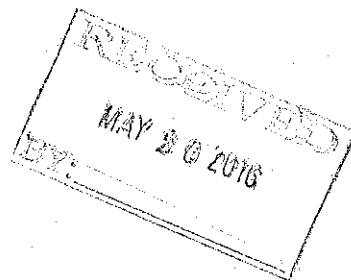




2016K022548  
SANDY WEGMAN  
RECORDER - KANE COUNTY, IL

RECORDED: 5/11/2016 11:45 AM  
REC FEE: 179.00 RHSPS FEE: 9.00  
PAGES: 135



**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR WATERFORD  
PLACE TOWNHOME ASSOCIATION**

RECORDING COVER PAGE

135

188  
1

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WATERFORD  
PLACE TOWNHOME ASSOCIATION**

**TABLE OF CONTENTS**

|                                                                  |           |
|------------------------------------------------------------------|-----------|
| <b>Preamble</b>                                                  | <b>2</b>  |
| <b>Article I – Definitions</b>                                   | <b>3</b>  |
| <b>Article II – Membership</b>                                   | <b>5</b>  |
| <b>Article III – The Association</b>                             | <b>6</b>  |
| Section 3.01: In General                                         | 6         |
| Section 3.02: Voting Members                                     | 6         |
| Section 3.03: Board                                              | 7         |
| Section 3.04: Voting Rights                                      | 7         |
| Section 3.05: Director and Officer Liability                     | 7         |
| Section 3.06: Representation                                     | 8         |
| Section 3.07: Dissolution                                        | 8         |
| Section 3.08: Security                                           | 8         |
| <b>Article IV – Easements and Property Rights</b>                | <b>8</b>  |
| Section 4.01: Property Subject to Declaration                    | 8         |
| Section 4.02: Title to Common Area                               | 9         |
| Section 4.03: Owners' Easements of Enjoyment                     | 9         |
| Section 4.04: Utility and Access Easements                       | 9         |
| Section 4.05: Delegation of Use                                  | 10        |
| Section 4.06: Encroachments and Overhangs                        | 10        |
| Section 4.07: Easements Run with the Land                        | 10        |
| Section 4.08: Severance of Ownership                             | 11        |
| Section 4.09: Association Easement                               | 11        |
| Section 4.10: No Dedication to Public Use                        | 11        |
| <b>Article V – Covenant for Assessments</b>                      | <b>12</b> |
| Section 5.01: Creation of Lien and Personal Obligation           | 12        |
| Section 5.02: Purpose and Use of Assessments                     | 12        |
| Section 5.03: Assessment Procedure-Annual Assessments            | 12        |
| Section 5.04: Revised Assessment                                 | 13        |
| Section 5.05: Itemized Accounting                                | 14        |
| Section 5.06: Special Assessments                                | 14        |
| Section 5.07: Uniform Assessment                                 | 15        |
| Section 5.08: Collection of Assessments                          | 15        |
| Section 5.09: Capital Reserve                                    | 15        |
| Section 5.10: Association rights upon non-payment of assessments | 15        |
| Section 5.11: No Waiver of Liability                             | 16        |

|                                               |                                              |    |
|-----------------------------------------------|----------------------------------------------|----|
| Section 5.12:                                 | Subordination of Lien to Mortgages           | 17 |
| Section 5.13:                                 | Receipt of Payments                          | 17 |
| <b>Article VI – Party Walls</b>               |                                              | 17 |
| Section 6.01:                                 | General Rules Apply                          | 17 |
| Section 6.02:                                 | Damage to Party Wall                         | 17 |
| Section 6.03:                                 | Contribution                                 | 18 |
| Section 6.04:                                 | Unenforceability of Private Agreements       | 18 |
| <b>Article VII – Architectural Controls</b>   |                                              | 19 |
| Section 7.01:                                 | Common Area                                  | 19 |
| Section 7.02:                                 | Townhouses and Units                         | 19 |
| Section 7.03:                                 | Townhouse Interiors                          | 20 |
| Section 7.04:                                 | Satellite Dishes and Antennas                | 20 |
| <b>Article VIII – Maintenance of Property</b> |                                              | 20 |
| Section 8.01:                                 | Maintenance by the Association               | 20 |
| Section 8.02:                                 | Maintenance by Owners                        | 21 |
| Section 8.03:                                 | Owner Failure to Maintain                    | 22 |
| Section 8.04:                                 | Willful and Negligent Damage                 | 23 |
| Section 8.05:                                 | Board's Discretion                           | 23 |
| <b>Article IX – Insurance</b>                 |                                              | 23 |
| Section 9.01:                                 | Hazard Insurance                             | 23 |
| Section 9.02:                                 | Trustee                                      | 24 |
| Section 9.03:                                 | Public Liability                             | 24 |
| Section 9.04:                                 | Fidelity Insurance                           | 24 |
| Section 9.05:                                 | Directors' and Officers' Liability Coverage  | 24 |
| Section 9.06:                                 | Owner Insurance                              | 25 |
| Section 9.07:                                 | Townhouse and Unit Alterations and Additions | 25 |
| Section 9.08:                                 | Release of Claims                            | 25 |
| Section 9.09:                                 | Other Insurance                              | 25 |
| Section 9.10:                                 | Inadequate Owner Insurance                   | 25 |
| Section 9.11:                                 | Certificate of Insurance                     | 26 |
| <b>Article X – Use Restrictions</b>           |                                              | 26 |
| Section 10.01:                                | Residential Purposes Only                    | 26 |
| Section 10.02:                                | Access                                       | 26 |
| Section 10.03:                                | Advertising and Signs                        | 26 |
| Section 10.04:                                | Obstruction of Common Area                   | 27 |
| Section 10.05:                                | Hazardous Use                                | 27 |
| Section 10.06:                                | Exterior Walls                               | 27 |
| Section 10.07:                                | Pets/Animals                                 | 27 |
| Section 10.08:                                | Noxious or Offensive Activity                | 27 |
| Section 10.09:                                | Development or Construction                  | 28 |
| Section 10.10:                                | Laundry and Rubbish                          | 28 |

|                                                                                               |                                           |           |
|-----------------------------------------------------------------------------------------------|-------------------------------------------|-----------|
| Section 10.11:                                                                                | Covering of Interior Surfaces             | 28        |
| Section 10.12:                                                                                | Parking                                   | 28        |
| Section 10.13:                                                                                | Leasing of Townhouses                     | 29        |
| Section 10.14:                                                                                | Rules and Regulations                     | 30        |
| <b>Article XI – Joint Connection of Sewer, Water,<br/>Electrical, Gas and Telephone Lines</b> |                                           | <b>30</b> |
| <b>Article XII – Remedies</b>                                                                 |                                           | <b>32</b> |
| Section 12.01:                                                                                | Enforcement                               | 32        |
| Section 12.02:                                                                                | Board Self Help                           | 32        |
| Section 12.03:                                                                                | Managing Agent Fees                       | 32        |
| Section 12.04:                                                                                | Fees Associated with Mortgage Foreclosure | 33        |
| <b>Article XIII – General Provisions</b>                                                      |                                           | <b>33</b> |
| Section 13.01:                                                                                | Amendment                                 | 33        |
| Section 13.02:                                                                                | Notices                                   | 33        |
| Section 13.03:                                                                                | Notice to Decedents                       | 34        |
| Section 13.04:                                                                                | Severability                              | 34        |
| Section 13.05:                                                                                | Rule Against Perpetuities                 | 34        |
| Section 13.06:                                                                                | Binding Effect                            | 35        |
| Section 13.07:                                                                                | Liberal Construction                      | 35        |
| Section 13.08:                                                                                | Unit Ownership in Trust                   | 35        |
| Section 13.09:                                                                                | Duration                                  | 36        |
| Section 13.10:                                                                                | Headings/Captions                         | 36        |
| Section 13.11:                                                                                | Gender Neutrality                         | 36        |
| Section 13.12:                                                                                | Conflicts                                 | 36        |
| Section 13.13:                                                                                | Townhouse Conveyance                      | 36        |
| Section 13.14:                                                                                | Proof of Payment                          | 36        |
| Section 13.15:                                                                                | Eminent Domain or Condemnation            | 37        |
| Section 13.16:                                                                                | Rights of Mortgagees                      | 37        |
| <b>Exhibit A – Legal Description of Property</b>                                              |                                           |           |
| <b>Exhibit B – By-Laws</b>                                                                    |                                           |           |

4

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR WATERFORD PLACE  
TOWNHOME ASSOCIATION**

This instrument, consisting of \_\_\_\_\_ pages, is recorded for the purpose of replacing, in its entirety, the Waterford Place Declaration of Covenants, Conditions, Restrictions and Easements (hereinafter referred to as the "Original Declaration"), recorded on March 26, 2001 as Document No. 2001K026258 in the Office of the Recorder of Deeds, Kane County, Illinois.

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", are adopted pursuant to the provisions of Article 13, Section 13.1 of the Original Declaration. This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, the text of which is set forth below, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", shall become effective following their approval by the Owners having at least three-fourths (3/4) of the total vote in the Association, with such Owners signing an instrument in support thereof, the providing of notice of such amended documents to all lien holders of record, and upon their Recording in the Office of the Recorder of Deeds, Kane County, Illinois.

## **PREAMBLE**

WHEREAS, the Waterford Place Townhome Association (hereinafter referred to as the "Association"), through its Board of Directors, administers the property legally described in Exhibit "A", which is attached hereto and made a part hereof (hereinafter referred to as the "Property");

WHEREAS, the Original Declaration was recorded on March 26, 2001 as Document No. 2001K026258 in the Office of the Recorder of Deeds, Kane County, Illinois;

WHEREAS, the Original Declaration was amended by the First Amendment to Waterford Place Declaration of Covenants, Conditions, Restrictions and Easements, which was recorded on June 1, 2012 as Document No. 2012K035281 in the Office of the Recorder of Deeds, Kane County, Illinois;

WHEREAS, the Board and the Owners of the Association desire to amend and restate the Original Declaration, as amended, replacing it, in its entirety, with this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B";

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", are adopted pursuant to Article 13, Section 13.1 of the Original Declaration having been approved by the Owners having at least three-fourths (3/4) of the total vote in the Association, with such Owners' approval being indicated by their signatures attached hereto;

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", shall become effective upon recordation in the Offices of the Recorder of Deeds of Kane County, Illinois; and

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association contains an affidavit by the Secretary of the Board certifying that notice of this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", has been mailed by certified mail to all lien holders of record.

NOW THEREFORE, the Waterford Place Declaration of Covenants, Conditions, Restrictions and Easements, as amended, is hereby amended and restated as follows:

## ARTICLE I

### DEFINITIONS

The following terms, when used in this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, shall have the following meanings, unless otherwise noted:

- Section 1.01:        **"Association"** shall mean and refer to Waterford Place Townhome Association, an Illinois not-for-profit corporation, its successors and assigns.
- Section 1.02:        **"Board"** shall mean and refer to the Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provisions of this Declaration and the By-Laws.
- Section 1.03:        **"Building"** shall mean and refer to a continuous structure containing single family residence units with party walls straddling the boundaries between such units.
- Section 1.04:        **"By-Laws"** shall mean and refer to the By-Laws of the Waterford Place Townhome Association, a copy of which is attached hereto as Exhibit "B" and by this reference made a part hereof.
- Section 1.05:        **"Charge or Charges"** shall mean the annual assessment, any special assessment levied by the Association and/or any other charges, expenses or payments which an Owner is required to pay or for which an Owner is liable under this Declaration, the By-Laws or any rules and regulations of the Association.
- Section 1.06:        **"Common Area"** shall mean and refer to all portions of the Property except the Units.
- Section 1.07:        **"Common Expenses"** shall mean and refer to the proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Association.
- Section 1.08:        **"County"** shall mean and refer to Kane County, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in, Kane County as of the Recording of this Declaration.
- Section 1.09:        **"Declaration"** shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements

for Waterford Place Townhome Association, as amended from time to time.

Section 1.10:        **"Emergency Access Lanes"** shall mean and refer to the ten foot (10') paved areas of the Common Area noted as emergency access lanes. These lanes are restricted for emergency vehicle use only for the sole purpose of access in and out of motor court areas.

Section 1.11:        **"Majority or Majority of the Unit Owners"** shall mean and refer to the Owners who own more than fifty percent (50%) of the total Units.

Section 1.12:        **"Member" or "Membership"** shall mean and refer to every person or entity holding Membership in the Association as provided in Article II hereof.

Section 1.13:        **"Mortgagee"** shall mean and refer to the lender of money to the owner of any interest in the subject real property to whom a title interest in said property is transferred to secure payment of the debt.

Section 1.14:        **"Mortgagor"** shall mean and refer to the owner of an interest in the subject real property who pledges said interest as security for a loan of money or other consideration.

Section 1.15:        **"Occupant"** shall mean any person or persons other than the Owner in lawful possession of a Unit.

Section 1.16:        **"Owner" or "Unit Owner"** shall mean and refer to the record holder of fee simple title to any Unit on the Property, whether such Owner shall be one or more persons or entities, the beneficiary or beneficiaries of a trust, shareholder of a corporation, or partner of a partnership, but excluding those persons or entities having any interest merely as security for the performance of an obligation.

Section 1.17:        **"Party Wall" or "Party Walls"** shall mean and refer to every wall, including the foundations therefor, which is built as part of the original construction of the Townhouses and placed on the boundary line between separate Units.

Section 1.18:        **"Person"** shall mean and refer to a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 1.19:        **"Plat"** shall mean the Plat of Re-subdivision for Waterford Place,

Recorded on October 27, 2000 as Document No. R2000K085928, and any and all amendments thereto.

Section 1.20:        **"Property"** means all the land, property and space comprising the Association, all improvements and structures erected, constructed or contained therein or thereon, including Buildings, Units, Townhouses and other buildings, all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to this Declaration and as legally described in Exhibit "A" attached hereto.

Section 1.21:        **"Record"** shall mean to record in the office of the Recorder of Deeds of Kane County, Illinois.

Section 1.22:        **"Townhouse"** shall mean and refer to a single-family dwelling constructed on a Unit and attached to one (1) or more townhouses by a Party Wall.

Section 1.23:        **"Unit"** shall mean and refer to each of the ninety-six (96) separate parcels of property which were created by the re-subdivision of lots 1 through 26 of Waterford Place (with four (4) Units in each such lot, except for lots 2, 6, 9 and 14 which contain two (2) Units each).

Section 1.24:        **"Unit Ownership"** shall mean and refer to a part of the Property consisting of one (1) Unit and easements appurtenant thereto.

Section 1.25:        **"Village"** shall mean and refer to the Village of Sugar Grove, Illinois, or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Village of Sugar Grove as of the Recording of this Declaration.

Section 1.26:        **"Voting Member"** shall mean and refer to the individual for each Unit who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in the Declaration and By-Laws.

## ARTICLE II

### MEMBERSHIP

Every Owner shall automatically, upon becoming an Owner and without any further act, be a Member of the Association, subject to the rights and obligations provided herein, in the Articles of Incorporation and the By-Laws, and shall remain a Member of the Association until such time as his or her ownership

ceases for any reason, at which time his or her Membership in the Association shall automatically cease. Each Owner, by acceptance of a deed or other conveyance of a Unit, thereby becomes a Member, whether or not the Declaration or such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Ownership of a Unit shall be the sole qualification for Membership in the Association. There shall be one (1) Membership per Unit. If the record ownership of a Unit shall be in more than one (1) Person, all such Persons shall be Members of the Association and the individual who shall enjoy the voting Membership attributable thereto (the "Voting Member" as more fully set forth herein and in the By-Laws) shall be designated by such Owner or Owners in writing to the Association. The Association shall be given written notice of any change of ownership of a Unit by the new Owner within ten (10) days after such change. The foregoing is not intended to include persons or entities that hold an interest merely for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit. No Owner shall have any right or power to disclaim, terminate, or withdraw from his, her or its Membership in the Association or from any of his, her or its obligations as such Member by abandonment of a Townhouse or Unit or for any other reason.

### **ARTICLE III**

#### **THE ASSOCIATION**

##### **Section 3.01: In General**

The Association shall be the governing body for all of the Owners for the administration and operation of the Property and for the maintenance, repair and replacement of the Common Area and certain portions of the Townhouse exteriors as provided herein. The Association shall act and operate as a Common Interest Community, as that term is defined in the Illinois Common Interest Community Association Act (765 ILCS 160/1-1 et. seq.), as from time to time amended. The Declaration and By-Laws shall be deemed to be amended as necessary to comply with any statute relating to Common Interest Communities, and the Board may Record such documents as are necessary to effect this compliance.

##### **Section 3.02: Voting Members**

The voting rights of the Members of the Association shall be vested exclusively in the Voting Members. One (1) individual shall be designated as the "Voting Member" for each Unit. The Voting Member or his or her proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the ownership of a Unit shall be in more than one (1) Person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Unit shall be designated by such Owner or Owners in writing to the Board

and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Unit as the Voting Member for such Unit.

**Section 3.03:**            **Board**

The Board shall consist of that number of directors provided for in the By-Laws, each of whom shall be an Owner; provided however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or agent or employee of a beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a director on the Board.

**Section 3.04:**            **Voting Rights**

All of the voting rights at any meeting of the Association shall be vested in the Voting Members, and each Voting Member shall have one (1) vote for each Unit that the Voting Member represents. Any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon the affirmative vote of a majority of the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

**Section 3.05:**            **Director and Officer Liability**

- (a) Neither the directors nor the officers of the Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the directors and officers, their heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. The liability of any Owner arising out of any contract made by such directors or officers or out of the aforesaid indemnity shall be limited to such proportion of the total liability thereunder as such Owner's percentage of assessment bears to the total assessment charged to all Owners in the Association.
- (b) It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, actions, suit or proceeding, whether civil, criminal,

administrative or other, in which any such director or officer may be involved by virtue of being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such director or officer.

**Section 3.06:**            **Representation**

The Association shall have the power and right to represent the interests of all of the Owners in connection with claims and disputes affecting the Common Area and more than one (1) Townhouse and/or Unit, and the Association shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Area or more than one (1) Townhouse and/or Unit on behalf of the Owners as their interests may appear.

**Section 3.07:**            **Dissolution**

To the extent permissible under applicable law, in the event of the dissolution of the Association, the Owners covenant and agree that all provisions contained herein with respect to the Property shall still apply and shall be in full force and effect. Prior to any dissolution of the Association, provisions shall be made as to how the responsibilities and obligations of the Association shall be handled by the Owners.

**Section 3.08:**            **Security**

The Association may, but is not obligated to, provide measures of security on the Property from time to time; however, the Association is not a provider of security and shall have no duty or obligation to provide any security on the Property. The obligation to provide security lies solely with each Owner individually. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

**ARTICLE IV**

**EASEMENTS AND PROPERTY RIGHTS**

**Section 4.01:**            **Property Subject to Declaration**

By the Recording of this Declaration, the Property is hereby made subject to the

provisions of this Declaration.

**Section 4.02: Title to Common Area**

Title to the Common Area shall be held by the Association.

**Section 4.03: Owners' Easements of Enjoyment**

Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easements shall be appurtenant to and shall pass with title of every Unit. The rights and easements of enjoyment created hereby are expressly subject to the following provisions:

- (a) The right of the Board to adopt reasonable rules and regulations governing the use, operation and maintenance of the Common Area.
- (b) The right of the Association, in accordance with the Declaration, By-Laws and Articles of Incorporation, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the individuals having easements of enjoyment under this Article.
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any municipality, public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast a majority of the total votes in the Association has been Recorded, agreeing to such dedication, transfer, purpose or condition.

**Section 4.04: Utility and Access Easements**

Each Owner, his or her guests, permitted invitees and licensees, the U.S. Postal Service, other permitted services, delivery persons and parties to contracts with the Association or Owners, the personnel of public and private utilities serving the Property, and governmental personnel shall have easement for ingress and egress to the subject Units over the Common Area, including the use of walkways, streets, Emergency Access Lanes (for emergencies only) and parking areas, on foot or by automobile vehicles.

**Section 4.05:**        **Delegation of Use**

Any Owner may delegate, in accordance with the By-Laws, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, his or her contract purchasers or other Occupants residing in the Townhouse.

**Section 4.06:**        **Encroachments and Overhangs**

- (a) If any portion of the Common Area shall encroach upon any Unit or if any Townhouse shall encroach upon any portions of the Common Area or any other Unit or Units, as the Common Area and Units are shown on the Plat, there shall be deemed to be reciprocal easements in favor of the Association as to the Common Area or the respective Owners of the Unit or Units involved, as the case may be, to the extent of such encroachment, so long as the same shall exist. Provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his or her agent.
- (b) Should any of the individual Townhouses be aesthetically and functionally designed with structures that may encroach or overhang adjoining Units or the Common Area, each such adjoining Units or Common Area shall be subject to a perpetual easement for any such overhang or encroachment.
- (c) The Person who is responsible for the maintenance of any encroaching improvement for which an easement therefor is granted under this Section shall continue to be responsible for the maintenance of such encroaching improvement and the Person who is responsible for the maintenance of the real estate upon which such improvement encroaches shall not have the duty to maintain, repair or replace any such encroaching improvement unless otherwise provided in this Declaration.

**Section 4.07:**        **Easements Run with the Land**

All the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration, including, without limitation, those easements referenced or established under this Article, shall be deemed to be covenants appurtenant and shall run with the land and shall inure to the benefit of and be binding upon any Person having at any time any interest or estate in any part of the Property with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof. Reference in any deed of conveyance, mortgage, trust deed, other evidence of obligation, or other instrument to the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this

Declaration or to this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document, regardless of whether a specific reference is made in such instrument to this Declaration. Provided, however, that in no event shall the failure of any such documents to recite or reference any of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration alter or lessen the effect or enforceability of said covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration.

**Section 4.08:**           **Severance of Ownership**

No Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit ownership without including therein both his or her interest in the Unit and the easements and covenants contained herein, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described herein.

**Section 4.09:**           **Association Easement**

The Association, and its successors, assigns, employees, duly authorized agents and hired contractors, shall have the right and power to come onto any Unit and Townhouse exterior for the purpose of furnishing the maintenance, painting, repairs, reconstruction, replacement and other services required to be furnished hereunder or enforcing its rights and powers hereunder. The Association and its successors, assigns, employees, duly authorized agents and hired contractors shall also have the right of ingress to, egress from, and parking on the Common Area, and the right to store equipment on the Common Area, for the purpose of furnishing any maintenance, repairs or replacements of the Common Area, Units and Townhouse exteriors, as required or permitted hereunder. Should it be necessary to enter a Townhouse in order to perform any of the maintenance, repairs, replacement or other services for which the Association is responsible hereunder, then employees, agents and contractors of the Association shall be entitled to entrance to a Townhouse by providing to the Owner an order from the Board or its managing agent.

**Section 4.10:**           **No Dedication to Public Use**

Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or

for any public use or purpose whatsoever. Any dedication made or to be made shall be expressed in writing and shall not be implied from anything stated herein.

## **ARTICLE V**

### **COVENANT FOR ASSESSMENTS**

#### **Section 5.01:      Creation of Lien and Personal Obligation**

Each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Unit owned by such Owner, all assessments and other Charges levied pursuant to this Declaration. Such assessments and other Charges, together with such interest, late fees, costs, property manager fees, charges and/or expenses, and reasonable attorney's fees incurred in the collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Unit against which such assessment or other Charge is made. Each such assessment or other Charge, together with such interest, late fees, costs, property manager fees, charges and/or expenses, and reasonable attorney's fees incurred in the collection thereof, shall also be the continuing personal obligation of the Person who was the Owner of such Unit at the time when the assessment or Charge fell due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

#### **Section 5.02:      Purpose and Use of Assessments**

All assessments levied by the Association shall be for the purpose of insuring the high standards of maintenance and operation of the part of the Property reserved or conveyed for the common use of all residents and Owners, the exterior of the respective Townhouses and any other portions of the Townhouses and Units for which the Association is responsible, the Common Area, and in general to promote the recreation, health, safety, and welfare of the residents of the Property, to administer the affairs of the Association, and to pay the Common Expenses.

#### **Section 5.03:      Assessment Procedure-Annual Assessments**

- (a) Each year, on or before December 1<sup>st</sup>, the Board shall adopt and furnish each Owner with a budget estimating the total amount necessary to pay the cost of all estimated Common Expenses during the ensuing fiscal year, together with a reasonable amount considered by the Board to be necessary for a reserve for Common Expenses. The budget shall set forth all such amounts with reasonable explanations and itemizations. The budget shall also set forth each Owners' proposed annual

assessment for the ensuing fiscal year, which each Owner shall be obligated to pay to the Association. The Board shall also establish the date or dates on which the annual assessments, or installments thereof, shall become due, however in the event the Board fails to do so, the annual assessments shall be due in twelve (12) equal installments on the first day of each month of the year for which they are assessed.

- (b) The Board shall provide to each Owner a copy of the proposed annual budget at least thirty (30) days, but not more than sixty (60) days, prior to the adoption of said budget by the Board. The failure or delay of the Board to prepare or serve the proposed annual budget on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay assessments, as provided in this Declaration, whenever the same shall be determined, and in the absence of any annual estimated assessment amount, the Owner shall continue to pay his or her assessment when due at the then existing rate established for the previous period until the next assessment, or installment thereof, which is due at least ten (10) days after such new annual budget shall have been mailed or delivered.
- (c) Provided that, if an adopted budget would result in the total assessments (annual plus special) payable in the budgeted fiscal year exceeding one hundred and fifteen percent (115%) of the total assessments (annual plus special) payable during the preceding fiscal year, then the Board, upon written petition signed by Owners representing at least twenty percent (20%) of the Units in the Association delivered to the Board within fourteen (14) days of the Board's adoption of the budget, shall call a meeting of the Owners to be held within thirty (30) days of the date of delivery of the petition to consider the budget. At said meeting, unless Voting Members representing a majority of the total Units in the Association cast votes to reject the adopted budget, the adopted budget is ratified.

**Section 5.04:        Revised Assessment**

If the annual assessment proves inadequate for any reason (including non-payment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 5.03 of this Article by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner at least ten (10) days prior to the adoption of said revised assessment by the Board, and such revised assessment shall take effect upon adoption by the Board or any date thereafter specified by the Board.

**Section 5.05:      Itemized Accounting**

On or before May 1 of each calendar year, the Board shall provide all Owners with a reasonably detailed summary of the receipts, Common Expenses, and reserves for the preceding budget year. Additionally, the Board shall either: (a) make available for review to all Owners an itemized accounting of the Common Expenses for the preceding fiscal year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves; or (b) provide a consolidated annual independent audit report of the financial status of all fund accounts within the Association.

**Section 5.06:      Special Assessments**

- (a) Special assessments may be levied by the Board to defray the expense, or build up reserves to pay the costs, in whole or in part, of: (i) any alterations, additions or improvements to the Common Area or any other property owned or maintained by the Association, or (ii) any unforeseen or unexpected expenses not set forth in the annual budget as provided in this Declaration.
- (b) Whenever the Board shall determine that there exists a need for levying a special assessment as herein provided, the Board shall adopt a resolution setting forth the need, amount, period of payment and due date or dates for the proposed special assessment. All special assessments must be approved by a majority of the directors on the Board. Provided that, if any special assessment adopted by the Board pursuant to this Section would result in the total assessments (annual plus special) payable in the budgeted fiscal year exceeding one hundred and fifteen percent (115%) of the total assessments (annual plus special) payable during the preceding fiscal year, then the Board, upon written petition signed by Owners representing at least twenty percent (20%) of the Units in the Association delivered to the Board within fourteen (14) days of the Board's adoption of the special assessment, shall call a meeting of the Owners to be held within thirty (30) days of the date of delivery of the petition to consider the special assessment. At said meeting, unless Voting Members representing a majority of the total Units in the Association cast votes to reject the special assessment, the special assessment is ratified.
- (c) Provided, however, that special assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Owner approval or the provisions of Subsection (b) or (d) of this Section. As used in this Section, "emergency" means a danger to or a compromise of the structural integrity of the Common Area or any of

the common facilities of the Association or a danger to the life, health or safety of the Members.

- (d) Provided further, however, that any assessments for additions or alterations to the Common Area or other Association owned property that are not included in the adopted annual budget shall be separately assessed and shall be subject to the approval of Voting Members representing a majority of the total Units.

**Section 5.07:           Uniform Assessment**

Both annual and special assessments shall be fixed at a uniform rate for all Units, unless otherwise provided in this Declaration.

**Section 5.08:           Collection of Assessments**

The Association shall collect from each Owner all assessments and other Charges payable by such Owner under this Declaration.

**Section 5.09:           Capital Reserve**

The Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Common Area and those portions of the Townhouses and Units with respect to which the Association is responsible for repair and replacement as well as for contingencies (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Area and the portions of the Townhouses and Units for which the Association is responsible and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Common Area and the portions of the Townhouses and Units for which the Association is responsible and the purchase of other property to be used by the Association in connection with its duties hereunder. Each budget shall disclose that percentage of the annual assessment, as applicable, that shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Association equal to such percentages multiplied by each installment of the annual assessment, as applicable, paid by such Owner.

**Section 5.10:           Association rights upon non-payment of assessments**

Any assessments (or installments thereof), other Charges or expenses, including, but not limited to, annual assessments, special assessments and duly imposed fines, which an Owner is required to make or is liable for hereunder which are not paid when due shall be deemed delinquent and the Board shall have the right to assess a late fee for the delinquent payment. Additionally, if an

assessment, Charge or expense is not paid within thirty (30) days after the due date, the Board shall have those rights and remedies to enforce such collection as shall be provided or permitted by law and equity including, but not limited to, bringing suit for and on behalf of the Association to enforce collection of the amount due, the costs of said suit, and other fees and expenses together with interest, including, but not limited to, reasonable attorneys' fees and managing agent fees associated with collection of unpaid assessments. Without limiting the foregoing, if any Owners shall fail to pay any assessments, Charges or expenses required to be paid, the Board shall have such rights and remedies:

- (a) The right to enforce the collection of such defaulting Owner's assessments, charges or payments, together with interest thereon, and all fees and costs including attorneys' fees, managing agent fees, and court costs, incurred in the collection thereof;
- (b) The right to foreclose the lien created in favor of the Association for unpaid assessments and other Charges, together with interest, costs, attorney's fees, managing agent fees and other expenses associated with the cost of collecting same provided for in Section 5.01 of this Article. The Board, 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 any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his or her interest at such foreclosure sale; and
- (c) The right to take possession of such defaulting Owner's interest in their Townhouse and Unit, to maintain for the benefit of all the Owners an action for possession in the matter prescribed in the Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. seq.), as amended, and to execute leases of such defaulting Owner's interest in their Townhouse and Unit and apply rents derived therefrom against such unpaid assessments, Charges or expenses.

**Section 5.11:      No Waiver of Liability**

No Owner may waive or otherwise escape liability for assessments or other Charges provided for in this Declaration for any reason. Without limiting the foregoing, no Owner may waive or otherwise escape liability for assessments or other Charges provided for in this Declaration by non-use of the Common Area, or non-use or abandonment of his or her Townhouse or Unit, or undertaking or performing the maintenance and other responsibilities of the Association as provided in this Declaration with respect to such Owner's Townhouse and Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or

performed by the Association or Board under this Declaration or the By-Laws, or for the inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, the Declaration or with any order or directive of any municipality, other governmental authority or the Association.

**Section 5.12: Subordination of Lien to Mortgages**

Any Recorded first mortgage or first trust deed made, owned or held by a bank, saving and loan association or insurance company or any institutional investor shall be superior to the lien of all Common Expenses which become due and are unpaid subsequent to the date of Recording of such first mortgage or trust deed except for such Common Expenses on the encumbered Unit which becomes due and payable after the date said encumbrancer either takes possession of the Unit, accepts a conveyance of any interest in the Unit, or has a receiver appointed in a suit to foreclose its lien.

**Section 5.13: Receipt of Payments**

The Association shall have the right to apply payments made by an Owner to any portion of the assessments or other Charges (including, but not limited to, late fees, fines, attorney's fees, and/or court costs) then currently due and owing by such Owner and/or such Owner's Townhouse and Unit as the Board deems appropriate. Such application of payments by the Association shall not be subject to or bound by any notation or restrictive endorsement contained upon the form of payment which attempts to restrict or designate for which portion(s) of the Charges such payment is intended.

**ARTICLE VI**

**PARTY WALLS**

Each Owner shall be subject to the following limitations and restrictions with respect to Party Walls constructed within the Property as follows:

**Section 6.01: General Rules Apply**

Party Walls shall have the meaning given to them in Article I of this Declaration, 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 damage due to negligence or willful acts or omissions shall apply thereto.

**Section 6.02: Damage to Party Wall**

- (a) If any Party Wall is damaged or destroyed through the act or acts of any Owner of a Townhouse which is adjacent to such Party Wall, or his or her

agents, servants, tenants, guests, invitees, licensees, or members of his or her family, irrespective of whether such act is willful, negligent or accidental, then such Owner shall forthwith proceed to rebuild or repair said Party Wall to as good a condition as such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Townhouse.

- (b) If any Party Wall is damaged or destroyed by fire or other casualty or is in need of reasonable repair or maintenance and the provisions of paragraph (a) of this Section do not apply, then such Party Wall shall be rebuilt, repaired or maintained by the Owners of the adjacent Townhouses to as good a condition as such Party Wall existed prior to such fire, casualty, or need for repair or maintenance. It is expressly provided that the costs of any such repair or maintenance to a Party Wall shall be borne by the Owners of the Townhouses contiguous thereto at the joint and equal expense of such Owners and as promptly as is reasonably possible and as may otherwise be required by this Declaration. Provided, however, that in the event that the destruction or damage to the Party Wall by fire or other casualty is covered by the insurance maintained by the Association in accordance with Article IX of this Declaration, the Association shall be responsible for the cost of repairs, to extent that insurance proceeds are available. The Association shall have no further obligation beyond other than that provided in this Section 6.02(b). Any Owner who has use of the Party Wall may be obligated for their portion of any deductible paid by the Association as a result of any insurable loss.

**Section 6.03:      Contribution**

Should any Owner incur expenses in connection with the reconstruction, repair or maintenance provided for in this Article, which expenses should, by the terms of this Article or any general rule of law pertaining to Party Walls, be borne by the Owner of the other Townhouse contiguous to such Party Wall, in whole or in part, the Owner incurring such expenses shall have a right of contribution from such other Owner, which right shall be appurtenant to the land and pass to such Owner's successor in title.

**Section 6.04:      Unenforceability of Private Agreements**

No private agreement of any adjoining Owners shall modify or abrogate any of the provisions contained in this Article, which shall be binding upon the heirs, administrators, successors and assigns of the Owners; but no Person shall be liable for any act or omission respecting such provisions, except such as took place while such Person was an Owner.

## ARTICLE VII

### ARCHITECTURAL CONTROLS

#### Section 7.01:       **Common Area**

No alterations, additions or improvements shall be made to the Common Area without the prior written approval of the Board. This provision, however, shall not prohibit the Association, at the direction of the Board, from making alterations, additions or improvements to the Common Area.

#### Section 7.02:       **Townhouses and Units**

No additions, alterations, changes or improvements (including, without limitation, structures, buildings, fences or walls) shall be erected, placed, altered or otherwise made to any Unit, exterior of a Townhouse or any part of the Townhouse that is visible from outside the Townhouse by an Owner without the prior written approval of the Board (or a committee appointed and designated by the Board for such purposes, if any) and compliance with all applicable governmental ordinances. The Board may withhold its approval to a proposed addition, alteration, change or improvement for any reason which the Board, in its absolute discretion, deems appropriate including, but not limited to, aesthetic judgments. The Board shall have the right to adopt reasonable rules and regulations governing such alterations, additions, changes or improvements. Any Owner desiring to make such an addition, alteration, change or improvement shall submit plans and specifications for same to the Board (or a committee appointed and designated by the Board for such purposes, if any) for its review. The Board (or the committee appointed and designated by the Board for such purposes, if any) may, but shall not be required to, condition its approval to the making of an addition, alteration, change or improvement to a Unit or Townhouse that requires the approval of the Board upon the Owner's agreement either (i) to be solely responsible for the maintenance, repair and replacement of such addition, alteration, change or improvement, subject to such standards as the Board may from time to time set, or (ii) if the addition, alteration, change or improvement is required to be maintained, repaired and replaced hereunder by the Association as part of the Common Expenses, to pay to the Association from time to time the additional cost of maintenance, repair and replacement as a result of the addition, alteration, change or improvement. If an addition, alteration, change or improvement that requires Board approval hereunder is made to a Townhouse or Unit by an Owner without the prior written approval of the Board (or a committee appointed and designated by the Board for such purposes, if any), then the Board may, in its discretion and in addition to all other rights of enforcement provided to the Association as set forth in the Declaration, By-Laws, rules and regulations or as provided at law or in equity, take any of the following actions:

- (a) Require the Owner to remove the addition, alteration, change or improvement and restore the Townhouse and Unit to its original condition, all at the Owner's expense; or
- (b) If the Owner refuses or fails to properly perform the work required under subsection (a) hereof, the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; provided, however, that in the event the item in violation is an item of construction that is part of or permanently attached to the Owner's Townhouse, then no such item of construction shall be removed or demolished by the Association without court order; or
- (c) Ratify the action taken by the Owner, and the Board may, but shall not be required to, condition such ratification upon the same conditions that it may impose upon the giving of its prior approval under this Section.

**Section 7.03:      Townhouse Interiors**

Except as otherwise provided in this Declaration, and the provisions of Section 7.02 notwithstanding, any Owner may make additions, alterations, changes or improvements within his or her Townhouse (except for those portions of the Townhouse that are visible from outside of the Townhouse) without the prior written approval of the Board. Provided, however, that such Owner shall be responsible for any damage to other Townhouses, Units and/or the Common Area occurring as a result of such additions, alterations, changes or improvements.

**Section 7.04:      Satellite Dishes and Antennas**

No radio or television antennas or satellite dishes shall be affixed or placed upon or on any portion of the Common Area without the prior written approval of the Board. The placement, installation and use of antennas and satellite dishes on or upon the Townhouses and Units by Owners shall be subject to all applicable provisions of the rules and regulations adopted by the Board. This provision, however, is not intended to interfere with the Owners' rights to adequate reception under the 1996 Telecommunications Act or other present, or future, federal or Illinois statutes.

**ARTICLE VIII**

**MAINTENANCE OF PROPERTY**

**Section 8.01:      Maintenance by the Association**

- (a) The Association shall furnish, as a Common Expense, the maintenance, repair, and replacement of the Common Area, including the maintenance

of private streets, Emergency Access Lanes, snow removal, sewer and water lines, and everything affecting the Common Area except as may be provided otherwise in this Declaration.

- (b) Except as otherwise provided in this Declaration, the Association shall furnish, as a Common Expense, the maintenance, painting, repair and replacement of the following portions of the Units and Townhouses:

- (i) Roofs;
- (ii) Gutters;
- (iii) Downspouts;
- (iv) Siding;
- (v) Trees;
- (vi) Shrubs;
- (vii) Grass;
- (viii) Walks;
- (ix) Fascia, soffit and trim;
- (x) Window sashes;
- (xi) Doors and door frames, except for garage doors and storm doors which shall be an Owner responsibility;
- (xii) Cement stoops;
- (xiii) Patios installed by the developer during the original construction of the Townhouse and Unit;
- (xiv) Front doorbell button, but not any other parts of the doorbell system;
- (xv) Driveways;
- (xvi) Those portions of utility lines and pipes that serve more than one (1) Townhouse;
- (xvii) Exterior light fixtures, except for light bulbs which shall be an Owner responsibility;
- (xviii) Address numbers for each Townhouse;
- (xix) Mailboxes, including any cluster mailboxes, but excluding the mailbox lock and key;
- (xx) Storm sewers on the Property; and
- (xxi) Snow removal from the parking areas, private streets, cluster mailboxes, driveways, service walks (unless otherwise designated by the Board) and front cement stoops (unless otherwise designated by the Board).

**Section 8.02: Maintenance by Owners**

- (a) Except as otherwise specifically provided for in this Declaration, each Owner shall be responsible for the maintenance, painting, repair, and replacement of his or her Townhouse and Unit at such Owner's sole cost and shall keep his or her Townhouse and Unit in good condition and repair. All of the maintenance, painting, repair, and replacement an

Owner performs on his or her Townhouse and Unit shall comply with the aesthetic standards adopted by the Board as further provided in Article VII of this Declaration.

- (b) Without limiting the provisions of subsection (a) of this Section, each Owner shall specifically be responsible for the maintenance, painting, repair and replacement of the following on such Owner's Townhouse and Unit:
- (i) All glass surfaces;
  - (ii) All window systems, except for the window sashes which are an Association responsibility;
  - (iii) All garage doors, door components and electric garage door opener;
  - (iv) Storm doors;
  - (v) Patios, except for those installed by the developer during the original construction of the Townhouse and Unit;
  - (vi) Doorbells, except the doorbell button;
  - (vii) Foundations;
  - (viii) Those portions of utility lines and pipes that serve only the Owner's Townhouse;
  - (ix) Exterior light bulbs;
  - (x) Mailbox lock and key; and
  - (xi) Watering of grass, trees, shrubs and other landscaping on the Owner's Unit and adjacent to the Owner's Unit; provided, however, that the Association shall have access to and the right to use any exterior water faucets/spigots and electrical outlets on a Townhouse if necessary to perform any of the maintenance, repair, replacement or other obligations of the Association or exercise any of the rights of the Association.

**Section 8.03:      Owner Failure to Maintain**

If, in the judgment of the Board, an Owner fails to maintain those portions of the Owner's Townhouse and Unit which the Owner is responsible for maintaining hereunder in good condition and repair or the appearance of such portions is not of the quality of that of other Townhouses and Units in the Property or in compliance with rules and regulations adopted by the Board from time to time, then the Board may, in its discretion, take the following action:

- (i) Advise the Owner of the work that must be done and allow the Owner at least thirty (30) days (or less in the case of an emergency) to cause the work to be done; and
- (ii) If the work is not done to the satisfaction of the Board, in its sole

judgment, then the Board may seek injunctive relief, levy a fine and/or enter upon such Owner's Townhouse exterior and Unit to cause such work to be done and the cost thereof shall be a Charge payable by the Owner to the Association upon demand in the same manner as unpaid assessments.

**Section 8.04:**      **Willful and Negligent Damage**

If, due to the act or omission of an Owner, his or her family, tenants, servants, pets, guests or invitees or other authorized Occupant of the Owner's Townhouse, damage is caused to the Common Area or another Townhouse or Unit and maintenance, painting, repairs, or replacements shall be required thereby, which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, painting, repairs, and replacements, as determined by the Board, and the cost of such maintenance, painting, repairs, or replacements, and any damage, shall be added to and become a part of the assessment to which such Owner's Unit is subject and the Association shall have a lien upon said Unit 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.

**Section 8.05:**      **Board's Discretion**

The Board shall have exclusive authority to take or refrain from taking any action pursuant to this Article. All expenses which, pursuant to this Article, are chargeable to any Owner, may be specifically assessed to such Owner and shall be payable by such Owner as prescribed by the Board.

**ARTICLE IX**

**INSURANCE**

**Section 9.01:**      **Hazard Insurance**

The Association shall obtain insurance for the Property against loss or damage by fire and such other hazards for the full insurable replacement cost of the Common Areas, Townhouses and Units, including Party Walls adjacent thereto. The full insurable replacement cost of the Townhouses and Units may, at the discretion of the Board, include the replacement cost value of betterments and improvements made in, and to, Townhouses and Units by an Owner. The insurance policy obtained shall include, but is not limited to, protections afforded by so-called fire and extended coverage, additional extended coverage, vandalism and malicious mischief coverage. Insurance shall be issued by companies authorized to transact business in the State of Illinois.

**Section 9.02:        Trustee**

The Association 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 Association 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 Common Expenses.

**Section 9.03:        Public Liability**

The Association shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner (only for that portion of the Property not reserved for their exclusive use), the Association, its officers, members of the Board, the manager and managing agent of the Association, and their respective employees and agents, from liability in connection with the Common Area, streets and sidewalks adjoining the Property, and insuring the officers of the Association and members of the Board from liability from their good faith actions. The insurance shall cover claims of one or more insured parties against the other insured parties. The insurance shall contain a waiver of any rights of subrogation by the insuring company against any of the above named persons. The premiums for such insurance shall be Common Expenses.

**Section 9.04:        Fidelity Insurance**

- (a) The Association shall obtain and maintain fidelity insurance covering all Persons who control or disburse funds of the Association for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody or control of the Association. The costs of such insurance shall be a Common Expense.
- (b) All management companies, if any, that are responsible for the funds held or administered by the Association shall maintain and furnish to the Association a fidelity bond for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody of the management company at any time.

**Section 9.05:        Directors' and Officers' Liability Coverage**

The Association shall obtain as a Common Expense directors' and officers' liability insurance at a level deemed reasonable by the Board.

**Section 9.06:      Owner Insurance**

Each Owner shall obtain his or her own insurance on the contents of his or her Townhouse, furnishings and personal property therein, his or her personal property stored elsewhere on the Property, 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 Common Expenses as provided in this Declaration. The Board may, but does not have to, require each Owner to name the Association as an additional insured on any individual policy. No Owner shall cause or permit anything to be done or kept on the Property that will result in the cancellation of insurance on such Owner's Unit or Townhouse, any other Unit, Townhouse or the Common Area.

**Section 9.07:      Townhouse and Unit Alterations and Additions**

The Association shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Owner to his Unit or Townhouse unless and until such Owner shall request the Board in writing so to do, and shall make arrangements satisfactory to the Board to reimburse the Association for any additional premiums attributable thereto. Upon the failure of such Owner so to do, the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit and/or Townhouse to a condition existing prior to the making of such additions, alterations or improvements.

**Section 9.08:      Release of Claims**

Each Owner hereby waives and releases any and all claims which he or she may have against any other Owner, the Association, its officers, members of the Board, the managing agent of the Association, if any, and their respective employees and agents for damage to the Property, the Common Area, or to any personal property located therein 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 such waiver is legally authorized by the insurance carrier.

**Section 9.09:      Other Insurance**

The Association shall have the right, but not the obligation, to obtain any other liability insurance or other kinds of insurance protection that the Board deems necessary.

**Section 9.10:      Inadequate Owner Insurance**

Whenever the Association shall be satisfied that any insurance to be maintained by any Owner pursuant to this Article is not in force, or if the same is about to expire and will not be renewed prior to expiration, the Association shall have the right, but not the obligation, to proceed to obtain that insurance or lesser

coverage that it may deem advisable, and the cost thereof shall be due from the delinquent Owner so insured to the Association forthwith upon demand, in the same manner and upon the same terms as any assessment payable pursuant to this Declaration or the By-Laws.

**Section 9.11:      Certificate of Insurance**

Each Owner shall deposit with the Association a certificate or certificates of insurance setting forth therein the coverage required pursuant to this Article and the certificate or certificates shall not be cancelable except upon thirty (30) days prior written notice to the Association.

**ARTICLE X**

**USE RESTRICTIONS**

**Section 10.01:      Residential Purposes Only**

Each Townhouse and Unit shall be used for single family residential purposes only. No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise, designed for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property. Provided, however, that no Owner shall be precluded with respect to his or her Townhouse, from (i) maintaining his or her personal professional library therein, (ii) keeping his or her personal, business or professional records or accounts therein, or (iii) handling his or her personal, business or professional telephone calls or correspondence therefrom.

**Section 10.02:      Access**

The Common Area shall be used only for access, ingress and egress to and from the respective Units by the respective Owners and Occupants residing therein and their respective guests, household help and other authorized visitors, and for such other purposes which are incidental to the residential use of the respective Units. The Emergency Access Lanes are for emergency vehicles only and are to remain unobstructed at all times.

**Section 10.03:      Advertising and Signs**

Except as otherwise approved by the Board in the rules and regulations, no advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on the Property. Provided, however that each Owner shall be permitted to display not more than one (1) "For Sale" sign of not more than nine (9) square feet on his or her Unit subject to the rules and regulations adopted by the Board, which may restrict the location that such "For Sale" signs may be placed on a Unit.

**Section 10.04:**      **Obstruction of Common Area**

The use, maintenance and operation of the Common Area shall not be obstructed, damaged or unreasonably interfered with by any Owner, nor shall anything be stored in the Common Area without the prior written consent of the Board. This includes, but is not limited to, basketball hoops, skateboard ramps, lawn furniture, toys and swing sets. The Common Area is planned for the use and enjoyment of all Owners, Occupants and their guests. No one or no group shall appropriate any part of the Common Area for their special uses or activities, and no activities shall be allowed which interfere with the peaceful enjoyment of the Property by others. This includes, but is not limited to, basketball playing and skateboarding.

**Section 10.05:**      **Hazardous Use**

Nothing shall be done or kept in any Unit, Townhouse or in the Common Area which will increase the rate of insurance applicable to residential buildings or the contents thereof without the prior written approval of the Board. No waste shall be committed in the Common Area.

**Section 10.06:**      **Exterior Walls**

Owners shall not cause or permit anything to be placed on the outside walls of the Townhouse and no sign, awning, or canopy shall be affixed to or placed upon the exterior walls or roof, or any part thereof, without the prior written consent of the Board as further provided in Article VII of this Declaration.

**Section 10.07:**      **Pets/Animals**

No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any Townhouse, Unit, Common Area or elsewhere on the Property; provided, however, that dogs, cats or other household pets may be kept in Townhouses subject to rules and regulations adopted by the Board, including, but not limited to, rules and regulations restricting the number of any such pets, and provided further that they are not kept, bred or maintained for any commercial purpose. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board to the Owner of the Townhouse containing such pet and the decision of the Board shall be final.

**Section 10.08:**      **Noxious or Offensive Activity**

No unlawful, noxious or offensive activity shall be carried on, caused, allowed or conducted on the Property, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the

Owners or other Occupants.

**Section 10.09:      Development or Construction**

Nothing shall be done in a Townhouse or Unit or in, on or to the Common Area which will impair the structural integrity of any Building. No Owner shall overload the electric wiring in a Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

**Section 10.10:      Laundry and Rubbish**

No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed on any part of the Common Area or any exterior portion of a Townhouse or Unit. The Property shall be kept free and clear of all rubbish, debris and other unsightly materials. All rubbish, trash and garbage shall be kept indoors or in garages so as not to be seen from neighboring Townhouses or streets and shall be regularly removed from the Property and shall not be allowed to accumulate thereon. The placement of garbage cans outside for collection and the manner in which garbage shall be kept when placed outside for collection may be regulated by the Board in the rules and regulations.

**Section 10.11:      Covering of Interior Surfaces**

The covering of the interior surfaces of the windows and glass doors, storm doors, screen doors appurtenant to the Townhouses whether by draperies, shades or other items visible from the exterior of a Townhouse, shall be subject to the rules and regulations of the Board.

**Section 10.12:      Parking**

- (a) Any part of the Common Area allocated to parking purposes shall be part of the Common Area and not part of any individual Unit. The Emergency Access Lanes are not to be parked upon or obstructed in any way. The Board may determine to grant exclusive use and possession to designated parking stalls, in any portion of the Property allocated to parking purposes, to Owners, and the Board may in any event prescribe such rules and regulations with respect to such parking areas as the Board may deem fit, including the requirement that such exclusive use and possession includes the obligation to clean and maintain the portion of the Common Area subject thereto as an expense of an Owner rather than as a Common Expense.
- (b) No boat, truck, commercial vehicle (as may be defined by the Board within the rules and regulations), airplane, trailer, house trailer, camper, snowmobile, ATV, go-cart, motorized scooter, non-operable vehicle or

motorized recreational vehicle (RV) shall be parked, either permanently or temporarily, in the open on any portion of the Property including, but not limited to, on any driveway on a Unit. Provided, however, that such items are permitted to be parked, subject to the rules and regulations of the Board, in a driveway on a Unit for no more than forty-eight (48) total hours per calendar month for purposes of loading and unloading such items. Provided additionally, that Owners and Occupants of the Owner's Townhouse and their guests and other invitees shall be permitted to park their operable conventional passenger vehicles on the driveway serving the Owner's Townhouse. All parking on the Property shall be subject to rules and regulations adopted by the Board.

**Section 10.13: Leasing of Townhouses**

- (a) Except as otherwise specifically provided in this Section, each Owner shall occupy and use his/her Townhouse as a private dwelling. Rental or leasing of the Townhouses is prohibited, except as otherwise specifically provided in this Section. For purposes of this Section, rentals or leasing to a member of the Owner's immediate family members, including, children, grandchildren, siblings or parents shall not be prohibited or restricted by the Association and shall not be considered a rental for purposes of the cap limitations on renting of Townhouses contained in paragraph (b) of this Section.
- (b) The maximum number of Townhouses that may be leased at any given time shall be ten (10) Townhouses, and no more than ten (10) Townhouses shall be rented or leased at any time. In order to ensure that the maximum allowed number of leased Townhouses is not exceeded, each Owner desiring to lease his or her Townhouse must notify the Board or its authorized agent, in writing, of such desire prior to leasing such Townhouse. The Board or its authorized agent shall inform such Owner whether or not his or her desired leasing would exceed the maximum allowed number of leased Townhouses. The Board may also from time to time adopt rules and regulations pertaining to the leasing of Townhouses, including policies and procedures to further the goals and objectives of this Section.
- (c) In the event that an Owner, due to medical or health reasons or other justifiable cause constituting a hardship, in the sole discretion of the Board, shall be unable to occupy the Townhouse for a period in excess of four (4) months and based on said hardship desires to lease said Townhouse, the Owner shall make application to the Board which may, by majority vote and review of the application, grant to the Owner an exception to the above leasing restriction, upon such conditions as the Board may establish and uniformly apply.

- (d) The Association shall be exempt from any lease restrictions provided in this Section, pursuant to the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. seq.) for the purposes of collecting delinquent assessments, costs, fees and other properly assessed expenses to the Townhouse.
- (e) All Owners leasing their Townhouses shall deliver a copy of the signed lease to the Board no later than the date of occupancy or ten (10) days after the lease is signed, whichever comes first. All leases of Townhouses shall be in writing. Any Owner leasing his or her Townhouse shall not lease less than his or her entire Townhouse and shall not lease his or her Townhouse for other than housing or residential purposes. No Townhouse shall be leased or subleased for transient or hotel purposes or for terms less than six (6) months. In the event that an Owner fails to comply with any leasing requirements set forth in this Declaration, the By-Laws, or rules and regulations of the Association, the Association may seek to evict a tenant from the Townhouse under Article IX of the Code of Civil Procedure, as well as pursue any and all other legal and/or equitable remedies available to the Association as to the Owner. Furthermore, all provisions of this Declaration, the By-Laws and rules and regulations shall be applicable to any person leasing a Townhouse and shall be deemed to be incorporated in any lease executed or renewed. The Board may proceed directly against a tenant, at law or in equity under the provisions of Article IX of the Code of Civil Procedure, for any other breach by tenant of any of the provisions of this Declaration, the By-Laws or rules and regulations. The Owner leasing his or her Townhouse shall not be relieved thereby from any of the Owner's obligations under this Declaration, the By-Laws, rules and regulations or otherwise provided by law.

**Section 10.14: Rules and Regulations**

The use and enjoyment of the Property, including the Common Area, Units and Townhouses, shall at all times be subject to reasonable rules and regulations duly adopted by the Board from time to time.

**ARTICLE XI**

**JOINT CONNECTION OF SEWER, WATER, ELECTRICAL, GAS AND TELEPHONE LINES**

The rights and duties of the Owners within the Property with respect to sewer, water, electricity, gas and telephone shall be governed by the following:

- (a) Wherever joint house connections of sanitary and storm sewer, water, electricity, gas or telephone lines are installed within the Property, and the connections, or any portion thereof, lie in or upon Units owned by Owners

others than the Owner served by said connections, the Association and the Owners of any Townhouse served by said connection shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon Units or to have the utility companies enter upon the Units within the Property in or upon which said connection, or any portion thereof is located, to repair, replace and generally maintain said connection as and when the same may be necessary as set forth below. If the Board deems the repair, replacement or maintenance of such connection to be an emergency, the Association shall have the right to repair, replace or maintain such connection and assess the costs thereof against the Townhouse served by such connection in the amounts the Owners would otherwise be responsible for under paragraphs (d) and (d) herein, and each such Owner shall pay the Association (or its collecting agent) said assessment upon demand or in such periodic payments as may be determined by the Board. Said assessment, if not so paid on the date when due shall become delinquent, and shall be a continuing lien on the Unit of such Owner and shall be the personal obligation of the Owner of such Townhouse and shall be subject to collection, enforceability, foreclosure and remedies of the Association in the manner set forth in Article V hereof for other assessments by the Association.

- (b) Wherever joint house connections of storm and sanitary sewer, water, electricity, gas, or telephone lines are installed within the Property and the connections serve more than one (1) Townhouse, the Owner of each Townhouse served by said connection shall be entitled to the full use and enjoyment of such portions of said connection as services his or her Townhouse.
- (c) In the event any portion of said connection or line is obstructed, damaged or destroyed through the act of an Owner of a Townhouse being served by said connection, or any of his or her agents, guests, or members of his or her family, whether or not such act is negligent or otherwise culpable, so as to deprive the other Owners being served by said connection of the full use and enjoyment of said connection, then the Owner responsible therefore, shall forthwith proceed to replace or repair the same to as good condition as formerly without cost to the other Owners served by said connection.
- (d) In the event any portion of said connection or line is obstructed, damaged or destroyed by some cause other than the act of any of the Owners being served by said connection, his or her agents, guests, or members of his or her family (including ordinary wear and tear and deterioration from lapse of time), then in such event if said obstruction, damage or destruction shall prevent the full use and enjoyment of said connection by the Owner of a Townhouse served by said connection, all such Owners who are thereby deprived of said use and enjoyment shall proceed forthwith to replace or

repair said connection to as good condition as formerly at their joint and equal expense.

## **ARTICLE XII**

### **REMEDIES**

#### **Section 12.01: Enforcement**

In addition to or in conjunction with all other rights herein granted to the Association, the Association or any Owner, their successors or assigns, shall have the right to enforce the provisions of this Declaration, 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, and further the Association shall have the right to levy a fine against such Person or Persons. All rights and remedies may be exercised at any time and from time to time, cumulatively, or otherwise, and failure of the Association or any Owner to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All costs and expenses incurred by the Association in connection with any such proceedings or with exercising the Board's self-help rights as set forth in Section 12.02 of this Article, including, but not limited to reasonable attorney's fees, court costs and managing agent fees, shall be assessed against any Owner violating any such provisions and shall be a Charge and constitute a lien on his or her Unit and Townhouse and be enforceable in the same manner as unpaid assessments as provided in this Declaration and recoverable by the Association as part of any such proceedings.

#### **Section 12.02: Board Self Help**

In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of this Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Property, including, but not limited to, any Townhouse exterior and Unit, where the violation or breach exists to remove or rectify the violation or breach at the expense of the Owner in violation or breach, and the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; provided, that, if the violation or breach exists within a Townhouse, judicial proceedings must be instituted before any items of construction can be altered or demolished.

#### **Section 12.03: Managing Agent Fees**

Any and all managing agent fees and costs associated with the collection of delinquent assessments and/or curing an Owner's or Occupant's breach or violation of the Declaration, By-Laws and/or rules and regulations shall be

assessed back to the defaulting Owner's account and become an additional obligation and Charge of such delinquent Owner. To assist the Association in collecting delinquent assessments and/or curing violations of the Declaration, By-Laws and/or rules and regulations from the Owners, the managing agent, if any, may perform the following duties: prepare and issue delinquency notices, prepare and issue statutory and other demand letters, order an ownership (tract) search to verify current ownership of the delinquent Unit, prepare and record a lien against the delinquent Townhouse and Unit for unpaid assessments or other Charges and any such other services performed in an effort to assist the Association in the collection of delinquent assessments or other Charges or curing breaches or violations of the Declaration, By-Laws and rules and regulations. The managing agent is entitled to receive a reasonable fee for such services performed, as more fully outlined in the management agreement entered into between the managing agent and the Association.

**Section 12.04: Fees Associated with Mortgage Foreclosure**

All expenses and fees, including, but not limited to, managing agent fees, attorney's fees and court costs, incurred by the Association as a result of the Association being included as a defendant in a mortgage foreclosure action shall be assessed back to the Owner sued in such foreclosure action and become an additional obligation and Charge of such delinquent Owner and a part of that Owner's assessment account.

**ARTICLE XIII**

**GENERAL PROVISIONS**

**Section 13.01: Amendment**

Except as otherwise expressly provided herein, the provisions of this Declaration may be amended, abolished, modified, enlarged or otherwise changed in whole or in part by a written instrument executed by Owners of at least three-fourths (3/4) of the total Units in the Property. Any such amendment shall be certified by the Secretary of the Board and shall become effective when Recorded. Provided, however, that any amendment in regard to the Emergency Access Lanes in the Common Area will require prior written approval of the Village.

**Section 13.02: Notices**

Unless otherwise specifically provided in this Declaration or in the By-Laws or required by law, any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if:

- a) Mailed to the Owner's last known address as provided by such Owner to the Association, or if no such address has been provided

- then mailed to such Owner's Townhouse;
- b) Personally delivered to such Owner;
- c) Posted in an Association publication that is routinely mailed to all Owners; or
- d) Transmitted to an Owner via electronic mail (e-mail) or facsimile (fax) to an e-mail address or fax number provided to the Association by such Owner; provided, however, that prior to the sending of such a notice via e-mail and/or fax an Owner must consent, in writing, to receive notices via e-mail and/or fax.

The date of mailing or delivery, or the date of transmission if the notice is sent by fax or e-mail, shall be deemed the date of service.

**Section 13.03:**      **Notice to Decedents**

Notices required to be given any devisee or personal representative of a deceased Owner may be delivered either personally or by mail to such party at his, her or its address appearing in the records of the court wherein the estate of such deceased Owner is being administered, or if the address is unknown, by mailing same addressed to such person at the number of the Unit involved.

**Section 13.04:**      **Severability**

If by legislation, judgment or court order, any portion of the covenants, restrictions, easements, conditions, reservations, liens and charges imposed by this Declaration shall be deemed unconstitutional, invalid, or unenforceable, then such determination shall in no way affect any other provisions of this Declaration and all provisions of this Declaration not so affected shall remain in full force and effect.

**Section 13.05:**      **Rule Against Perpetuities**

The covenants, restrictions, conditions, reservations, easements, charges, liens and other provisions as delineated in this Declaration shall run with and bind the land so as to insure the Owners full enjoyment and benefit of their Townhouses and Units. If, and to the extent that, any of the covenants, restrictions, conditions, reservations, easements, charges, liens or other provisions contained in this Declaration would otherwise be unlawful or void for violation of:

- (a) The rule against perpetuities;
- (b) The rule restricting restraints on alienation; or
- (c) Any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision 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 Barack Obama, the Forty-Fourth (44<sup>th</sup>) President of the United States, living at the date this Declaration is Recorded.

**Section 13.06:**      **Binding Effect**

Each grantee by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed or 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 such rights were recited fully and set forth in their entirety in such documents. Reference to the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the rights described in this Article or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Unit Ownerships as fully and completely as though such rights were recited fully and set forth in their entirety in such documents.

**Section 13.07:**      **Liberal Construction**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of first-class townhouses.

**Section 13.08:**      **Unit Ownership in Trust**

In the event title to any Unit Ownership is conveyed to a title-holding trust, under the terms of which all powers of management, operation and control of the Unit Ownership 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 Unit Ownership. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Unit Ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Unit Ownership.

**Section 13.09:      Duration**

These covenants and restrictions shall remain in full force and effect for a period of forty (40) years from the date hereof, and thereafter shall be deemed to have been renewed for successive terms of ten (10) years.

**Section 13.10:      Headings/Captions**

The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

**Section 13.11:      Gender Neutrality**

Unless the provisions of this Declaration require otherwise, words imparting the masculine gender shall include the feminine, words imparting the feminine gender shall include the masculine, words imparting the singular number shall include the plural, and words imparting the plural shall include the singular.

**Section 13.12:      Conflicts**

In the case of any conflict between the Articles of Incorporation of the Association, this Declaration, the By-Laws and the rules and regulations, the Articles of Incorporation shall control over the Declaration, the By-Laws and the rules and regulations, the Declaration shall control over the By-Laws and the rules and regulations, and the By-Laws shall control over the rules and regulations.

**Section 13.13:      Townhouse Conveyance**

All conveyances or transfers of ownership of a Townhouse and Unit shall be of the entire Townhouse and Unit and there shall be no conveyance or transfer of only a portion of a Townhouse or Unit.

**Section 13.14:      Proof of Payment**

Upon written request of an Owner and after payment of a reasonable fee, if any, set by the Board, the Association shall, within ten (10) business days of such written request, furnish such Owner a written certificate signed by an officer of the Association or the managing agent, if any, setting forth the status of the Owner's account and whether there are any then unpaid annual or special assessments or other Charges levied against such Owner's Townhouse and Unit and, if so, the amount thereof. Such certificate shall be conclusive evidence of payment of any annual or special assessments or other Charges not stated

therein as unpaid.

**Section 13.15: Eminent Domain or Condemnation**

In the event any portion of the Common Area is taken by eminent domain proceedings or condemnation, or conveyed in lieu thereof, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Common Area reserves being held for such part of the Common Area, shall, in the discretion of the Board, either (i) be applied to pay the Common Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Association and Recorded.

**Section 13.16: Rights of Mortgagees**

Notwithstanding any provision of this Declaration or the By-Laws to the contrary, the following provisions shall control:

- (a) Upon written notice to the Association by any Mortgagee, the following actions will require notice to all Mortgagees:
  - (i) Abandonment or termination of the Association; or
  - (ii) Any material amendment to the Declaration, By-Laws or Articles of Incorporation of the Association.
- (b) Upon written request to the Association by any Mortgagee, such Mortgagee shall have the right:
  - (i) To examine current copies of this Declaration, the By-Laws, the Article of Incorporation of the Association, the rules and regulations of the Association, and the books and records and financial statements of the Association, all during normal business hours;
  - (ii) To receive, without charge and within a reasonable time after such request, an audited financial statement prepared by the Association at the end of each of its respective fiscal years;
  - (iii) To receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

- (iv) To receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
  - (v) To receive notice of any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to such mortgage, where such delinquency has continued for a period of thirty (30) days;
  - (vi) To receive written notice of any proposed action that would require the consent of a specified percentage of First Mortgagees;
  - (vii) To receive written notice of any judgment rendered against the Association; and
  - (viii) To receive written notice of any condemnation loss or casualty loss which affects a portion of the Common Area, which loss exceeds Ten Thousand Dollars (\$10,000.00), or which affects any Townhouse or any Unit, which loss exceeds Five Thousand Dollars (\$5,000.00), on which there is a mortgage held by such Mortgagee.
- (c) No provision of this Declaration or of the By-Laws or Articles of Incorporation of the Association, or any similar instrument pertaining to the Property or the Townhouses thereon, shall be deemed to give an Owner or any other party priority over any rights of bona fide first Mortgagees in the case of a distribution to Owners or insurance proceeds or condemnation awards for losses to or a taking of the Common Area or any portion thereof or interest therein.

#### **END OF TEXT OF DECLARATION**

This instrument was prepared by, and upon recording return to:

*Pd* KEAY & COSTELLO, P.C.  
128 South County Farm Road  
Wheaton, Illinois 60187

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF KANE        )

The undersigned is Secretary of the Board of Directors of Waterford Place Townhome Association and by my signature below, do hereby execute the foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", on behalf of the Board and certify that said documents have been approved by Owners having at least three-fourths (3/4) of the total vote in the Association, with such Owners' approval being indicated by their signatures attached hereto.

EXECUTED this 1st day of May, 2016.



Being the Secretary of Waterford Place  
Townhome Association

I, HUZAIFA ATTARWALA, a Notary Public, hereby certify that on the above date, the above member of the Board of Directors of Waterford Place Townhome Association, which Board member is personally known to me, appeared before me and acknowledged that, as such Board member, he/she signed this instrument as his/her free and voluntary act of said Board for the uses and purposes therein set forth.

BY: 



05/01/16

STATE OF ILLINOIS     )  
                                  )SS  
COUNTY OF KANE     )

The undersigned is Secretary of the Board of Directors of Waterford Place Townhome Association and by my signature below do hereby certify that notice of the foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Waterford Place Townhome Association, and the By-Laws of the Waterford Place Townhome Association, attached hereto as Exhibit "B", on behalf of the Board has been mailed by certified mail to all lien holders having bona fide liens of record against any Unit.

EXECUTED this 1<sup>st</sup> day of May, 2016.



Being the Secretary of Waterford Place  
Townhome Association

I, HUZAIFA ATTARWALA, a Notary Public, hereby certify that on the above date, the above member of the Board of Directors of Waterford Place Townhome Association, which Board member is personally known to me, appeared before me and acknowledged that, as such Board member, he/she signed this instrument as his/her free and voluntary act of said Board for the uses and purposes therein set forth.

BY:  \_\_\_\_\_



05/01/16

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF PROPERTY**

Units A, B, C, and D in Lot 1 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A and B in Lot 2 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 3 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 4 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 5 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A and B in Lot 6 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 7 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 8 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A and B in Lot 9 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois,

according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 10 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 11 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 12 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 13 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A and B in Lot 14 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 15 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 16 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 17 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 18 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with

the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 19 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 20 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 21 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 22 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 23 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 24 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 25 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Units A, B, C, and D in Lot 26 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.

Lot 28 of Waterford Place, being a resubdivision of Lot 14 of Sugar Grove Corporate Center Unit 2 in the Village of Sugar Grove, Kane County, Illinois, according to the Plat thereof recorded as Document Number 2000K085928 with the Kane County Recorder of Deeds.