the Association in the aggregate amount of (a) the amount that cost thereof exceeds insurance proceeds; (b) interest at a rate equal to four percentage points above the prime rate charged by The First National Bank of Chicago from time to time from the date of the Association's payment of such costs; and (c) reasonable attorneys' fees any court or other costs incurred by the Association in connection therewith, which lien shall bind such Townhouse Unit in the hands of such Owner, his heirs, devisees, personal representatives, grantees and assigns. In the event such Owner does not forthwith fully repay the Association therefore, as aforesaid, such lien shall be foreclosed against the Townhouse Unit by the Association in the same manner as hereinafter provided in connection with unpaid assessments. The Association's lien in this Section 7.06 provided for shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Townhouse Unit.



Section 7.07 In the event of any damage or destruction to the exterior portions of a Townhouse Unit and the loss is covered by policies of insurance, the Board shall have the authority to settle and adjust any claim under such policies without the consent of the respective Owner.

## **ARTICLE VIII**

### **INTERIM PROCEDURE**

Section 8.01 Until each of the various Townhouse Units shall have been conveyed by the Declarant to the first Owner thereof (or such Owner's nominee), the Developer shall, with respect to each unsold Townhouse Unit, have all the rights granted to and obligations imposed upon the Owners.

Section 8.02 Until the initial meeting of the Members, the Declarant (or its beneficiary or designees) may appoint the Board which shall have the same powers and authority as given to the Board generally.

Section 8.03 The powers granted to the Developer by Section 8.02 hereof shall include, without limitation, the power to assess upon and collect from the individual Owners, their respective proportionate shares of the funds required for the carrying out of all the duties and obligations of the Association.

## **ARTICLE IX**

### **RESTRICTIONS RELATING TO PROPERTY**

#### Section 9.01

- a). The Owners shall comply with all ordinances of the City in connection with the use of any Townhouse Unit.
- b). All buildings or structures in the Development shall be of new construction.

Section 9.02 Each Townhouse Unit conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

Section 9.03 The Townhouse Units shall be used only for residential purposes, as a private residence, and no professional business or commercial use shall be made of the same, or any portion thereto, and no resident's use of a Townhouse Unit shall endanger the health or disturb the reasonable enjoyment of any other Owner or resident, except as provided in Section 4.01 (b) and 9.06 herein and provided further, that the Townhouse

Units restrictions contained in this Section shall not be construed in such a manner as to prohibit any Owner from (a) maintaining his personal professional library therein; (b) keeping his personal, business or professional records or accounts therein; or (c) handling his personal, business or professional telephone calls or correspondence therefrom.

Section 9.04 Except as hereinafter provided in Section 9.06 hereof, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used as a residence at any time, either temporarily or permanently.

Section 9.05 No advertising sign [except on “For Rent” or “For Sale” sign of not more than five (5) square feet per Townhouse Unit], billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Townhouse Unit except as provided in Section 9.06 hereof. Any such sign shall be in compliance with all applicable City ordinances.

Section 9.06 The foregoing covenants of this Article IX shall not apply to the activities of the Association. The Developer may maintain, while engaged in construction and sales, activities, in or upon such portions of the Development as the Developer determines, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, temporary toilets, model units, signs and construction and storage trailers.

Section 9.07 No animals, livestock or poultry of any kind shall be raised, bred, or kept at the Development, except dogs, cats or other common household pets [not to exceed a total of two (2) pets] may be kept in a Townhouse Unit, provided, that they are not kept, bred or maintained for any commercial purposes and are in compliance with all applicable rules and regulations promulgated by the Association.

Section 9.08 All rubbish, trash or garbage shall be kept so as not to be seen from neighboring Townhouse Units and streets, and shall be regularly removed from the Development, and shall not be allowed to accumulate thereon.

Section 9.09 Drying of clothes shall be confined to the interior of the Townhouse Units.

Section 9.10 Without prior written authorization of the Board, no television, radio or ham radio antennas, or satellite dishes of any sort shall be placed, allowed or maintained on the exterior of any Townhouse Unit or any portion of the Common Areas, nor upon any structure situated in the Development.

Section 9.11 An Owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other properties or their owners.

Section 9.12 There shall be no change in any exterior color of any Townhouse Unit from the color scheme selected by the Owner upon the initial conveyance of the Townhouse Unit from the Declarant without the prior written approval of the Association. Any exterior storm doors shall be constructed of full view glass except for the frame with kickplate which shall have a white finish.

Section 9.13 There shall be no fences, screened porches, patios, decks or similar improvements commenced, erected, or maintained within the Development, other than those constructed by the Developer, if any, without the prior written approval of the Association and the issuance of any appropriate permit from the City and in any case, no such improvement shall encroach upon any portion of the Common Areas, except as otherwise allowed hereunder.

Section 9.14 No nuisance, noxious or offensive activity shall be carried on the Development nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or Occupants.

Section 9.15 The Development is hereby declared to be subject to an easement and right to and in favor of the Association and each and all of its employees, agents and instrumentalities for reasonable inspection of the exterior of the Townhouse Units from time to time and for the purpose of carrying out any and all of the obligations and functions with respect to such Townhouse Unit as are herein imposed upon or permitted to the Association.

Section 9.16 The Board may adopt such other rules and regulations from time to time governing the use and enjoyment of the Common Areas as the Board, in its sole discretion, deems appropriate or necessary.

Section 9.17 Subject to applicable City ordinance, parking areas and driveways shall be used for parking operable automobiles and private vans only and shall not be used for campers, recreational vehicles, trucks, buses, motorcycles, trailers, commercial vans, snowmobiles, boats or for any other purpose. The Board may authorize such vehicles parked in violation of this provision to be towed away and any such towing charge shall become a lien upon the Townhouse Unit of the owner of the vehicle in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

Section 9.18 The Common Areas are hereby subjected to a permanent easement appurtenant to any adjoining portion of the Common Areas to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining portion of the Common Areas, including roof structures which overhang and encroach upon a Townhouse Unit or the Common Areas, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the dominant

tenement, provided, however, that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section 9.18. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Declarant, notwithstanding any lapse of time since such improvements, material or other obstacle was placed in or over the easement area.

Section 9.19 No building, wall or other structure or landscaping shall be commenced, erected or maintained in the Development except such as are installed or approved by the Declarant in connection with the initial construction of the Townhouse Units, nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration made to the exterior portion of any Townhouse Unit, therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same, and the grading plan and landscape plan shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee of three (3) or more persons appointed by the Board. In the event the Board, or its architectural committee, fails to approve or disapprove such design and location within forty (40) days after said plans and specifications have been submitted to it, or in the event no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Section 9.19 will be deemed to have been fully complied with. The Board or its architectural committee shall, in addition, have the right to approve the general contractor responsible for performing the work in connection with the restoration of the exterior portion of any Townhouse Unit in the same manner as approval of plans and specifications is obtained. Any work performed in accordance with this Section 9.19 shall not be undertaken without the issuance of any appropriate permit by the City.

Section 9.20 Until such time as title to any Townhouse Unit is conveyed to a bonafide purchaser, the Declarant reserves the right to lease such Townhouse Unit upon such terms and conditions as the Declarant may, in its sole discretion, approve.

Section 9.21 No Owner shall be allowed to utilize that portion of the Common Area upon which any retention basins are located. No fishing, boating, swimming or any other recreational use of any retention basins shall be allowed.

## **ARTICLE X**

### **PARTY WALLS**

Section 10.01 All walls which serve two or more Townhouse Units, shall at all times be considered party walls, and each of the owners of Townhouse Units upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for the support of said Townhouse Units and for the support of any building constructed to replace the same, and shall have the right to maintain in or on said wall any pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained.

Section 10.02 No Owner of any Townhouse Unit nor any successor in interest to any such Owner shall have the right to extend said party wall in any manner, either in length, height or thickness.

Section 10.03 In the event of damage to or destruction by fire or other casualty of any party wall, including the foundation thereof, the Owner of any Townhouse Unit upon which such party wall may rest shall have the obligation to repair or rebuild such wall and the Owner of each Townhouse Unit upon which such wall shall rest, be served or benefited by shall pay his aliquot portion of the cost of such repair or rebuilding. All such repair or rebuilding shall be done within a reasonable time, in a workmanlike manner with materials comparable to those used in the original wall and shall conform in all respects to the laws or ordinances regulating the construction of building in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

Section 10.04 The foregoing provision of this Article notwithstanding, the Owner of any Townhouse Unit, or other interested party, shall retain the right to receive a larger contribution from another or others under any rule or law regarding liability for negligent or willful acts or omissions. The right of any Owner, or other interested party, to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's or other person's successors in title.

Section 10.05 The title of each Owner to the portion of each party wall within such Townhouse Unit is subject to a cross easement in favor of the adjoining Owner for joint use of said wall.

## **ARTICLE XI**

### **ADDITIONAL REAL ESTATE**

Section 11.01 The Declarant hereby reserves the right and option at any time and from time to time, within a period of seven (7) years after the date of the recording of this Declaration in the office of the Recorder of Deeds of Kane County, Illinois, to add on and subject to the provisions of this Declaration, all or any portion of the Additional Real Estate by recording an amendment or amendments to this Declaration executed solely by

the Declarant (each such instrument being hereinafter referred to as “Amendment to Declaration”) which shall set forth the legal description of the additional parcel or parcels within the Additional Real Estate to be added to and made subject to the provisions of this Declaration. Upon the recording of each such Amendment to Declaration, the additional parcels or parcels therein described shall be deemed subject to this Declaration and governed in all respects by the provisions of this Declaration. No portion or portions of the Additional Real Estate shall be subject to any of the provisions of this Declaration unless and until an Amendment to Declaration is recorded as aforesaid. The Owners shall have no rights whatsoever in or to any portion of the Additional Real Estate, unless and until an Amendment to Declaration is recorded as aforesaid. Upon the expiration of said seven (7) year period, no portions of the Additional Real Estate which have not theretofore been added to and made subject to the provisions of this Declaration shall thereafter be made subject to this Declaration. No portions of the Additional Real Estate must be submitted to this Declaration. Portions of the Additional Real Estate must be submitted to this Declaration. Portions of the Additional Real Estate may be added to and made subject to this Declaration at different times within such seven (7) year period. Except as may be required by applicable laws and ordinances, there shall be no limitations (a) on the order in which portions of the Additional Real Estate may be added to and made subject to this Declaration; (b) fixing the boundaries of these portions; or (c) on the location of improvements which may be made on the Additional Real Estate. Structures, improvements, buildings and units to be constructed on portions of the Additional Real Estate shall be compatible with the configuration of the Townhouse Units on the Real Estate in relation to density and use and similar in construction and architectural style to the Townhouse Units initially made subject to this Declaration. Subject to any limitation imposed by applicable laws and ordinances, the maximum number of Townhouse Units which may be constructed on the Real Estate and the Additional Real Estate shall be two hundred twenty-eight (228).

Section 11.02 Each Amendment to this Declaration shall include:

- a). An amendment to the legal description on Exhibit “A” attached hereto and made a part hereof which shall add to the legal description of the Real Estate that portion or portions of the Additional Real Estate made subject to this Declaration;
- b). An amendment to Exhibit “B” attached hereto which shall subtract from the legal description of the Additional Real Estate those portions of the Additional Real Estate made subject to this Declaration by such Amendment to Declaration.

Section 11.03 Any Townhouse Unit which is located on a portion of the Additional Real Estate which is made subject to this Declaration shall be entitled to, and be subject to, all the benefits and burdens of this Declaration as of the date of recording of the Amendment to Declaration. Any common areas which are part of the portion of the

Additional Real Estate which is made subject to this Declaration shall become Common Areas as of the date of recording of the Amendment to Declaration.

## **ARTICLE XII**

### **MISCELLANEOUS**

Section 12.01 The Association, the City or any Owner, their successors or assigns, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Owner found to be in violation by a court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorneys' fees incurred by the Association in prosecuting such action. The amount of such attorneys' fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Owner's Townhouse Unit, enforceable as other liens herein established. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so with the enforcement of any provisions hereunder, the violation of which shall also be considered a violation of any applicable City ordinance.

Section 12.02 Invalidation of any of these covenants or restrictions by judgment or order shall in no way affect any other provisions which shall remain in full force and effect.

Section 12.03 The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the City, the Owner of any Townhouse Unit 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, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants and restrictions of this Declaration may be amended during the first fifty (50) year period or within any successive ten (10) year period by an instrument signed by those Members (Class A and Class B) entitled to cast seventy-five percent (75%) of the total votes and as provided in Article III, Section 3.01 hereof and then properly recorded. These covenants and restrictions may also be cancelled or amended by an instrument signed by sixty percent (60%) of Owners executed and recorded within ninety (90) days of the expiration of any successive ten (10) year period, such cancellation or amendment to be effective on the date of commencement of the ten (10) year period in question. Notwithstanding the foregoing, no amendment shall be made to this Declaration without the consent of the Developer until all the Townhouse Units have been conveyed by the Declarant to the first owner thereof. Any instrument executed pursuant to the provisions contained in this Section shall be filed for record in the Office of the Recorder of Deeds of Kane County, Illinois, and a true, complete copy of such instrument shall be transmitted to each Owner promptly.

Section 12.04 If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities; (b) the rule restricting restraints on alienation; or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned shall continue and endure only after the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of George Bush, President of the United States living at the date of this Declaration.

Section 12.05 Any notices required under the provisions of this Declaration to be sent to any Member or Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member or Owner as it appears on the records of the Association at the time of such mailing.

Section 12.06 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 Kane County, Illinois, in order to avoid the expiration hereof or of any of the covenants, easements, agreements or other provisions herein contained under any of the provisions of Chapter 83 of the Illinois Revised Statutes presently in force commonly known as the Marketable Title Act, or any other law or statute of similar purport, they shall submit the matter to a meeting of the Members called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of Members shall vote against such rerecording, the Association shall have, and is hereby granted, power to so rerecord this Declaration or such part thereof, and such rerecording shall be binding upon all Owners in every way and with all the full force and effect as though such action were taken by each of said Owners and rerecorded document executed and acknowledged by each of them.

Section 12.07 All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon the Declarant and each subsequent holder of any interest in any portion of the Development and their grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Development or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

Section 12.08 In amplification of and in addition to the provisions contained in Article VI, Section 6.07, in the event of any default of any Owner, the Association, all other Owners and the City may and shall have all rights and remedies as shall otherwise be provided or permitted by law or in equity.



Section 12.09 In the event that any part of any Townhouse Unit encroaches or shall hereafter encroach upon any part of any other Townhouse Unit or the Common Areas, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Townhouse Unit of another Owner or if it occurred due to the willful conduct of any Owner.

Section 12.10 The Declarant reserves the right to rerecord the Plat of Subdivision referred to in Section 4.13 (b) hereof, to correct any inaccuracies, errors or mistakes contained therein, subject to the prior review and approval of the City.

Section 12.11 Any aggrieved Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board, by an action at law or in equity against the defaulting Owner or occupant of his Townhouse Unit.

Section 12.12 No Owner shall lease or rent his or her Townhouse Unit for a term less than thirty (30) days. Every lease of a Townhouse Unit shall be in writing and shall be made expressly subject to the requirements, rights, covenants, conditions, restrictions and easements of this Declaration and of the By-Laws.

Section 12.13 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class cooperative housing development.

Section 12.14 If all or any part of the Common Areas shall be taken through condemnation proceedings by any governmental authority having power to do so, the net proceeds of such taking shall be paid to and retained by the then owner of the Common Areas. If any part of one or more Townhouse Units shall be taken by one or more concurrent condemnation proceedings, the entire net proceeds of such taking or takings shall be divided equitably among, and retained by, the Owners of the Townhouse Units wholly or partially taken in such condemnation proceedings, subject to the rights of the holders of first mortgage liens on the Townhouse Units.

Section 12.15 The Declarant reserves 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) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing 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) to induce any of such agencies or entities to make, purchase, sell, insure

or guarantee first mortgages covering Townhouse Units; or (c) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the 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 or other evidence of obligation, or other instrument affecting a Townhouse Unit, and the acceptance thereof shall be deemed to be a granted and acknowledgement of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 12.15 shall terminate at such time as the Declarant no longer holds or controls title to any Townhouse Unit.

Section 12.16 This Declaration is executed by Harris Bank St. Charles, as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under this Declaration that Harris Bank St. Charles, as Trustee aforesaid, and not personally, has joined in the execution of this Declaration for the sole purpose of subjecting the title holding interest and the trust estate under said Trust No. LT-2009 to the terms of this Declaration; that any and all obligations, duties, covenants and agreements of every nature herein set forth by Harris Bank St. Charles as Trustee aforesaid, to be kept and performed, are intended to be kept, performed and discharged by the beneficiaries under said Trust No. LT-2009 or their successors, and not by Harris Bank St. Charles personally; and further, that no duty shall rest upon Harris Bank St. Charles, either personally or as such Trustee, to sequester trust assets, rentals, avails or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation, express or implied, arising under the terms of this Declaration, except where said Trustee is acting pursuant to direction as provided by the terms of said Trust No. LT2009 and after the Trustee has first been supplied with funds required for the purpose. In the event of conflict between the terms of this paragraph and of the remainder of the Declaration on any question of apparent liability or obligation resting upon said Trustee, the exculpatory provision hereof shall be controlling.