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RECORDER
DU PAGE COUNTY

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE RESERVE OF CLARENDON HILLS

LEGAL DESCRIPTION:

LOT 1-59 IN THE RESERVE OF CLARENDON HILLS, A RESUBDIVISION OF LOTS 8 THROUGH 14 AND PART OF LOT 15 IN CLARENDON HILLS FARMS, BEING A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED June 18th, 1996 AS DOCUMENT NO. R96-100 589 IN DUPAGE COUNTY, ILLINOIS.

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| | 09-15-200-012 |
| | 09-15-200-014 |

*VACANT Property -
55th to 56th Western
Ave and west approx
610 feet. CLARENDON HILLS
60514*

Document Prepared By:
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A delineation of the property
described in this instrument
appears in
FLAT BOOK NO. 177 PAGE 97

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**THE RESERVE OF CLARENDON HILLS
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made by Callaghan Associates, Inc., an Illinois Corporation, hereinafter referred to as "Declarant."

RECITALS:

Declarant is the holder of record title to the subject real property which is legally described as follows:

LOT 1-59 IN THE RESERVE OF CLARENDON HILLS, A RESUBDIVISION OF LOTS 8 THROUGH 14 AND PART OF LOT 15 IN CLARENDON HILLS FARMS, BEING A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED June 18, 1996 AS DOCUMENT NO. R96-100589 IN DUPAGE COUNTY, ILLINOIS.

Callaghan Associates, Inc. ("Developer"), an Illinois corporation, is a developer of residential real estate throughout the Chicago west suburban area and is the Developer and General Contractor of the subject real property, hereinafter referred to as "The Reserve."

Developer intends to improve The Reserve as a development of townhouses. Each "townhouse" is intended to be a single-family private residence erected on a separate lot, connected to an adjoining townhouse by a party wall. Developer further intends to build these townhouses in clusters or groups of three, four or five single family residences, such that each group or cluster constitutes a continuous structure with a party wall dividing the residences within each group or cluster. Each group or cluster shall be surrounded by a landscaped common area, designated on the Plat of Subdivision as Lot 56. All of the townhouses within The Reserve shall be accessed by a system of interconnected private streets, designated on the Plat as Lot 57, and the storm water management for The Reserve has been designed for collection in that portion of the Common Area designated as Lot 58.

Developer desires to provide for the preservation of the distinctive quality of The Reserve and for the maintenance of the common area and the residences which will be constructed therein. For these purposes, Developer desires to subject the real property hereinafter described to the covenants, conditions, restrictions, reservations, grants and easements herein set forth (all of which are hereinafter referred to collectively as the "Covenants, Conditions and Restrictions").

NOW, THEREFORE, Callaghan Associates, Inc., for the purposes above set forth, hereby declares as follows:

ARTICLE ONE**Definitions**

The following words, phrases, and terms shall be defined for use herein as follows:

- 1.1 Association: The Reserve Homeowners' Association, an Illinois not-for-profit corporation, its successors and assigns.
- 1.2 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 Section 9.3 hereof.
- 1.3 By-Laws: The By-Laws of the Association.
- 1.4 Common Area: The whole of The Reserve except Lots 1-55 which are created within The Reserve also referred to as Lots 56, 57 & 58 on the Plat of Subdivision of The Reserve.
- 1.5 Common Expenses: The expenses of administration (including management, security and professional services), maintenance, operation, repair, replacement, waste removal, landscaping, and snow removal of the Common Area; the cost of additions, alterations, or improvements to the Common Area; the cost of insurance; the cost of any necessary utility expenses for the Common Area and, if not separately metered, charged or designated herein as a Residence Expense, the cost of water, waste removal and other necessary utility services to the Residences; any expenses designated as Common Expenses by this Declaration or the By-Laws; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.
- 1.6 Declaration: This instrument as amended or supplemented from time to time.
- 1.7 Declarant and Developer: Callaghan Associates, Inc., an Illinois Corporation, its successors and assigns.
- 1.8 Owner: A record owner, whether one or more persons, of fee simple title to any townhouse lot upon which a residence has been built, excluding those having an interest merely as security for the performance of an obligation.
- 1.9 Party Wall: A wall which is built as part of the original construction and placed on the boundary line between Residences.
- 1.10 Person: A natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
- 1.11 Property: All the land, property, and space comprising The Reserve as legally described above, all improvements and structures erected, constructed or contained therein or thereon, including Residences, and all easements, rights and appurtenances belonging thereto, and

all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, hereby or hereafter subjected to the Covenants, Conditions and Restrictions.

1.12 **Residence:** A single-family townhouse residence constructed on a separate Lot.

1.13 **Residence Expenses:** Any expense other than a Common Expense, incurred by the Board which is to be charged to any Owner. A Residence Expense shall include, without limitation, the cost of any maintenance, repairs, or replacements or other services furnished by the Association to a Residence and any expenses which are specifically designated as Residence Expense in this Declaration or the By-Laws.

1.14 **Rules and Regulations:** The Rules and Regulations adopted from time to time by the Board governing The Reserve and the use of The Reserve by the Owners and by all other persons.

1.15 **Townhouse:** A single-family residence erected on separate Townhouse Lots, constructed in groups of three, four or five residences separated by party walls.

1.16 **Townhouse Lot:** Any one of Lots 1 through 55, both inclusive, of The Reserve, subject to the Covenants, Conditions and Restrictions, including the Residence to be constructed thereon.

1.17 **Voting Member:** The person entitled to membership in the Association and who shall be entitled to vote at meetings of the Owners, as more fully set forth in Section 9.2 (b).

ARTICLE TWO

Property Subject to Covenants, Conditions and Restrictions

2.1 **The Reserve:** Subject to Covenants, Conditions and Restrictions. The Reserve is hereby made and declared to be subject to the covenants, conditions, restrictions, reservations, grants and easements contained in this Declaration, and the sale transfer, mortgage, conveyance, use or occupation of the Townhouse Lots and the Common Area are and shall at all times hereafter be subject to the Covenants, Conditions and Restrictions.

ARTICLE THREE

General Purpose of Declaration

3.1 **Statement of Purpose.** The purpose of this Declaration is to insure proper use and appropriate development and improvement of The Reserve and every part thereof; to protect the owners of the property therein against such improper use of surrounding lots as may depreciate the value of their property; to guard against the erection thereon of buildings built of improper or unsuitable materials; to insure adequate and reasonable development of said property; to encourage the erection of attractive improvements thereon, with appropriate locations thereof; to prevent haphazard and inharmonious improvements; and to insure desired high standards of maintenance and services for the benefit and convenience of all owners of property and all residents. It is the

purpose of this Declaration, in general, to provide adequately for a residential subdivision of the highest quality and character.

ARTICLE FOUR
The Townhouse Lots and The Owners

4.1 Creation of Townhouse Lots. The Townhouse Lots were created by the recording of the Plat of Subdivision. Said Plat of Subdivision shows, for each Townhouse Lot, a lot number, the legal description, boundary dimensions, and configuration.

4.2 Designation of Townhouse Lot. Each Townhouse Lot may for all purposes, including but without limitation, conveyances and mortgages, be identified and referred to as "Lot Number ___," (the appropriate Lot number to be inserted) as described and delineated on The Reserve Plat of Subdivision, recorded in the Recorder's Office of DuPage County, Illinois on _____, as document number R96-_____".

ARTICLE FIVE
Restrictions

5.1 Land Use and Building Type. All Townhouse Lots in The Reserve shall be used for single-family, private residence purposes only, and no building or structure other than a single-family private "townhouse" residence shall at any time be constructed or maintained on any Townhouse Lot within The Reserve. No accessory buildings or structures including by way of illustration and not by way of limitation, satellite dishes, sheds, dog houses, swimming pools, or other accessory buildings or structures shall at any time be constructed or maintained on any Townhouse Lot or within the Common Area. All buildings or structures erected on the Properties shall be of new construction, and no buildings or structures shall be moved from other locations to the Properties. No subsequent buildings or structures other than townhouses shall be built on any Lot where the Declarant has therefore constructed a townhouse. The garages shall be used for parking automobiles and other motor vehicles and for storage, and for no other purpose, subject to such reasonable rules and regulations as may be adopted by the Board.

5.2 Business Use and Signs. No industry, business, trade occupation or profession of any kind, whether commercial, religious, educational or otherwise, designed for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any Lot, except for model homes and sales offices which may be operated by the Developer or its designees during the construction and sales period. No advertising signs or billboards, "For Lease" or "For Sale" signs, shall be erected, placed or permitted to remain on any Lot. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Developer or its designees, or the use or operation of sales offices or model units on any Lot by Developer or its designees 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, By-Laws and Rules and Regulations, as the same may be amended from time to time.

5.3 Personal and Professional Use. The restrictions in Sections 5.1 and 5.2 shall not,

however, be construed in such a manner as to prohibit an Owner from: (a) maintaining a personal professional library therein; (b) keeping personal business records or accounts therein; or (c) handling personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said sections.

5.4 **Parking and Outside Storage.** The outdoor parking areas shall be used for the parking of passenger automobiles. No boats, trailers, recreational vehicles, trucks, or vehicles bearing signs on their exteriors or other vehicles or property of any kind shall be parked or stored within the Properties unless permitted by such rules and regulations as the Board may prescribe (except for vehicles and trucks which may be operated by the Developer or its designees during the construction or sales period). Every Owner, occupant and other person shall be responsible for their personal property on the Lot. No snowmobile, dune buggy, three- or four-wheeled off-road vehicles or similar motorized device may be operated anywhere within The Reserve. No parking shall be permitted within the private streets of The Reserve, and any and all restrictions on vehicular parking, ownership or operation imposed by the Village of Clarendon Hills shall be deemed applicable to the private streets within The Reserve without further action or direction of the Board.

5.5 **Changes or Improvements to Exteriors of Buildings.** Any additions, changes or improvements to any building, changes in the colors of exterior building surfaces or any part thereof (including roofs, siding, trim, doors, air conditioning units, or shutters) or the placement of patios or decks on the rear portion of any Lot or the addition of any landscaping or plant materials by Owner other than Declarant will be allowed only with the approval of the Association referred to herein. ✓ The installation of a storm door, awning or canopy is prohibited. ✓

STORM
DOOR

5.6 **Window Covering.** The covering of the interior surfaces of the windows or other glass surfaces whether by window grilles, shades, draperies or other items visible from the exterior of the Unit, shall be subject to the rules and regulations of the Board. No newspapers, paper or other temporary window coverings may be used to cover the windows in any Residence for more than twenty (20) days after closing.

5.7 **Proscribed Activities.** No unlawful, noxious or offensive activity shall be conducted on any Lot or in the Common Area, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of the Lots. No objects of unsightly appearance or nuisance shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb any resident of the Properties. All woodpiles shall be screened by adequate planting so as to conceal them from view of neighboring Lots and streets, and all woodpiles must be less than five feet in height, five feet in width and twenty inches in depth. No clothes, sheets, blankets, laundry of any kind, or similar articles shall be hung out on any part of the Lot, except as permitted by rules and regulations of the Board. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon.

5.8 **Use Affecting Insurance.** Nothing shall be done or kept on any Lot or in the

Common Area which will increase the rate of insurance applicable to the improvements or contents thereof, without prior written consent of the Board. No Owner shall permit anything to be done or kept on their Lot or in the Common Area which will result in the cancellation of insurance on the improvements or contents thereof, or which would be in violation of any law.

5.9 Structural Impairment. Nothing shall be done on any Lot which will damage the structural integrity of any Building or which would structurally change the building except as otherwise herein provided. No Owner shall overload the electrical wiring in a building or operate any machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

5.10 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except for dogs and cats kept as household pets, subject to rules and regulations adopted by the Board, provided they are not kept, bred or maintained for any commercial purposes. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Properties upon ten (10) days written notice from the Board to the Owner of the Lot containing the pet, and the decision of the Board shall be final.

5.11 Trash Removal. All rubbish, trash and garbage shall be regularly removed from the Properties and shall not be allowed to accumulate thereon. Each Owner shall be responsible for the acquisition and maintenance of not more than two (2) thirty two (32) gallon covered trash receptacles, which must be stored inside the unit. All rubbish, trash and garbage must be contained within the aforesaid receptacles, and no receptacles may be placed outside before 8:00 p.m. the day before pickup. Owners agree to abide by the rules adopted by the Board for the collection of recyclables. The foregoing restrictions shall not apply to the activities of Declarant, its designees and those working for or on behalf of Declarant during the construction and sales period. Refuse or waste material shall not be permitted to be burned outside of Owner's residence.

5.12 Landscaping Controls. Initial landscaping shall be done by Developer, and changes in such landscaping shall be made by an Owner only with the prior approval of the Association. The Developer or the Association has the right, in making a judgment as to the giving or withholding of approval of plans and specifications submitted to the Developer or the Association, to consider the desirability of the proposed landscaping or grading in relation to other landscaping and grading in The Reserve, and to consider the character and qualities of the residential development existing or being created within The Reserve. Provided any initial landscaping is not disturbed, an Owner may plant and maintain flowers in the first three feet of common area adjoining a unit without further approval of the Board.

5.13 Nameplates, Antennae, Lighting, and Other Such Matters. There shall be not more than one nameplate on each Townhouse Lot. Style, size and location of nameplates shall be prescribed by the Rules and Regulations of the Association. No television or radio antennae (including satellite dishes of all kinds), tower, or other receiving or transmitting devices shall be erected outdoors, nor shall laundry be dried outdoors.

5.14 Covenants, Conditions and Restrictions - Running with the Land. The covenants,

conditions and restrictions created by this Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting The Reserve shall be deemed subject to these Covenants, Conditions and Restrictions were fully set forth in said conveyance or other instrument. Violation of the foregoing restrictions shall entitle the Association to enforce the rights and remedies hereinafter specified, whether or not said violation constitutes a nuisance.

ARTICLE SIX

Use of the Common Area

6.1 Use by Owners and Developer. The Owners, their families, guests and invitees have the right to use the Common Area. Developer, its agents, employees and invitees also have the right to use the Common Area. Use of the Common Area shall be subject to the Rules and Regulations which may be amended from time to time by the Developer.

6.2 Use to Comply with the Declaration and Rules and Regulations. No use of the Common Area shall be made by any person, whether Owner or otherwise, which does not comply with, and conform to, the requirements of this Declaration, and which does not comply with, and conform to, the Rules and Regulations.

ARTICLE SEVEN

Easements

7.1 Ingress/Egress Easement for Utilities. A perpetual easement is hereby reserved and granted to the Village of Clarendon Hills and to those public utility companies operating under franchise from the Village of Clarendon Hills, including but not limited to, Commonwealth Edison, Ameritech, Northern Illinois Gas, Hinsdale Sanitary District, cable television companies, and their successors and assigns upon Lots 56, 57 and 58 for the perpetual right, privilege and authority to construct, reconstruct, repair, inspect, maintain and operate various utility transmission and distribution systems, including, but not limited to, water lines and storm and/or sanitary sewers, together with any and all necessary manholes, catch basins, connections, appliances and other structures and appurtenances as may be deemed necessary by said Village or utility upon, along, under and through said Lots together with right of access across the subdivision, for the necessary men and equipment to do any of the above work. The right is also granted to cut down, trim or remove, without obligation to restore or replace, any obstruction, including but not limited to, trees, shrubs, other plants, structures or other improvements on the easement that interfere with the operation of the utilities. All installations are subject to the ordinances of the Village of Clarendon Hills.

7.2 Municipal Services Easement. A perpetual easement is further hereby reserved and granted to the Village of Clarendon Hills, other governmental authorities having jurisdiction of the land subdivided thereby, and the Association members over Lots 56, 57 and 58 for ingress, egress, and the performance of municipal and other governmental services, including, but not limited to, water, storm and sanitary service and maintenance, drainage and detention purposes and maintenance, and emergency and routine police, fire and other public safety-related services. However, the Village shall have no duties with respect to any private streets, detention

improvement or landscaping, which are to be constructed in the subdivision and which shall be maintained by The Reserve Homeowners' Association. A perpetual easement, upon, along, under, and through Lots 1, 6, 15, 19, 20, 23, 28, 29, 33, 37, 44, 45, 51 and 55 is further reserved and granted to the Association, the Village of Clarendon Hills, the fire protection district and such other governmental authorities having jurisdiction of the subdivision for the installation and maintenance of a fire detection panel, or such other emergency service equipment as may be required, for the use and protection of all units in The Reserve. The Board shall reasonably compensate the Owners of each of the foregoing lots in reimbursement of the utility charges incidental to the operation of the fire detection equipment.

7.3 Construction. Each lot in The Reserve is hereby subjected to a permanent easement to permit the construction, existence, maintenance and repair of structures located on adjoining lots. The Association, its agents and employees have the right to enter upon any lot in The Reserve at any reasonable time and from time to time in order to provide exterior maintenance, repairs and lawn and landscaping care.

7.4 Encroachments. In the event that, by reason of the initial design, construction, repair, reconstruction, settlement or shifting of the Property or any part thereof, (i) any part of the Common Area encroaches, or shall hereafter encroach, upon any part of any Townhouse Lot, or (ii) any part of any Townhouse Lot (including, but not limited to, patios, decks, fireplaces, chimneys, bay, bow or box windows, and window wells) encroaches, or shall hereafter encroach, upon any part of any other Townhouse Lot or the Common Area, then, in any such case, there shall be deemed to be any easement in favor of the Owners for the maintenance and use of any of the Common Area which may encroach upon a Townhouse Lot, and there shall also be deemed to be an easement in favor of any Owner for the exclusive use of any part of his Townhouse Lot which shall encroach upon the Common Area or any other Townhouse Lot; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful or negligent conduct of such Owner or his agent.

7.5 Easements Reserved by Developer. Notwithstanding any provision herein to the contrary, until such time as the Developer is no longer vested with or controls title to any part of The Reserve, the Developer and its agents and contractors shall have the right (a) to place and maintain on the Property model residences, sales offices, advertising signs, parking spaces and lighting in connection therewith, at such locations and in such forms as the Developer may determine, in its discretion, to be used by the Developer in connection with the promotion, sale, or lease of the Residences or of the Residences constructed on any part of The Reserve, (b) to come over, across and upon the Property for the purpose of making alterations or improvements to the Residences, Townhouse Lots or Common Area, and (c) to store on the Common Area equipment and materials used in connection with such work on the Residences, Townhouse Lots or Common Area, all without the payment of any fee or charge whatsoever.

7.6 Perpetual Easement for Enjoyment of the Common Area. Perpetual easements are hereby established in the Common Area for the use and enjoyment of said area by all Owners, their families, guests, invitees and others where a right to use or enjoy the Common Area is derived from the Owners. Each Owner, and all persons whose rights are derived from the Owner, has an easement freely to make all reasonable and proper use of the Common Area subject to the terms of this

Declaration and to the Rules and Regulations promulgated pursuant hereto.

7.7 Perpetual Easement in Gross to Association. The Common Area shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association properly to perform its duties and responsibilities. The Association further has a perpetual easement in gross to enter upon a Townhouse Lot where reasonably necessary in the judgment of the Association for the purpose of properly performing or executing a duty or responsibility of the Association in respect of other Owners, or of the Owners generally, or of the Common Area. Without limiting the above easement in gross, the Association has a perpetual easement in the Common Area and the Townhouse Lots for the purpose of maintaining, and testing the lawn sprinkler system, the exterior lighting system, and the fire protection security system, along with any other systems which the Association has the duty or responsibility to operate or maintain for the benefit of the Owners or the Association. Developer also has an easement in gross for the purpose of enabling and permitting Developer properly to perform its duties and responsibilities as Developer. Developer further has an easement in gross to enter upon a Townhouse Lot where reasonably necessary in the judgment of Developer for the purpose of properly performing or executing a duty or responsibility of Developer in respect of other Owners, or of the Owners generally, or of the Common Area.

7.8 Easements for Public Utilities, Sanitary and Storm Sewers. Developer initially, and the Association thereafter, has the right to establish easements over portions of The Reserve for sanitary and storm sewers and for all other public utility purposes including electricity, gas, water, cable television, and telephones, and Developer and the Association have the concomitant right, in connection with such grants of easements, to grant the right and power to do all things necessary or appropriate in connection with said grant of easements, including, but without limitation, the right of maintenance, repair and replacement. Developer and the Association are fully authorized and empowered to execute and deliver any and all documents necessary to implement these provisions, and the Owners shall be deemed to have approved and confirmed such documents, and to be bound thereby.

7.9 Easement Creation and Amendment. Easements for all public utility or other purposes, including, but without limitation, electricity, gas, water, cable television, security, and telephone, shall be initially created by the recording in the Recorder's Office of DuPage County, Illinois, of the Plat of Subdivision of The Reserve and, if necessary, individual Grants of Easements to which shall be appended Plats of Easements showing the location of the easements being initially created. Thereafter, easements for public utilities shall be created by the recording of separate Plats of Easement, each of which shall show the location, within the Common Area and within any Townhouse Lots covered by such subsequent Plats of Easements, each of which shall show the location, within the Common Area and within any Townhouse Lots covered by such subsequent Plats of Easements, of the easements being newly created. The utility easements created by the filing of Plats of Easements shall be deemed to have been created upon and subject to, all of the terms and conditions of the Plat of Subdivision of The Reserve and initial Grants of Easements to the respective utilities or services, so that upon the recording of a Plat of Easements subsequent to the recording of the Plat of Subdivision of The Reserve or an initial Grant of Easements, each utility or service company shall forthwith have all the rights, powers and obligations contained in said Plat

of Subdivision of The Reserve or the initial Grant of Easements, as fully and as effectively as if all the terms of said Grant of Easements were contained within the subsequently recorded Plat of Easements.

7.10 Easement Within Townhouse Lot. At any time prior to the sale of Townhouse Lot by Developer, Developer has the right to create, for public utility and other Common Area purposes, an easement strip within, and/or adjacent to, one or more sides of such Townhouse Lot.

7.11 Easement: Townhouse Lot to Public Streets. An easement for ingress and egress to public streets shall exist over the driveways, the private roads and walks which connect the Townhouse Lots to the private roads of The Reserve, in favor of the Owners, their families, guests, invitees and others whose right of use is derived from the Owners, and in favor of the Developer and the Association. An area for a private road and for the utility easement (in addition to the utility easements hereinabove provided for), and for other purposes not inconsistent with such uses, is created and shall exist, as shown on the Plat of Subdivision of The Reserve as Lot 56.

7.12 Easement to Fire and Police Departments. Fire and police departments servicing The Reserve, and any cooperating fire and police department, are hereby given an easement to enter upon and make such use of the private road of The Reserve, and of so much of The Reserve itself, as is necessary for the customary and proper performance and discharge of their duties.

ARTICLE EIGHT

Party Walls

8.1 Owner's Rights and Obligations. Each of the Owners immediately adjacent to a party wall shall have the obligations and be entitled to the rights and privileges granted herein and, to the extent not inconsistent herewith, the general rules of law regarding party walls. If any party wall is damaged or destroyed through the act or acts of an adjoining Owner, or his agents, servants, guests, or members of his family, whether such act is willful, negligent or accidental, such Owner shall rebuild or repair the wall to as good a condition as formerly without cost to the other adjoining Owner. Any party wall damaged or destroyed by some act or event other than that produced by one of the adjacent Owners, his agents, servants, guests, or family, shall be rebuilt or repaired by both adjoining Owners to the same good condition as formerly, at their joint and equal expense, as promptly as reasonably possible. Any Owner who proposes to modify, rebuild, repair or make additions to his own residence or any reconstruction upon his Townhouse Lot 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 such other requirements as may be set forth herein.

8.2 Disputes Regarding Party Walls. In the event of a disagreement between Owners of adjoining Residences with respect to the repair, reconstruction or maintenance of a party wall or with respect to his share in the cost or repairing, rebuilding or maintaining the same, then upon the written request of either of said Owners to Developer or the Association, or its successor or assign, the matter shall be submitted to it for arbitration under such rules as it may from time to time adopt; provided, however, that if no such rules are adopted or it refuses to act, then the matter shall be

submitted to three arbitrators, one chosen by each of the Owners, and the third arbitrator shall be chosen by the other two arbitrators. A determination of the matter signed by any two of the three arbitrators shall be binding upon all persons.

8.3 Private Agreements. No private agreement of any adjoining property Owner shall modify or abrogate any of the provisions contained in Article Eight, which shall be binding upon the heirs, administrators, successors and assigns of the Owners. No persons shall be liable for any act or omission respecting the provisions of this Article except such as took place while such person was an Owner.

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

8.5 The title of each owner to the portion of each party wall within such Townhouse unit is subject to a cross easement in favor of the adjoining owner for joint use of said wall.

ARTICLE NINE

The Reserve Homeowners' Association

9.1 The Association. The Declarant shall cause the Association ("the Association") to be incorporated as a not-for-profit corporation entitled: The Reserve Homeowners' Association. The Association shall be the governing body for all of the Owners and for the administration and operation of The Reserve as provided in this Declaration and the By-Laws. All agreements and determinations lawfully made by the Association shall be deemed to be binding on all Owners and their respective successors and assigns.

9.2 Membership.

(a) Membership in the Association shall be limited to one class. One Owner of each Townhouse Lot shall be declared a member of the Association, and only one membership per Townhouse Lot is hereby created. Membership shall be appurtenant to and may not be separated from ownership of a Townhouse Lot. Ownership of a Townhouse Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Townhouse Lot within ten days after such change.

(b) One owner of each Townhouse Lot shall be designated as the "Voting Member" for that Townhouse Lot. The Voting Member, or his proxy, shall be the individual who shall be entitled to vote at meetings of the Owners. If the record ownership of a Townhouse Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Townhouse Lot shall be designated by such Owner or Owners in writing to the Board, and if in the case of multiple individual

Owners no designation is given, then the Board at its election may recognize an individual Owner of the Townhouse Lot as the Voting Member for such Townhouse Lot.

9.3 Election of a Board. When Developer notifies the Owners that Developer is ready to direct the conveyance of fee simple title of the Common Area to the Association, or is otherwise prepared to turn over the management of the Common Area, the Owners shall elect a Board. The Board shall consist of five owners to serve in the offices of President, Vice-President, Secretary, Treasurer, and Second Vice President. The term of each office shall be twelve (12) months, except that the initial term shall be extended to allow for the election of not more than a two new directors per year within the first three years of operation of the Board. If in the judgment of Developer, the Owners fail to elect an initial Board after notice authorizing such election has been given by Developer, then Developer shall have the right to designate, in its discretion, any five of the Owners as an initial Board. *Staggered terms*

9.4 Management and Control by Board. The Board may retain all responsibility and authority for day-to-day management and control of the Common Area. The Board has the right, but no obligation, to vest all of its responsibility and authority for day-to-day management and control of the Common Area in a manager to be employed by the Board. If a manager is so employed, he shall be subject to the authority of the Board. The policies and decisions of the Board shall be executed by the manager, and the manager shall enforce their Rules and Regulations. The power and authority of the manager shall be coextensive with that of the Board but shall be subject and subordinate to the Board.

9.5 Adoption of Rules and Regulations. The Board may from time to time adopt rules and regulations governing the Common Area and use of the Common Area by the Owners and by all other persons. Developer shall have the right to adopt Rules and Regulations prior to their adoption by the first Board. All users of the Common Area shall comply with the Rules and Regulations. The Rules and Regulations to be adopted by the Board in respect of the Common Area and Townhouse Lots may cover, among other things and without limitation, matters pertaining to use, admission of guests, pets, discipline and disciplinary measures against violators of said Rules and Regulations.

9.6 Vacancies, Compensation and Other Matters. The Board shall receive no compensation for its services. A vacancy in the Board, whatever the reason for the vacancy, shall be filled by the vote of the remaining members of the Board. If there are two or more vacancies in the Board, the vacancies shall be filled by majority vote of the Owners at a special meeting called for that purpose. The Board shall act by majority vote of those present at its meeting when a quorum is present. The Board shall meet as often as it deems necessary for the proper performance of its duties.

9.7 Officers of the Board of Directors. The Board shall elect from among its members a President and a Secretary-Treasurer. Each officer shall perform the duties which commonly attach to the office he holds.

9.8 Meetings of the Owners. When development of The Reserve has been substantially

completed by Developer, and Developer is prepared to transfer and assign all of Developer's Rights, powers and obligations to the Association, Developer shall give due notice of said substantial completion to the Owners. Developer shall give Owners not less than 15 days notice of a meeting to be held by the Owners at a place to be designated by Developer in DuPage County at which, by majority vote of all Owners present at said meeting, the Owners shall elect the Board hereinabove referred to. Thereafter, the Owners shall meet annually for the purpose of electing Directors at a place to be designated by the Board in DuPage County. The first annual meeting of the Owners shall be held one year, as nearly as practicable, after the date of the first meeting of the Owners, and subsequent meetings shall be held at yearly intervals thereafter as may be established by the Board.

9.9 Meetings of the Board. The Board shall meet annually promptly after the annual meeting of Owners at a place to be designated by the Board in DuPage County for the purpose of electing officers and transacting any other business which may properly come before the annual meeting. In addition to the said annual meeting, the Board may hold special meetings when business before the Board makes it necessary. Special meetings of the Board shall also be held on the written request of not less than fifteen Owners, delivered to the Board. The request of the Owners shall state the purpose of the special meeting for which a request has been made, and in response to a proper request by not less than fifteen Owners, the Board shall set a suitable date for a special meeting and shall give not less than ten days' notice to each Owner, of the date, time and place of the special meeting.

ARTICLE TEN

Rights, Powers and Obligations of Association

10.1 Rights, Powers and Obligations of Association. For the benefit of all the Owners, the Association shall have all powers relating to the maintenance, repair, improvement, management, and operation of the Property including, but not limited to, the power set forth in this Article Ten, and all the rights and powers possessed by Developer under the terms of this Declaration. The power of the Association shall include the power to acquire and pay out funds as hereinafter provided, for the following Common Expenses and/or Residence Expenses:

- (a) Management services.
- (b) Security services, including security personnel, and operation and maintenance of central fire and security signal receiving systems and other security arrangements or devices, if any.
- (c) Water, water removal, if any, operating expenses, electricity, telephone and other necessary utility services for the Common Area.
- (d) Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, insuring the Association itself, its manager, if any, agency and employees, the Owners, including the Directors personally, the Developer, its agents and employees, from any liability in connection with the Common Area or the streets, the

pond, sidewalks and public spaces adjoining the Common Area. Such insurance coverage shall also cover cross liability claims of one insured against another. The insurance coverage provided for Developer, its agents and employees, shall continue in force and effect only until the time of the transfer by Developer to the Association of all of the rights, powers and obligations of Developer, and said coverage may then be canceled.

- (e) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Association in its judgment shall elect to effect.
- (f) General real estate taxes, assessments or other charges of governmental bodies against the Common Area ("taxes").
- (g) The services of any person or firm employed by the Association. The Association may employ the service of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments, and in connection with any other matter where the respective interests of the Owners are deemed by the Association to be similar and non-adverse to each other.
- (h) Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement in the Common Area, and acquisition of such furnishings and equipment for the Common Area as the Association shall determine are necessary and proper. The Association shall have the exclusive right and duty to acquire the same for the Common Area.
- (i) In respect of Townhouse Lots, (i) maintenance of landscaping initially done by Developer and landscaping (other than flower planting) done by Owner on his Townhouse Lot for which Association has in writing accepted responsibility, (ii) snow removal from driveways, (iii) maintenance and repair of exterior of residences, including, but not limited to, the roof, exterior walls, soffits, trim, and chimney.
- (j) Maintenance and repair of Townhouse Lot walks and driveways on behalf of the Owners, but each Owner shall be separately assessed by the Association for the separate expense thereof allowable to a Townhouse Lot. Such assessments shall be governed by the provisions set forth in Article Twelve relating to assessments generally, except that the statement covering the cost of walk and driveway maintenance and repair shall be paid promptly upon presentation to the Owner for whom the work was done.
- (k) Any other materials, supplies, equipment, labor services, maintenance, repairs, structural alterations or assessments, tax or otherwise, which the Association is required to secure or pay for pursuant to the terms of this Declaration or the By-Laws or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Common Area or for the implementation of this Declaration.
- (l) Any amount necessary to pay for or discharge any mechanic's lien or other

encumbrance levied against the entire Common Area or any part thereof which may, in the opinion of the Association, constitute a lien against the Common Area or any part thereof which may in the opinion of the Association, constitute a lien against the Common Area, rather than merely against the interests therein of particular Owners.

(m) All funds collected hereunder shall be held and expended for the purposes designated herein.

10.2 Owners' Obligation to Maintain. Each Owner shall have the obligation to maintain in good condition and repair the following: decks and patios, all glass surfaces, windows, entry doors, and garage doors, electrical fixtures (including but not limited to the garage bracket lighting) and walkways located on, or directly adjacent to, his Townhouse Lot. Upon the failure of any Owner to maintain those items, the Association may enter upon said Townhouse Lot and make such reasonable repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, and the costs thereof may become a lien upon the Townhouse Lot as provided herein.

10.3 Alterations and Improvements of the Common Area. The Association shall have the right to make or cause to be made alterations and improvements to the Common Area. The costs of such alterations and improvements shall be assessed as Common Expenses in the manner hereinafter set forth.

10.4 Books and Records. The Association, through its secretary or manager, shall keep complete and correct books of account of the receipts and expenditures relating to the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owners. Upon ten days' notice to the Association and payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner for Common and/or Residence Expenses.

10.5 Employment of Professional Management. The administrative duties of the Board may be performed by a Manager (which may be a professional management firm) employed by the Association, and the Association has the right to pay reasonable compensation to Manager so employed. The Developer has the right, but not the obligation, on behalf of the Owners, to engage the initial Manager and to enter into a contract with said expiring not later than one year after the completion of the development of The Reserve.

10.6 Execution of Agreements, Contracts, etc. All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by the authorized officers of the Board, its Manager, or by such other persons and in such manner, as from time to time may be determined by the Association.

10.7 Authority of Board to Lease or License. The Association shall have the authority to lease or to grant licenses or concessions with respect to the Common Area, when reasonably

deemed to be in the best interest of the Owners.

10.8 No Business Activity. Nothing in the Declaration of Trust shall be construed to give the Association authority to conduct a business for profit on the Common Area or any part hereof.

10.9 Non-Liability of the Board. The Board and Developer shall not be personally liable to the Owners or to any others for any mistake in judgment or for any acts or omissions made in good faith. The Owners shall indemnify and hold harmless each member of the Board and the Developer against all contractual liability to others arising out of contracts made by the Board or the Developer on behalf of the Owners unless any such contract shall have been made in bad faith or in violation of the provisions of this Declaration. The liability of the Owners based upon a contract made by the Board or by Developer, or based upon Owners' agreement to indemnify and hold harmless, shall be several, and not joint, and no Owner shall be liable for more than his equal proportionate share of any such contract or indemnity liability. Every agreement made by the Board or Developer shall provide that the Board or Developer, as the case may be, are acting only as agents for and on behalf of the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be several, and not joint, and shall not exceed the Owner's equal proportionate share of such contract liability.

10.10 Delegation of Power. The maintenance, repair, improvement, management and operation of the Common Area shall be the responsibility of the Association, but the Association has the right to delegate to the Manager or others, such authority and duties as may be granted and imposed upon the Board by this Declaration.

10.11 Funds and Titles for the Owners. All funds and all properties acquired by the Association, and the proceeds thereof, shall belong to the Owners and shall be held for the benefit of the Owners subject to this Declaration for the Purposes herein stated.

ARTICLE ELEVEN

Conveyance of Title by Developer to Association

11.1 Developer's Rights, Powers and Obligations Prior to Transfer to Association. All of the rights, powers and obligations which by this Declaration are to be vested in the Association shall be deemed vested in and possessed by Developer.

11.2 Transfer of Rights, Powers and Obligations by Developer to Association. When Developer has substantially completed development of The Reserve, it shall transfer and assign to the Association all of its rights, powers, and obligations under this Declaration.

11.3 Transfer of Title to Common Area to Association. Until the title in the Common Area is conveyed to Association, Developer, solely shall hold the fee simple title in the Common Area, subject to the right of use by the Owners hereinabove provided for in Article Six. Concurrently with said transfer by Developer to the Association, the legal title of Developer in the Common Area shall be conveyed to the Association, and thereupon the Association solely shall

possess fee simple title in the Common Area. Concurrently with the transfer of Developer's rights, powers and obligations to the Association, the exclusive interest of Developer in the Common Area shall cease and terminate.

11.4 Rights and Powers Reserved by Developer. Prior to Developer's substantial completion of The Reserve and Developer's transfer of its rights, powers and obligations to the Association, Developer shall have the right and power to erect and maintain advertising signs and to use and employ on The Reserve other sales devices and arrangements, all to be in good taste and consistent with the quality and character of the development, for the purpose of advertising Townhouse Lots and Residences in The Reserve. Developer shall have the further right and power to maintain, for the aforesaid period, sales, business and construction offices on the Property, up to five (5) model Residences, and to complete construction of the Buildings and improvements on the Property and development of the entire The Reserve. The construction of buildings and improvements by Developer in accordance with this Article shall be deemed fully authorized and empowered until development of The Reserve has been completed and Developer has transferred and assigned all its rights, powers and obligations to the Association.

11.5 Developer's Successors and Assigns. Developer's successors and assigns shall have, without limitation, qualification or exception, all the rights, powers and authority of Developer itself.

11.6 Common Area Improvements: Developer's Warranty. Developer warrants all improvements constructed by Developer in the Common Area to be free from defects in workmanship and materials. Said warranty shall be effective for twelve months from the date as of which the improvement is ready for use or occupancy. During said twelve-month warranty period, all repairs required by reason of defects in workmanship or materials shall be made by Developer at its own expense, without charge to the Owners. After the expiration of the warranty period, all repair expense on Common Area improvements shall be borne by Owners.

ARTICLE TWELVE

Assessments

12.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed therefor or possession thereof, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to personally and individually covenant and agree to pay the Association: (1) annual assessments or charges, (2) special assessments, and (3) a single initial assessment, such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments, together with interest thereon, attorney's fees and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot so charged. Each such interest and assessment, cost, and reasonable attorney's fees as may be due shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment falls due. The personal obligation shall pass to his successors in title accepting a deed to or assignment of beneficial interest in any trust holding title to said Lot.

12.2 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use or abandonment of their Lot.

12.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the purposes set forth above including by illustration and not limitation, the maintenance of the Lots including yards and landscaping, the maintenance and repair of the exterior of the townhouses constructed on the Lots, the maintenance, repair and snowplowing of the driveways, the payment of real estate taxes on the Common Area, the payment of premiums for the insurance which is the obligation of the Association, and to provide funds for the Association to carry on its duties set forth herein or in its Articles of Incorporation or By-Laws.

12.4 Reasonable Reserves. The Association shall establish and maintain from annual assessments collected hereunder, reasonable reserves for the costs of the maintenance, repair and replacement of the Common Area or any landscaping therein, which are the obligations of the Association hereunder.

12.5 Special Assessment. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment for the purpose of defraying in full or in part the cost of any reconstruction, repair or replacement of the townhouse located on any Lot, including landscaping related thereto, or for the purpose of providing funds to the Association to carry on any of its duties set forth in this Declaration or in its Articles of Incorporation or By-Laws, provided that any such assessment shall have the assent of a majority of the votes of the members voting in person or by proxy at a meeting duly called for this purpose, at which a quorum is present. Written notice of this meeting shall be sent to all members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purposes of the meeting. In the event a special assessment is to be levied for the construction, reconstruction, repair or replacement of less than all of the townhouses located within The Reserve, such assessment may, by the action described herein, be levied against only those Lots which benefit by such construction, reconstruction, repair, or replacement, in proportion to their benefit, and not against the other Lots in The Reserve.

12.6 Uniform Rate of Assessment. Annual assessments must be fixed at a uniform rate for all Lots, and shall be collected on an annual basis or such other basis as set by the Board of Directors. *

12.7 Assessment for Lots Owned by Declarant. Notwithstanding the foregoing provisions, Developer shall be exempt from the payment of all assessments due under Article Twelve of this Declaration during the period Residences are used by Developer as model Residences or during the period any Residence owned by the Developer remains unsold and unoccupied.

12.8 Date of Commencement of Annual Assessments, Due Dates. The fiscal year shall be January 1 to December 31. The annual assessments provided for herein shall commence for any Lot within The Reserve or any land annexed to The Reserve on the day of the conveyance of the first Lot in The Reserve or such land and shall be prorated from the month of said conveyance to *

the end of the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of the annual assessment shall be sent to every Owner subject thereto. The due dates when said annual assessments are due and payable shall be April 1 of each year or such other date as may be established by the Board of Directors.

12.9 Initial Capital Contribution. At the time of the initial sale of any Lot from Declarant to any Owner, such Owner shall pay to Declarant for the use of the Association a sum equal to one fourth (1/4) of the Annual Assessment then in effect. Such sum shall be delivered by Declarant to the Association for use as described in Section 12.3 of this Article Twelve. The Initial Assessment for any Lot shall be levied only upon the sale by Declarant to an Owner and shall not be levied on any subsequent sales of the Lot.

12.10 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the annual assessments on a specified Lot 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 certificate shall be conclusive evidence that any assessment 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 Declarant on Lots then owned by Declarant. Developer shall be exempt from any requirement to furnish any certificate of payment for the period Residences are used by Developer as model Residences or during the period any Residence owned by the Developer remains unsold and unoccupied.

12.11 Assessments by Developer Prior to Transfer to Association. Until Developer transfers its rights, powers and obligations to the Association, assessments for maintenance and operation shall be levied by Developer on an annual basis and shall be paid by the Owners. The assessment for maintenance and operation shall be subject to periodic adjustment, upward or downward, each such adjustment to be based upon the estimate then made by Developer of the expense of managing and operating the Common Area during the period for which the estimate has been made. The term "maintenance and operation" of the Common Area includes, but without limitation, all of the matters set forth in Article Ten in respect of which the Association (and Developer prior to transfer to the Association) are stated to have rights, powers and obligations.

12.12 Transfer by Developer of Maintenance Reserves. When Developer is preparing to transfer its rights, powers and obligations to the Association, Developer will deliver to the Association a statement showing the amount by which aggregate assessments received by Developer from the Owners exceeded, or are less than, the aggregate expense of maintaining and operating the Common Area up to the date of transfer. If the statement shows a surplus, Developer shall within thirty days of receipt of the statement pay that surplus to the Association. If the statement shows a deficiency, then the Association will pay the amount of that deficiency to the Developer. After the date of the transfer and assignment to the Association of Developer's rights, powers and obligations, Developer shall have no further liability or obligation in respect of any costs or expenses of the Common Area. Thereafter, all assessments for taxes, maintenance and operations shall be made as provided for herein.

12.13 Estimate and Assessment of Maintenance Costs by Association. After Developer has transferred its rights, powers, and obligations to the Association, payment by Owners for maintenance and operating expenses shall continue to be paid annually in the same amount as prior to the transfer, until the Owners are notified by the Association of a change in the amount of the assessments.

(a) Not less than sixty days after the end of each fiscal year, the Association shall prepare and approve an estimate of taxes, maintenance and operating expenses for the coming fiscal year, with reasonable supporting data, and the Association shall promptly give each Owner written notice of said estimate, and a statement of the annual payment of taxes, maintenance and operating expenses to be made by each Owner on the first day of April of the fiscal year for which the estimate was made, and each Owner shall thereafter make payment in accordance with said statement.

(b) Within sixty days after the beginning of each fiscal year, the Association shall prepare an itemized accounting of taxes, maintenance and operating expenses actually incurred and paid for the preceding fiscal year, together with a tabulation of the amounts collected pursuant to assessment of the Owners. The net amount over or under the actual expenditures, plus reserves must be disclosed. In the first fiscal year of the Association's control, the data to be delivered to the Secretary of the Board shall cover the fiscal period from the date of the transfer by Developer to the Association, to the end of said initial fiscal year. Any amount accumulated in excess of the amount required for actual expenses and reserves may be placed in a special reserve to apply against cash requirements for the following year and any net shortage may be assessed equally among the Owners.

12.14 Reserves for Contingencies. The Association may build up and maintain reasonable reserves for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate, which may become necessary during the year, shall be charged first against such reserves. If the estimated cash reserve is inadequate for any reason, including nonpayment of any assessment, the Board has the right to levy an additional assessment to cure the deficiency. The Association shall serve notice of such additional assessment on the Owners by a statement in writing giving the amount and reason therefor, and such additional assessment shall be paid as directed by the Association. Each Owner, jointly and severally, shall be personally liable for and obligated to pay his respective adjusted assessment.

12.15 Failure of Association to Serve Estimate. The failure or delay of the Association to approve or distribute the annual estimate or the adjusted estimate shall in no way constitute a waiver or release in any respect or in any degree of the obligation of each Owner to pay the maintenance assessments herein provided for, whenever the same shall be determined, and if timely distribution of an estimate is not made by the Association, the Owners shall continue to pay the then existing monthly assessment, until the new or adjusted estimate shall have been distributed by the Association.

12.16 Assessment Roll. The assessments against Owners shall be set forth upon a roll

which shall be available for inspection on request at all reasonable times by the Owners or their duly authorized agents. Said assessment roll shall show all assessments made and their purposes, and shall show further the amounts of all assessments paid and assessments unpaid.

12.17 Lien for Assessments.

(a) If an Owner fails to pay an assessment or portion thereof for which he is liable, then the Association shall have a lien, effective as of the date on which payment was due, on such Owner's Townhouse Lot for the purpose of securing the obligation of the Owner in respect of said unpaid assessment or portion thereof; provided, the lien hereby created in favor of the Association shall be subject and subordinate to the lien of any mortgage or trust deed on such Townhouse Lot made by a bank or insurance company or savings and loan association or other lender, except in respect of assessments on the mortgaged Townhouse Lot which become due and payable subsequent to the date on which the mortgagee, after default, takes possession of the Townhouse Lot, or accepts a conveyance of the Owner's interest therein or has a receiver appointed in proceedings to foreclose the mortgage lien, and in respect of assessments subsequent to the mortgagee's possession or acceptance of conveyance, or appointment of a receiver, the lien of the Association shall have priority over the defaulted mortgage.

(b) In addition to the lien for unpaid assessment or any portion thereof in favor of the Association provided for herein, the Association shall have a lien on all tangible personal property located in, on or about the Townhouse Lot, except that such Association's lien shall be subject and subordinate to prior bona fide liens of record.

12.18 Payment of Assessments: Interest. Assessments and installments thereof paid on due date shall not bear interest, but all sums not paid on or before the date when due shall, when so directed by the Association, bear interest at the prime rate charged by the Association's depository plus two percent or such other rate determined from time to time by the Board but not higher than the highest legal rate payable by individuals in Illinois, from the date when due until date of payment. All payments on account shall be applied first to interest and next to the principal of the assessment which was first due and owing.

12.19 Rights of Association on Default. If an Owner is in default in the payment of the aforesaid assessments or expenses for thirty days or more, the Association may bring suit to foreclose the lien in favor of the Association hereinabove provided for, or may bring suit to enforce collection of the unpaid assessment, and for the recovery of all costs, fees and expenses incurred by reason of said default, including but not limited to, interest as hereinabove provided and reasonable attorneys' fees in an amount to be fixed by the court. The lien hereby created may be foreclosed by an action brought in the name of the Association and shall be maintained as in the case of foreclosure of any mortgage or other equitable lien against real estate; provided however that, as herein provided, the Association's lien shall be subordinate to a mortgage on the Townhouse Lot only as set forth in 12.17(a). Any mortgagee of a Townhouse Lot has the right from time to time and upon payment of a reasonable fee to request in writing a written statement from the Association showing the condition of the assessment account of the Owner of the mortgaged

Townhouse Lot, and showing all unpaid items in respect of which the Association is given lien rights hereunder.

12.20 Lien Rights of Developer. Until Developer's transfer and assignment of its rights, powers and obligations to the Association, all of the lien rights and other rights herein provided for in favor of the Association, shall be possessed by the Developer as fully and as effectively in every respect, without diminution of any kind, as said lien rights are to be possessed by the Association itself.

ARTICLE THIRTEEN

Insurance

13.1 Casualty Insurance for Townhouses. The Association shall obtain and maintain a policy or policies of insurance covering the townhouses (other than the contents thereof) constructed on the Lots within The Reserve 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 100% of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall name The Reserve Homeowners' Association as the insured, and the proceeds thereof shall be payable to the Association, as trustee for the Owners of any townhouses 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 townhouses, subject to the right of 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 Declarant, 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 canceled without at least thirty (30) days prior notice to the Association, the Owners, and all first mortgagees of the lots. The policies obtained by the Association shall be deemed to be the primary insurance coverage for any townhouse.

13.2 Owner's Insurance for Liability and Contents of Townhouses. Each Owner shall maintain at his own cost and expense such insurance coverage as he may desire with respect to (i) personal liability for acts and occurrences upon his lot and within his townhouse with limits of liability not less than \$100,000.00 per person and \$500,000.00 per occurrence, and (ii) physical damage losses for personal property and the contents of his townhouse.

13.3 Liability Insurance; the Association. 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, and their agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in connection with any act or omission of or in behalf of the Association, its Board of Directors, agents or employees within the Properties. Such policies shall be in the amount of \$1 Million for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that it may not be canceled without at least a thirty (30) day prior notice to the

Association, the Owners, and the first Mortgagees of the Lots.

13.4 Workmen's Compensation and Fidelity Insurance; Other Insurances. 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 employers 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 amount for all officers and employees having fiscal responsibilities, naming the Association as obligee; and
- (c) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.

13.5 Waiver of Subrogation. 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. So long as the policies of insurance provided for 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 herein is 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.

13.6 Insurance Premium Expense. The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association. The Board shall apportion the insurance premium according to the premium determined by the issuing company for each unit, and the insurance premium so allocated shall be collected by the Association from the Owners as an addition to the annual assessment.

ARTICLE FOURTEEN

Sale or Lease Transfer of Townhouse Lot

14.1 Sale or Lease of Townhouse Lot. Any Owner, other than Developer, who wishes to sell or lease his Townhouse Lot (or any lessee of any Townhouse Lot wishing to assign his lease or sublease such Townhouse Lot) shall give the Association not less than thirty days' prior written notice of the terms of any proposed sale, lease, assignment or sublease, together with the name, address and financial and character references of the proposed purchaser, lessee, assignee or sublessee, and such other information concerning the proposed purchaser, lessee, assignee or sublessee as the Association may reasonably require. The Owner shall request a Certificate of Payment reflecting that all assessments are current through the month of the closing of the sale or commencement of the term of the lease.

14.2 Lease of Townhouse Lots. Any Owner may lease his Lot, subject to the terms and

conditions herein contained and the provisions of the Rules and Regulations adopted by the Board from time to time. No lease may be for a period of less than one (1) year. All leases, together with the proscribed lease application, must be submitted to the Association for approval not less than 14 days prior to the commencement of the lease term. All leases must be made expressly subject to the terms of this Declaration. In the event any Owner leases, his Lot, he shall at all times keep the Association advised in writing of the address of his own current residence and any changes thereto, and of the name(s) of his tenant(s). The Declarant and its successors and assigns shall have the right to rent any or all units.

14.3 **Limit on Number of Townhouse Lots Leased.** The Association may, pursuant to the provisions of the Rules and Regulations, limit the number of Townhouse Lots that may be leased within a twelve month period. The Association may impose a penalty upon any Owner violating such a restriction, in addition to any other right or remedy granted to the Association herein.

ARTICLE FIFTEEN

Compliance, Breach of Covenants, and Default

15.1 **Rights and Remedies of Association.** Each Owner is bound by and shall comply with the terms of this Declaration, the By-Laws, and the Rules and Regulations adopted pursuant thereto, and by all amendments to them. A failure by an Owner to comply with this Declaration, or with the By-Laws, and Rules and Regulations of the Association or any authorized amendment to said Declaration, By-Laws, or Rules and Regulations shall constitute a default by such Owner. If a default occurs, the Association shall have the right to recover damages at law, to procure injunctive relief, to foreclose on any lien rights the Association may have, or to avail themselves of any other rights or remedies permitted at law or in equity including, but not limited to, filing suit pursuant to the Forcible Entry and Detainer Act. All expenses of the Association in connection with an actions or proceedings described herein, including court costs and attorneys' fees and all other expenses of the proceeding, and all damages, liquidated or otherwise, together with interest thereon at 18% per annum herein until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective share of the annual expenses and the Association shall have a lien for all of the same, as well as for non-payment of his respective share of the annual expenses upon the Townhouse Lot of such defaulting Owner and upon all of his additions and improvements thereto and upon all of his personal property located on his Townhouse Lot or elsewhere on the Property. The rights and remedies of the Association shall be cumulative and shall be enforceable concurrently in a single proceeding. By virtue of the provision of this Declaration which gives Developer all rights and powers of the Association prior to completion of the development of The Reserve and conveyance of Developer's rights to the Association, Developer has every right and power and every right and remedy which the Association is given by this Article.

15.2 **Liability of Owners for Negligence.** Each Owner shall be liable for any damage caused by his act or negligence, or by the act or negligence of any party whose right to be upon the Common Area is derived from such Owner, but only to the extent that such damage is not covered by insurance carried by the Association. Nothing herein contained, however, shall be construed so

as to modify any waiver by an insurance company of rights of subrogation.

15.3 **Recovery of Suit Expense.** In any proceeding commenced by the Association, based upon or arising out of an alleged Default by an Owner, the prevailing party, whether Association or Owner, shall be entitled to recover all expenses of the proceeding, including reasonable attorneys' fees, but the amount to be allowed the prevailing party shall be determined by the court.

ARTICLE SIXTEEN

Townhouse Lots: Title in Land Trust

16.1 **Townhouse Lots: Title Held by Land Trustee.** If title to any Townhouse Lot is conveyed to a Land Trust, under the terms of which all powers of management, operation and control of the premises are vested in the trust beneficiary or beneficiaries, then the parties who are the beneficiaries from time to time under such land trust shall be deemed the Owners of such Townhouse Lot and shall have all the rights and obligations of Owners hereunder. The trust holding title under such a land trust shall have no personal liability for payment of any obligation or lien created by or arising under this Declaration, and no party shall have the right to claim personal liability on the part of any such Land Trust for any liability or obligation of any kind arising under this declaration. Beneficiaries of a Land Trust who transfer their beneficial interest by assignment, or who cause their trustee to transfer Townhouse Lot by trustee's deed shall continue to be liable for all liabilities and obligations incurred by them prior to the disposition of their Townhouse Lot.

ARTICLE SEVENTEEN

Amendment and Termination of Declaration

17.1 **Who May Amend.** This Declaration may be amended by the Developer, or by the Association, or by the Owners, in the manner provided for in this Article Seventeen. Amendment other than in accordance with this Article is not permissible.

17.2 **Amendment After Sale of Townhouse Lot.** After one or more Townhouse Lots has been sold, but prior to Developer's sale of the last lot of The Reserve and prior to Developer's transfer of its rights, power and obligations to the Association, Developer itself acting without concurrence of any other party has the right to amend this Declaration as often as Developer deems necessary, but no such amendment shall unfairly or unreasonably affect any rights of the Owners.

17.3 **Amendment After Election of Board.** After completion of The Reserve by Developer and the election of the first Board, this Declaration may be amended by a two-thirds vote of the Board, together with the concurrence of Developer so long as Developer has any unsold Townhouse Lot.

17.4 **Amendment After All Townhouse Lots Have Been Sold.** After the development of The Reserve has been substantially completed and all Townhouse Lots therein have been sold by Developer, and a first Board has been elected, this Declaration may be amended by a vote of no less than 66 2/3% of the Owners, but such amendment shall not unfairly or unreasonably affect the

rights of the Owners.

17.5 Termination of Declaration. After one or more Townhouse Lots have been sold, this Declaration may be terminated only with the joint consent of:

- (a) The Developer, if the Developer has any unsold Townhouse Lot. If Developer has sold all its Townhouse Lots, consent of Developer shall not be required; and
- (b) If a Board of Directors has been elected, then the consent of the Board, supported by a two-thirds vote of the Directors; and
- (c) The Owners of 75% of the Townhouse Lots; and
- (d) All mortgagees of Townhouse Lots.

Concurrence of all the foregoing shall be required in order to effect a valid termination of this Declaration.

17.6 Termination of Application of Declaration to Lot 58. Lot 58 has been designated on the Plat of Subdivision as "Detention Area A/Park," and Lot 58 is included within the Common Area of The Reserve. If Developer or Association elects to transfer ownership of Lot 58 to the Clarendon Hills Park District, or such other municipal corporation as may have proper jurisdiction to assure the enjoyment of Lot 58 as open space, Developer or Association may, without the consent of Owners or their mortgagees, terminate the application of this Declaration to Lot 58 only and convey title to Lot 58. If Developer or Association elects to terminate this Declaration as to Lot 58 only, it may evidence its election by recordation of an appropriate statement of termination with the Recorder of Deeds of DuPage County, Illinois, and upon such recordation, the title of only Lot 58 of The Reserve shall stand free and clear of this Declaration.

17.7 Procedure on Amendment or Termination.

- (a) If this Declaration is to be amended after development of The Reserve has been completed and the rights and powers of Developer have been transferred and assigned to the Association, and if Developer still has one or more Townhouse Lots which remain unsold, the amendment shall be effected by an appropriate written instrument setting forth the terms of the amendment and duly executed in behalf of the Association and duly executed by the Developer.
- (b) If an amendment is to be effected after Developer has completed the sale of all Townhouse Lots in The Reserve, and after the rights and powers of Developer have been transferred and assigned to the Association, then the amendment may be evidenced by a written instrument executed in behalf of Association solely, and no participation by Developer shall be required.
- (c) If this Declaration is to be terminated after one or more Townhouse Lots have been

sold, the termination shall be evidenced by an appropriate written instrument stating that this Declaration has been terminated. The statement of termination shall be executed by the President and Secretary of the Association in behalf of the Association, by 75% of the Owners of the Townhouse Lots, and by all Owners of mortgage liens on the Townhouse Lots and Common Area. The President and Secretary of the Association shall certify, in the statement of termination, that no less than two-thirds of the Board have voted for termination of this Declaration and that 75% of the Owners of Townhouse Lots have voted for termination.

(d) The instrument effecting an amendment or termination of this Declaration shall be recorded promptly after execution in the office of the Recorder of Deeds of DuPage County, Illinois, and the amendment or termination provided for therein shall become effective and operative upon recordation.

17.8 Notices With Respect to Amendment or Termination. All parties who have the right to participate in a vote relating to amendment or termination of this Declaration shall have the right to initiate proceedings for amendment or termination of this Declaration. Any such party desiring to initiate proceedings for amendment or termination, shall give at least ten days' prior written notice of the meeting at which amendment or termination is to be considered. If Developer solely amends this Declaration, in pursuance of the foregoing provisions providing for amendment by Developer solely, then within fifteen days after adoption of the amendment, notice of the amendment shall be given by Developer to all Owners, and each Owner, promptly upon receipt of such notice, shall give notice of the amendment to the mortgagee of his Townhouse Lot.

ARTICLE EIGHTEEN

General Provisions

18.1 Notices - In General.

(a) Notices given pursuant to this Declaration or in connection therewith shall be written, and shall be delivered in person or by mail. Notices of default, or formal demands by any party hereunder to any other party shall be sent by certified or registered mail, with request of return receipt. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing. Notice to an Owner may be given to the Owner at his Townhouse Lot, unless the Owner has informed the Board of Directors of some other mailing address. Notice to the Association may be given to the Association at an address selected by the Board of Directors from time to time, or to the Townhouse Lot of the President of the Board of Directors. Until Developer has transferred and assigned all its rights, powers and obligations to the Association, all notices which the Association would be entitled to receive shall be given to Developer. Notices in respect of meetings or special meetings of the Board or of the Owners shall be given in accordance with the provisions of the Declaration or of the By-Laws to be adopted by the Board.

(b) Notice to the personal representative of a deceased Owner shall be sent to the address furnished by such personal representative to the Association, and if no address is

furnished by the personal representative, then notice to a deceased Owner shall be given to decedent by writing directed to the Owner at such Owner's Townhouse Lot.

(c) Notices - To Mortgagees. Upon request of the mortgagee of any Townhouse Lot, and payment of a reasonable charge therefore, the Association shall give to such mortgagee a copy of every amendment to this Declaration.

18.2 Non-Waiver Except by Written Instrument. No conditions, covenants, restrictions, reservations, grants or other provisions of this Declaration shall be deemed to have been waived by silence, or inaction, or failure to enforce rights or by any other matters whatsoever, other than a writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived. No waiver shall be deemed to have been effected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights which have occurred.

18.3 Liberal Interpretation. This Declaration shall be liberally construed so as to facilitate and promote the objectives of this Declaration hereinabove set forth. Narrow, technical, and literal construction of this instrument inconsistent with the objectives of the Developer, Association and Owners shall be avoided.

18.4 Rule Against Perpetuities. Should any provision of this instrument be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, (c) or any other statutory or common law rules imposing time limits, then such provisions shall be deemed to be operative only until twenty-one years after the death of the last survivor of the now living lawful descendants of Bill Clinton, President of the United States of America.

18.5 Partial Invalidity - Severability. The invalidity of any of the conditions, covenants, restrictions or reservations herein contained, or of any other provisions of whatever nature of this Declaration shall not in any way impair or affect the validity or enforceability of any other provision of this Declaration, and any such invalidity shall be deemed partial and separable, and all of this Declaration shall be deemed valid, effective and binding except for the invalid provision.

18.6 Gender, Usage of Singular and Plural Forms, and Other Usage. Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural or any gender shall be deemed to include all genders. Prior to Developer's transfer of its rights, powers and obligations to the Association or Owners, all references to the rights, powers and obligations of the Association or the Board shall be read as references to the rights, powers and obligations of Developer. The term "sale" means a sale consummated by delivery of a deed to a Townhouse Lot.

18.7 Captions. Captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text thereof.

18.8 Reliance on Association's Certification. A certification or statement that a

described act has been authorized, or in particular, that execution and delivery of a described instrument has been authorized, signed by the President of the Board and attested by a Secretary of the Board, shall sufficiently establish for all purposes that the described act or instrument is the act or instrument of the Board and has been fully authorized by the Board, and the said described act or instrument may be relied upon by all parties.

18.9 Recordation. Prior to consummation of the sale of the first Townhouse Lot in The Reserve and the delivery of a deed to said Townhouse Lot, this Declaration shall be recorded in the office of the Recorder of Deeds of DuPage County, Illinois. All amendments to the Declaration shall also be recorded in said Recorder's Office.

Prepared By: **Robert M. Claes**
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 Darien, Illinois 60561
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Mail To: **Callaghan Associates, Inc.**
 7000 Frontage Road, Suite B
 Burr Ridge, Illinois 60521

IN WITNESS WHEREOF, said Grantor has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by its President, and attested by its Secretary, this 28 day of May, 1996.

Owner: CALLAGHAN ASSOCIATES, INC.

By: [Signature]
Daniel P. Callaghan, President

Attest: [Signature]
David G. Callaghan, Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Daniel P. Callaghan, personally known to me to be the President of the corporation and David G. Callaghan personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 28 day of May, 1996.

Commission expires 5/23/99

[Signature]
Notary Public

(Notarial Seal)

