

**DECLARATION OF PARTY WALL RIGHTS, COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PRAIRIE RIDGE TOWNHOMES**

Prepared by:  
James A. Stoddard  
Klein, Stoddard, Buck & Waller  
2045 Aberdeen Court, Ste. A  
Sycamore, Illinois 60178  
Phone: 815-899-2210

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**DECLARATION OF PARTY WALL RIGHTS, COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PRAIRIE RIDGE TOWNHOMES**

THIS DECLARATION is made and entered into this 3rd day of May, ~~2004~~ <sup>2005</sup>

by **AMERICAN NATIONAL BANK OF DE KALB COUNTY**, a national banking association, as Trustee under the provisions of a deed or deeds in trust, duly recorded and delivered to said company in pursuance of a trust agreement dated the 6th day of January, 2004, and known as Trust No.2854; hereinafter referred to as "Declarant", and **K & S DEVELOPMENT, LLC**, hereinafter referred to as "Developer,"

**WITNESSETH:**

WHEREAS, the Declarant is the owner and legal title holder of certain real estate in the City of Sycamore, County of DeKalb and State of Illinois, which real estate is legally described in the Schedule of Real Estate attached hereto and by this reference made a part hereof; and

WHEREAS, **K & S DEVELOPMENT, LLC**, hereinafter referred to as the "Developer", presently intends to construct Townhouse Units and Common Areas on the Real Estate (as those terms are hereinafter defined), which will require uniformity and continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in the Townhouse Units; and

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

WHEREAS, there will be incorporated under the laws of the State of Illinois, as a not-for-profit corporation, **PRAIRIE RIDGE TOWNHOMES ASSOCIATION**, (or a similarly named corporation), hereinafter referred to as the “Association” for the purpose of exercising the functions aforesaid; and

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

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

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

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01.** “Association” shall mean and refer to **PRAIRIE RIDGE TOWNHOMES ASSOCIATION**, an Illinois not-for-profit corporation.

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

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

by the Association for the common use and enjoyment of the Owners.

**Section 1.04.** "Townhouse Unit" shall mean one (1) of the several residential housing units, and that portion of the Real Estate underneath it which extends to the vertical plane of the surface of the exterior walls, and that portion of adjacent land as may be platted as part of the lot for such Townhouse Unit; which Townhouse Unit may be attached to one (1) or more other Townhouse Units by common party walls and which are designed or intended for the exclusive use as living quarters.

**Section 1.05.** "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Townhouse Unit, including contract sellers, but excluding those having such interest merely as a mortgagee. The term "Owner" shall include the Developer to the extent of the number of Townhouse Units owned by Developer and also includes the interest of the Developer as contract seller of any Townhouse Unit.

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

**Section 1.07.** "Declarant" shall mean and refer to **American National Bank of DeKalb County**, a national banking association, as Trustee under the provisions of a deed or deeds in trust, duly recorded and delivered to said company in pursuance of a trust agreement dated the 6<sup>th</sup> day of January, 2004, and known as Trust No. 2854, its successors and assigns.

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

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

**Section 1.10.** "By-Laws" shall mean the By-Laws of **PRAIRIE RIDGE TOWNHOMES ASSOCIATION**, which shall be adopted by the initial Board appointed by the Declarant.

**Section 1.11.** "Declaration" shall mean this Declaration of Party Wall Rights, Covenants, Conditions, Restrictions and Easements for **PRAIRIE RIDGE TOWNHOMES**.

**Section 1.12.** "Transfer Date" shall mean the date which is the earlier of (a) the date on which 18 of the Townhouse Units have been conveyed to Owners other than the Developer; or (b) two (2) years after the first Townhouse Unit is conveyed to an Owner other than the Developer. For purposes of this Section 1.12, the term "conveyed to Owners" shall not include any conveyance to a mortgagee pursuant to or by reason of the terms and conditions of a mortgage which is or becomes a lien upon any portion of the Real Estate or the Development.

**Section 1.13.** "Material Amendment" shall mean any amendment to the Declaration, By-Laws or the Association's Articles of Incorporation that would change any of the following in a manner other than as expressly provided herein: voting rights in the Association; assessments, assessment liens, or

subordination of assessment liens, reserves for maintenance, repair and replacement of the Common Areas; responsibility for the maintenance and repair of the Common Areas; allocation of interests in the Common Areas, or right to use the Common Areas; boundaries of any Townhouse Units; additions to or deletions from the Common Areas; expansion or contraction of the Development, or the addition, annexation or withdrawal of property from the Development; insurance or fidelity bonds; leasing of Townhouse Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Townhouse Units; requirements for the restoration or repair of the Development; or termination of the legal status of the Association or the Development following substantial destruction or condemnation.

**Section 1.14.** "Developer" shall mean **K & S DEVELOPMENT, LLC**, its successors and assigns.

**Section 1.15.** "City" shall mean the City of Sycamore, Illinois, its elected and appointed officials, officers, agents and employees.

**Section 1.16.** "Additional Real Estate" means the real estate legally described on the Additional Schedule of Real Estate attached hereto.

**Section 1.17.** "Lot" shall mean a lot as designated on any plat of any portion of the Real Estate, recorded, from time to time, in the office of the Recorder of Deeds, DeKalb County, Illinois.

## **ARTICLE II**

### **MEMBERSHIP**

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

## **ARTICLE III**

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

**Section 3.01.** The Association shall have two (2) classes of voting membership:

**Class A.** Class A Members shall be all those Owners defined in Article II, provided that the Developer shall not be a Class A Member. Class A Members shall be entitled to one (1) vote for each Townhouse Unit in which they hold the interest required for membership by ARTICLE II. When more than one (1) person holds such interest in any Townhouse Unit, all such persons shall be Members. The vote for such

Townhouse Units shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Townhouse Unit. All Members holding any interest in a single Townhouse Unit shall together be entitled to cast only one (1) vote for the Townhouse Unit.

**Class B.** The Class B Member shall be the Developer. The Class B Member shall initially be entitled to thirty-six (36) votes provided that the number of votes of the Developer shall be reduced by one (1) vote for each Townhouse Unit conveyed by the Developer to an Owner other than the Developer.

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

**Section 3.03.** The Association shall have a Board of five (5) Directors who shall be elected by the Members of the Association at such intervals as the corporate charter and By-Laws of the Association shall provide, except that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board by majority vote if so provided by the articles of incorporation or By-Laws and that the first Board may be appointed by the Developer (or its beneficiary or designee) and shall be three (3) in number. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the Association's articles of incorporation, this Declaration or the By-Laws, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board from time to time and its officers under the direction of the Board, and shall not be subject to any requirement of approval on the part of its Members. The articles of incorporation and By-Laws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

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

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

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

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

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

#### **ARTICLE IV**

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

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

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

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

(c) All parking spaces shall remain available generally for the Owners or their guests and invitees, and no Owner shall have the exclusive use or right to use such unassigned parking spaces.

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

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

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

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

**Section 4.05.** The Declarant and Developer hereby covenant for themselves, their successors and assigns, that they will convey fee simple title to the Common Areas to the Association on or before the Transfer Date, subject, however, to the provisions of Section 4.01 (a) hereof. Declarant and Developer



shall reserve, upon conveyance to the Association of the Common Areas, a perpetual and non-exclusive easement for egress and ingress in, to and from each Townhouse Unit which it shall grant to each Townhouse Unit upon conveyance thereof.

**Section 4.06.** Declarant, the Developer and their respective agents, employees, guests and invitees shall have the right and easement of ingress and egress in, over, upon, under and across the Common Areas for sales and construction purposes until Declarant has conveyed all of the Townhouse Units to the purchasers thereof.

**Section 4.07.**

(a) The Association shall have the right and duty to build, repair and maintain the Common Areas.

(b) The Association shall have the right of ingress and egress over and upon the Common Areas for any and all purposes in connection with the use, maintenance, construction, operation, repair and reconstruction of the Common Areas.

(c) The Association, through resolutions of the Board, shall have the right to adopt rules and regulations governing the use, maintenance and administration of the Common Areas and for the health, comfort, safety and general welfare of persons using the Common Areas.

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

(a) The right of the Developer to execute all documents and do all other acts and things affecting the Development which, in the Developer's sole opinion, are desirable in connection with the Declarant's rights hereunder.

(b) Easements of record on the date hereof, including those easements granted on the attached Plat of Subdivision and any easements which may hereafter be granted by the Developer or the Association to any public utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water mains and pipes, or any other utility services serving any Townhouse Unit and to any provider of cable television service.

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

**Section 4.10.** Easements for serving the Common Areas and other properties with public utilities and municipal services are hereby granted to Commonwealth Edison Company, Northern Illinois Gas Company, Verizon Telephone Company, Comcast, the City and all other suppliers of utilities serving the

Common Areas and the respective successors and assigns, jointly and severally to install, lay, construct, renew, operate, maintain or remove, from time to time, conduits, cables, pipes, wire transformers, switching apparatus and other facilities and appurtenances used in connection with serving the Common Areas and adjacent property with telephone communications electric, sewer, gas, water, drainage, cable television or other municipal services, upon, across and under the Common Areas provided, however, that all such public utilities shall be installed underground. Notwithstanding any code or ordinance provisions which may provide otherwise, no public utility shall be installed over the ground and nothing herein shall be deemed or construed as permitting over the ground utilities.

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

**Section 4.12.** Each driveway serving a particular Townhouse Unit shall be available for the use by the Townhouse Unit Owner, and such Owner's guests, licensees, and invitees, and shall not be generally available to other Townhouse Unit owners notwithstanding that a part or all of such driveway is located within the Common Areas.

## ARTICLE V

### MAINTENANCE OF TOWNHOUSE UNITS AND THE COMMON AREAS

**Section 5.01.** The Association shall determine the need for and may carry out or cause to be performed all maintenance and repair to the lots (excepting the Townhouse Units located thereon) and to the exteriors of the Townhouse Units, including without limitation, landscaping, lawn, tree and shrubbery care, driveways, exteriors, roofs, foundations, siding and trim, gutters and downspouts, fences, if any, porches, patio areas, and wooden decks located on or serving a Townhouse Unit made necessary and desirable in the sole discretion of the Association as a result of natural or ordinary wear and deterioration. The Association shall, in addition, determine the need for and shall carry out or cause to be performed all such maintenance and repair of all gas, telephone and electrical lines incorporated in and forming a part of the Townhouse Units as originally constructed that service more than one (1) Townhouse Unit, shall maintain and repair all water, storm sewer and sanitary lines which service only one Townhouse Unit, and such maintenance and repair shall not include the maintenance or repair of any furnaces, water heaters, stoves, refrigerators, washing machines or household appliances, sump pumps, glass surfaces, windows and patio doors, doors, electrical fixtures, air conditions and compressors, or any other portion of said unit which services only one (1) Townhouse Unit, or the interior of any Townhouse Unit or portion thereof. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Townhouse Unit is subject. The Association shall, in addition, be responsible for the proper maintenance of all landscaping located on the Lots and Common Areas, including, but not limited to, mowing the grass areas and the proper maintenance of all access roads and streets, including the snow plowing of all sidewalks, parking areas and driveways located within the Lots and Common Areas, and the storage of such snow on the Lots and Common Areas. The obligations of the

Association as contained in this Section 5.01 shall be limited, however, to the extent that there are funds available in the Association's account from the assessments collected pursuant to ARTICLE VI hereof. The Association shall have the right to assess each and every Owner for any costs incurred in connection with the maintenance and repair of any underground sprinkling system located in the Development.

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

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

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

## ARTICLE VI

### COVENANTS FOR MAINTENANCE ASSESSMENTS

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

**Section 6.02.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Development and in particular for the improvement and maintenance of the Development, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, and of the Townhouse Units. Such uses shall include, but are not limited to the cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Areas and of the maintenance of the exteriors of the Townhouse Units (except as otherwise provided herein) as may be from time to time authorized by the Board, and other facilities and activities including, but not limited to, caring for the grounds, landscaping, parking areas and driveways, equipment, storm water management system, street lighting, if any, subdivision signage at the

entrance to the Development in accordance with applicable City code, all sanitary and storm sewer and water lines which service individual Townhouse Units, structures and appurtenances (other than facilities and activities maintained by any governmental authority or utility company), and other charges required by this Declaration or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve fund for repair, maintenance, replacements, taxes and other charges as specified herein. In addition, water, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners shall be paid for by the Association from the assessments levied hereunder. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund. At the time of closing of the sale of each Townhouse Unit by the Developer, the Owner shall pay (in addition to the first monthly assessment) to the manager or managing agent, or as otherwise directed by the Board, an amount equal to three (3) times the first full monthly assessment for such Owner, which amount shall be used and applied as a working capital fund in the manner herein provided.

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

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

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

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

**Section 6.07.** Any assessments which are not paid when due shall be delinquent. Such assessments, interest and all costs of collection shall be a continuing lien upon the Townhouse Units

against which each such assessment was made. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a rate equal to four (4) percentage points over the Base Index rate announced from time to time by the Federal Reserve Bank of Chicago, or its successors, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the respective Townhouse Unit and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Townhouse Unit, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a foreclosure of a mortgage or deed of trust lien on real property.

**Section 6.08.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the Townhouse Units and recorded prior to the due date of the delinquent assessment, provided, however, that such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Townhouse Unit which became due and payable subsequent to the date the holder of said mortgage takes possession of the Townhouse Unit, accepts a conveyance of any interest in the Townhouse Unit or has a receiver appointed in a suit to foreclose his lien. The lien of the assessment shall not be affected by the sale or transfer of the corresponding Townhouse Unit unless the sale or transfer is pursuant to the foreclosure of the first mortgage thereon. In such a case, the transfer of title pursuant to the foreclosure shall extinguish the lien. However, neither the personal obligation of the transferor, if any, nor the resulting pro rata share of the burden of such non-payment or non-enforcement, imposed through a subsequent assessment, shall be affected.

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

## ARTICLE VII

### INSURANCE

#### **Section 7.01.**

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

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

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

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

**Section 7.02.** Each Owner shall procure and maintain in full force at all times insurance covering his Townhouse Unit consisting of, or providing all the protections afforded by, the insurance now generally

described in an "all risk" policy to one hundred per cent (100%) of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than One Thousand Dollars (\$1,000.00) and naming the Association as an additional insured on each policy. A certificate of insurance evidencing the renewal of each expiring policy of insurance shall be furnished to the Association in each case at least ten (10) days prior to the expiration date of the expiring insurance. In the event a Townhouse Unit or any portion thereof shall be damaged or destroyed by fire or other casualty and the Owner thereof shall cause it to be repaired, restored or reconstructed, as the case may be, the repairs, restoration or reconstruction shall be in the same architectural style and design as was originally constructed and shall conform in all respects to all applicable laws or ordinances in force at the time of such repair, restoration or reconstruction. In the event of the total or substantial destruction of all of the Townhouse Units, the architectural design of the Townhouse Units to be rebuilt and the materials to be used in construction of the same shall be agreed upon among the Owners thereof, and in the absence of such agreement, the rebuilt Townhouse Units shall be substantially similar in architectural design as the original Townhouse Units and shall be constructed of comparable materials and quality of construction.

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

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

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

**Section 7.06.** In any case in which the Owner or Owners concerned shall fail to carry out and see to the repair, restoration or rebuilding required by the provisions of this ARTICLE VII, the Association shall cause such repairs or rebuilding to be furnished, provided and installed, in the same manner as set forth in Section 7.03 hereof, provided, however, that to the extent the insurance proceeds referred to in Section 7.02 are insufficient as to any Townhouse Unit, the particular Owner shall be responsible to the Association for such deficiency, and the Association shall have, and is hereby granted, a continuing lien on the Townhouse Unit for which any such repairs or rebuilding are furnished by the Association in the aggregate amount of (a) the amount that cost thereof exceeds insurance proceeds; (b) interest at a rate equal to four (4) percentage points above the Base Rate charged by Federal Reserve Bank of Chicago, or its successor, from time to time from the date of the Association's payment of such costs; and (c) reasonable attorneys' fees and any court or other costs incurred by the Association in connection therewith, which lien shall bind such Townhouse Unit in the hands of such Owner, his heirs, devisees, personal

representatives, grantees and assigns. In the event such Owner does not forthwith fully repay the Association therefore, as aforesaid, such lien shall be foreclosed against the Townhouse Unit by the Association in the same manner as hereinafter provided in connection with unpaid assessments. The Association's lien in this Section 7.06 provided for shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Townhouse Unit.

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

## **ARTICLE VIII**

### **INTERIM PROCEDURES**

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

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

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

## **ARTICLE IX**

### **RESTRICTIONS RELATING TO PROPERTY**

**Section 9.01.**

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

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

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



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

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

**Section 9.05.** No advertising sign (except one (1) "For Rent" or "For Sale" sign of not more than five (5) square feet per Townhouse Unit), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Townhouse Unit except as provided in Section 9.06 hereof. Any such sign shall be in compliance with all applicable City ordinances.

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

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

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

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

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

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

**Section 9.12.** There shall be no change in any garage doors, exterior light fixtures or exterior color of any Townhouse Unit from the color scheme selected by the Owner upon the initial conveyance of the Townhouse Unit from the Developer without the prior written approval of the Association. Any exterior storm doors shall be constructed of full-view glass except for the frame with kick plate.

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

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

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

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

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

**Section 9.18.** The Common Areas are hereby subjected to a permanent easement appurtenant to any adjoining portion of the Common Areas to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining portion of the Common Areas, including roof structures which overhang and encroach upon a Townhouse Unit or the Common Areas, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to maintain, repair and restore any improvements located on the dominant tenement, provided, however, that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section 9.18. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Developer, notwithstanding any lapse of time since such improvements, material or other obstacle was in place in or over the easement area.

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

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

**Section 9.21.** No Owner shall be allowed to utilize that portion of the Common Area upon which any retention basins are located.

**Section 9.22.** Each Owner shall generally keep the garage door for his Townhouse Unit closed except when entering and exiting the garage.

## **ARTICLE X**

### **PARTY WALLS**

**Section 10.01.** All walls which serve two (2) or more Townhouse Units, shall at all times be considered party walls, and each of the Owners of the Townhouse Units upon which any such party wall shall stand shall have the right to use said party wall below and above the surface of the ground and along the whole length, or any part of the length thereof, for the support of said Townhouse Units and for the support of any building constructed to replace the same, and shall have the right to maintain in or on said wall any pipes, ducts or conduits originally located therein or thereon, subject to the restrictions hereinafter contained.

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

**Section 10.03.** In the event of damage to or destruction by fire or other casualty of any party wall,

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

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

## **ARTICLE XI**

### **ADDITIONAL REAL ESTATE**

**Section 11.01.** The Developer hereby reserves the right and option at any time and from time to time, within a period of seven (7) years after the date of the recording of this Declaration in the office of the Recorder of Deeds of DeKalb County, Illinois, to add on and subject to the provisions of this Declaration, all or any portion of the Additional Real Estate by recording an amendment or amendments to this Declaration executed solely by the Developer (each such instrument being hereinafter referred to as "Amendment to Declaration") which shall set forth the legal description of the additional parcel or parcels within the Additional Real Estate to be added to and made subject to the provisions of this Declaration. Upon the recording of each such Amendment to Declaration, the additional parcel or parcels therein described shall be deemed subject to this Declaration and governed in all respects by the provisions of this Declaration. No portion or portions of the Additional Real Estate shall be subject to any of the provisions of this Declaration unless and until an Amendment to Declaration is recorded as aforesaid. The Owners shall have no rights whatsoever in or to any portion of the Additional Real Estate, unless and until an Amendment to Declaration is recorded as aforesaid. Upon the expiration of said seven (7) year period, no portions of the Additional Real Estate which have not theretofore been added to and made subject to the provisions of this Declaration shall thereafter be made subject to this Declaration. No portions of the Additional Real Estate must be submitted to this Declaration. Portions of the Additional Real Estate may be added to and made subject to this Declaration at different times within such seven (7) year period. Except as may be required by applicable laws and ordinances, there shall be no limitations (a) on the order in which portions of the Additional Real Estate may be added to and made subject to this Declaration; (b) fixing the boundaries of these portions; or (c) on the location of improvements which may be made on the Additional Real Estate. Structures, improvements, buildings and units to be constructed on portions of the Additional Real Estate shall be compatible with the configuration of the Townhouse Units initially made subject to this Declaration. The maximum number of Townhouse Units which may be constructed on the Real Estate and the Additional Real Estate shall be subject to any limitation imposed by applicable laws and ordinances.