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Linda M. Reiner
RECODER

(SPACE ABOVE THIS LINE FOR USE BY RECORDER OF DEEDS)

DECLARATION OF PARTY WALL RIGHTS, COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR KIRKLAND CHASE COURTYARD TOWNHOMES

THIS DECLARATION OF PARTY WALL RIGHTS, COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Declaration") is made and entered into on the date hereinafter set forth by AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, as Trustee under Trust Agreement dated July 21, 1995 and known as TRUST NO. 300503-06 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner and legal title holder of certain real estate, encompassing approximately 7.14 +/- acres, situated in the City of Batavia, Kane County, Illinois, which real estate is legally described in Exhibit "A" attached hereto and by this reference made a part hereof (the Property"); and

WHEREAS, the Declarant's duly authorized and empowered agent for purposes of developing the Property with Townhomes, namely, either and/or Declarant's beneficiary Kirkland Farms Partnership, an Illinois General Partnership and/or its affiliate, The Townhomes of Kirkland Chase, L.L.C., an Illinois Limited Liability Company (collectively or alternatively the "Developer") is/are the developer and intend(s) to construct a development containing approximately Thirty-Nine (39) attached townhomes with courtyard features, together with certain common areas which will require uniformity and continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in said townhomes; and

This Instrument prepared by and after
recording shall be returned to:

P.I.N.(s): _____

J. Steven Butkus, Esq.
GUERARD, KALINA & BUTKUS
100 W. Roosevelt Road, Suite A-1
Wheaton, Illinois 60187

Common Address:
Approx. 7.14 +/- Acres of Land on Wagner Road
Batavia (Kane County), Illinois

DSB
AL

WHEREAS, the beneficiary of the Declarant has deemed it desirable for the efficient preservation of the values and amenities of the proposed development to create an association to which shall be delegated and assigned the powers of maintaining and administering said common areas, and administering and enforcing the covenants, conditions and restrictions hereinafter contained and created; and

WHEREAS, there will be incorporated under the laws of the State of Illinois, as a not-for-profit corporation, the Kirkland Chase Courtyard Townhome Association (the "Association" or "Townhome Association") for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires to establish for its own benefit, the benefit of the Developer, and the mutual benefit of all future owners, tenants and occupants of the aforesaid development and Property and any part thereof, certain easements or rights in, over, under, upon and along said development and Property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

NOW, THEREFORE, the Declarant hereby declares that the aforementioned Property (further described in Exhibit "A" hereto) is and shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements. The Declarant does hereby further declare that the following party wall rights, easements, covenants, restrictions, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquired right, title or interest in any portions of the real estate; (2) be binding upon and inure to the benefit of each owner, and (3) run with the land subjected to this Declaration, to be held, sold and conveyed subject thereto.

ARTICLE I

DEFINITIONS

1.01 "Association" or "Townhome Association" shall mean and refer to the Kirkland Chase Courtyard Townhome Association (or such other similar corporate name as is available and selected by the Developer), an Illinois not-for-profit corporation.

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

1.03 "By-Laws" shall mean the By-Laws of the Kirkland Chase Courtyard Townhome Association, as delineated in Articles III and IV hereof and as otherwise hereafter supplemented by the Board.

1.04 "City" shall mean the City of Batavia.

1.05 "Common Area" shall mean all real property owned by the Association which shall be all of the Property except the Parcels.

1.06 "Courtyard" shall mean those exterior yards and portions of an Owner's Parcel which are not improved with such Owner's Townhome housing unit or Garage (including any detached Garage), as the case may be.

1.07 "Declarant" shall mean and refer to American National Bank & Trust Company of Chicago, as Trustee under Trust Agreement dated July 21, 1995 and known as Trust No. 300503-06, its successors and assigns.

1.08 "Developer" shall mean and refer collectively or alternatively to either the Declarant's beneficiary Kirkland Farms Partnership, an Illinois General Partnership, and/or to its affiliate, being The Townhomes of Kirkland Chase, L.L.C., an Illinois Limited Liability Company, and their respective successors and assigns.

1.09 "Declaration" shall mean, and refer to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for Kirkland Chase Courtyard Townhomes.

1.10 "Family" shall mean one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, together with his or their domestic servants, maintaining a common household in a Townhome.

1.11 "Garage" shall mean, depending upon the configuration of improvements and of the Courtyard features of an Owner's Parcel, either an attached or detached, as the case may be, garage structure situated upon each respective Owner's Parcel which Garage is designed and intended for the exclusive use of such owner for the storage and keeping of such Owner's motor vehicle(s), recreational equipment, tools and other personal property.

1.12 "Master Association" shall mean that certain Owner's Association or Master Association established by separate declaration, affecting all of the Property which forms a part of the Kirkland Chase Courtyard Townhomes as well as neighboring Kirkland Chase commercial and single family subdivision developments and properties, all for the purpose(s) of maintaining, administering and managing various drainage and storm water detention and retention ponds and areas (including the below-referenced Storm Water Facilities which are situated at or near the northerly boundary of the Property). Each Owner is a member of such Master Association in accordance with the terms of the declaration instrument which forms and governs the same.

1.13 "Member" shall mean and refer to any person or entity who holds membership in the Association.

1.14 "Occupant" shall mean any person or persons other than the Owner in possession of a Townhome.

1.15 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Parcel as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term

"Owner" shall include the beneficiaries of the Declarant to the extent of the number of Parcels owned by Declarant and also includes the interest of said beneficiaries or of Declarant as contract seller of any Parcel.

1.16 "Parcel" shall mean and refer to a homesite which is part of a platted lot upon which a Townhome and other related improvements (including any Garage) is constructed or to be constructed according to the development plan approved by the City and which may be described by a metes and bounds legal description.

1.17 "Property" shall mean and refer to that certain real estate described and depicted in Exhibit "A" attached hereto and made a part hereof.

1.18 Storm Water Facility(ies)" shall mean any and all "detention" or "retention" pond areas situated on the Property (including in particular those situated near the northerly boundary of the Property), designed for storm water management and drainage purposes, together with all appurtenant improvements, facilities and easements, all of which are subject to management, maintenance and administration by the above-referenced Master Association.

1.19 "Townhome" shall mean a residential housing unit consisting of a group of rooms which may be attached to one or more other Townhomes by common party walls and which are designed or intended for the exclusive use as living quarters for one Family, as herein defined.

ARTICLE II

MEMBERSHIP

Every person or entity who is a record Owner of any Parcel which is subject to this Declaration, including a contract seller, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Parcel which is subject to assessment by the Association. Ownership of such Parcel shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Parcels. Voting rights with regard to each Member are set forth in Article III hereof.

ARTICLE III

VOTING RIGHTS IN THE TOWNHOME ASSOCIATION: BOARD OF DIRECTORS OF THE TOWNHOME ASSOCIATION

3.01 The Members of the Association shall be entitled to one (1) vote for each Parcel in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Parcel all such persons shall be Members. The vote for such Parcel shall be exercised as the Owners themselves determine, but in no event shall more than one vote be cast with respect to each Parcel.

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

3.03 The total number of votes which may be cast on any matter requiring assent of Members of the Townhome Association shall be equal to the total number of Parcel Memberships at the time of any such vote. Unless this Declaration, or any law, shall specify a greater vote, all Townhome Association matters requiring action by Members shall be decided by a majority of the votes cast by Members voting at a meeting at which are present Members representing a majority of the Parcel Membership at the time of such vote. For purposes of this Section 3.03, a Member may be present either in person or by proxy.

3.04 The Association shall be governed by a Board of Directors as follows:

- a. The Townhome Association shall be governed by its Board of Directors ("Board") comprised of three (3) persons duly appointed or elected as provided herein and in the charter and By-laws of the Townhome Association. The Board shall appoint or elect from its Board members a President and a Secretary of such Association.
- b. Prior to the appointment of the first Board of the Townhome Association pursuant to Section 3.05 hereof, Developer may exercise all rights, powers and privileges of the Board and may perform all of its functions.
- c. The term of office of any Director appointed by the Developer shall be at the sole discretion of the Developer, and any Director appointed by the Developer may be removed by the Developer at any time. The term of office of any Director elected by the Members pursuant to Section 3.06 or 3.07 shall be for a period of two (2) years.

3.05 Notwithstanding any other provisions of this Declaration or the charter or By-Laws of the Townhome Association, the first and each subsequent Board of the Townhome Association shall be filled by, such persons as Developer shall from time to time appoint, until the first to occur of any one of the following events:

- i. Developer notifies the Townhome Association in writing that it has completed and sold or leased eighty (80%) percent of all Townhomes to be constructed by Developer on the Property;
- ii. three (3) years shall have elapsed from the date upon which this Declaration is recorded; or
- iii. Developer by written notice to the Townhome Association voluntarily elects to terminate its control of the Townhome Association.

Such right of Developer to appoint Directors shall be to the exclusion of the right of the Members to do so. The Owners and Members shall not, without the prior written consent of Developer, have the right to amend, modify, or change the charter or By-Laws of the Townhome Association to in any way diminish the authority of the Board during the period that Developer has the right to appoint any members of the Board. Developer may, from time to time, by written notice to the Townhome Association, voluntarily waive its right to appoint one or more Directors, and continue to exercise its right to appoint the remaining members of the Board for the period hereinabove specified. Election by Developer to waive its right to appoint any member or members of the Board or to terminate its control of the Townhome Association, shall not affect the right of Developer or Declarant to participate in the Townhome Association as a Member thereof and to cast the number of votes equal to the number of Parcels owned by Developer or Declarant. All Directors who are not subject to appointment by Developer shall be elected by Members in accordance with the provisions of Sections 3.06 and 3.07 hereof.

3.06 Upon receipt by the President of the Townhome Association of appropriate evidence of the waiver of Developer's right to select some or all of the Directors of the Townhome Association, he shall promptly convene a meeting of the Members, for the purpose of electing a new Board or to elect those Directors who no longer are to be appointed by Developer.

3.07 Upon waiver of Developer's right to appoint any of or all the Directors, pursuant to Section 3.05 hereof, those Directors not subject to appointment by Developer, shall be elected in accordance with the provisions of this Article. Notwithstanding such election, any Director theretofore appointed by Developer who does not elect to resign may stay in office for the balance of his unexpired term and until his successor is elected and qualified.

3.08 Unless specifically prohibited by the charter or By-Laws of the Townhome Association, any action required by this Declaration to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof. Any such consent signed by all the Directors shall have the same effect as a unanimous vote.

3.09 Any action required by this Declaration to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Members entitled to vote with respect to the subject matter thereof.

3.10 None among the Declarant, its agents, beneficiaries and employees, the Developer, its directors, officers, shareholders, owners, members, employees, the Board, Directors of the Board, Officers of the Townhome Association, and the agents and employees of any of them (all of the above hereinafter referred to as the "Protected Parties"), shall be liable to the Owners, Occupants, or any other person for any mistake of judgment or for any acts or omissions made in good faith as such members of the Board or Officers of the Townhome Association or acting as the Board. The Owners hereby agree to indemnify, hold harmless, protect and defend any and all of the Protected Parties against all contractual liability to others arising out of contracts made by the Board, or acting as the Board, on behalf of the Owners unless any such contract shall have been made not in good faith or

contrary to the provision of this Declaration. It is intended that the liability of each Owner arising out of said indemnity, shall be limited to and borne by each such Owner, in the proportion that each said Owner's Parcel Membership bears to the total number of Parcel Memberships. The Board shall assess each Owner for his share of the cost of such indemnification, and such assessment shall be collectible and enforceable in mode and manner as set forth in Article VI hereof. To the extent possible, the obligation of the Owners for indemnification hereunder shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Townhome Association.

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

3.12 The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the details of the day to day use of the Townhomes, the Parcels and the Property.

ARTICLE IV

ADMINISTRATION AND USE OF THE COMMON AREA

4.01 Every Member or Members and their tenants, guests and invitees, shall have a right and easement in, over, upon and to the Common Area for purposes of pedestrian (and where applicable, vehicular) ingress and egress and use of the open spaces and other common facilities and the Common Area shall be held for the use and benefit of each Member, and such easement shall be perpetual and appurtenant to and shall pass with the title to every Parcel subject to the following provisions: each Owner shall be entitled to the exclusive use and possession of that portion of the Common Area which is contiguous to his Townhome provided, however, that the Association, each Owner or Owners and their tenants, guests and invitees shall have a perpetual right and easement in, over, upon and to the Common Area contiguous to each Townhome for purposes of ingress and egress in an emergency situation.

4.02 There shall be no fences constructed upon the Common Area other than those fences, if any, constructed by the Developer, and any repairs or replacements thereof. Any such fences so constructed by the Developer shall be maintained, repaired and replaced by the Association as part of Common Area maintenance.

4.03 An easement is hereby granted to the City of Batavia (the "City" herein) to go upon the Common Area for the purpose of providing police and fire protection services and for any purpose ancillary thereto.

4.04 Any Member may delegate, in accordance with the By-laws, his right of ingress and egress to the Common Area to the members of his Family, Occupants, guests, invitees, lessees, or contract purchasers who reside on the Parcel.

4.05 The Declarant hereby covenants for itself, its successors and assigns, that upon formation of the Association and upon sale of eighty (80%) percent of the Townhomes or three (3) years from the date of recording hereof, whichever is less, it shall convey fee simple title to the Common Area to the Association.

4.06 The Association shall have the following rights:

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

4.07 Notwithstanding any provisions herein to the contrary, the easements created pursuant to this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements, shall in no way prohibit the creation of existence of the right of Declarant to execute all documents and do all other acts and things affecting the Property which, in the Declarant's opinion, are desirable in connection with Declarant's rights hereunder.

4.08 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.

4.09 The Common Area will be subject to utility easements for electricity, telephone, cable TV, and any other necessary utilities. The Declarant, Developer and/or Association shall have the authority to grant such easement or easements upon request of the Declarant or the Owners.

4.10 All Storm Water Facilities situated on the Property and any appurtenant Common Areas needed for reasonable access thereto for the maintenance thereof shall further be subject to the rights, covenants, easements, restrictions and provisions set forth in the declaration instrument which creates and governs the aforementioned Master Association.

ARTICLE V

MAINTENANCE OF TOWNHOMES

5.01 The Association shall determine the need for and may carry out or cause to be performed all maintenance and repair to the exteriors of the Townhomes (as well as the exteriors of any Garages, whether detached or attached) including, without limitation, all walls, including the foundations thereof, front masonry steps, roofs, gutters and downspouts made necessary and desirable in the discretion of the Association as a result of natural or ordinary wear and deterioration. The Association shall, in addition, determine the need for and shall carry out or cause to be performed all such maintenance and repair of all water, sewer, gas, telephone, and electrical lines incorporated in and forming a part of the Townhomes as originally constructed that services more than one Townhome and shall not include the maintenance or repair of any furnaces, water heaters, stoves, refrigerators, washing machines, or household appliances, sump pumps, glass surfaces, windows and patio doors, front entry and garage doors, electrical fixtures, air conditioners and compressors, or any other portion of said Townhomes which services only one Townhome or the interior of any Townhome or portion thereof. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his Family, his Occupants, guests or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Parcel is subject.

5.02 Each Owner shall have the obligation to maintain in good condition and repair his glass surfaces, windows, front entry and garage doors, electrical fixtures, and such other items and appurtenances contiguous or adjacent to his Parcel. Each Owner shall additionally have the obligation, at Owner's own expense, to maintain in a neat and presentable condition all Courtyard areas of each respective Owner's Parcel. Such Courtyard areas shall be kept well landscaped by each respective Owner with well-groomed lawns (and if such Owner elects, flower beds/gardens), subject to the further rules and regulations from time to time adopted by the Board pertaining thereto. Upon the failure of any Owner to maintain those areas which are not the maintenance responsibility of the Association, the Association, through its agents and employees, is hereby granted the right to enter upon the Parcel and make such reasonable repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, and the costs thereof shall become a lien upon the Parcel in the same manner as provided in Article VI hereof for nonpayment of maintenance assessments.

5.03 The Association shall have the right to draw water and electricity from individual Townhomes as required for the efficient performance of its duties hereunder.

ARTICLE VI

COVENANTS FOR MAINTENANCE ASSESSMENTS

6.01 Each Owner of a Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance for each Parcel owned by such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Townhome Association such assessments as are levied pursuant to the provisions of this Declaration and the By-Laws of the

Townhome Association. Such assessments, together with interest thereon and cost of collection, if any, as hereinafter provided, shall be a charge and a continuing lien upon the Parcel against which such assessment is made and upon the Parcel Membership appurtenant thereto. Each such assessment, together with such interest and costs, shall also be the personal obligation of the Member who was the Owner of such Parcel at the time when the assessment fell due.

6.02 The assessments levied by the Townhome Association (or by the Developer acting on its behalf pursuant to Section 3.05 hereof) shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Townhome Association and in particular, without limiting the foregoing:

- i. for the improvement and maintenance of the services and facilities devoted to such purpose and related to the use and enjoyment of the Common Area, including reasonable reserves;
- ii. for the payment of taxes and other charges (including without limitation those levied pursuant to one or more of the recorded instruments to which the Property is subject) and insurance on and the making of repairs, replacements and additions to the Common Area, defraying the cost of labor, equipment and material for the management and maintenance of the Common Area and other maintenance functions provided for in this Declaration; and
- iii. in general for carrying out the duties of the Board as set forth in this Declaration and the By-Laws of the Townhome Association, and for carrying out the purposes of the Townhome Association as stated herein and in its charter.

6.03(a) Preparation of Estimated Budget. Each year on or before December 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, taxes, services, fees, repairs, replacements, management, supplies and of other items which, in the judgment of the Board, will be required to be provided to the Townhome Association or be required to meet the Townhome Association's obligations during the ensuing calendar year to effect the purposes of the Townhome Association, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements. The annual budget shall also take into account any estimated net operating income or deficit which may result from the operation of the Common Area during such year and income from user charges to be received pursuant to Section 6.03d hereof. Said "estimated cash requirement" shall be allocated among and assessed to the Members in accordance with the provisions of section 6.06 hereof. On or before January 1 of the ensuing year, and the 1st day of each and every month of said year, each member shall be personally obligated to pay, in the way prescribed by section 6.06, 6.07, and 6.08 hereof, one-twelfth (1/12) of such Member's annual assessment, together with all user charges incurred by such Member during the preceding month. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said "estimated cash requirement," any net shortage or excess shall be applied as an adjustment to the installments under the current year's estimate falling due after the amount of such net shortage or excess for the preceding year has been determined.

6.03(b) **Adjustments to Estimated Budget.** If said "estimated cash requirement" proves inadequate for any reason (including non-payment of any Member's assessment), the Board may at any time levy a further assessment. The Board shall serve notice of such further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Members shall be personally liable for and obligated to pay their respective adjusted monthly amount.

6.03(c) **Failure to Prepare Annual Budget.** The failure or delay of the Board to prepare an annual or adjusted estimated budget shall not constitute a waiver or release in any manner of any Member's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, each Member shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period.

6.03(d) **User Charges.** The Board (or the Developer acting pursuant to Section 3.05 hereof) may establish, and each Member shall pay, user charges to defray the expense of providing services, facilities or benefits which may not be used equally or proportionately by all of the Members or which, in the judgment of the Board or Developer, should not be charged to every Member. Such expenses may include, without limitation, fees for the use of facilities located in the Common Area; charges predicated on the negligence of any Member or the abuse of any part of the Common Area; fees for scavenger or trash services or other services which the Board has obtained for certain, but not all, of the Members, or for all of the Members but in different or varying amounts; and fees for such other services and facilities provided to Members which should not reasonably be allocated among all of the Members in the same manner as Member assessments. Such user charges may be billed separately to each Member benefited thereby, or may be added to such Member's assessments as otherwise determined, and collected as a part thereof pursuant to Sections 6.06 and 6.07 hereof. Nothing herein shall require the establishment of user charges as hereinabove authorized, and the Board or Developer may elect to treat all or any portion thereof as expenses to be defrayed by Member assessments.

6.03(e) **Initial Assessment/Initial Reserve Payment.** The Board shall determine the date upon which the Members who own Parcels shall commence payment of annual assessments established by the Board, which date shall be no earlier than the date upon which the first Parcel is occupied. The first estimated budget prepared by the first Board may be for the balance of the calendar year in which such budget is prepared, in which event monthly installments of assessments shall commence on the date fixed by the Board for such purpose. Additionally, the Board may require each initial Owner of a Parcel who has received conveyance of title to his or her Parcel from the Declarant (or Developer) to post and pay a reasonable, non-refundable initial reserve payment (in such amount determined by the Board in its sole discretion) with the Association in order to facilitate the initial funding of reserves for the Association.

6.04 In addition to the annual assessment authorized by Section 6.03, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction or purchase of a specified capital improvement upon or to the Common Area, and the necessary fixtures

and personal property related thereto; provided, however, that any such special assessment shall first be approved at a meeting of the Owners by the affirmative votes of two-thirds (2/3) of the votes cast by the Owners at a meeting called and held in accordance with the provisions of Section 6.05, with each Parcel being entitled to one (1) vote. The provisions of this Section 6.04 shall not limit the power of the Board, without such prior approval, to levy assessments to reconstruct, replace or restore any improvements on the Common Area to the condition as originally constructed by Developer.

6.05 Written notice of any meeting called for the purpose of authorizing any special assessments requiring approval pursuant to Section 6.04 hereof shall be sent to all Members (and to Declarant or Developer, if either is the Owner of a Parcel or Parcels) not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence in person or by proxy of Owners representing a majority of the Parcels shall constitute a quorum.

6.06 Regular annual assessments shall be allocated among the Members by spreading the total assessment levy equally among all of the Parcels owned by Members of the Townhome Association. Special assessments shall be allocated among the Owners by spreading the total special assessment levy equally among all of the Parcels.

6.07 All annual and special assessments and other user charges shall be paid directly by each member to the Townhome Association.

Upon written demand of an Owner or mortgagee at any time, the Townhome Association shall furnish such Owner or mortgagee a written dated certificate signed by an officer of the Townhome Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's Parcel. Such certificate shall be conclusive evidence of payment of any annual or special assessments theretofore levied and not stated therein as unpaid. The Board or Developer shall have the right to charge a reasonable fee to the Owner for providing this service.

6.08(a) Except as otherwise provided in Section 6.09 hereof, any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may upon notice to such Member of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall commence to bear interest from the date of the acceleration at the rate of eighteen (18%) percent per annum (or the highest rate [not to exceed such 18% per annum] otherwise permitted under law). The Townhome Association may bring an action against the Owner or Member personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action; and the Association may enforce and foreclose any lien it has or which may exist for its benefit.

6.08(b) No Member shall be relieved of personal liability for the assessments and for other amounts due as provided herein by non-use of the Common Area or abandonment or transfer of ownership of his Parcel.

6.08(c) The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any prior recorded first mortgage, now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the date the mortgagee takes possession of the Parcel, accepts a conveyance of any interest in the Parcel or has a receiver appointed in a suit to foreclose the lien of the mortgage. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

6.09 With regard to any Parcels which have not been conveyed by Declarant, the assessment respecting any such Parcel shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Parcel provided, however, that in the event Declarant enters into a lease or installment contract for any Parcel, then Declarant shall be responsible for the payment of assessments on those Parcels on the same basis as any other Owner. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Property and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, prepaid items or inventory items to the extent attributable to subsequent periods. Until such time as title to seventy five (75%) percent of the Parcels has been conveyed, the assessments covering the Parcels which have not been sold by the Declarant may be paid on a monthly basis or, at its option, paid to the Association at the close of each calendar year and no interest shall accrue on said amount and no late charges shall be assessed against said assessments.

ARTICLE VII

INSURANCE/CONDEMNATION

7.01 The Board shall have the authority to and shall obtain insurance for all improvements located on the Property against loss or damage by fire and other hazards as the Board may deem desirable, for the full insurable replacement cost of improvements to the Common Area and the Townhomes. Premiums for such insurance shall be expenses of the Association. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Board as trustee for each of the Owners. All such policies of insurance: (i) shall contain standard mortgage clause endorsements in favor of the First Mortgagees as their respective interests may appear; (ii) shall provide that the insurance, as to the interests of the Board, shall not be invalidated by any act or neglect of any Owner; (iii) to the extent possible, shall provide that such policy shall not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days written notice to the First Mortgagee of each Parcel, and (iv) shall contain waivers of subrogation with respect to the Association, its directors, officers, employees and agents, Owners, Occupants of the Townhomes, First Mortgagees, the Declarant and the Developer or, alternatively, all such parties shall be named as additional insureds.

7.02 In the event of damage by fire or other disaster or casualty to a portion of a Townhome or improvements to the Common Area (a "Damaged Improvement"), then in that event the Board shall act as trustee, agent or depositary for and on behalf of each of the Owners, 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 Board may, but except as provided herein, shall not be required to engage in the services of any bank or trust company to act as a depositary on behalf of the Board for the purpose of receiving the insurance proceeds resulting from any loss as set forth herein. In the event of any loss resulting in the destruction of the major portion of one or more Townhomes, the Board, upon the written demand of the First Mortgagee of any Townhome so destroyed, shall engage the services of any bank or trust company authorized to do trust business in Illinois to act as trustee, agent or depositary on behalf of the Board ("Corporate Trustee") for the purpose of receiving and disbursing the insurance proceeds resulting from any loss as set forth herein. The rights of First Mortgagees under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions of this Declaration with respect to the application of insurance proceeds to the repair or reconstruction of the Damaged Improvement. Payment by an insurance company to the Board or to such Corporate Trustee of the proceeds of any policy, and the receipt of a release from the Board of the company's liability under such policy, shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or see to the application of any payments of the proceeds of any policy by the Board or the Corporate Trustee.

7.03 Where the insurance proceeds are sufficient to repair or reconstruct the Damaged Improvement, then the proceeds shall be used by the Board to repair or reconstruct said Damaged Improvement.

All Owners, mortgagees and lenders do hereby acknowledge and agree that the placement, taking or possession of a mortgage lien on or the encumbrancing of any portion of the Property, does constitute an acceptance of the terms and provisions of this Declaration, and therefore, said parties hereby agree that, in the event of damage by fire or other disaster to a portion or the entirety of a Townhome or improvements to the Common Area, insurance proceeds obtained as a result thereof by the Board shall be utilized to repair or reconstruct the Damaged Improvement.

In the case of damage by fire or other disaster to a portion of a Townhome or an improvement to the Common Area where the insurance proceeds are insufficient to repair or reconstruct the Damaged Improvement or the Damaged Improvement cannot be reconstructed as originally designed and built because of zoning, building or other applicable laws, ordinances or regulations, the following procedure shall be followed:

- a. A meeting of the Owners shall be held not later than the first to occur of (i) the expiration of thirty (30) days after the final adjustment of the insurance claims, or (ii) the expiration of ninety (90) days after the occurrence which caused the damage.
- b. At the meeting, the Board shall present a plan for the repair or reconstruction of the Damaged Improvement and an estimate of the cost of repair or reconstruction, together with an estimate of the amount thereof which must be raised by way of special assessment and a proposed schedule for the collection of a special assessment to pay the excess cost.

- c. A vote shall then be taken on the question of whether or not the Damaged Improvement shall be repaired or reconstructed based on the information provided by the Board under subsection (b) above, including the proposed special assessment. The Damaged Improvement shall be repaired or reconstructed and the proposed special assessment shall be levied only upon the affirmative vote of Members representing at least three-fourths (3/4) of the votes cast.
- d. If the Members do not vote to repair or reconstruct the Damaged Improvement under subsection (c) above, then the Board may, with the consent of Owners representing seventy-five (75%) percent of the voting rights of Townhomes on the Property and seventy-five (75%) percent of the first Mortgagees of Townhomes on the Property, amend this Declaration to withdraw that portion of the Property which includes the Damaged Improvement. If portions of the Property are withdrawn, then the amendment shall provide that the portion of the Property which is so withdrawn shall be owned by the Owners of Townhomes in such withdrawn portion as tenants in common with each Owner's interest being determined based on the relative assessment rates of such Parcels prior to withdrawal. The amendment shall reallocate the assessment rates of the remaining Parcels in a manner which will insure that each Owner's percentage of such assessment is in direct proportion to the floor space in the Townhome proportion to the floor space in the Townhome constructed on Parcels subject to this Declaration. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Owner shall be made to such Owner and his First Mortgagee, as their interests may appear, on an equitable basis, determined by the Board. From and after the effective date of the amendment referred to above in this paragraph, the Owner of a Parcel located on the portion of the Property which is withdrawn shall have no responsibility for the payment of assessments which would have been payable with respect to the Parcel if the amendment had not been recorded.

If the Townhomes or the improvements to the Common Area are repaired or reconstructed, it shall be done in a workmanlike manner which is substantially similar in design and construction as originally constructed with any variations or modifications required to comply with applicable law.

If the Townhomes or improvements to the Common Area are not repaired or reconstructed, then the damaged portions shall be razed, or secured and otherwise maintained in conformance with the rules or standards adopted from time to time by the Board.

7.04 The Board shall also have the authority to and shall obtain the following insurance:

- a. Comprehensive public liability and Property damage insurance against claims for personal injury or death or Property damage suffered by the public or by any Owner occurring in, on or about the Property or upon, in or about the streets, driveways, patios, and passageways and other items and appurtenances and areas contiguous to and adjoining the Property, in such amounts as the Board shall deem desirable (but not less than \$1,000,000.00 covering all claims for personal injury and/or Property damage arising out of a single occurrence).

- b. Such workmen's compensation insurance as may be necessary to comply with applicable laws.
- c. Employer's liability insurance in such amount as the Board shall deem desirable.
- d. Fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable.
- e. Director's and officer's liability insurance.
- f. Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. To the extent possible, all of such policies shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium without at least thirty (30) days prior written notice to the Association and First Mortgagees who specifically request such notice.

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

7.06 Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Association, its directors and officers, the Declarant, the Developer, and their respective employees and agents, for damage to improvements to the Common Area, the Townhomes, or to any personal property located in the Townhomes or Common Area, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance.

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

7.08 In the case of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements in the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. Any proceeds or awards paid to the Association shall be applied first to the cost of any restoration and any remaining portion of such proceeds or awards shall be, in the discretion of the Board, either (i) applied to pay the Association's expenses, or (ii) distributed to the remaining Owners and their respective First Mortgagees, as their interests may appear. In the event that part of or all of one or more Townhomes is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Declaration and the Board shall adjust the assessment rates of the remaining Townhomes in a just and equitable manner. The President and Secretary of the Association shall execute and record an instrument on behalf of the Association which amends this Declaration, effective as of the effective date of the taking or condemnation, to reflect the removal of Property and adjustments, if any, in the assessment rates as a result of an occurrence covered by this Section.

ARTICLE VIII

RESTRICTIONS RELATING TO THE PROPERTY

8.01 Each Parcel conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

8.02 * The Parcels shall be used only for residential purposes, as a private residence, and no professional business or commercial use shall be made of the same, or any portion thereof nor shall any resident's use of a Parcel endanger the health or disturb the reasonable enjoyment of any other Owner or Occupant, and provided further, that the Parcel restrictions contained in this Section shall not be construed in such a manner as to prohibit an Owner or Occupant from (a) maintaining his personal professional library therein; (b) keeping his personal, business or professional records or accounts therein; or (c) handling his personal, business or professional telephone calls or correspondence therefrom.

No Parcel, Townhome or Garage shall be rented or leased by any Owner to any third party without the prior express written consent of the Board in each instance, which consent may be withheld with or without any reason by such Board in its sole and exclusive discretion at any time. Any such expressly consented to lease shall expressly contain provisions which subjects the tenant to compliance with all terms, covenants and restrictions of this Declaration and all rules and regulations of the Association and the Association is acknowledged to have full right, power and authority, in its sole discretion, to enforce all of the same against any such tenant as well as the Owner, jointly and severally.

* amended 1/17/2007 - See attachment

8.03 No buildings or structures other than Townhomes or appurtenances thereto (including Garage(s) appurtenant to each Parcel) originally constructed by the Developer or the beneficiaries of the Declarant shall be constructed on each Parcel.

8.04 The foregoing covenants of this Article VIII shall not apply to the activities of the Association. The beneficiaries of the Declarant may maintain, while engaged in construction and sales activities, in or upon such portions of the Property as said beneficiaries determine, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, signs and construction trailers.

8.05 No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Parcel except dogs, cats or other common household pets (not to exceed a total of two (2) pets) may be kept, provided, that they are not kept, bred, or maintained for any commercial purposes. Such animals shall be confined to a leash and all animal waste shall be removed and disposed of by the Owner immediately. Exterior "dog runs" or pens or other exterior structures or barriers (including electronic based systems) for the keeping of any allowable pets are prohibited. Any allowable pet or animal while on the exterior of any Townhome shall be in the presence of any respective Owner or Occupant of the Townhome where such pet is kept.

8.06 All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Townhomes and streets, and shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All household trash shall be confined to plastic containers with lids.

8.07 No signs or placards of any type, size or content (except for a single standard realtor size "for sale" sign in the Parcel yard upon any sale of a Parcel) shall be placed upon any Parcel or any other part of the Property or in window(s) of any Townhome or Garage. No seasonal or other flags or banners (other than the American flag on recognized national holidays) shall be displayed, hung or flown on any Parcel. None of the foregoing restriction(s) apply to Declarant or Developer. Drying of clothes, linens, etc. shall be confined to the interior of the Townhomes (meaning interior living areas).

8.08 No television or radio antennas or satellite dishes of any sort shall be placed, allowed or maintained on the exterior of any Townhome or any portion of the exterior of the improvement located on the Property, nor upon any structure situated upon the Property, provided, however, television satellite dish type antenna or tracking devices which do not exceed twenty-four (24") inches in diameter and which are situated on the back side of an Owner's Garage and which in the judgment of the Association are not otherwise in a location which is highly visible from the street or from any other Owner's Townhome may be permitted SUBJECT TO architectural control approval by the Association as further herein provided.

8.09 No lines or wires for communication or the transmission of electrical current or power shall be constructed, placed or permitted to be placed anywhere other than within the Townhomes. No above-ground communication, electric or television lines or cable shall be permitted to be placed anywhere other than within the Townhomes. It is intended that all such necessary approved conduits and cables will be constructed, placed and maintained underground.

8.10 An Owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Parcels or the other Owners.

8.11 There shall be no change in any exterior color of any Townhome or Garage (or any erected fences) from the color scheme, if any, selected by the Owner and otherwise implemented and utilized by the Developer upon the initial conveyance of the subject Parcel from Declarant without the prior written approval of the Association.

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

8.13 Each Parcel is hereby declared to be subject to an easement and right to an in favor of the Association and each and all of its employees, agents and instrumentalities to go upon such Parcel for reasonable inspection thereof from time to time and for the purpose of carrying out any and all of the obligations and functions with respect to such Parcel and the Townhome located thereon as are herein imposed upon or permitted to the Association. Each Parcel is further declared to be subject to an easement in favor of any adjoining Parcel to the extent necessary to permit the maintenance, supply, repair, and servicing of utility services to the various Parcels and Townhomes located thereon.

8.14 The Owner of each Parcel shall from time to time grant such additional easements (including without limitation temporary construction easements) and rights over, across, on, under and upon his Parcel as may be reasonably necessary in connection with the supply of any utilities to any part of the Property or the performance by the Association of its maintenance duties and functions hereunder.

8.15 The Board may adopt such other rules and regulations from time to time governing the use and enjoyment of the Common Area and the use of the Parcels (including Courtyards) as the Board, in its sole discretion, deems appropriate or necessary.

8.16 Common Areas, parking areas and driveways shall be used for parking operable automobiles only and shall not be used for campers, trailers, vans, snowmobiles, motorcycles, boats or for any other purpose. No trucks, with Class B or higher license plates, no trucks or other vehicles with commercial lettering or signs painted on or affixed to any portion of the exterior thereof, shall be parked or stored temporarily or permanently on any street within the Property or any Common Areas, on any driveways within any Parcel, other than in a fully enclosed Garage. Notwithstanding the foregoing, trucks with Class B or higher license plates and trucks and other vehicles with commercial lettering or signs painted on or affixed to any portion of the exterior of the same shall be permitted to park temporarily on the driveway on a Parcel during the limited period of a service call, delivery or pick-up being carried out or made to the Townhome unit on such Parcel, provided such limited temporary parking shall not include or allow unenclosed overnight parking of such vehicles on any Parcel. The restrictions set forth in this Section 8 shall not apply to trucks or other vehicles, (i) engaged or used in the development of the public improvements for the Property, (ii) engaged or used in the construction of a Townhome unit or installation of landscaping or other site improvements on a Parcel prior to the issuance of the occupancy permit for, and the residential habitation of, the Townhome unit located on such Parcel, (iii) utilized, parked or stored on a Parcel upon which a model Townhome is located and operated pursuant to the written approval of Declarant, or (iv) utilized, parked or stored on a Parcel upon which a Townhome for sale which has not previously been

inhabited is located. The Board may authorize such vehicles parked in violation of this provision to be towed away and any such towing charge shall become a lien upon the Parcel of the Owner of the vehicle in the same manner as provided in Article VI hereof for non-payment of maintenance assessments.

8.17 No firewood shall be stacked on any Common Area or any part of the Townhome or Courtyard area other than the patio.

8.18 Each Parcel and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Parcel to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Parcel, including roof structures which overhang and encroach upon the servient Parcel or Common Area, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The Owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the dominant tenement provided, however, that such entry shall be allowed only during daylight hours and with the prior knowledge of the Owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the Owner of the servient tenement. The Owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the Owner of the dominant tenement granted by this Section 8.18. Any such improvement, material or obstacle shall be promptly removed by the Owner of the servient tenement at that Owner's expense when requested by the Owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvements, material or other obstacle was placed in or over the easement area.

8.19 No building, fence, wall or other structure or landscaping (including exterior hot tubs/trellises to be located in a Courtyard area) shall be commenced, erected or maintained upon any part of the Property (including any Parcel or Courtyard area) except such as are installed or approved by the Declarant or Developer in connection with the initial construction of the Townhomes upon the Property, nor shall any exterior addition to or change or alteration or, in the event of a casualty loss, any restoration made to the exterior portion of any Townhome, therein be made until a written application therefor and a Fifty and No/100 (\$50.00) Dollar application fee together with the plans and specification showing the nature, kind, shape, height, materials, and location of the same and the grading plan and landscape plan shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or by an architectural committee of three (3) or more persons appointed by the Board. The foregoing notwithstanding (unless Declarant and/or Developer otherwise expressly agree in writing) until the last Townhome and Parcel situated or to be situated on the Property has been constructed and sold by Developer to a third party Owner, the Declarant or Developer shall have sole power, right and authority to appoint, constitute and exercise the powers of such architectural committee. In the event the Board's architectural committee, fails to approve or disapprove such design and location within one hundred eighty (180) days after said plans and specifications have been submitted to it, or in the event no suit to enjoin the addition, alteration or change has been commenced within one (1) year following the completion thereof, approval will not be required and the Section 8.19 will be deemed to have been fully complied with. The Board's architectural committee shall, in addition, have the right

to approve the general contractor responsible for performing the work in connection with the restoration of the exterior portion of any Townhome in the same manner as approval of plans and specifications is obtained.

ARTICLE IX

PARTY WALLS

9.01 All dividing walls which straddle the boundary line between Parcels and which stand partly upon one Parcel and partly upon another, and all walls which serve two or more Townhomes shall at all times be considered party walls, and each of the Owners of Parcels upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length or any part of the length thereof for the support of said Townhomes and for the support of any building constructed to replace the same, and shall have the right to maintain in or on said wall any pipes, ducts or conduits originally located therein or thereon subject to the restrictions hereinafter contained.

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

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

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

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

ARTICLE X

MISCELLANEOUS

10.01 The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Owner found to be in violation by a

court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorney's fees incurred by the Association in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Owner's Parcel, enforceable as other liens herein established. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.02 Any provisions of applicable law which supersede or otherwise affect any provisions hereof shall not affect the validity of the balance of this Declaration, and the remaining provision shall be enforced as if the invalid provisions were deleted.

10.03 The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Owner of any Parcel subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. Other than the provisions of Sections 3.04(b) and 3.05 hereof, which may be amended only by the Declarant, the covenants and restrictions of this Declaration may be amended during the first forty (40) year period or within any successive ten (10) year period by an instrument signed by those Members entitled to cast two-thirds (2/3) of the total votes as provided in Article III, Section 3.1 hereof which instrument shall then be properly recorded. These covenants and restrictions may also be canceled or amended by an instrument signed by sixty (60%) percent of Owners executed and recorded within ninety (90) days prior to the expiration of any successive ten (10) year period, such cancellation or amendment to be effective on the date of commencement of the ten (10) year period in question. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of Recorder of Deeds of Kane County, Illinois, and a true, complete copy of such instrument shall be transmitted to each Owner promptly.

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

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

10.06 Notwithstanding anything in the Declaration to the contrary, with regard to the provisions of Section 6.08c. which expressly subordinates the lien of the Association for unpaid assessments to the lien of any first mortgage on any Parcel, no amendment to, change or modification of that Section shall be effective unless such change or amendment shall be first consented to, in writing, by all mortgagees of record of such Parcels.

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

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

IN WITNESS WHEREOF, the Declarant has caused its officer to sign this Declaration and its seal to be affixed hereto on this 26th day of May, 1999.

DECLARANT:

AMERICAN NATIONAL BANK & TRUST
COMPANY OF CHICAGO, as Trustee under
Trust Agreement dated July 21, 1995 and known
as TRUST NO. 300503-06

By: D. J. Leth
Its: Trust Officer

Attest: Attestation not required by American National
Bank and Trust Company of Chicago By Laws
Its: _____

faganel\kirkland chase party wall dec.doc\052699\cp

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

STATE OF Illinois)
) SS.
COUNTY OF DuPage)

* David J. Lanciaff:

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the above-named * President/Trust Officer and _____ Secretary of AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO, as Trustee under TRUST NO. 300503-06, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President/Trust Officer and _____ Secretary, respectively, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee for the uses and purposes therein set forth; and the said Trust Officer Secretary then and there acknowledged that said Trust Officer Secretary, as custodian of the corporate seal of said Trustee, caused the corporate seal of said Trustee to be affixed to said instrument as said Trust Officer Secretary's own free and voluntary act and as the free and voluntary act of said Trustee for the uses and purposes therein set forth. GIVEN under my hand and official seal, this 28th of May, 1999.

Eva Higi
Notary Public



MORTGAGEE CONSENT

This Declaration is hereby consented to as of the date first above written by First National Bank of Chicago in its capacity as mortgagee of record against the Property.

FIRST NATIONAL BANK OF CHICAGO,
a National Banking Association

By: Michael F. Moore
Title: Vice President

Attest: Judy M. Hoffman
Title: Chrm. R/E Loan Officer

.....
STATE OF ILLINOIS)
)
COUNTY OF DuPAGE) SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael F. Moore, and Judy M. Hoffman, of FIRST NATIONAL BANK OF CHICAGO, a National Banking Association, and of said Association, personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day in person as Vice President and Comml. Rel. Manager of said Association, and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Association, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 28th day of May, 1999.

Georgia L. Taylor
Notary Public

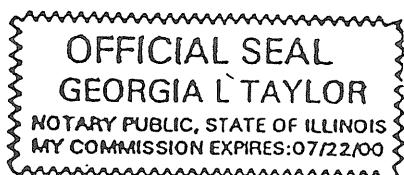


EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

KIRKLAND CHASE P.U.D. PHASE ONE-A, A RESUBDIVISION OF LOT 100 OF KIRKLAND CHASE P.U.D. PHASE ONE, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24TH, 1999 AS DOCUMENT NO. 1999K020059, TOGETHER WITH THAT PART OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF KIRKLAND CHASE P.U.D. PHASE ONE-A; THENCE EASTERLY, ALONG THE NORTH LINE OF SAID SUBDIVISION, 553.32 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORtherly at an angle of $89^{\circ}45'05''$, MEASURED CLOCKWISE FROM SAID NORTH LINE, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF KIRK ROAD AS DEDICATED PER SAID KIRKLAND CHASE P.U.D. PHASE ONE, 266.35 FEET TO A POINT OF CURVATURE; THENCE CONTINUING NORtherly along SAID WESTERLY RIGHT-OF-WAY LINE, 24.47 FEET, ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 714.47 FEET, THENCE WESTERLY, AT AN ANGLE OF $89^{\circ}11'40''$, MEASURED CLOCKWISE FROM THE CHORD FORMED BY THE LAST DESCRIBED CURVE, ALONG THE SOUTH LINE OF LOT 103 OF SAID KIRKLAND CHASE P.U.D. PHASE ONE AND A WESTERLY EXTENSION THEREOF, 552.17 TO THE EASTERLY RIGHT OF WAY LINE OF WAGNER ROAD; THENCE SOUTHERLY, AT AN ANGLE OF $90^{\circ}57'48''$, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID EASTERLY RIGHT OF WAY LINE, 281.54 FEET TO THE POINT OF BEGINNING, ALL IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

**AMENDMENT TO DECLARATION OF PARTY WALL RIGHTS,
COVENANTS, RESTRICTIONS, CONDITIONS AND EASEMENTS
FOR KIRKLAND CHASE COURTYARD TOWNHOMES**

This Amendment to Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Kirkland Chase Courtyard Townhomes is executed this 17th day of January, 2007.

R E C I T A L S

WHEREAS, the Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Kirkland Chase Courtyard Townhomes was established pursuant to document dated May 26, 1999, recorded as Document No. 1999K055400 on June 4, 1999 in the Kane County Recorder's Office (hereinafter the "Declaration"); and

WHEREAS, pursuant to the provisions of Article X Section 10.03 said Declaration is subject to amendment by vote of two-thirds (2/3) of the total votes provided in Article III Section 3.01 of the Declaration; and

WHEREAS, pursuant to a vote of the Members of the Association, two-thirds (2/3) of said Members have elected to exercise their right to amend the Declaration pursuant to the authority set forth in Section 10.03 in the manner herein set forth.

NOW THEREFORE, this Amendment to Declaration of Party Wall Rights, Covenants, Restrictions, Conditions and Easements for Kirkland Chase Courtyard Townhomes is hereby declared effective on the date set forth above:

1. The second paragraph of Article VIII Section 8.02 is hereby deleted and in lieu thereof the following is inserted:

No Parcel, Townhome or Garage shall be rented or leased by any owner to any third party. Properties with current signed rental agreements are exempt from this policy for the term of the current lease plus two years. Upon expiration, compliance with this policy is required. All such units must be registered and approved for compliance by the Board of Directors of the Association.

The consent of the Members approving the Amendment of the foregoing is attached hereto.

Executed this 17th day of January, 2007

Kirkland Chase Courtyard Townhomes

By: Jack Weeks
Its President

Subscribed and sworn to before me
this 17th day of January, 2007

D. M. Kalita
Notary Public



**AMENDMENT TO DECLARATION OF PARTY WALL RIGHTS, COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR KIRKLAND CHASE COURTYARD TOWNHOMES**

This Amendment to Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for Kirkland Chase Courtyard Townhomes, established pursuant to the document dated May 26, 1999 and recorded June 4, 1999 as Document No. 1999K055400 in the Kane County Recorder's Office (the "Declaration") is made this 25th day of March, 2013.

At the meeting conducted on the 10th day of December, 2012, pursuant to notice, by a vote of two-thirds (2/3) of the Members of the Kirkland Chase Courtyard Townhomes, it was resolved, pursuant Article X Section 10.03 of the Declaration, that the Declaration shall be amended as follows:

1. Article III Section 3.04 c. shall be and is deleted and in place of the same the following is hereby inserted:

"3.04 c. The term of office of any Director elected by the Members pursuant to Section 3.06 or 3.07 shall be for a period of (3) years beginning with the sitting Board of Directors elected in December, 2011.

In order to stagger new Directors, elections shall be held accordingly.

April 1, 2013: Members elect one new Board Member for a three (3) year term that will end December 31, 2015.

December, 2013: Members elect one new Board Member for a three (3) year term that will end December 31, 2016.

December, 2014: Members elect one new Board Member for a three (3) year term that will end December 31, 2017.

The sitting Board of Directors will determine who will resign their Directorship on April 1, 2013 and December 31, 2013 in order to create this staggered election schedule."

The written consent of the Members approving this Amendment to the Declaration is attached hereto as Exhibit "1" and is incorporated herein by this reference.

Executed this 25th day of March, 2013.

KIRKLANE CHASE COURTYARD TOWNHOMES

By: Mark M. Carson
Its President

Subscribed and sworn to before me
this 6th day of MAY, 2013.

Seal:

Notary Public

