

## **Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association**

This instrument is recorded for the purpose of replacing, in its entirety, the Bloomfield Club III Homeowners Association Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Original Declaration"), recorded on December 9, 1991 as Document No. R91-164416 in the Office of the Recorder of Deeds, DuPage County, Illinois, and all prior amendments thereto.

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association is adopted pursuant to the provisions of Article VIII, Section 5 of the Original Declaration. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association, the text of which is set forth below, shall become effective upon Recording in the Office of the Recorder of Deeds, DuPage County, Illinois, following its approval by the Owners of not less than sixty-seven percent (67%) of the Units in the Association, with such approval being indicated by a vote at a meeting of the Owners and with such approval votes being attached hereto, and following the written approval of the Village of Bloomingdale, Illinois.

The Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, attached hereto as Exhibit "B", are adopted pursuant to the provisions of Article XV of the Bloomfield Club III Homeowners Association By-Laws (hereinafter referred to as the "Original By-Laws"), which provides that amendments to said Original

By-Laws may be made at a regular or special meeting of the Owners by a vote of a majority of a quorum of Owners present in person or by proxy. The Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, attached hereto as Exhibit "B", shall become effective following its Recording in the Office of the Recorder of Deeds, DuPage County, Illinois.

## **PREAMBLE**

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

WHEREAS, the Original Declaration was recorded on December 9, 1991 as Document No. R91-164416 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Original Declaration was amended by Amendment to the Declaration of Covenants, Conditions and Restrictions for the Bloomfield Club III Homeowners Association, which was recorded on February 2, 1998 as Document No. R98-018665 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Original Declaration was further amended by Amendment to the Declaration of Covenants, Conditions and Restrictions for the Bloomfield Club III Homeowners Association (hereinafter referred to as the "1999 Amendment"), which was recorded on April 22, 1999 as Document No. R99-092127 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Board and the Owners of the Association desire to amend and restate the Original Declaration and all prior amendments thereto, replacing them, in their entirety, with this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association;

WHEREAS, the Board and the Owners of the Association desire to amend and restate the Original By-Laws, replacing it, in its entirety, with the Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, attached hereto as Exhibit "B";

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association has been approved by Owners of not less than sixty-seven percent (67%) of the total Units in the Association, with such approval being indicated by a vote at a meeting of the Owners and with such approval votes being attached hereto;

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association has been approved in writing by the Village of Bloomingdale, with evidence of the Village of Bloomingdale's

approval attached hereto;

WHEREAS, the Association has provided notice to the Village of Bloomingdale, all Owners and all First Mortgagees of the meeting of Owners called for purposes of voting on this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association at least thirty (30) days prior to such meeting; and

WHEREAS, there are no Eligible Mortgage Holders for the Units in the Association; and

WHEREAS, the Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, attached hereto as Exhibit "B", are adopted pursuant to Article XV of the Original By-Laws, having been approved at a regular or special meeting of the Owners by a vote of a majority of a quorum of Owners present in person or by proxy; and

WHEREAS, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association and the Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, attached hereto as Exhibit "B", shall become effective upon recordation in the Offices of the Recorder of Deeds of DuPage County, Illinois.

NOW THEREFORE, the Original Declaration is hereby amended and restated as follows:

## **ARTICLE I**

### **DEFINITIONS**

The following words when used in this Declaration ~~or any Supplemental Declaration~~ (unless the context shall prohibit) shall have the following meanings:

**Act:** The Illinois Common Interest Community Association Act (765 ILCS 160/1-1 et. seq.), as amended from time to time.

**Association:** BLOOMFIELD CLUB III HOMEOWNERS ASSOCIATION, an Illinois not-for-profit corporation, its successors and assigns. ~~For purposes of these Covenants, references to the Association or its Board of Directors shall mean the Developer until such time as the Association is formed.~~

**Board:** The Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provisions of this Declaration and the By-Laws.

**By-Laws:** The Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, a copy of which is attached hereto as Exhibit "B" and by this reference made a part hereof.

**Charge or Charges:** The annual assessment, any special assessment levied by the Association and/or any other charges, expenses or payments which an Owner is required to pay or for which an Owner is liable under this Declaration, the By-Laws or any rules and regulations of the Association.

**Common Area:** Those portions of the Property other than the Units and the improvements on the Units including, but not limited to, the Townhomes.

**Common Expenses:** The proposed or actual expenses affecting the Property, including reserves, if any, lawfully assessed by the Association.

**County:** DuPage County, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in DuPage County, Illinois as of the Recording of this Declaration.

**Declaration:** This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association, as amended from time to time.

**Community:** ~~The real property described in Exhibit "A" attached hereto and made a part hereof.~~

**Developer:** ~~HOFFMAN HOMES, INC., a Delaware Corporation, licensed to do business in the State of Illinois, its agents, successors and assigns.~~

**Eligible Mortgage Holder:** A holder of a first mortgage on a Unit that has requested the Association notify it on any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

**First Mortgagee:** The holder of any recorded first mortgage lien on one or more Units.

**Member:** Every person or entity holding membership in the Association as provided in Article III hereof.

**Owner:** The record owner, whether one or more ~~persons or entities and including the Developer where applicable,~~ of the fee simple title to any Unit situated in the ~~Property Community, but excluding those Persons having any interest merely as security for the performance of an obligation. Owner shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or transfer in lieu of foreclosure.~~

**Person:** A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

**Plat:** The Plat for Bloomfield Club Unit Five, Recorded on May 22, 1992 as Document No. R92-096454, and any and all amendments thereto.

**Prescribed Delivery Method:** Mailing, delivering, posting in an Association publication that is routinely mailed to all Members, electronic transmission, or any other delivery method that is approved in writing by the Member and authorized by this Declaration, the By-Laws or rules and regulations of the Association.

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

**Record:** To record in the office of the Recorder of Deeds of DuPage County, Illinois.

**Townhome:** That portion of a Unit which is improved with a single-family dwelling unit, which Townhome may be attached to one or more Townhomes by a Party Wall.

**Unit:** A platted lot.

**Village:** The Village of Bloomingdale, Illinois, or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Village of Bloomingdale, Illinois as of the Recording of this Declaration.

**Voting Member:** The individual for each Unit who shall be entitled to vote at meetings of the Owners, as more fully set forth in the Declaration and By-Laws.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION: ~~ADDITIONS THEREOF~~**

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

~~The real property, from which the Developer may from time to time declare portions to be specifically included in this Declaration and thereby be held, transferred, sold, conveyed and occupied subject to these Covenants is located in DuPage County, State of Illinois, and is more particularly described in Exhibit "A" attached hereto and made a~~

~~part hereof, all of which real property shall hereinafter be referred to as "Existing Property."~~

~~The portions of the Existing Property described in Exhibit "B" attached hereto and made a part hereof, are hereby specifically declared to be subject to this Declaration and included within the Covenants effective upon the recording of this Declaration.~~

~~Additional portions of the Existing Property may, from time to time within the period of seven (7) years from the date of this Declaration and at the option of the Developer, be annexed hereto and made subject to this Declaration and the Covenants by the Developer and the owner of record thereof pursuant to a supplemental Declaration, effective upon recording of such Supplemental Declaration, without the consent of the Association or its members.~~

~~All improvements intended for future phases will be substantially completed prior to annexation and will be consistent with the initial improvements in terms of quality of construction.~~

~~Unit owners are also subject to the rules, regulations and assessments established by the Bloomfield Club Recreation Association, by virtue of the Declaration of Covenants, Conditions and Restrictions therefor, which has been recorded against the Units which are the subject of these Covenants, in addition to three (3) surrounding communities.~~

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

##### Section 1:                   **Membership**

~~Every person or entity who is a record owner of a fee or undivided fee interest in any Unit in a portion of the Community, and which portion of the Community is by appropriate Declaration in the manner hereinbefore described included within these Covenants shall~~ Every Owner shall automatically, upon becoming an Owner and without any further act, be a Member of the Association, subject to the rights and obligations provided herein, in the Articles of Incorporation and the By-Laws, and shall remain a Member of the Association until such time as his or her ownership ceases for any reason, at which time his or her Membership in the Association shall automatically cease. Each Owner, by acceptance of a deed or other conveyance of a Lot, thereby becomes a Member, whether or not the Declaration or such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Ownership of a Lot shall be the sole qualification for Membership in the Association. There shall be one (1) Membership per Lot. If the record ownership of a Lot shall be in more than one (1) Person, all such Persons shall be Members of the Association and the individual who shall enjoy the voting Membership attributable thereto (the "Voting Member" as more fully set forth herein and in the By-Laws) shall be designated

~~by such Owner or Owners to the Association. The Association shall be given written notice of any change of ownership of a Lot by the new Owner within ten (10) days after such change. The foregoing is not intended to include persons or entities that hold an interest merely for the performance of an obligation. No Owner shall have any right or power to disclaim, terminate, or withdraw from his, her or its Membership in the Association or from any of his, her or its obligations as such Member by abandonment of a Townhome or Lot or for any other reason. The Association shall have one (1) class of Membership, and said membership shall be appurtenant to said Unit, and each purchaser of any Unit by acceptance of a deed therefor covenants and agrees to be a member of the Association whether or not it shall be so expressed in any such deed or other conveyance, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. Membership shall be expanded from time to time to the extent of the number of Units within a portion of the Existing Property when such portion is by Declaration included within these Covenants and thereby included within the Community.~~

~~Section 2:~~ **Membership Classes**

~~The Association shall have two classes of voting membership.~~

~~Class A:~~

~~Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Unit in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any Unit, all such persons shall constitute one member. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.~~

~~Class B:~~

~~The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Unit in which it holds the interest required for membership by Section 1, provided that the Class B membership shall close and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:~~

~~(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or~~

~~(b) Three (3) years after the first Unit is conveyed to a member.~~

**Section 23: Transfer of Membership**

Membership held by any Owner of a Unit is an appurtenance to such Unit and shall not be transferred, alienated, or pledged in any way except upon the sale or encumbrance of such Unit, and then only to the purchaser of such Unit. Any attempt to make a transfer except by the sale or encumbrance of a Unit is void. Reference to the transfer of membership need not be made in an instrument of conveyance or encumbrance of such Unit for the transfer to be effective, and the same shall automatically pass with title to the Unit.

**Section 3: Voting Members and Voting Rights**

There shall be only one (1) Person with respect to each Unit who shall be entitled to vote as a Voting Member at any meeting of the Members of the Association. Such Person shall be known in this Declaration and referred to as a "Voting Member". Such Voting Member may be the Owner of, or one of a group composed of all of the Owners of, a Unit or may be some Person designated by such Owner or Owners to act as proxy on his, her or their behalf and who need not be an Owner. The vote of the Voting Member shall be exercised as determined by the various Owners themselves but in no event shall more than one (1) vote be cast with respect to any one (1) Unit. The designation of the Voting Member shall be made in writing to the Board and shall be revocable at any time by actual notice of the death or judicially declared incompetence of any designator or by written notice to the Board by the designator. Any or all of such Owners may be present at any meeting of the Voting Members and (those constituting a group acting as a unit) may vote or take any other action as a Voting Member either in person or by proxy. Provided, however, that when record Ownership of a Unit shall be in more than one (1) Person, if only one (1) of the Owners of such Unit is present at a meeting of the Members, he or she shall be considered the Voting Member for such meeting and entitled to cast the vote associated with such Unit. Additionally, when record Ownership of a Unit shall be in more than one (1) Person, if more than one (1) of the Owners of such Unit are present at a meeting of the Members and only one (1) of the Owners of such Unit cast a vote for such Unit without any objection from the other Owners of such Unit, then the Owner casting a vote for such Unit shall be considered the Voting Member for such meeting and entitled to cast the vote associated with such Unit.

**ARTICLE IV**

**COVENANT FOR ~~CHARGES~~ CAPITAL CONTRIBUTIONS AND MAINTENANCE ASSESSMENTS**

**Section 1: Creation of Lien and Personal Obligation ~~foref Capital Contributions and Assessments and Charges~~**

~~Developer, if and to the extent provided in Section 11 of this Article, and each~~ Each Owner ~~purchaser~~ of any Unit by acceptance of a deed or other instrument of

conveyance therefore, whether or not it shall be so expressed in any deed or other instrument of conveyance, hereby covenants and agrees, for himself or herself, his or her heirs, personal representatives, successors and assigns, to pay to the Association for each Unit owned by such Owner all assessments and other Charges levied pursuant to this Declaration: (a) annual assessments or charges, payable monthly; and (b) capital contributions (described in Section 4 of this Article). Such contributions and assessments and other Charges are to be fixed, established and collected from time to time as hereinafter provided. Such capital contributions and assessments and other Charges (or installments of either), together with such interest thereon, late charges, property manager fees, attorney's fees and costs of collection thereof as are hereinafter provided, when due and not fully paid shall be a charge on the land, and shall be a continuing lien upon the Unit property against which each call for such contributions or assessment or other Charge (or installment of either) is made until the same shall be paid in full. Each such capital contribution or assessment and other Charge (or installment of either), together with such interest thereon, late charges, property manager fees, attorney's fees and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the Person who is the Owner of such Unit property at the time when such contribution or assessment or other Charge (or installments of either) falls due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

~~Upon the initial conveyance of each Unit from Developer to a purchaser, the purchaser shall establish an assessment deposit with the Association, in an amount equal to three (3) times the then current monthly assessment for such Unit. The assessment deposit shall not be refunded to purchaser upon a subsequent conveyance unless and until the party to whom purchaser conveys deposits a like amount with the Association. The foregoing shall apply to all subsequent conveyances of the Unit so that a three (3) month assessment deposit shall be held by the Association at all times as to each Unit, so long as these Covenants are in effect.~~

## Section 2:                    **Purpose of Assessments**

The assessments levied by the Association shall be used ~~exclusively~~ for the purposes of paying the Common Expenses and any Association obligations including, but not limited to: payment for any insurance obtained by, for or on behalf of the Association including casualty, liability, worker's compensation, fidelity, or any other insurance required by this Declaration or as may be deemed necessary; maintenance, repair and replacement of the Common Area and of the exterior portions of the Townhomes and Units which are the responsibility of the Association as set forth in this Declaration; landscaping of Units, islands and parkways; maintenance, repair and replacement of off-street parking spaces located within public right-of-ways; and the cost of labor, management, supervision and operation necessary or desirable for the provision

~~of such maintenance, repair or replacement and to provide funds for the Association to carry out its duties set forth in this Declaration, the By-Laws and Articles of Incorporation; to otherwise provide for maintenance, repair and replacement for operation of the Association and Property in accordance with this Declaration, the By-Laws and Articles of Incorporation; to accumulate reserves for any such expenses; and to in general promote the health, safety and welfare of the Owners and occupants of Units.ment of casualty liability, worker's compensation and fidelity insurance premiums and such other insurance premiums as may be deemed necessary from time to time and maintenance of the exterior portions of the townhomes, yards and landscaping of the Units, maintenance of landscaped islands, parkways, and offstreet parking spaces located within public right-of-ways, and the cost of labor, management, supervision and operation necessary or desirable for the provision of such maintenance and to provide funds for the Association to carry out its duties set forth herein or in its Articles of Incorporation or By-Laws.~~

**Section 3:            **Assessments****

- ~~(a)    The amount of the annual assessment shall be determined and fixed by the Board. Each year on or before December 1, the Board shall estimate the total amount necessary to pay the costs for maintenance, repair and replacement and for operation of the Association which will be required during the ensuing calendar year for the rendering of all services, for all equipment, supplies, materials, repairs, replacement, and maintenance, together with an amount for reasonable reserves for contingencies, replacements for capital expenditures and deferred maintenance for repair and replacement of the Property and the other properties to be maintained, repaired or replaced by the Association and for other Common Expenses, and the Board shall fix the annual assessment to be paid by each Unit in accordance with this Article. The Board shall also establish the date or dates on which the annual assessments, or installments thereof, shall become due, however unless otherwise provided by the Board, the annual assessments shall be due in twelve (12) equal installments on the first day of each month of the year for which they are assessed.~~
- ~~(b)    The Board shall provide to each Owner via a Prescribed Delivery Method, at least thirty (30) days, but not more than sixty (60) days, prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes. The failure or delay of the Board to prepare or serve the proposed annual budget on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay assessments, as provided in this Declaration, whenever the same shall be determined, and in the absence of any annual estimated assessment amount, the Owner shall continue to pay his~~

or her assessment when due at the then existing rate established for the previous period until the next assessment, or installment thereof, which is due at least ten (10) days after such new annual budget shall have been mailed or delivered.

(c) Provided that, if an adopted budget would result in the total assessments (annual plus special) payable in the budgeted fiscal year exceeding one hundred and fifteen percent (115%) of the total assessments (annual plus special) payable during the preceding fiscal year, then the Board, upon written petition signed by Owners representing at least twenty percent (20%) of the Units in the Association delivered to the Board within fourteen (14) days of the Board's adoption of the budget, shall call a meeting of the Owners to be held within thirty (30) days of the date of delivery of the petition to consider the budget. At said meeting, unless Voting Members representing a majority of the total Units in the Association cast votes to reject the adopted budget, the adopted budget is ratified.

(d) In the event that the sum of the annual and special assessments for any calendar year shall exceed the Association's expenses for such calendar year, the Board may, at its discretion, place or credit any excess to reserves, or the Board may, at its discretion, choose to apply any excess toward the next year's annual assessment, and the estimated costs for maintenance, repair and replacement and for operation of the Association, and shall consider such excess in determining the next annual assessment as set forth in this Article.

~~From the date any Unit becomes subject to this Declaration and until the calendar year beginning January 1, 1991, the annual assessment shall be not more than One Hundred Thirty One Dollar (\$131.00) per Unit. On and after January 1, 1991, for each succeeding year, on an annual basis, the annual assessment may be increased by vote of the Members of the Association, as provided in Section 5 of this Article.~~

~~In the event the annual assessment is not increased by vote of the members of the Association, as provided in Section 5 of this Article, this assessment may be increased effective the first day of January of each year on and after January 1, 1991, by action of the Board of Directors of the Association and without the necessity for a vote of the Members.~~

~~Prior to the transfer of control of the Association from the Developer to the Unit Owners, each Unit Owner shall pay the annual assessment for his Unit established by the Developer in the Association's estimated budget. If during such period, the actual expense of the Association exceeds the amounts established in the estimated budget, the Developer shall be responsible for the amount of such excess.~~

- ~~— The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at an amount more or less than the annual assessment established in accordance with this Article.~~
- ~~— Monies received by the Association pursuant to this Section 3 shall be deposited in the general account of the Association.~~
- ~~— In the event that the sum of the annual and special assessments for any calendar year shall exceed the Association's expenses including reserves for such calendar year, the Board of Directors shall cause the Association either to return the amount of such excess assessments to the members of the Association promptly after the end of such calendar year or to apply the amount of such excess against the members' annual assessments for the next following calendar year. Any such excess assessments which the Board of Directors elects to return to the members shall be returned to those persons who are members of the Association on the last day of the calendar year in which such excess arose. For purposes of this Section 3, the Association's expenses for a calendar year shall be conclusively deemed to equal the expenses reported on the Association's federal income tax return for such calendar year. The Association shall establish and maintain from annual assessments collected hereunder, reasonable reserves for the costs of maintenance, labor, management supervision and operation which are the obligation of the Association hereunder.~~

**Section 4:                    Special Assessments~~Capital Contributions~~**

- ~~(a)    Special assessments may be levied by the Board to defray the expense, or build up reserves to pay the costs, in whole or in part, of: (i) any alterations, additions, replacements or improvements to the Common Area or any other property owned or maintained by the Association, or (ii) any unforeseen or unexpected expenses not set forth in the annual budget as provided in this Declaration.~~
- ~~(b)    Whenever the Board shall determine that there exists a need for levying a special assessment as herein provided, the Board shall adopt a resolution setting forth the need, amount, period of payment and due date or dates for the proposed special assessment. All special assessments must be approved by a majority of the directors on the Board. Provided that, if any special assessment adopted by the Board pursuant to this Section would result in the total assessments (annual plus special) payable in the budgeted fiscal year exceeding one hundred and fifteen percent (115%) of the total assessments (annual plus special) payable during the preceding fiscal year, then the Board, upon written petition signed by Owners representing at least twenty percent (20%) of the Units in the Association delivered to the Board within fourteen (14) days of the Board's adoption of the special assessment, shall call a meeting of the Owners to be held~~

within thirty (30) days of the date of delivery of the petition to consider the special assessment. At said meeting, unless Voting Members representing a majority of the total Units in the Association cast votes to reject the special assessment, the special assessment is ratified.

(c) Provided, however, that special assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Owner approval or the provisions of Subsection (b) or (d) of this Section. As used in this Section, "emergency" means a danger to or a compromise of the structural integrity of the Common Area or any of the common facilities of the Association or a danger to the life, health or safety of the Members.

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

~~In addition to the annual and special assessments authorized by Section 3 of this Article, the Board of Directors may cause the Association to require, from time to time on at least thirty (30) days advance written notice to all members, a capital contribution to the Association (which may be payable in installments if so designated by the Board of Directors) for the purpose of (a) paying capital expenditures and the cost of acquisition or replacement of any major specified item or items of personal property owned or to be owned by the Association, or (b) making principal payments on loans made to the Association, or (c) providing the Association with working capital as reserves against future expenses, or (d) providing funds to cover losses incurred by the Association. Notwithstanding the foregoing, such capital contributions may not be levied without the assent of two-thirds (2/3) of the votes of each class of voting membership in the Association, cast in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all voting Members at least thirty (30) days in advance and which shall set forth the purpose of the meeting.~~

~~The purpose(s) of each capital contribution shall be specified in the aforementioned notice and all monies received by the Association in payment of the capital contributions referred to in this Section 4 shall be segregated from all other monies of the Association in a separate bank account or other investment approved by the Board of Directors, to be held by the Association and identified as being for funds for the purpose called for in the said notice to membership.~~

#### Section 5: **Change in Assessments by Action of the Membership**

~~Subject to the limitations of Section 3 of this Article, for the calendar year 1989 and for each annual period thereafter, the Association may, notwithstanding any action or inaction by the Board of Directors, change the annual assessment fixed~~

~~pursuant to said Section 3 prospectively for any such period, provided that any such change shall have the consent of a majority of the votes of each class of the voting Members of the Association, cast in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all voting Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.~~

Section 6: ~~Quorum for Actions under Sections 4 & 5~~

~~The quorum required for any action authorized by Sections 4 and 5 of this Article shall be as follows: At the first meeting called, as provided in said Sections 4 and 5, the presence at such meeting of Members of the Association, or of proxies, entitled to cast sixty (60) percent of all of the votes of each class of voting members shall constitute a quorum. If the required quorum is no\_ forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in said Sections 4 and 5 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the immediately preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the date of the immediately preceding meeting.~~

Section 7: ~~Date of Commencement~~

~~The annual assessments provided herein shall commence as to each Unit in any portion of the Existing Property which by declaration has been brought under these Covenants on the first day of the calendar month following said declaration, subject to the provisions of Section 11 of this Article.~~

~~The annual assessment shall become due and payable in equal monthly installments to be paid each month in advance on or before the first day of the month commencing on the first day of January of the year for which the assessment is levied, unless the Board of Directors designates another form of periodic payments.~~

~~The amount of the annual assessment which may be levied for the balance remaining in the first calendar year of assessment against a Unit shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 of this Article for such year as the remaining number of months in that calendar year bears to twelve (12).~~

~~The due date of any special assessment or capital contribution under Section 3 or Section 4 hereof respectively (and whether or not such assessment, or capital contribution, shall be payable in installments) shall be fixed in the resolution authorizing such assessment.~~

Section 58: **Duties of Board of Directors as to Assessments**

~~At least thirty (30) days in advance of the due date for any capital contribution assessed pursuant to Section 4 above, or annual or special assessment of the first installment of such contribution or assessment, the Board of Directors of the Association shall fix the amount of such contribution or assessment against each Unit. Subject to the provisions of Section 11 of this Article any such contribution or Both annual and special assessments shall be allocated equally among each Unit subject to this Declaration; provided, however, that nothing herein contained shall be deemed to restrict the remedies available to the Association against any particular Unit or Unit Owner(s) in the event of non-payment of contributions or assessments or other Charges when due, or for costs assessed to Unit Owner(s) as a result of willful or negligent acts of Owner(s), their family, guests or invitees. The Board shall prepare a roster of the Units and ~~capital contributions and~~ assessments applicable thereto ~~which shall be kept in the office of the Association and such roster, as well as the other books and records of the Association, shall be open to inspection by any Owner or First Mortgagee. Written notice of the assessment or capital contribution, or both, shall thereupon be sent to every Owner and First Mortgagee subject thereto. The Board of Directors may, in its discretion, designate a form of periodic payments. The Association shall collect from each Owner all assessments and other Charges payable by such Owner under this Declaration; provided, that ~~the~~ Board of Directors may also, in its discretion, designate and retain any agent to collect such ~~capital contributions and~~ assessments and other Charges on behalf of the Association, to whom payments of such ~~contributions and assessments~~ and other Charges shall be made.~~~~

**Section 69:            Non-Payment**

If the ~~capital contributions or~~ assessments or other Charges (or any installments or either) are not paid on the date when due ~~(being the dates specified in Section 7 hereof)~~, they shall be deemed delinquent, and such delinquent ~~contribution, assessment~~ or other Charge or installment of either shall, together with such interest thereon and the cost of collection thereof as are hereinafter provided, thereupon become a lien on the Unit of the delinquent Owner which shall bind such Owner, his or her heirs, devisees, personal representatives and assigns and the Association shall have the right to ~~r~~Record in the DuPage County Recorder's Office, a notice of lien upon the Unit of the delinquent Owner and the Board shall have the right to assess a late fee for the delinquent payment. The personal obligation of the then Owner to pay such ~~capital contribution or~~ assessment or other Charge however, shall remain the Owner's personal obligation for the statutory period and shall not pass to his or her successors in title unless expressly assumed by them. Sale or transfer of any Unit shall not affect the continuing lien on such Unit for the amount of any unpaid ~~capital contributions or assessments~~ or other Charges (or installments of either).

If an assessment or other Charge (or installment of either) is not paid within thirty (30) days after the due date thereof the Association, or its collecting agent designated by the Board, may bring legal and/or equitable action against the Owner personally obligated to pay the same, and/or against the Owner and the Unit to obtain possession of the Unit and Townhome in accordance with Article IX of the Illinois Code of Civil Procedure (or any other law or statute) and/or to execute, enforce and foreclose upon the Association's lien against the delinquent Owner's Unit, and there shall be added to the amounts due all expenses incurred by the Association with respect to such legal actions including, but not limited to, all actual attorneys' fees, court costs, costs, expenses, property management fees, and damages, and any judgment shall include these amounts.

No Owner may waive or otherwise escape liability for assessments or other Charges provided for in this Declaration for any reason. Without limiting the foregoing, no Owner may waive or otherwise escape liability for assessments or other Charges provided for in this Declaration by non-use of the Common Area or non-use or abandonment of his or her Townhome or Unit, or undertaking or performing the maintenance and other responsibilities of the Association as provided in this Declaration with respect to such Owner's Townhome and Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for the inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, the Declaration or with any order or directive of any municipality, other governmental authority or the Association.

Any unpaid amounts which cannot be promptly collected from an Owner may (but need not) be reassessed by the Board as a Common Expense to be collected from all of the Owners, including (by way of illustration and not limitation) a purchaser who acquires title to the Unit owned by the defaulting Owner at a foreclosure sale of such Unit pursuant to foreclosure of a lien against the Unit (including, without limitation, the Association lien for delinquent assessments or other Charges charged to the Unit, the Owner's successors and assigns and any holder of any mortgage who comes into possession of a Unit by deed in lieu of foreclosure or any assignment in lieu of foreclosure).

If a capital contribution or assessment (or installment of either) is not paid within thirty (30) days after the due date thereof, such contribution, assessment or installment shall bear interest from such due date at the highest rate permitted by Illinois law, and the Association, or its collecting agent designated by the Board of Directors, may bring any legal action against the Owner personally obligated to pay the same and/or to execute or foreclose upon the Association's lien against the delinquent Owner's Unit, and there shall be added to the amount of such

~~contribution, assessment or installment the costs of preparing and filing the complaint in such action and, in the event a judgment is obtained, such judgment shall include interest on the contribution or assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the cost of the action. No Owner may avoid liability for the capital contributions and assessments provided for herein by set-off of any claims he may have against the Association, or by abandonment of his Unit. Any unpaid assessment which cannot be promptly collected from an Owner of a Unit may (but need not) be reassessed by the Board of Directors as a common expense to be collected from all of the Owners, including (by way of illustration and not limitation) a purchaser who acquires title to the Unit owned by the defaulting Owner at a sheriff's sale of such Unit pursuant to execution upon a lien against such Unit (including, without limitation, the Association's lien for delinquent capital contribution(s) and/or assessment(s), his successors and assigns and any holder of a mortgage who comes into possession of a Unit by deed in lieu of foreclosure or any transfer or assignment in lieu of foreclosure.~~

Section 740:           **Subordination**

The lien of the ~~capital contributions and assessments~~ and other Charges provided for herein shall be subordinate to the lien of any first mortgage placed upon the Unit subject to such ~~capital contribution or assessment~~ or other Charge prior to the time such ~~capital contribution or assessment~~ or other Charge becomes a lien on such Unit; provided, however, that such subordination shall apply only to the ~~contributions, assessments,~~ Charges or installments which have become due and payable prior to the date of sale of such Unit pursuant to a decree of foreclosure of such mortgage or prior to the date of a deed, or other instrument of conveyance, of such Unit given by the mortgagor in lieu of foreclosure. Any First Mortgagee who comes into possession of a Unit on which it holds or held a mortgage, through foreclosure of such mortgage, or by deed (or assignment) in lieu of foreclosure, shall, except as otherwise provided by law, take the Unit free of any claims for unpaid assessments, ~~capital contributions,~~ or other Charges against such Unit which have accrued prior to the time such First Mortgagee comes into possession of such Unit (except for claims for a pro rata share of such assessments, ~~capital contributions~~ or other Charges resulting from a pro rata reallocation thereof by the Association to all Units including the mortgaged Unit). Such sale, or deed or instrument of conveyance in lieu of foreclosure, shall not relieve such Unit from liability for any ~~capital contributions or assessments~~ or Charges, or installments of either, which thereafter become due nor from the lien of any such subsequent ~~contribution, assessment,~~ Charge or installment.

Section 11:           **Exempt Units**

~~Each Unit, for the period prior to the time it is constructed, sold and conveyed by Developer, shall be exempt from the capital contributions, assessments, charges~~

~~and liens of the Association created herein for any amount in excess of sixty percent (60%) of capital contributions, and/or monthly assessments paid by other Unit Owners. Such exemption for any such unconveyed Unit shall continue until the time of closing and conveyance of such Unit by Developer.~~

~~Upon the conveyance by Developer to an Owner other than Developer of a Unit which was theretofore entitled to the above, partial exemption, such exemption shall be terminated ipso facto and such Unit shall thereafter be subject to the full amount of capital contributions and assessments elsewhere set forth in this Article prorated from the date of such conveyance.~~

~~It is further understood that the following property subject to this Declaration shall be exempt from the capital contributions and assessments, charges and liens created herein: (a) properties dedicated to and accepted by a local public authority and devoted to public use, from and after the time of acceptance of such dedication; (b) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Illinois, so long as such properties are not used as a dwelling.~~

Section 812:           **Certificate of Payment**

The Association shall, upon demand, furnish to any Owner liable for said ~~capital contribution or~~ assessment or other Charge, a certificate in writing signed by an officer or agent of the Association, setting forth whether the annual or special assessments or other Charges~~capital contributions~~ on a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Said certificates shall be conclusive evidence that any assessment or Charge~~capital contribution~~ therein stated to have been paid has in fact been paid. ~~No charge shall be made for issuing from time to time said certificates to the Developer on Units then owned by Developer.~~

Section 9:           **Revised Assessment**

~~If the annual assessment proves inadequate for any reason (including non-payment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under this Article by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.~~

Section 10:           **Itemized Accounting**

~~Within a reasonable time after the close of each fiscal year, the Board shall provide all Owners with a reasonably detailed summary of the receipts, Common Expenses, and reserves for the preceding budget year. Additionally, the Board~~

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

**Section 11: Capital Reserve**

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

**Section 12: Receipt of Payments**

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

**ARTICLE V**

**MAINTENANCE DUTIES AND RIGHTS OF THE ASSOCIATION AND FIRST MORTGAGEES**

**Section 1: Maintenance Duties and Responsibilities of theThe Association's Maintenance Duties and Rights**

- (a) The Association shall furnish, as a Common Expense, the maintenance, repair, and replacement of the Common Area.
- (b) The Association shall be responsible for repair, replacement and maintenance of the following portions of the exterior of the Townhomes and Units as follows:
- (i) gutters, downspouts and gutter leaders;
  - (ii) the entire roof, including shingles, underlayment, plywood, decking, flashing, fascia, soffits and other materials or portions considered part of the roof;
  - (iii) chimneys (including, but not limited to, any concrete/limestone masonry work that is part of the chimney structure) and chimney caps with screens;
  - (iv) foundations to the Townhomes;
  - (v) the concrete slabs of the front porch stoops of the Townhome (but not including the steps, which shall be the Owner's responsibility);
  - (vi) all exterior siding;
  - (vii) mailboxes;
  - (viii) any external sewer and sewer lines in the Property that were installed by the original developer of the Property or by the Association (other than those sewers and sewer lines that are the responsibility of the Village or any other person or entity other than the original developer of the Property or the Association);
  - (ix) driveways in the cul de sacs (the "turn around" areas) that serve more than one (1) Unit;
  - (x) decorative dormers and windows ("fake windows");
  - (xi) decorative louvers and shutters;
  - (xii) the window wells adjacent to the windows in basements to the Townhomes;
  - (xiii) painting and caulking of any of the foregoing items as deemed necessary;
  - (xiv) painting of all exterior Townhome doors (including, but not limited to, front doors) and wrought iron fences;
  - (xv) tuckpointing of Townhome exteriors;
  - (xvi) concrete/limestone window sills adjacent to the first floor windows on Townhomes that are attached to the brick on Townhome exteriors;
  - (xvii) garage coach light (but not including bulbs); and
  - (xviii) mowing and fertilizing grass, and trimming of bushes and trees.
- (c) Owners shall have no authority or right to maintain, repair or replace any of the items specified in this Section or other exterior areas that are the responsibility of the Association, except with the prior written approval of the Board. In the event an Owner repairs, maintains or replaces any

such items or areas without the prior written approval of the Board, the Owner will not be reimbursed for its costs or expense and will be responsible for any damage caused or further repair required, including to return the item or area to the proper or original form.

**Section 2: Maintenance Duties and Responsibilities of Owners**

- (a) Each Owner shall be responsible for any and all repair, replacement and maintenance of the exterior of the Owner's Unit and Townhome that is not the responsibility of the Association as set forth in Section 1 of this Article. Without limiting the foregoing, each Owner's repair, replacement and maintenance obligations shall include, but not be limited to, the following:
- (i) any modifications to or options added to the roof, including, but not limited to, skylights, attic exhaust vents, etc.;
  - (ii) any venting that originates or comes from the inside of the Townhome;
  - (iii) all walks, sidewalks, driveways, steps, patios, and decks serving the Unit and Townhome;
  - (iv) all doors, windows, door and window frames, door and window sills, and any other material or portions considered to be part of the doors and windows, including basement windows (but not including the steel water well) and window well drains, but excluding painting of exterior Townhome doors (including but not limited to front doors) and the concrete/limestone window sills adjacent to the first floor windows on Townhomes that are attached to the brick on Townhome exteriors, which are an Association responsibility as provided in Section 1(b) of this Article;
  - (v) garage doors and all materials and portions considered to be a part of the garage door;
  - (vi) outside spigots;
  - (vii) all coach lights and bulbs, except for the garage coach light which shall be an Association responsibility but the Owner will be responsible for all bulbs for the garage coach light;
  - (viii) all well covers and grates on the Unit/Townhome;
  - (ix) all splash blocks at the bottom of downspouts; and
  - (x) all watering of grass and flower beds, and treatment of weeds and care for the flower beds, including but not limited to mulch.
- (b) Additionally, each Owner shall be responsible for having performed, at said Owner's expense, all interior repairs to the Owner's Unit and Townhome including, but not limited to, any repairs that become necessary as a result of exterior damage or breaches that may fall under the responsibility of the Association (such as, but not necessarily limited to, roof leaks, foundation leaks, window leaks, etc.).

- (c) No changes or alterations to any of the items outlined in this Section may be made without the prior written consent of the Board. Any repair, replacement or maintenance of any item which is the Owner's responsibility as set forth herein and which is performed by the Association shall be at the expense of such Owner, and the expense shall be charged to the Owner and the Unit and added to the Unit's assessments and shall become a lien upon the Unit.
- (d) Certain Townhomes, being those Townhomes located in the middle of each building containing Townhomes, share a portion of a walkway leading from the driveway serving the Townhome to the front entry of a Townhome with the neighboring Townhome. For these walkways that serve two (2) adjacent Townhomes, the Owners of the Townhomes served by the shared walkway shall be responsible for the maintenance, repair and replacement of the shared portion of same at their joint and equal expense. The provisions of Article VI of this Declaration applicable to Party Walls shall likewise be applicable to these shared walkways with respect to each Owner's rights and responsibilities thereto. Each Owner, however, shall remain solely responsible at such Owner's sole cost and expense for the maintenance, repair and replacement of the portions of the walkway that are not shared and serve only the Owner's Townhome and Unit as further provided in paragraph (a)(iii) of this Section.

**Section 3: Association's Rights Regarding Maintenance**

- (a) Each Owner shall repair those items that are the Owner's responsibility when necessary, and/or on notice and demand by the Board as deemed necessary in the sole discretion of the Board. In the event any Owner shall fail to perform such maintenance, repairs, reconstruction or replacement, or in the event such maintenance, repairs, reconstruction or replacement is necessary to protect the Association's property or any other Unit or Townhome or other improvement on the Property, or to maintain the general character, appearance and condition thereof, and the same is not done within a reasonable time (not to exceed fourteen (14) days in non-emergency situations, and one (1) day in emergency situations) after written notice of the necessity thereof, or, in the case of an emergency, without notice, in addition to any other remedies available to the Association, the Association may enter upon the Unit and cause such maintenance, repairs, reconstruction or replacement to be done and the costs thereof shall be assessed and charged to such Owner as his or her personal obligation and shall be a lien upon such Owner's Unit and enforceable as provided in this Declaration and/or the By-Laws.
- (b) In furtherance of the duties and all other powers, rights and duties of the Association (including as set forth in this Declaration and this Article), the

Association for itself, its agents, successors, and assigns, is hereby granted the right, license and authority and an easement to enter in and upon any one or more Units and Townhomes to perform said duties, including any maintenance, reconstruction, replacement or repairs. In exercising this right, the Association, when possible, shall use reasonable efforts to work with the Owner of a Unit to find a mutually convenient time to enter in and upon the Owner's Unit and shall use reasonable efforts to cause as little inconvenience to the Owner as possible.

- (c) The extent and frequency of the activities of the Association in carrying out the duties and maintenance and management set forth in this Article shall be determined by the Board in its sole discretion, and the Board may appoint committees to advise the Board on such matters. The Board may also promulgate and amend from time to time Rules and Regulations to aid in the carrying out of said maintenance and management duties.

**Section 4: Willful and Negligent Damage**

If, due to the act or omission of an Owner, his or her family, tenants, servants, pets, guests or invitees or other authorized occupant of the Owner's Townhome, damage is caused to the Common Area or another Townhome or Unit and maintenance, repairs, or replacements shall be required thereby, which would otherwise be a Common Expense of the Association, then such Owner shall pay for such damage and such maintenance, repairs, and replacements, as determined by the Board, and the cost of such maintenance, repairs, or replacements, and any damage, shall be added to and become a part of the assessment to which such Owner's Unit is subject and the Association shall have a lien upon said Unit enforceable in the manner and to the extent herein set forth in this Declaration and the failure of such Owner to pay such costs shall carry with it the same consequences as the failure to pay any assessments levied pursuant to this Declaration when due, as herein provided.

~~The Association, in addition to its other powers, rights and duties as set forth in these Covenants and in its Articles of Incorporation, By-Laws and any Rules and Regulations which the Association may promulgate as hereinafter provided, and as any of the same may be amended, shall:~~

- ~~(a) cause the Association to maintain continually in effect, and to pay the premium of fire and extended coverage issuance on any insurable improvements owned by the Association, Comprehensive public liability insurance covering any real estate owned by the Association, and to include the Village and its agents and employees, as an additional insurance under such Coverage, if possible, a fidelity bond or insurance policy covering all persons who are responsible for handling the funds of the Association, and such other insurance as the Board of Directors of the Association shall deem to be necessary or desirable, and to include the Village as an additional insured under such coverage if possible, all of which shall be in such amounts and with such companies as the Board of~~

~~Directors shall determine; provided, however, that if and for so long as any First Mortgagee shall be the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other Federal, State or local agency or instrumentality, then the insurance coverage carried by the Association shall, at a minimum, comply with any applicable requirements of such association, corporation, agency and/or instrumentality.~~

~~(b) provide exterior maintenance and service, upon each Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for gutters, downspouts, exterior building surfaces and other exterior building or structural improvements, and mow and fertilize grass, provide garbage collection, and remove snow from driveways, and the Association for itself and its agents is hereby granted the right and easement to enter on all Units and the exterior of the townhomes thereon for purposes of such maintenance. Such exterior maintenance and service shall not include glass surfaces and patio areas, unless authorized by a majority of each class of the voting members, nor shall such exterior maintenance include the replacement or repair of any portion of a Unit which replacement or repair is the result of damage caused by a hazard which is normally insured against under a standard form homeowner's hazard insurance policy. Insurance proceeds from policies obtained by the Association shall be made available to any such Owner to defray the cost of rebuilding in the event casualty loss covered by such policies. The Association shall not provide exterior building maintenance to exempt Units during the period of their exemption.~~

~~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, to the extent provided by law the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Unit is subject and shall be paid as determined by the Board of Directors.~~

~~In furtherance of the above duties and all other powers, rights and duties of the Association, the Association for itself, its agents, successors, and assigns, is hereby granted the right and easement to enter in and upon all yard areas and walks of the Units in the Community.~~

~~The extent and frequency of the activities of the Association in carrying out the duties of maintenance and management set forth above shall be decided by the Board of Directors, and the Board of Directors may appoint committees to advise the Board on such matters. The Board of Directors may also promulgate Rules and Regulations to aid in carrying out of said maintenance and management duties, and may amend said Rules and Regulations from time to time.~~

**Section 52: Certain Rights of First Mortgagees**

The holder, insurer or guarantor of the mortgage on any Unit, which sends a written request to the Association, stating its name and address and Unit description of the subject Unit, shall be entitled to timely written notice of the following:

- (i) any condemnation or casualty loss which affects either a material portion of the PropertyCommunity or the Unit securing its mortgage;
- (ii) any sixty (60)-day delinquency in the payment of assessments or eCharges owed by the Owner of any Unit on which it holds the mortgage;
- (iii) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (iv) any proposed action that requires the consent of a specified percentage of eEligible mMortgage Hholders.

The holder, insurer or guaranty of any first mortgage~~d~~ that is secured by a Unit shall be provided with an audited financial statement for the preceding fiscal year, upon written request to the Association; provided, that, if the Association has not elected to have audited financial statements for such fiscal year prepared then the cost of having such audited financial statements prepared shall be borne by the holder, insurer or guaranty of any first mortgage requesting such audited financial statements.

**Section 63: Reconstruction**

Each Owner, his or her successors and assigns, hereby covenants and agrees at all times to maintain his or her Unit and the tTownhome constructed thereon in a neat and proper condition and to perform all necessary repairs thereto, which are not otherwise provided by the Association pursuant to the terms hereof.

**ARTICLE VI**

**PARTY WALLS**

**Section 1: General Rules Apply**

“Party Wall” is defined as a fire wall, as that term is defined in the Village Building Code, and means any wall which is built as part of the original construction of two (2) tTownhomes in the PropertyCommunity and placed on the dividing line between such tTownhomes and, as to such wall each tTownhome Owner immediately adjacent shall have the obligations and be entitled to the rights and

privileges of this Declaration and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls shall apply thereto.

Section 2:                    **Damage to Party Wall by Owner**

If any Party Wall is damaged or destroyed through the act or acts of any adjoining Owner, or his or her agents, servants, guests, invitees or members of his or her family, whether such act is willful, negligent, or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as formerly existed prior to such damage without cost to the other adjoining Owner.

Section 3:                    **Other Damage to Party Wall**

Any Party Wall damaged or destroyed by some act or event other than that produced by one of the adjacent Owners, his or her agents, servants, guests, invitees or family, shall be rebuilt or repaired by both adjoining Owners to the same good condition as formerly existed prior to such damage, at their joint and equal expense and as promptly as reasonably possible.

Section 4:                    **Changes to Party Wall**

Any Owner who proposes to modify, rebuild, repair, or make additions to his or her own Unit or Townhome in any manner which requires the extension, alteration, or modification of any Party Wall, shall first obtain the written consent of the adjacent Owner, in addition to meeting the other requirements of this Declaration.

~~Section 5:~~ \_\_\_\_\_

~~\_\_\_\_\_ In the event of a disagreement between adjoining Owners with respect to the repair, reconstruction, or maintenance of a Party Wall or with respect to sharing the cost of repairing, rebuilding, or maintaining the same, then, upon the written request of either of said Owners to the Board, the matter shall be submitted to it for arbitration under such rules as it may from time to time adopt.~~

Section 56:                    **Unenforceability of Private Agreements**

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

Section 67:                    **Compliance with Village Code**

Construction, reconstruction, repair, or alteration of Party Walls shall be governed by the Village's building code as it currently exists and as it may be amended from time to time. No holes, doorways, or other openings or penetrations shall be placed in a Party Wall.

**Section 7:                    Contribution**

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

**ARTICLE VII**

**INSURANCE ON UNITS**

**Section 1:                    Maintenance of Insurance by Owner**

The Owner of each Unit that is subject to this Declaration shall maintain in full force and effect during the period of said Owner's ownership of said Unit with respect to: (i) personal liability insurance for acts and occurrences on any portion of the Association property and the Property, on or upon his or her Unit, and within his or her Townhome, (ii) insurance for physical damage to or losses of personal property and for the contents of his or her Townhome, and (iii) all interior areas of the Townhome including, but not limited to, walls, floors, and any other part of the Townhome structure. The Owner's insurance shall be primary insurance for any damage to the interior of the Townhome which damage is caused by any occurrence within the Townhome or which is not damage resulting from a casualty covered by Association casualty insurance set forth in Section 3 of this Article.

~~The Owner of each Unit which shall become subject to this Declaration shall maintain in full force and effect during the period of said Owner's ownership of said Unit as he may desire with respect to (i) personal liability insurance for acts and occurrences upon his Unit and within his townhome and (ii) insurance for physical damage losses for personal property and the contents of his townhome.~~

**Section 2:                    Association as Named Insured**

The Association shall be named as an additional insured in each Owner's said insurance policy, and said policy shall contain a "ten-day notice cancellation" clause to the Association.

Section 3:                   **Casualty Insurance for Townhomes**

The Association shall obtain and maintain a policy or policies of insurance covering the ~~†~~Townhomes (other than the personal property thereof), including fixtures, improvements and appliances that were permanently installed at the time the ~~u~~Unit was originally sold, regardless of current ownership, constructed on the Units within the ~~Property properties or any phases of the additional land annexed thereto~~, including, without limitation, all alterations and additions thereto, against damage or destruction by the perils of fire, lightning and those casualties contained in an all risk form, and such other perils as the Board ~~of Directors of the Association~~ from time to time may determine should be included in such coverage, in an amount equal to one hundred percent (100%) of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall name as the insured, and the proceeds thereof shall be payable to the Association, as trustee for the Owners of any ~~†~~Townhomes damaged or destroyed. The proceeds from such insurance shall be made available, as the Board ~~of Directors of the Association~~ shall reasonably determine, for the repair, reconstruction, and restoration of such ~~†~~Townhomes, subject to the right of ~~f~~First Mortgagees. To the extent feasible, all such policies of insurance shall (i) provide that the insurance shall not be invalidated by the act or neglect of the ~~Developer, the Association, its Board of Directors~~, its officers, any Owner or occupant, or any agent, employee, guest or invitee of any of them, and (ii) shall contain an endorsement that such policies shall not be cancelled without at least thirty (30) days prior notice to the Association, the Owners, and all first Mortgagees of the Units.

Section 4:                   **Liability Insurance; the Association**

To the extent available, the Association shall obtain and maintain a policy or policies of comprehensive general liability insurance insuring on an occurrence basis the Association, its Directors, Officers, the Members, the Village ~~of Bloomingdale~~, and their agents and employees, against all claims for personal injury, including death and property damage, arising out of any occurrence in connection with the maintenance, service or repair of any Unit subject to the provisions of this Declaration, in connection with any act or omission of or in behalf of the Association, its Board ~~of Directors~~, agents or employees within the ~~PropertyCommunity~~. Such policies shall contain a provision that they may not be cancelled without at least thirty (30) days prior notice to the Association, the Owners and the ~~F~~first Mortgagees of the Units.

Section 5:                   **Worker's Compensation; ~~and~~ Fidelity Insurance; Other Insurance**

To the extent available, the Association shall obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage:

- (a) Worker's Compensation and employer's liability insurance in such form and in such amounts as may be necessary to comply with applicable laws;
- (b) ~~Fidelity insurance or bonds in reasonable amounts for all officers and employees having fiscal responsibilities, naming the Association as obligee~~ Fidelity insurance covering Persons who control or disburse funds of the Association for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody or control of the Association; and
- (c) Directors' and officers' liability coverage at a level deemed reasonable by the Board. Directors' and officers' liability coverage shall extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the Illinois General Not For Profit Corporation Act of 1986 (805 ILCS 105/101 et. seq.) or the Declaration and By-Laws.
- (d) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.

**Section 6:                    Waiver of Subrogation; Release**

- (a) To the extent feasible, all policies of insurance obtained by the Association shall contain provisions that no act or omission of any named insured shall affect or limit the obligation of the insurance company to pay the amounts of any loss sustained.
- (b) ~~Each Owner hereby waives and releases any and all claims which he or she may have against any other Owner, the Association, its directors and officers, the manager and managing agent of the Association, if any, and their respective employees and agents for damage to the Common Area, the Townhomes and Unit, or to any personal property located therein caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance. So long as the policies of insurance provided herein shall provide that a mutual release as provided for in this Section shall not affect the right of recovery thereunder, and further provide coverage for the matters for which the release is herein given, all named insureds and all parties claiming under them shall, and do by these presents mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard or source covered by any insurance procured by the Association, regardless of the cause of damage or loss.~~

Section 7:                    **Insurance Premium Expense**

The expense of insurance premiums paid by the Association under this Article shall be a Common Expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

**ARTICLE VIII**

**REMEDIES**

Section 1:                    **Enforcement**

In addition to or in conjunction with all other rights herein granted to the Association, the Association or any Owner, their successors or assigns, shall have the right to enforce the provisions of this Declaration, By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any such provisions, and further the Association shall have the right to levy a fine, following notice and an opportunity to be heard, against such Person or Persons. The Association may also enforce by appropriate legal action any and all covenants and restrictions set forth in the Bloomfield Club Recreation Association Declaration of Covenants, Conditions and Restrictions that apply to any Unit in the Association, and any rules and regulations of the Recreation Association. All rights and remedies may be exercised at any time and from time to time, cumulatively, or otherwise, and failure of the Association or any Owner to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All costs and expenses incurred by the Association in connection with any such proceedings or with exercising the Board's self-help rights as set forth in Section 2 of this Article, including, but not limited to reasonable attorneys' fees, court costs and managing agent fees, shall be assessed against any Owner violating any such provisions and shall be a Charge and constitute a lien on his or her Unit and Townhome and be enforceable in the same manner as unpaid assessments as provided in this Declaration and recoverable by the Association as part of any such proceedings.

Section 2:                    **Board Self Help**

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

within a Townhome, judicial proceedings must be instituted before any items of construction can be altered or demolished.

**Section 3: Managing Agent Fees**

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

**Section 4: Fees Associated with Mortgage Foreclosure**

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

**ARTICLE ~~VIII~~X**

**GENERAL PROVISIONS**

**Section 1: Covenants to Run with Land~~Enforcement~~**

All the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant and shall run with the land and shall inure to the benefit of and be binding upon any Person having at any time any interest or estate in any part of the Property with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof.

~~Reference in any deed of conveyance, mortgage, trust deed, other evidence of obligation, or other instrument to the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration or to this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document, regardless of whether a specific reference is made in such instrument to this Declaration. Provided, however, that in no event shall the failure of any such documents to recite or reference any of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration alter or lessen the effect or enforceability of said covenants, conditions, restrictions, easements, reservations, liens, charges, rights, obligations, benefits and privileges which are granted, created, reserved or declared by this Declaration. These Covenants shall run with, and be binding upon all land which by Declaration, as elsewhere herein provided for, is brought within these Covenants and shall inure to the benefit of and shall be binding upon the Association and all persons owning, leasing, subleasing, or occupying any such land and their heirs, executors, administrators, personal representatives, successors, and assigns.~~

**Section 2: Village Enforcement Rights**

~~The provisions of this Declarationse Covenants may be enforced by the Association, which shall have the right to expend Association monies in pursuance thereof, and may also be enforced by the Village, but with no obligation to the Village, the Owner of any Unit in the Community or any one or more of the aforesaid persons benefited thereby. If the provisions of this Declarationse Covenants are enforced in any manner, whether by court proceeding or otherwise, by appropriate proceedings by the Village, the Village, if successful in such enforcement, shall be reimbursed by the Association for all of its costs incurred, including attorneys' fees. If these Covenants are enforced by appropriate proceedings by any such Owner or Owners, such Owner or Owners, if successful in such enforcement and if the Association had theretofore refused such enforcement, shall be reimbursed by the Association for all or any part of the cost incurred, but such reimbursement shall be solely in the discretion of the Board of Directors of the Association. Enforcement of these Covenants shall be by any proceeding at law, equity, or otherwise against any person or persons violating or attempting to violate any of these Covenants either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and failure by the Association, the Village, or any Owner to enforce any of the Covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter.~~

The Association shall indemnify, hold harmless and defend the Village from any and all actions, proceedings, or damages arising from this Declaration ~~these Covenants~~ and the Village shall also be entitled to recover all of its damages, costs and attorneys' fees incurred as a result of being or being made a party to any action brought regarding this Declaration ~~these Covenants~~. All such damages, costs and attorneys' fees shall be payable by the Association or any ~~e~~Owner who is also a party to any such proceedings. In the event said damages, costs and attorneys' fees are not paid, the Village shall be entitled to place a lien on the ~~u~~Units until such time as such amounts are paid.

**Section 32:            Signs and Commercial Activity**

~~No "For Rent" or "For Sale" signs, advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Unit, nor shall any Unit be used in any way for any purpose which may endanger the health or unreasonably disturb the residents of the Community. No commercial activities shall be conducted on any portion of the Community, except activities which are intended primarily to serve residents in the Community, or which are permitted by local ordinance and do not cause traffic or parking congestion or disturb residents of the Community. The foregoing restrictions shall not apply to the commercial activities, signs, and billboards, if any, of the Developer during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation and By-Laws, as amended from time to time. All signs must conform to all Village ordinances. Signs may not exceed four (4) square feet in total area (i.e. 2' x 2'). Signs may be displayed in the interior of Townhome windows subject to the size limitation. Signs may be displayed outside Townhomes, on the Unit property subject to the size restrictions, on weekends only from sunrise Saturday to sunset Sunday. No signs may be displayed on the parkway or any area that is not part of the Unit without the prior written consent of the Board. Signs for commercial purposes other than the sale of a Townhome are prohibited. Any sign that, in the Board's discretion, fails to comply with these requirements or that is determined by the Board in its discretion to cause a nuisance, disturbance or interference or is unsightly or offensive shall be removed immediately upon notice to the Owner and/or the Unit occupant from the Board or the Board's agent. No commercial activities shall be conducted on any portion of the Property, except activities that are intended to primarily serve residents in the Property. Units may not be used in any manner or for any purpose that may endanger the health or safety of the residents or unreasonably disturb the residents of the Property. Provided, however, that this Section shall not preclude any Owner with respect to his or her Townhome, from (i) maintaining his or her personal professional library therein, (ii) keeping his or her personal, business or professional records or accounts therein, or (iii) handling his or her personal, business or professional telephone calls or correspondence therefrom.~~

**Section 43: Severability**

Invalidation of any one or more of the provisions of this ~~Declaration~~~~ese Covenants~~ or portions thereof by judgment, legislation or court order shall in no way affect the validity of any of the other provisions or portions ~~thereof~~ this Declaration, which shall remain in full force and effect.

**Section 54: Terminology**

The word "he" wherever used in this instrument, shall be deemed to be synonymous with the words "she," "it," and "they," and the word "his" shall be deemed to be synonymous with the words "her," "its," and "their." ~~The word "person" may refer to an individual, corporation, partnership, or other legal entity except when the context provides otherwise.~~

**Section 65: Duration and Amendment**

~~Subject to the provision of Section 5 of this Article, these Covenants~~The provisions of this Declaration shall remain in full force and effect for a period of thirty-five (35) years from the date hereof, and thereafter they shall be deemed to have been automatically renewed for successive terms of ten (10) years except that at any time, and from time to time, they may be amended or terminated by the affirmative vote of the Owners of not less than sixty-seven percent (67%) of the Units then in the Association at a meeting of the Owners or by a written instrument executed and approved by Owners of not less than sixty-seven percent (67%) of the Units then in the Association. Any termination or amendment of a material nature shall require the prior written approval of the Village and of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders. A change to any of the following shall be considered as material:

- (a) Voting Rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of any ~~e~~Common ~~a~~Areas;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in any ~~e~~Common ~~a~~Areas, or rights to the ~~ir~~re use;
- (f) Boundaries of any Unit;
- (g) Convertibility of Units into ~~e~~Common ~~a~~Areas or vice versa;

- ~~(h) Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;~~
- (h) Insurance or fidelity bonds;
- (i) Leasing of Units;
- (j) Imposition of any restrictions on an ~~Unit~~ Owner's right to sell or transfer his or her ~~Unit~~;
- (k) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;
- (l) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration or the Articles of Incorporation or By-Laws of the Association;
- ~~(m) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or~~
- (n) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Any termination of the legal status of the project for reasons other than substantial destruction or condemnation must be approved by Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the Units then in the Association. Any such amendment or termination shall be effected by ~~Recording~~ in the office of the Recorder of Deeds of ~~DuPage~~ County, ~~Illinois in which the Community is located~~, a document executed by the required number of Owners, setting out such amendment(s) or stating that ~~this Declaration~~ ~~these Covenants~~ shall be terminated as provided therein. It shall be the duty of the Association to notify the Village and all Owners and First Mortgagees of any action under this Section by mail at least thirty (30) days prior to the date of any meeting called to decide any such action or at least thirty (30) days prior to the date of the Recording of such amendment if the amendment is approved by a written instrument executed and approved by Owners of not less than sixty-seven percent (67%) of the Units then in the Association without holding a vote of the Owners at a meeting. Implied approval of an Eligible Mortgage Holder shall be assumed when the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

Section 6: ~~Powers retained by Developer~~

~~A power coupled with an interest is hereby retained by and granted to the Developer (acting by and through its duly authorized officers), its successors, assigns or designees, as attorney-in-fact, to amend this Declaration, the By-laws of the Association, or the Articles of Incorporation of the Association, for any of the following purposes: (a) compliance with requirements of the Veterans Administration, the Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, any successor to any of such organizations and any other federal, state or local governmental entity or agency; (b) correcting any typographic or scrivener's error; and (c) meeting requirements of the Internal Revenue Code as now, or hereafter amended, (i) relating to organizations exempt from tax or (ii) specifically exempting homeowners' association from any Federal income tax; provided that Developer shall have no obligation to cause any such amendment to be made. The acceptance of each deed, mortgage or other instrument with respect to any Unit which is subject to these Covenants shall be deemed to be a confirmation of such power to such attorney-in-fact and shall be deemed to constitute a consent and agreement to and acceptance, confirmation and ratification of all such amendments, which shall be effective upon the recording in the office of the Recorder of Deeds of the County within which the Community is located of an appropriate instrument, setting forth the amendment, and its authorization pursuant to this Section 6, which instrument shall be executed and acknowledged by Developer.~~

**Section 7:            Notices**

Any notice or other communication required to be sent to any Member, Owner or First Mortgagee under the provisions of this instrument shall be deemed to have been properly sent when ~~delivered via a Prescribed Delivery Method~~~~mailed, postpaid,~~ to the last known address of the ~~P~~erson who appears as Member, Owner or First Mortgagee on the records of the Association at the time of such mailing. ~~The date of mailing or delivery, or the date of transmission if the notice is sent by fax, e-mail or other electronic transmission method, shall be deemed the date of service.~~ Notice to the Association shall be sent in the manner addressed to its President or Secretary at ~~300 Park Boulevard, Suite 515, Itasca, Illinois 60143,~~ the address of the then current property management company or to such other address of which the Association shall have notified the Members in the aforesaid manner.

**Section 8:            Captions**

The ~~Article and Section~~paragraph headings and captions in this instrument are for convenience only and do not in any way define, limit, describe or amplify the terms and provisions of this instrument or the scope or intent thereof.

**Section 9:            Leases**

In order to maintain the quality of life and property values, the objective of the Association is to promote and encourage Unit Owners to reside on the pProperty. Notwithstanding any provisions of the Declaration to the contrary, rental, leasing, subleasing or other tenancy arrangement of Units by an Unit Owner, any descendant of an Unit Owner or contract purchaser is prohibited, except as hereinafter provided.

- (a) A lease is a written agreement with a third party other than an Immediate Family Member of the Owner, to occupy an Owner's Unit. For purposes of this Section, an "Immediate Family Member" shall constitute a child (natural or adopted) or parent of the Owner. The Owner of each Unit at Bloomfield Club III shall occupy and use such Unit as a private dwelling for himself or herself and/or his or her Immediate Family Members. Thus, except as set forth in this Section, leasing of Units is prohibited.
- (b) Any Owner of a Unit who was leasing the Unit on April 22, 1999 and submitted a lease for the Unit to the Board at that time was permitted by the terms of the 1999 Amendment to ~~has submitted a current lease to the Board as of the effective date of this Amendment, may~~ continue to lease ~~the~~ Unit for as long as the Ownery owned ~~the~~ Unit. This grandfather provision contained in the 1999 Amendment shall remain in effect under the terms of this Declaration as to any current Owner of a Unit who was also the Owner of the Unit on April 22, 1999 and has continuously remained as the Owner of the Unit since April 22, 1999 and who was leasing the Unit on April 22, 1999. Once the Unit is sold or ownership of the Unit is otherwise transferred from the Owner grandfathered in by this paragraph, the Unit must be occupied by the new Owner or by an Immediate Family Member of suchthe Owner and must comply with all other provisions of this Section. Any Owner who fails to submit a current lease to the Board within thirty (30) days of the effective date of this Amendment, will be restricted from leasing.
- (c) Copies of all leases must be submitted to the Board within ten (10) days after execution and prior to occupancy.
- (d) All tenants shall acknowledge in writing that they have received copies of the rules and regulations of the Association and a copy of the written receipt shall be submitted to the Board ~~of Directors~~ prior to occupancy.
- (e) In the event of any unauthorized lease of a Unit in violation of this Section, and in addition to the authority to levy fines against the Owner for violation of this Section or any other provision of the Declaration, By-Laws or Rules and Regulations, the Board shall have all rights and remedies, including but not limited to the right to maintain an action for eviction and possession against the Owner and/or their tenant, under 735 ILCS 5/9-

111 of the Illinois Code of Civil Procedure, an action for injunctive and other equitable relief, and/or an action at law for damages.

- (f) Any action brought on behalf of the Association and/or the Board ~~of Directors~~ to enforce this Section Amendment shall subject the Owner to the payment of all costs and attorneys' fees at the time they are incurred by the Association.
- (g) All unpaid ~~e~~Charges as a result of the foregoing subsections shall be deemed to be a lien against the Unit and collectible as any other unpaid regular or special assessment, including late fees and interest on the unpaid balance.
- (h) Notwithstanding the foregoing provisions of this Section, in a case of extreme hardship, an n-Unit Owner may apply for a hardship waiver in the following manner:
  - (1) The ~~Unit~~ Owner must submit a request in writing to the Board ~~of Directors~~ requesting a hardship waiver, setting forth the reasons why they feel they are in need of an exemption. The Board's decision as to whether to allow a hardship shall be final and binding.
  - (2) Any lease entered into pursuant to this subsection shall be in writing and for a period and subject to the terms, conditions, rules and regulations as determined by the Board. The lease must also contain a provision that failure by the tenant or the ~~Unit~~ Owner to abide by the Association's governing documents may, in the discretion of the Board ~~of Directors~~, result in termination of the lease by the Board ~~of Directors~~.
  - (3) In the event an Owner has been granted hardship status, they must re-apply within thirty (30) days of the expiration of each hardship period if they wish to request an extension.
- ~~(j) — The effective date of this Amendment shall be deemed to be the date of recording with the office of the Recorder of Deeds of DuPage County.~~
- (jk) This Section Amendment shall not prohibit the Board from leasing any Unit owned by the Association or any Unit which the Association has been issued an Order of Possession by the Circuit Court of DuPage County.

Section 10:                    **Condemnation**

In the event of condemnation or ~~of~~ destruction of all or part of the Property Community or the liquidation or termination of the Association, any

losses or proceeds resulting therefrom shall be shared equitably between the ~~m~~Members effected by such event(s) as reasonably determined by the Board ~~of Directors of the Association~~. The Association is hereby designated to represent the Members in any proceedings, negotiations, settlements or agreements regarding any such condemnation or destruction and each ~~M~~Member by acceptance of a deed for a Unit, appoints the Association as its attorney-in-fact for the foregoing purposes. ~~Any~~ proceeds from any such settlement shall be payable to the Association for the benefit of the Members and their mortgage holders.

Section 11: ~~Professional Management Contracts~~

~~Developer shall not directly or indirectly bind the Association to any professional management contract, unless such contract includes a right of termination without cause that the Association can exercise any time after transfer control. Said right of termination shall not require any payment of any penalty or advance notice of more than ninety (90) days.~~

Section 112: **Village Ordinances Prevail**

None of the covenants, conditions, restrictions or provisions of the Declaration are intended to supersede or prevail over the ordinances of general or specific applicability of the Village ~~of Bloomingdale~~ as they currently exist or as they may be amended from time to time, in which the PropertyCommunity is located, and in the event of any conflict, the applicable ordinances of the Village ~~of Bloomingdale~~ shall supersede and prevail over the covenants, conditions, restrictions and provisions of this Declaration.

Section 12: **Rule Against Perpetuities**

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

- (a) The rule against perpetuities;
- (b) The rule restricting restraints on alienation; or
- (c) Any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only after the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Tom Hanks, professional

actor and star of such films as Sleepless in Seattle, Apollo 13 and Saving Private Ryan, living at the date this Declaration is Recorded.

**Section 13: Binding Effect**

Each Owner and occupant of a Unit covenants to abide by each and every covenant, easement and restriction set forth herein and agrees that all conveyances shall be subject to this Declaration as though each and every provision herein was set forth in each and every document affecting title to any Townhome or Unit.

**Section 14: No Waiver**

No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason or any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 15: Conflicts**

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

**Section 16: Liberal Construction**

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 development.

**Section 17: Determination of Board to Be Binding**

All matters of dispute or disagreement with respect to interpretation or application of the provisions of this Declaration or the By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Owners.

**Section 18: Representation**

The Association shall have the power and right to represent the interests of all of the Owners in connection with claims and disputes affecting the Common Area and more than one (1) Townhome and/or Unit, and the Association shall have standing and capacity to act in a representative capacity in relation to matters

involving the Common Area or more than one (1) Townhome and/or Unit on behalf of the Owners as their interests may appear.

**Section 19: Dissolution**

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

**Section 20: Security**

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

**Section 21: Unit Conveyance**

All conveyances or transfers of Ownership of a Townhome and Unit shall be of the entire Townhome and Unit and there shall be no conveyance or transfer of only a portion of a Townhome or Unit without the prior written consent of the Board.

**Section 22: Noxious or Offensive Activity**

No unlawful, noxious or offensive activity shall be carried on, caused, allowed or conducted on any part of the Property, including, but not limited to, any Townhome, Unit or the Common Area, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or other occupants of Townhomes.

**Section 23: Rules and Regulations**

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

**ARTICLE X**

## ARCHITECTURAL CONTROLS

### Section 1: Common Area

No alterations, additions or improvements shall be made to the Common Area without the prior written approval of the Board. This provision, however, shall not prohibit the Association, at the direction of the Board, from making alterations, additions or improvements to the Common Area and the cost thereof may be paid from the annual assessments or a special assessment.

### Section 2: Townhomes and Units

No additions, alterations or improvements (including, without limitation, changes in the exterior color of a Townhome) shall be commenced, erected, placed, altered or otherwise made to any Unit, exterior of a Townhome or any part of the Townhome that is visible from outside the Townhome by an Owner without the prior written approval of the Board and compliance with all applicable Village and other governmental ordinances and permit requirements. Any Owner desiring to make such an addition, alteration or improvement shall submit plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost for same to the Board for its review. The Board shall review such proposed addition, alteration or improvement as to the harmony of external design and location in relation to surrounding buildings and other improvements on the Property and may withhold its approval to a proposed addition, alteration or improvement for any reason which the Board, in its absolute discretion, deems appropriate including, but not limited to, aesthetic judgments. The Board shall have the right to adopt reasonable rules and regulations governing such alterations, additions or improvements and the application for same. The Board may, but shall not be required to, condition its approval to the making of an addition, alteration or improvement to a Unit or Townhome that requires the approval of the Board upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) if the addition, alteration or improvement is required to be maintained hereunder by the Association as part of the Common Expenses, to pay to the Association from time to time the additional cost of maintenance as a result of the addition, alteration or improvement. If an addition, alteration or improvement that requires Board approval hereunder is made to a Townhome or Unit by an Owner without the prior written approval of the Board, then the Board may, in its discretion and in addition to all other rights of enforcement provided to the Association as set forth in the Declaration, By-Laws, rules and regulations or as provided at law or in equity, take any of the following actions:

- (a) Require the Owner to remove the addition, alteration or improvement and restore the Townhome and Unit to its original condition, all at the Owner's expense; or

- (b) If the Owner refuses or fails to properly perform the work required under subsection (a) hereof, the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or
- (c) Ratify the action taken by the Owner, and the Board may, but shall not be required to, condition such ratification upon the same conditions that it may impose upon the giving of its prior approval under this Section.

**Section 3: Townhome Interiors**

Except as otherwise provided in this Declaration, and the provisions of Section 2 of this Article notwithstanding, any Owner may make additions, alterations or improvements within his or her Townhome (except for those portions of the Townhome that are visible from outside of the Townhome) without the prior written approval of the Board. Provided, however, that such Owner shall be responsible for any damage to other Townhomes, Units and/or the Common Area occurring as a result of such additions, alterations or improvements and such Owner shall also be responsible for complying with all Village and other governmental requirements for any such additions, alterations or improvements and shall be required to obtain all applicable Village and other governmental permits prior to commencing or otherwise making any such additions, alterations or improvements.

**Section 4: Satellite Dishes and Antennas**

No radio or television antennas or satellite dishes shall be affixed or placed upon or on any portion of the Common Area without the prior written approval of the Board. The placement, installation and use of antennas and satellite dishes on or upon the Townhomes and Units by Owners shall be subject to all applicable provisions of the rules and regulations adopted by the Board. Notwithstanding anything contained herein to the contrary, the installation of any satellite dish or antenna shall be at the Owner's sole risk and sole cost and expense and, in the event the installation of any satellite dish or antenna causes any damage or destruction to any Townhome or other improvement on any Unit or the Common Area or voids or impairs any warranty which runs for the benefit of the Association or any Owner, the Owner installing and owning the satellite dish or antenna shall be liable and responsible for and shall pay for any and all costs, expenses, fees and damages and repair any and all damage or destruction created thereby, including reasonable attorneys' fees and court costs. This provision, however, is not intended to interfere with the Owners' rights to adequate reception under the 1996 Telecommunications Act or other present, or future, federal or Illinois statutes.

**Section 5: Disclaimer**

No approval of plans and specifications submitted by an Owner pursuant to this Article by the Board shall be construed as representing or implying that such plans and specifications shall, if followed, result in properly designed improvements. Such approvals shall in no event be construed as representing or guaranteeing that any Townhome or Unit or other improvement built in accordance therewith shall be built in a good and workmanlike manner. Neither the Association, the Board nor any committee of the Association shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article, any loss or damages to any Person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans or specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

**END OF TEXT OF DECLARATION**

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

KEAY & COSTELLO, P.C.  
128 South County Farm Road  
Wheaton, Illinois 60187  
(630) 690-6446

STATE OF ILLINOIS        )  
  )SS  
COUNTY OF \_\_\_\_\_)

The undersigned is the President of the Board of Directors of Bloomfield Club III Homeowners Association and by my signature below do hereby certify that the attached is a true, correct, and accurate copy of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Bloomfield Club III Homeowners Association, and that said document has been approved at a meeting of the Owners by Owners of not less than sixty-seven percent (67%) of the total Units in the Association, with such approval votes being attached hereto. By my signature below, I also do hereby certify that there are no Eligible Mortgage Holders of Units in the Association. By my signature below, I also do hereby certify that the Association provided notice to the Village of Bloomingdale, all Owners and all First Mortgagees of the meeting of Owners called for purposes of voting on the aforementioned document at least thirty (30) days prior to such meeting.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Being the President of Bloomfield Club III  
Homeowners Association

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

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

STATE OF ILLINOIS        )  
  )SS  
COUNTY OF \_\_\_\_\_)

The undersigned is President of the Board of Directors of Bloomfield Club III Homeowners Association and by my signature below do hereby certify that the Amended and Restated By-Laws of Bloomfield Club III Homeowners Association, attached hereto as Exhibit "B", has been approved at a regular or special meeting of the Owners by a vote of a majority of a quorum of Owners present in person or by proxy.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Being the President of Bloomfield Club III  
Homeowners Association

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

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