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Lynnda M. Powers
RECORDER

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

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
KIRKLAND CHASE MASTER ASSOCIATION**

463988-KA 3

THIS DECLARATION is made and entered into effective as of this 26th day of May, 1999, by **AMERICAN NATIONAL BANK & TRUST COMPANY OF CHICAGO**, as Trustee under Trust Agreement dated July 21, 1995 and known as TRUST NO. 300503-06 (the "Declarant").

RECITALS:

CHICAGO TITLE INSURANCE CO.
Kane County Office
Geneva, Illinois 60134
Phone 232-2750

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37.0

A. The terms used in the Recitals, if not otherwise expressly defined, shall have the meanings set forth in Article II hereof.

B. Declarant is the record legal title holder of approximately 48.24 acres of real estate (inclusive of land which is to be dedicated for right(s)-of-way for Kirk Road and Wind Energy Pass) located generally west of Kirk Road and east of Raddant Road in Kane County, Illinois, which real estate is commonly known as the "Kirkland Chase" development and is legally described on Exhibit "A" attached hereto and made a part hereof (collectively the "Property").

C. The entirety of such Property has been annexed to and made a part of the municipal corporate limits and boundaries of the City of Batavia pursuant to applicable provisions of the Illinois Municipal Code and the terms of a certain **Kirkland Chase Annexation Agreement** effectively dated on or about August 3, 1998 (the "Annexation Agreement")

This Instrument prepared by and
after recording return to:

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

Property Address(es):

Approx. 48.24+/- acres of land
West of Kirk Road in Batavia
(Kane County), Illinois

P.I.N. 12-35-200-025; 12-35-200-34;
12-36-100-005; 12-36-100-006; and
12-36-100-98 (all underlying)

(26)

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by and among the City of Batavia (the "City"), the Declarant, and Kirkland Farms Partnership, an Illinois Partnership (the "Developer").

D. Pursuant to the terms of such Annexation Agreement, various respective portions of the Property are permitted to be developed, improved and utilized within the City's zoning district classifications of: (i) R-O, Single Family Residence District; (ii) R-5, Multiple Family Residence District; and (iii) B-1(N), Neighborhood Shopping District, all with a conditional use for a planned development.

E. On the basis of such permitted multiple zoning district classifications of respective portions of the Property, it is anticipated that the following respective portions of the Property will be so developed and/or subdivided, improved and utilized as follows:

- (i) That certain portion of the Property situated along Kirk Road, encompassing approximately 2.49 +/- acres, which is to be developed and improved with approximately 30,500 S.F. of retail-commercial and office buildings, being further legally described on Exhibit "B" attached hereto and made a part hereof (the "Commercial Parcel");
- (ii) That certain real estate situated between Kirk Road and Wagner Road, encompassing approximately 7.14 +/- acres, which is to be developed and improved with approximately Thirty-Nine (39) attached residential townhomes, being further legally described on Exhibit "C" attached hereto and made a part hereof (the "Townhome Parcel");
- (iii) That certain real estate partially adjoining and contiguous to Wagner Road, encompassing approximately 36.59 +/- acres, which is to be subdivided, developed and improved with Fifty-Six (56) single family residential lots and detached homes, being further legally described on Exhibit "D" attached hereto and made a part hereof (the "Single Family Parcel").

F. If and to the extent Declarant or Developer should hereafter acquire additional real estate which adjoins the Property and which is additionally so annexed to the municipal boundaries and limits of the City, and which is served by the "Facilities" (as hereinbelow defined) (such future additional added real estate sometimes being referred to herein as "Future Property"), it is hereby acknowledged and agreed that Declarant hereby reserves the right, at Declarant's sole and exclusive discretion and election, to hereafter amend and supplement this Declaration by a written recorded Amendment hereto, executed by Declarant, adding and annexing such Future Property hereto, all as further provided at Article VII hereof.

G. The aforementioned Commercial Parcel, Townhome Parcel, and Single Family Parcel, respectively, are intended to be serviced by certain storm water detention/retention and drainage facilities located in substantial conformity with the "detention" or "retention pond" areas identified on the "Preliminary Plat," a copy of which Preliminary Plat is attached hereto and made a part hereof of Exhibit "E" and as further identified and provided in the Annexation Agreement and the exhibits thereto. Such "detention" or "retention pond" areas, together with all appurtenant structures, improvements, facilities, easements and appurtenances are sometimes collectively or alternatively referred to herein as the "Facilities."

H. Consistent and in accordance with Article VII and other applicable provisions of the Annexation Agreement, Declarant desires by this Declaration to provide for: (i) certain easements, covenants and restrictions against and effective as to each respective area or portion of the Property, which will be binding upon each present and future Owner of such Property or any portion thereof or any interest or estate therein, and which will inure to the benefit of such present and future Owner and its respective successors and assigns, to the extent provided herein, with regard to the Facilities; and (ii) the management, care and maintenance of all such Facilities; and (iii) the creation and establishment of the below-referenced "Owner's Association" (sometimes also known as the "Association") for purposes of so owning, managing and maintaining such Facilities at such time as the responsibility for the same is duly transferred by the Developer to such Owner's Association.

NOW, THEREFORE, the Declarant hereby declares that the Property, and any part thereof, is and shall be owned, held, mortgaged, leased or otherwise encumbered, transferred, assigned, sold, conveyed and accepted subject to all terms and conditions of this Declaration. Declarant does hereby further declare and agree that each of the following easements, covenants, conditions, restrictions, burdens, uses, privileges and charges created hereunder shall exist at all times hereafter amongst, and shall be binding upon and inure, to the extent provided herein, to benefit of all parties having or acquiring any right, title or interest in or to any portion of, or interest or estate in, the Property, and each of the foregoing shall run with the land subjected to this Declaration.

ARTICLE I

INCORPORATION OF RECITALS

1.1 The foregoing Recitals are true and correct in all material respects and are hereby incorporated herein by reference within the body of this Declaration as if the same were fully set forth herein.

ARTICLE II

DEFINITIONS

All definitions or defined terms further identified in the Recitals hereto are hereby further supplemented with the following additional identified or defined terms:

2.1 "Association" or "Owner's Association" means an Illinois not-for-profit corporation to be formed for purposes of owning, maintaining, administering and managing the Facilities pursuant to the terms of this Declaration and such Association's By-Laws, Rules and Regulations, from time to time adopted, which are consistent with the terms and provisions of this Declaration.

2.2 "Commercial Parcel" shall have the meaning ascribed to such term in the Recitals hereto.

2.3 "Declarant" means American National Bank & Trust Company of Chicago, as ³ Trustee under Trust Agreement dated July 21, 1995 and known as Trust No. 300503-06.

2.4 **"Declaration"** means this Declaration of Covenants, Conditions, Restrictions and Easements for Kirkland Chase, Kane County (Batavia), Illinois, including all exhibits, amendments, and supplements thereto.

2.5 **"Default Rate"** means the interest rate applicable to any sums which are owed by an Owner to the Association from time to time pursuant to the terms of this Declaration and which are past due, all as further described at Section 5.8 hereof.

2.6 **"Developer"** means **Kirkland Farms Partnership**, an Illinois General Partnership, having its address, as of the effective date of this Declaration, at 11432 Lytham Court, Winfield, Illinois, 60190.

2.7 **"Easements"** means all easements granted, reserved, provided for, declared or created pursuant to or in accordance with the terms and provisions of this Declaration.

2.8 **"Facilities"** means all structures, components, improvements, easements, landscaping, and all other appurtenances (including any replacements or substitutions therefor) for the aforementioned storm water "detention" or "retention pond" facilities which service the various portions of the Property, as further recited hereinabove.

2.9 **"Future Property"** shall mean such real estate which adjoins or is contiguous to any part of the Property, and which may hereafter be annexed to the municipal boundaries and limits of the City and which is serviced by the Facilities (or any portion thereof) and which Developer, in its sole and absolute discretion elects to add and annex to the Property which is subject to this Declaration, by means of a written, executed amendment hereto, duly recorded with the Recorder.

2.10 **"Maintenance"** means and includes operation, maintenance, repair, reconditioning, refurbishing, reconfiguration, inspection, testing, cleaning, installation and replacement when necessary or desirable of the Facilities and includes the right of access to and the right to remove material portions of such Facilities for any of the above purposes, subject, however, to any limitations set forth elsewhere in this Declaration, or in the Annexation Agreement.

2.11 **"Owner"** means either the Owner(s) of the Commercial Parcel (or any portion thereof); the Owner(s) of the Townhome Parcel (or any portion thereof); or the Owner(s) of the Single Family Parcel (or any portion thereof), as the context may from time to time require.

2.12 **"Owner's Parcel"** shall mean the respective portion(s) of the Property owned by each Owner, as further described and identified at Section 4.2 hereof.

2.13 **"Property"** shall have the term and meaning ascribed to it in the Recitals hereto.

2.14 **"Recorder"** means the Recorder of Deeds of Kane County, Illinois.

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2.15 "Secured Property Lender(s)" means the holder of any mortgage or trust deed in the nature of a mortgage (as the same may be amended and/or replaced from time to time) on any portion of the Property.

2.16 "Single Family Parcel" shall have the meaning ascribed to such term at the Recitals hereto.

2.17 "Special Service Area" (sometimes alternatively being known as the "SSA") shall mean that certain Special Service Area established by the Declarant with the City providing for an alternative means of Maintenance of the aforementioned Facilities and including and subjecting to such Special Service Area all of the Property. The purpose for the SSA shall be to provide funding for the ordinary and extraordinary Maintenance of the Facilities in the event the Association fails to perform such Maintenance. In the event of such failure to maintain the Facilities by such Association, the City, on behalf of the SSA, shall have the right to levy up to \$.50 per \$100.00 of assessed valuation of respective portions of the Property, on a yearly basis as is necessary in the City's judgment for such maintenance of the Facilities.

2.18 "Townhome Parcel" shall have the term and meaning ascribed to such term at the Recitals hereto.

ARTICLE III

DECLARATION OF EASEMENTS

3.1 Reciprocal Easements for the Utilization of the Facilities. A reciprocal Easement for the respective use of and access to the Facilities, in a manner consistent with their respective engineered, designed and intended purposes, is hereby declared in favor of all areas of the Property generally, and more specifically, the respective Commercial Parcel, Townhome Parcel, and Single Family Parcel. Such Easements shall be for the uses and purposes which are reasonably necessary or desirable to provide each respective portion or area of the Property with the aforementioned "detention" or "retention pond" stormwater management and related drainage, utilities and services, all as designed and constructed in accordance with such engineering and landscape plans, drawings and specifications as have been from time to time submitted to the City by the Developer and approved by the City. The aforementioned Easements hereby declared and reserved are subject to amendment, revision or change, from time to time, to permit additional or further design, amendments, changes or improvement at any time after the Developer has transferred ownership, management and maintenance care of the Facilities to the Association, subject to the express written approval by the City of any such amendments, changes, or improvements.

3.2 Access Easements. Easements for access to and from the Facilities are additionally hereby declared and reserved in favor of the Developer, the Association, and the City, over, along and upon all areas of the Facilities as well as all other common areas of the Townhome Parcel and the Single Family Parcel as well as all driveways, lanes, and parking areas of the Commercial Parcel for purposes of facilitating and permitting free access to and from each of the respective areas of the Facilities for purposes of providing Maintenance to such Facilities.

3.3 Repair and Restoration of Easement Areas. Each Easement created under this Article III shall be exercised, utilized and enjoyed in such manner so as to prevent or preclude unreasonable interference with the use, operation or enjoyment by each respective Owner of its respective portion of the Property and appurtenant common areas of the Property. Any damage to any common areas of the respective areas of the Property or to any portions of such Property which are privately owned by an Owner, incurred, created or resulting from such Maintenance activities related to the Facilities, shall be reasonably repaired and restored at the Association's cost and expense, as a part of such Maintenance activity.

3.4 Easements Run With Land. All Easements provided for, declared or created under this Article III shall run with the land and shall be perpetually binding upon the Property generally, as well as the Commercial Parcel, the Single Family Parcel, and the Townhome Parcel, respectively, and each Owner or Owner(s) of any such respective parcels of real estate as well as the Developer, Declarant and City, and shall run in favor of and in use to the benefit of and be appurtenant to each such respective area of real estate which is from time to time serviced in any manner by such Facilities.

3.5 Limited Purposes. The Easements granted herein are solely for the uses, purposes and benefits identified herein and accordingly, the execution of this Declaration shall not infer, imply, or be deemed to have created any other easements for any other purposes generally or specifically which have not been identified in this Declaration.

ARTICLE IV

CREATION OF MASTER ASSOCIATION, ADMINISTRATION, MEMBERSHIP, AND VOTING RIGHTS

4.1 Association. Within seven (7) years following Declarant's recordation of this Declaration, the powers and authorities of the Declarant and Developer as set forth throughout this Declaration, except as otherwise expressly reserved unto Declarant and Developer hereunder or as limited pursuant to the instrument of assignment pertaining thereto, shall be vested in an Association having the name "**Kirkland Chase Master Association**" (or such other name chosen by Developer and acceptable to the Illinois Secretary of State), being an Illinois not-for-profit corporation formed by Developer for such purpose. Developer shall have the right, at Developer's sole discretion, to establish the Association and assign all or any of Developer's rights and/or duties hereunder to the Association at any time following the recordation of this Declaration. Until such time as the Association is created and turned over to the Owners, all of the rights, powers and duties of the Association as set forth herein shall remain vested in and may be exercised by Developer, including, without limitation, the power to appoint the Association's Board of Directors and to establish a budget and collect assessments in the manner and for the purposes set forth in Article V of this Declaration.

4.2 Association Membership. Each Owner of: (i) any legally subdivided or divided portion or parcel(s) of real estate situated in the Commercial Parcel ("**Commercial Owner(s)**"); (ii) each subdivided single family residential lot situated in the Single Family Parcel ("**Single Family Owner(s)**"); and (iii) each separate residential townhome unit situated in the Townhome Parcel

("Townhome Owner(s)") shall be a member of the Association so long as he is an Owner of a lot, townhome unit, or legally divided portion of the Commercial Parcel, as the case may be (such respective separate areas of Owner-owned real estate sometimes being referred to herein as an "Owner's Parcel"). Ownership of an Owner's Parcel shall be the sole qualification for membership. An Owner's membership in the Association shall automatically terminate when he ceases to be an Owner of an Owner's Parcel. Upon the conveyance or transfer of an Owner's ownership in an Owner's Parcel to a new Owner, the new Owner shall automatically and simultaneously succeed to the former Owner's membership in the Association. Such succession of interest shall not, however, relieve the former Owner of his obligation for any assessments which were levied or became due while he was an Owner under this Declaration.

4.3 Association Responsibilities. The Association, acting through its membership, or its Board of Managers, as the case may be, shall have the responsibility of: (a) enforcing and administering the terms of this Declaration; (b) establishing and approving the annual budget (including necessary reserves); and (c) providing for the Maintenance of the Facilities.

4.4 By-Laws. The Association may adopt such By-Laws, not inconsistent with the provisions of this Declaration, as are necessary to fulfill its functions. Unless and until such By-Laws are adopted, this Declaration shall serve as the By-Laws of the Association. The fiscal year of the Association shall be determined by the Association, and may be changed from time to time as the Association deems advisable. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of the Owners in accordance with the provisions of this Declaration.

4.5 Voting Rights.

(a) Each Owner shall be entitled to one (1) vote for such Owner's Parcel owned by it. There shall be one person with respect to each ownership interest in an Owner's Parcel who shall be entitled to vote at any meeting of the Association ("voting member"). The voting member may be the Owner or may be a person designated in writing by such Owner to act as proxy on his behalf and who need not be an Owner. Such designation shall be made in writing by the Owner to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner. It shall be the obligation of each Owner to furnish the Board with the current mailing address of the Owner and voting member for the purpose of receiving notice. In any case where the ownership of an Owner's Parcel is vested in more than one person, the voting member and the vote of such Owner shall be determined among such persons as they may see fit, but not more than one (1) vote, and no fractional votes, may be cast on behalf of any such ownership.

(b) With respect to the election of Directors to the Board, the Owners of Owner's Parcels situated in each of the three (3) respective portions of the Property (i.e., the Commercial Parcel, the Townhome Parcel, and the Single Family parcel) shall each be deemed to be and constitute their own respective "class." Owners in each of such three (3) respective "class(es)" shall vote to each elect a single one (1) Director to the full Board (that is, each "class" is entitled to elect a single Director to the Board). Except for voting by such class system for the election of respective

members of the Board of Directors, Owner(s) as voting members of the Association shall otherwise vote as a whole and entire single class and body of Owners/ Association voting members.

(c) During any period in which an Owner shall be in default in the payment of any assessment or special assessment levied by the Association pursuant to this Declaration, any voting rights of such Owner shall be suspended, and the Association shall further have the right to suspend any or all services to such Owner until such default is cured.

4.6 Meetings

(a) Location/Quorum. Meetings of the voting members shall be held at the Property, or at such other reasonable location in the County of Kane, Illinois, as may be designated in any notice of a meeting. The presence in person or by written proxy at any meeting of the voting members having either: (i) at least twenty-five percent (25%) of the total votes of each respective aforementioned class; or (ii) fifty (50%) percent or more of all Owners who own an Owner's Parcel situated within the Property shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of a majority of the voting members present at such meeting. All meetings of the voting members shall be open to all Owners. Withdrawal of a voting member from any meeting shall not cause failure of a duly constituted quorum at that meeting.

(b) Annual Meeting. The initial meeting of the voting members shall be held upon not less than seven (7) days written notice given by Developer. Thereafter, there shall be an annual meeting of the voting members during the first quarter of each calendar year at such reasonable time and date as may be designated by written notice of the Board delivered to the voting members not less than thirty (30) days prior to the date fixed for such meeting.

(c) Special Meetings. Special meetings of the voting members may be called at any time for the purpose of considering matters which, by the terms of this Declaration require the approval of all or some of the voting members, or for any other purpose. Such meetings shall be called by written notice authorized by a majority of the Board or by the voting members having one-third (1/3) of the total votes and delivered not less than four (4) calendar days prior to the date of the meeting, or such longer period as may be specifically required by this Declaration. The notices shall specify the date, time, and place of the meeting and the matters to be considered.

(d) Notices of Meetings. Notices of meetings required to be given herein shall be delivered either personally or by mail to the voting members, addressed to each such person at the address given to the Board for the purpose of service of such notice, or to the Owner at the address of the tax assessee of record for such Owner's Parcel, if no other address has been given to the Board.

4.7 Board of Directors

(a) At the initial meeting of the voting members, and at each annual meeting thereafter, a Board of Directors consisting of three (3) individual persons (one [1] each elected by each of the above-referenced three [3] ownership classes), who are each an Owner or are an officer or duly

appointed and authorized agent of an Owner, shall be elected by a majority of the voting members of each respective class, each to serve a term of one (1) year and until his successor is elected and qualified. Board members shall serve the Association without compensation. For purposes of incorporating the Association, Developer may select any or all members of an initial Board of Directors consisting of persons who may or may not be Owners, to serve in such capacity until the initial meeting of the voting members and the election of a Board of Directors at said meeting.

(b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting members, and who shall be the chief executive officer of the Board and the Association, and a Secretary-Treasurer who shall keep the minutes and records of the Board and the Association and perform all the usual functions of a Secretary and a Treasurer.

(c) Vacancies in the Board of Directors caused by any reason shall be filled by a vote of voting members (Owners) of the respective "class" from which such Director was originally elected, at a special meeting of the Owners in such class, called for that purpose. The Board shall be notified in writing of the identity of the person elected to fill such vacancy.

(d) At any meeting of the voting members of each such respective "class," duly called, the member of the Board of Directors elected by such respective "class" may be removed with or without cause by a majority of the voting members and a successor may then and there be elected to fill the vacancy thus created. Any such member whose removal has been proposed shall be given an opportunity to be heard at the meeting. The Board shall be notified in writing of any such removal and change of a Director.

(e) Until the first Board of Directors is elected by the voting members pursuant to this Section, the Developer shall have and exercise the powers and duties of the Board.

(f) Except as otherwise expressly provided in this Declaration or in the By-Laws of the Association, the Board shall act by the majority vote of its members at meetings called from time to time as a majority of the Board may determine. The majority of the Board shall constitute a quorum. No meetings may be held without notice to all members of the Board which shall also set forth specifically the business to be conducted. All Board meetings shall be open to the Owners and the voting members. Notwithstanding anything contained herein to the contrary, any action authorized herein to be taken by the Board at a meeting pursuant to notice may be taken by informal action consisting of a written resolution signed by all of the members of the Board and setting forth the action taken or authorized and waiving notice of a meeting and agreeing to the use of the informal procedure hereby authorized.

4.8 Powers and Duties of the Board of Directors. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by this Declaration or the Association's By-Laws directed to be exercised by the Owners, including, without limitation, the following:

(a) To provide for the planting, care, maintenance, restoration and replacement of landscaping materials within any landscaped, sodded and/or seeded area of the Facilities. 9

(b) To provide for the Maintenance, ownership, management, improvement, maintenance, repair, renewal, replacement and rehabilitation of the Facilities, including, without limitation, such Maintenance and improvement from time to time required in order to maintain compliance of the Facilities with applicable codes and regulations of the City and other applicable governmental authorities pertaining to wet and/or dry bottom retention/detention facilities.

(c) To enforce the terms of this Declaration.

(d) To cause the annual budget to be prepared, and each Owner to be notified of the annual budget and any regular and/or special assessments against his Owner Parcel, and to collect the same, all in accordance with this Declaration.

(e) To procure and maintain such public liability, workmen's compensation, fidelity, directors' and officers' liability and other insurance in such amounts and insuring the Owners, the Association, and the Board against such risks as the Board may in its discretion deem appropriate, provided, however, that in no event shall comprehensive general liability insurance coverage be in an amount less than One Million Dollars (\$1,000,000.00) for each person and each occurrence.

(f) To pay all taxes and other costs and expenses incident to any property owned by the Association for the benefit of the Association.

(g) To execute such grants of easement, not inconsistent with the easements specified in Article III hereof, as may be necessary from time to time to any utility company or provider serving or utilizing any property from time to time owned by the Association.

(h) To deposit from time to time to the credit of the Association funds in savings, money market and checking accounts in such banks, trust companies, or other depositories as the Board may select.

(i) To authorize any officer or officers, agent or agents, of the Association to enter into contracts or to execute and deliver instruments in the name of and on behalf of the Association.

(j) To keep correct and complete books and records of account and minutes of the proceedings of the Board and committees having any of the authority of the Board. All books and records of the Association may be inspected by any Owner, voting member or member of the Board or his agent or attorney, for any proper purpose at any reasonable times.

(k) To provide to a Secured Property Lender who is the holder of a first mortgage on any Owner Parcel, upon written request, written notice of any default by the Owner of such Owner Parcel in the performance of any obligation under this Declaration which is not cured within thirty (30) days. This provision may not be amended without the written consent of all holders of first mortgages in all Owner Parcels.

(l) To exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Developer or Owners by the By-Laws or this Declaration.

4.9 Indemnity of Board of Directors. The members of the Board and the officers thereof or of the Association shall not be liable to the Owners or any mortgage holder for any mistake of judgment, or any acts or omissions made in good faith as such members or officers. The Owners shall indemnify and hold harmless each of such members or officers against all contractual liability to others arising out of contracts made by such Board members or officers on behalf of the Owners or the Association unless such contract shall have been made in bad faith or contrary to the provisions of this Declaration.

4.10 Board's Determination Binding. In the event of any dispute or disagreement between the Owners relating to any question of interpretation or application of the provisions of this Declaration or the By-Laws of the Association, the determination thereof by the Board shall be final and binding on each and all of such Owners.

ARTICLE V

ASSESSMENTS

5.1 Allocation of Expense Among Development Parcels. Anything to the contrary set forth herein, it is hereby acknowledged, confirmed, covenanted and agreed that all costs and expenses of Maintenance of the Facilities and other Association costs and expenses shall be equitably allocated and assessed in the following proportions:

(i) **Fifteen (15%) Percent** to the Commercial Parcel (to be allocated among Owners of respective Owner's Parcel(s) [if there be more than one] situated therein based upon their respective pro-rata square footage of land situated in the Commercial Parcel, owned by each such respective Owner).

(ii) **Eighty-Five (85%) Percent** to the Townhome Parcel and Single Family Parcel (to be allocated equally to each respective townhome unit and single family lot in such parcels in the aggregate [and their respective Owners] based upon total, aggregate number of such townhome units and single family lots).

5.2 Lien and Personal Obligation of Assessments. The Declarant, for each Owner's Parcel improved with an occupiable dwelling unit owned by it, hereby covenants to pay to the Association, subject to the conditions and limitations expressed in Section 5.5 of this Article V, and each respective Owner other than the Declarant, by acceptance of the deed to his respective Owner's Parcel, shall be deemed to covenant and agree to pay to the Association, annual assessments or charges, and special assessments as hereinafter authorized, fixed, established, and collected from time to time as hereinafter provided. All such annual and special assessments, together with interest, if any, and cost of collection thereof, including attorneys fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made from the date of its commencement, all as hereinafter provided. Each such assessment, together with such interest and such cost of collection, shall also be the continuing personal obligation of the Owner of such respective Owner's Parcel at the time the assessment became due. Until such time as the Association is created and the first Board of Directors elected

by the Owners is installed, all assessments shall be paid to the Developer to be used for the purposes as set forth in this Declaration.

5.3 Purpose of Assessments. The assessments levied by the Association or the Developer, as the case may be, shall be used exclusively to carry out and promote the purposes, obligations and duties of the Association as set forth in this Declaration, including, but not limited to, the payment of taxes, insurance, and other costs and expenses incident to the Maintenance of the Facilities and to enforce this Declaration and the compliance herewith by each Owner.

5.4 Amount of Annual Assessment. Until the first annual meeting of the Association, the amount of the annual assessment shall be determined by the Developer. Thereafter, the amount of the annual assessment shall be determined by the voting members at any annual meeting or any special meeting called for the purpose. Notice of any special meeting for such purpose shall be given in writing to all voting members at least thirty (30) days in advance of the date set for such special meeting. The amount of the annual assessment shall in no case be less than an amount determined (taking into consideration existing cash reserves and the need to maintain future reasonable reserves) by the Developer or the Board, as the case may be, to be necessary to defray all costs and expenses of the Association in meeting its obligations and fulfilling its duties under this Declaration and the By-Laws for the following year. Each annual assessment shall be allocated as between the Commercial Parcel and the Townhome and Single Family Parcels and divided among their respective Owners, as further provided at Section 5.1 hereof. In the event the annual assessment is not duly adopted by the voting members within sixty (60) days following the date of the initial meeting duly notified for such purpose, whether due to lack of a quorum, lack of sufficient vote of the voting members, or for any other reason, one hundred ten percent (110%) of the amount of the Annual Assessment for the preceding year shall be assessed for the current year until otherwise approved by the voting members.

5.5 Special Assessments for Extraordinary Items. In addition to the annual assessments authorized by Section 5.4 of this Article V, the Association may levy in any assessment year, applicable to that year only, a special assessment which shall be equitably assessed against each Owner's Parcel (in accordance with the allocation(s) provided for at Section 5.1 hereof) for the purpose of defraying, in whole or in part, the cost of any extraordinary construction or reconstruction, unexpected or emergency repair, replacement, rehabilitation or of any maintenance responsibility of the Association, provided that any such assessment shall have the assent of sixty percent (60%) of the voting members voting on the question at an annual meeting or a special meeting duly called for this purpose, written notice of which shall be sent to all voting members at least fourteen (14) days in advance and shall set forth the purpose of the meeting.

5.6 Quorum for Any Action Authorized Under Sections 3 and 4. The quorum required for any action authorized by Sections 5.4 and 5.5 of this Article V, together with such other actions duly noticed to be considered at such meeting, shall be as follows:

At the first meeting of voting members called pursuant to Sections 5.4 and 5.5 of this Article V, the presence in person or by written proxy of voting members which would be sufficient to establish a quorum in accordance with Section 4.6(a) of this Declaration, shall constitute a quorum. If the required quorum is not forthcoming at such meeting, subsequent meetings may be called,

subject to the notice requirement set forth in said Sections 5.4 and 5.5, until a quorum of three quarters (3/4) of the required quorum at the first such meeting is met.

5.7 Date of Assessment. The Declarant, until the first annual meeting of voting members, and thereafter, the Board, shall fix the date of commencement and the date or dates of payment of the annual assessment against each Owner's Parcel at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Owner's Parcel(s) and assessments applicable thereto which shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Board shall upon demand at any time furnish to any Owner liable for any assessment a certificate in writing signed by an officer of the Board, setting forth whether such assessment has been paid, and such certificate shall be presumptive evidence of payment of any such assessment. The due date of any special assessment under Section 5.5 hereof shall be fixed by the Board. The Board may require any annual or special assessment to be paid in such installments as it may deem appropriate.

5.8 Effect of Nonpayment of Assessment or Remedies of Association. If an assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, be a continuing lien on the respective Owner's Parcel in favor of the Association which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns until paid. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and that of his personal representatives but his personal obligation shall not pass to his successors in title unless expressly assumed by them, although the delinquent assessment will remain a lien on the land until satisfied.

If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a "Default Rate" of interest equal to one and one-half percent (1-1/2%) per month (eighteen [18%] percent annual rate), or the maximum rate allowable by law, whichever is less, and the Association may bring an action against the Owner personally obligated to pay the same and/or to foreclose the lien against the respective Owner's Parcel, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney fees to be fixed by the court, together with the costs of the action.

5.9 Subordination of the Lien to Certain Encumbrances. Notwithstanding anything contained herein to the contrary, the lien of the assessments provided for herein shall be subordinate to the lien of any and Secured Property Lender's first mortgage or trust deed in the nature of a mortgage now or hereafter placed upon the property subject to Association assessment; provided, however, that such subordination shall apply only to the assessments and liens which have become due and payable prior to a sale or transfer of such respective property pursuant to a decree of foreclosure, or any other proceeding or conveyance in lieu of foreclosure. Such sale or transfer shall not relieve such respective property from liability for any Association assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

ARTICLE VI

CITY'S SPECIAL SERVICE AREA

6.1 Right of City to Maintain and Levy Taxes. In the event the Association fails to properly maintain the Facilities located within the Property, the City shall have the right to perform such Maintenance in accordance with the provisions of this Declaration as well as the Annexation Agreement (and any Special Service Area Agreement executed in conjunction therewith), and the cost incurred by the City as a result thereof, together with the additional sum of ten percent (10%) of such cost, shall be defrayed from additional real estate taxes levied and collected pursuant to an ordinance or ordinances to be hereafter adopted by the City of Batavia, establishing a special service area for the Property, or portions thereof from time to time developed ("**Special Service Area**"), all as provided for pursuant to applicable provisions of the Annexation Agreement, any related Special Service Area Agreements, the City's ordinances, and applicable State law. The Special Service Area encompasses the Property and now or hereafter will include any Future Property (if any). The City shall give the Association not less than ten (10) days prior written notice of the Association's failure to properly maintain and the City's intention to undertake such maintenance. In the event the Association cures such non-performance within said ten day period, the City shall refrain from undertaking the same.

ARTICLE VII

ADD-ON "FUTURE PROPERTY"

7.1 "Future Property" Addition to "Facilities". The Property constitutes the initial land and area comprising and constituting the overall development known as "Kirkland Chase." Declarant contemplates the potential or possibility that one or more other contiguous or adjoining areas of "Future Property" (hereinabove defined) might hereafter be acquired by Declarant and/or Developer, which may possibly be serviced by one or more portions of the Facilities and in such event(s) and occurrence(s), Declarant wishes to reserve unto itself and/or the Developer the right to amend and supplement this Declaration to add, annex, and make subject to this Declaration such Future Property. Declarant, by written instrument or instruments duly executed by Declarant and hereafter recorded with the Recorder's office, shall have the right and authority, but not the obligation, to from time to time subject all or any part of such Future Property hereafter acquired by Declarant, to the conditions, covenants, easements, reservations and restrictions set forth in this Declaration, subject to such alterations, amendments, or clarifications of the terms and provisions hereof, and such additional covenants, easements, and restrictions as Declarant may deem appropriate for the applicable parcel of the Future Property. Declarant, as part of such addition of Future Property to the terms of this Declaration may additionally amend, supplement and annex any storm water detention or retention pond or areas situated in such Future Property as additional portion(s) of the Facilities hereunder. The submission of all or any portion of the Future Property (including additions to the Facilities) or other contiguous property to this Declaration shall be in the sole and absolute discretion of Declarant, and shall not require the consent or approval in any form or manner of any Owner taking title by, through or under Declarant, or any of Declarant's grantees or assignees. The right and authority vested in Declarant pursuant to this Article VII shall be personal to Declarant and shall not run to the benefit of any grantee, successor or assignee of Declarant except by written instrument of assignment specifically referencing the right being

assigned, duly executed by Declarant and recorded with the Recorder's office. Each portion of the Future Property, or other contiguous property, from time to time duly subjected to this Declaration shall automatically be treated as a part of the "Property" hereunder for purposes of applying the provisions of this Declaration. Unless otherwise provided in the instrument adding such property under this Declaration, all Facilities shall be administered and maintained by the Association, and the assessments from time to time levied by the Association or Declarant shall be spread over all of the property then being the subject of this Declaration.

**ARTICLE VIII
DECLARANT'S RIGHTS RESERVED**

8.1 Easements. Notwithstanding any provisions contained herein to the contrary, the Easements granted or referred to under Article III of this Declaration shall be subject to:

- a. The right of the Declarant to execute all documents and do all other acts and things affecting the Property which, in the Declarant's opinion are desirable and appropriate in connection with Declarant's rights hereunder, provided any such document or act or thing does not unreasonably interfere with the property rights of any Owner.
- b. Easements of record on the date hereof and any easements which may hereafter be granted by Declarant to any public utility or governmental body for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewer and water pipes, or any other utility services serving or relating in any manner to the Facilities.
- c. The vacation or relocation of easements by the Declarant pursuant to agreement with the City to facilitate the service of such Facilities to all or any portion of the Property, or to eliminate a particular hardship which would otherwise be experienced by an Owner.

8.1 Exceptions. Except for rights granted to the City, Declarant, for itself only, hereby reserves the right to enter into written agreements without the consent of any Owner to deviate from any or all of the provisions set forth herein in the event there are practical difficulties or particular hardships evidenced by any Owner of any Owner's Parcel in the Property. Any deviation so approved shall not constitute a waiver of the right of Declarant or any Owner to enforce against any other Owner's Parcel within the Property the provision deviated from, nor shall Declarant have any obligation to extend or grant such deviation to any other Owner's Parcel within the Property.

8.2 General Authority. Declarant shall have the right to execute all documents and undertake any actions effecting the Property, and any portions thereof, which in Declarant's sole and absolute discretion are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to Declarant or the Association in this Declaration.

8.3 Declarant's Agent. All notices, approvals, consents, deviations, and other authorizations which may be given by Declarant hereunder may also be given by the "Developer" (hereinabove defined), as Declarant's agent hereby duly authorized in all such respects (the "Agent"). All such notices, approvals, consents, deviations, and other authorizations from time to time voluntarily given in writing under the authentic and duly authorized signature of Agent shall be

deemed binding upon Declarant and may be relied upon solely by the person or entity to which the same is specifically addressed. Declarant may from time to time revoke, alter, amend or transfer the authority granted under this Section 8.4 by written instrument referencing this Section 8.4, which instrument shall be deemed effective upon execution by Declarant and recordation thereof with the Recorder.

8.5 Assignment of Declarant's Rights. Declarant, its successors or assigns, shall have the right to transfer and assign all or any of the rights, privileges, easements, powers, and duties herein retained or reserved by Declarant, its successors or assigns, by written instrument or instruments in the nature of an assignment expressly providing for such assignment and specifically referencing this Declaration and the provisions assigned, which shall be effective when recorded in the office of the Recorder, and Declarant, its successors or assigns, shall thereupon be relieved and discharged from every duty so vested in the transferee.

8.6 Rights of Developer. All rights reserved and granted to Declarant hereunder shall be deemed reserved and granted to "Developer" (hereinabove identified) and may be exercised and carried out by Developer.

ARTICLE IX

GENERAL PROVISIONS

9.1 Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association, the Owner of any land subject to this Declaration or portions thereof, and the City, and their respective legal representatives, heirs, grantees, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years unless and until an instrument amending this provision as hereinafter provided shall be recorded.

9.2 Amendment. This instrument and its effect shall not at any time hereafter be modified, amended, or annulled except by the written agreement of the then Owners of record of sixty percent (60%) of all of the Owner's Parcels to which such provision applies, or such other percentage as expressly otherwise provided in this Declaration. No amendment purporting to change the Assessment allocations provided for at Section 4.6 hereof (as between the Commercial Parcel and the Townhome and Single Family Parcels) shall be effective unless the same is executed by the majority of Owners of Owner's Parcels in each such "class" (hereinabove identified) of such parcels within the Property. No amendment purporting to affect any right of the City or Declarant provided herein shall be effective unless such amendment is duly approved and executed by the City or Declarant, as the case may be. In addition thereto, no amendment to the obligation of the Association to provide for the common care and Maintenance of Facilities as provided herein shall be effective unless the purpose and intent of this Declaration to provide for the perpetual care and Maintenance of said items is provided for. No amendment shall be effective until duly executed, acknowledged, and recorded in the office of the Recorder.

9.3 Severability. If any provisions of this Declaration or any section, sentence, clause, phrase or word hereof, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

9.4 Headings Not Controlling. The headings, sub-headings, and captions in this Declaration are for convenience only and shall not be construed to affect the meaning or interpretation of this Declaration.

9.5 Perpetuities and Other Rules of Property. If any of the options, privileges, covenants, or rights created by this Declaration would otherwise violate (a) the rule against perpetuities or an analogous statutory provision, or (b) any other statute or common law rule imposing time limits, then such provision shall continue in the case of (a) only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Chairman of the Kane County Board, Kane County, Illinois, and the incumbent President of the United States, and in the case of (b) for the maximum period permitted.

9.6 Title in Land Trust. In the event title to any Owner's Parcel is conveyed to a title-holding trust, under the terms of which all powers of management, operation, and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries from time to time established thereunder shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants, and undertakings, chargeable or created under this Declaration against such Owner's Parcel. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the respective Owner's Parcel and the personal obligation of the beneficiaries of such trust at the time such charge or lien is incurred, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such respective Owner's Parcel.

9.7 Rights and Obligations. Each grantee of Declarant by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed and shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and, except as otherwise provided herein, shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance. The rights and powers reserved in Declarant hereunder shall be personal to Declarant and shall not inure to the benefit of any grantee, successor or assignee of Declarant unless otherwise expressly provided in a written instrument of assignment executed by Declarant and recorded with the Recorder's Office.

9.8 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for development and the Maintenance of such Facilities.

9.9 Remedies for Breach of Covenants, Restrictions and Regulations.

(a) Default. In the event of any default of any Owner under the provisions of this Declaration, or any amendment hereof, Declarant, the Association, other Owners, and the City shall have each and all of the rights which may be respectively provided for them in this Declaration, or which may be available at law or in equity and may prosecute any action or other proceeding for enforcement of any lien or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. All expenses of the Declarant, the Association, such other Owners, or the City in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, shall be charged to and assessed against such defaulting Owner.

(b) No Waiver of Rights. The failure to enforce any right, provision, covenant, or condition which may be granted by this Declaration shall not constitute a waiver of the right or of the continuing right to enforce such a right, provision, covenant, or condition in the future, irrespective of the number of violations, defaults, or breaches which may occur.

(c) Remedies Cumulative. All rights, remedies, and privileges granted to Declarant, the Association, Owners, or the City pursuant to any of the terms, provisions, covenants, or conditions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude Declarant, the Association, Owners, or the City thus exercising the same from exercising such other additional rights, remedies, or privileges as may be granted to Declarant, the Association, Owners, or the City at law or in equity.

9.10 Limited Application. Absent a duly executed and recorded Amendment to this Declaration pursuant to Article VII hereof dealing with the addition of "Future Property," nothing contained in this Declaration shall be construed to apply to any property other than the Property.

9.11 Conflict. In the event of a conflict between any provision of this Declaration and an express provision contained on the duly recorded Final Plat(s) for the Property, the provision of the Final Plat shall prevail.

9.12 Governing Law/Venue. This Declaration shall be governed by and construed in accordance with the law of the State of Illinois. Venue for any disputes hereunder or enforcement of any right or remedy hereunder shall be in the Circuit Court for Kane County, Illinois.

9.13 Recitals and Exhibits. The Recitals set forth at the beginning of this Declaration and the exhibits attached hereto are hereby incorporated into and made a part of the substance of this Declaration.

SCHEDULE OF EXHIBITS

- EXHIBIT "A": LEGAL DESCRIPTION OF "PROPERTY"
EXHIBIT "B": LEGAL DESCRIPTION OF "COMMERCIAL PARCEL"
EXHIBIT "C": LEGAL DESCRIPTION OF "TOWNHOME PARCEL"
EXHIBIT "D": LEGAL DESCRIPTION OF "SINGLE FAMILY PARCEL"
EXHIBIT "E": COPY OF PRELIMINARY PLAT FOR "KIRKLAND
CHASE" DEVELOPMENT

Unofficial

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EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL ONE:

LOTS 1-20, 40-56, 101, 102 & 103 IN KIRKLAND CHASE P.U.D. PHASE ONE, SUBDIVISION PLAT DOCUMENT NUMBER 1999K014613, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PARCEL TWO:

LOTS 1, 2, 3, 4, 8, 9 AND 201 IN KIRKLAND CHASE P.U.D. PHASE ONE-A, PLAT RECORDED FEBRUARY 24, 1999K020059, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

PARCEL THREE:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 35 AND THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 4 OF PIRON SUBDIVISION; THENCE WESTERLY ON THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 4, A DISTANCE OF 20.93 FEET TO THE EASTERLY LINE OF BEECHEN AND DILLS PRAIRIE TRAIL PHASE TWO; THENCE SOUTHERLY, AT AN ANGLE OF 91 DEGREES 02 MINUTES 35 SECONDS, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE ALONG SAID EASTERLY LINE, 365.71 FEET; THENCE EASTERLY, AT AN ANGLE OF 88 DEGREES 28 MINUTES 21 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 174.48 FEET; THENCE SOUTHERLY, AT AN ANGLE OF 88 DEGREES 40 MINUTES 27 SECONDS, MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 1179.74 FEET; THENCE EASTERLY, AT AN ANGLE OF 88 DEGREES 51 MINUTES, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 171.60 FEET; THENCE CONTINUING EASTERLY, AT AN ANGLE OF 179 DEGREES 56 MINUTES 51 SECONDS, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 1553.04 FEET TO THE WESTERLY RIGHT OF WAY LINE OF KIRK ROAD; THENCE NORTHERLY, AT AN ANGLE OF 91 DEGREES 03 MINUTES 46 SECONDS, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID WESTERLY LINE, 313.80 FEET; THENCE WESTERLY, AT AN ANGLE OF 89 DEGREES 24 MINUTES 04 SECONDS, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 612.56 FEET TO THE WEST LINE OF SAID SECTION 36; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 50 MINUTES 51 SECONDS, MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID WEST LINE, 16.50 FEET; THENCE EASTERLY, AT AN ANGLE OF 89 DEGREES 09 MINUTES 09 SECONDS, MEASURED CLOCKWISE FROM SAID WEST LINE, 612.49 FEET TO SAID WESTERLY LINE; THENCE NORTHERLY AT AN ANGLE OF 90 DEGREES 35 MINUTES 56 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID WESTERLY LINE, 521.68 FEET TO A POINT OF CURVATURE; THENCE CONTINUING NORTHERLY, ALONG SAID WESTERLY LINE, 300.96 FEET ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 7689.49 FEET; THENCE WESTERLY, AT AN ANGLE OF 88 DEGREES 09 MINUTES 51 SECONDS MEASURED CLOCKWISE FROM THE CHORD FORMED BY THE LAST DESCRIBED CURVE, 614.83 FEET TO THE WEST LINE OF WAGNER ROAD; THENCE SOUTHERLY, AT AN ANGLE OF 90 DEGREES 57 MINUTES 42 SECONDS MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID CENTERLINE, 436.70 FEET; THENCE WESTERLY AT AN ANGLE OF 91 DEGREES 51 MINUTES 26 SECONDS, MEASURED COUNTERCLOCKWISE FROM SAID CENTERLINE, 446.0 FEET; THENCE NORTHERLY, AT AN ANGLE OF 90 DEGREES 26 MINUTES, MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 490.20 FEET; THENCE WESTERLY, AT AN ANGLE OF 90 DEGREES 56 MINUTES 14 SECONDS, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 20.03 FEET; THENCE NORTHEASTERLY, AT AN ANGLE OF 79 DEGREES 10 MINUTES 59 SECONDS, MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 350.54 FEET; THENCE WESTERLY, AT AN ANGLE OF 79 DEGREES 39 MINUTES 10 SECONDS, MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE 837.31 FEET TO THE POINT OF BEGINNING, (EXCEPT THAT PART IN KIRKLAND CHASE P.U.D. PHASE ONE AND EXCEPT PART LYING IN KIRK ROAD), IN CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

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EXHIBIT "B"

LEGAL DESCRIPTION OF "COMMERCIAL PARCEL" (+/- 2.49 ACRES)

LOT 103 OF KIRKLAND CHASE P.U.D. PHASE ONE, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 8TH, 1999 AS DOCUMENT NO. 1999K014613, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, TOGETHER WITH THAT PART OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 103 IN KIRKLAND CHASE P.U.D. PHASE ONE; THENCE WESTERLY, ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 103, A DISTANCE OF 238.89 FEET TO THE EASTERLY RIGHT OF WAY LINE OF WAGNER ROAD; THENCE NORTHERLY, AT AN ANGLE OF 89°02'12", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID EASTERLY RIGHT OF WAY LINE, 196.03 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF WIND ENERGY PASS, AS DEDICATED ON THE PLAT OF SAID KIRKLAND CHASE P.U.D. PHASE ONE; THENCE EASTERLY, AT AN ANGLE OF 90°57'48", MEASURED COUNTERCLOCKWISE FROM SAID EASTERLY RIGHT OF WAY LINE, ALONG SAID SOUTHERLY LINE, 235.59 FEET TO THE NORTHWEST CORNER OF SAID LOT 103; THENCE SOUTHERLY, AT RIGHT ANGLE TO SAID SOUTHERLY LINE, ALONG THE WESTERLY LINE OF SAID LOT 103, A DISTANCE OF 196.0 FEET TO THE POINT OF BEGINNING, ALL IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

EXHIBIT "C"

LEGAL DESCRIPTION OF "TOWNHOUSE PARCEL" (+/- 7.14 ACRES)

KIRKLAND CHASE P.U.D. PHASE ONE-A, A RESUBDIVISION OF LOT 100 OF KIRKLAND CHASE P.U.D. PHASE ONE, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 24TH, 1999 AS DOCUMENT NO. 1999K020059, TOGETHER WITH THAT PART OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF KIRKLAND CHASE P.U.D. PHASE ONE-A; THENCE EASTERLY, ALONG THE NORTH LINE OF SAID SUBDIVISION, 553.32 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTHERLY AT AN ANGLE OF 89°45'05", MEASURED CLOCKWISE FROM SAID NORTH LINE, ALONG THE WESTERLY RIGHT-OF-WAY LINE OF KIRK ROAD AS DEDICATED PER SAID KIRKLAND CHASE P.U.D. PHASE ONE, 266.35 FEET TO A POINT OF CURVATURE; THENCE CONTINUING NORTHERLY ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 24.47 FEET, ON THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 7714.47 FEET, THENCE WESTERLY, AT AN ANGLE OF 89°11'40", MEASURED CLOCKWISE FROM THE CHORD FORMED BY THE LAST DESCRIBED CURVE, ALONG THE SOUTH LINE OF LOT 103 OF SAID KIRKLAND CHASE P.U.D. PHASE ONE AND A WESTERLY EXTENSION THEREOF, 552.17 TO THE EASTERLY RIGHT OF WAY LINE OF WAGNER ROAD; THENCE SOUTHERLY, AT AN ANGLE OF 90°57'48", MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID EASTERLY RIGHT OF WAY LINE, 281.54 FEET TO THE POINT OF BEGINNING, ALL IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

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EXHIBIT "D"

LEGAL DESCRIPTION OF SINGLE FAMILY PARCEL (+/- 36.59 ACRES)

KIRKLAND CHASE P.U.D. PHASE ONE, A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 8TH, 1999 AS DOCUMENT NO. 1999K014613, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS, (EXCEPTING THEREFROM LOTS 100 AND 103 OF SAID KIRKLAND CHASE P.U.D. PHASE ONE); TOGETHER WITH THAT PART OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF LOT 4 OF PIRON SUBDIVISION; THENCE WESTERLY, ON THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID LOT 4, A DISTANCE OF 21.15 FEET TO THE EASTERLY LINE OF BEECHEN & DILL'S PRAIRIE TRAIL PHASE TWO; THENCE SOUTHERLY, AT AN ANGLE OF 91°05'31", MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, ALONG SAID EASTERLY LINE, 365.72 FEET; THENCE EASTERLY, AT AN ANGLE OF 88°25'25", MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 175.01 FEET; THENCE SOUTHERLY, AT AN ANGLE OF 88°40'27", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 216.00 FEET TO THE NORTHWEST CORNER OF LOT 20 IN SAID KIRKLAND CHASE P.U.D. PHASE ONE; THENCE EASTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, ALONG THE NORTH LINE OF SAID LOT 20 AND AN EASTERLY EXTENSION THEREOF, 196.00 FEET; THENCE SOUTHERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 82.84 FEET; THENCE EASTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 147.00 FEET; THENCE NORTHERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 305.00 FEET; THENCE EASTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 95.00 FEET; THENCE SOUTHEASTERLY, AT AN ANGLE OF 164°53'54", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 219.88 FEET TO THE NORTHEAST CORNER OF LOT 102 IN SAID KIRKLAND CHASE P.U.D. PHASE ONE; THENCE NORTHERLY, AT AN ANGLE OF 72°38'51", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 80.20 FEET; THENCE WESTERLY, AT AN ANGLE OF 90°56'14", MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 20.03 FEET; THENCE NORTHEASTERLY, AT AN ANGLE OF 79°10'59", MEASURED COUNTERCLOCKWISE FROM THE LAST DESCRIBED COURSE, 325.13 FEET; THENCE WESTERLY, AT AN ANGLE OF 79°39'10", MEASURED CLOCKWISE FROM THE LAST DESCRIBED COURSE, 205.44 FEET; THENCE NORTHERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, 25.00 TO THE SOUTHERLY LINE OF SAID PIRON SUBDIVISION; THENCE WESTERLY, AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE, ALONG SAID SOUTH LINE, 627.31 FEET TO THE POINT OF BEGINNING, ALL IN BATAVIA TOWNSHIP, KANE COUNTY, ILLINOIS.

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