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SANDY WEGMAN
RECORDER - KANE COUNTY, IL

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**AMENDED AND RESTATED
DECLARATION
OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE
ORCHARD 88 BUSINESS PARK
CITY OF AURORA, KANE COUNTY, ILLINOIS**

ADDRESS OF PROPERTY:
Northwest corner of Sullivan (Old Indian Trail) and
Deerpath Roads, Aurora, IL

Parcel 1:
P.I.N. 14-12-225-011

Parcel 2:
P.I.N. 14-12-225-005, 14-12-225-003, 14-12-225-001 and 14-12-225-004

Parcel 3:
P.I.N. 14-12-209-002, 14-12-209-001, 14-12-210-003, 14-12-210-001, 14-12-210-004
and 14-12-210-002

PREPARED BY AND RETURN TO:
John C. Stern
Hardt, Stern & Kayne, P.C.
2610 Lake Cook Road
Suite 200
Riverwoods, IL 60015

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**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE
ORCHARD 88 BUSINESS PARK
CITY OF AURORA, KANE COUNTY, ILLINOIS**

On February 16, 2006, Podco Orchard 88, LLC prepared and recorded in Kane County, Illinois that certain Declaration of Protective Covenants, Conditions and Restrictions for the Orchard 88 Business Park, City of Aurora, Kane County, Illinois. Pursuant to the rights reserved to it, the Declarant (hereinafter defined) desires to amend and restate in its entirety this Declaration as hereinafter set forth.

This Amended and Restated Declaration is made on September __, 2009, by Podco Orchard 88, LLC (hereinafter referred to as "Declarant"), as owner of record of a portion of the real property subject to this Declaration and pursuant to Declarant's right to amend.

WITNESSETH:

WHEREAS, Declarant is the owner of record of all of the real property subject to this Declaration, which real property is presently located in the City of Aurora, Kane County, Illinois, and

WHEREAS, Declarant desires to subject such real property to the covenants, conditions and restrictions hereinafter set forth, for the benefit of each portion of such property and each present and future owner thereof, during the term of this Declaration.

NOW, THEREFORE, the Declarant declares that the real property described in Article I is and shall be held, transferred, sold, conveyed, leased and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

ARTICLE I

PROPERTY SUBJECT TO DECLARATION

1.1 The real property (the "Property") that is and shall be held, transferred, sold, conveyed, leased and occupied, subject to this Declaration, is located in the City of Aurora, County of Kane, State of Illinois and is known as the Orchard 88 Business Park. The legal description of the Property is attached hereto as Exhibit A and made a part hereof.

ARTICLE II

GENERAL PURPOSE OF THE DECLARATION

2.1 The Property is hereby subjected to the covenants, conditions and restrictions herein declared, all of which shall be deemed to run with the Property and each and every parcel thereof, to provide for the proper use and appropriate development and improvement of the Property so as to:

- a. protect the Owners and occupants of buildings located on the Property against improper development and use of surrounding Lots;

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- b. prevent the erection or construction of improvements with improper or unsuitable materials or of improper quality;
- c. insure adequate and reasonably consistent development of the Property;
- d. encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function; and
- e. provide for the maintenance of that portion of the Property which is owned by the association to be formed hereunder and used in common by the owners of the property located in the Orchard 88 Business Park development.

ARTICLE III

DEFINITIONS

For the purposes of this Declaration, the following terms shall have the following meanings;

3.1 "Association" shall mean the Orchard 88 Business Park Owners' Association, an Illinois not-for-profit corporation.

3.2 "Board" shall mean the Board of Directors of the Association.

3.3 "City" shall mean the City of Aurora located in the County of Kane, State of Illinois.

3.4 "Committee" shall mean the Architectural Control Committee of the Association, as such Committee is described in Article VI hereof.

3.5 "Common Areas" shall mean all the real property and improvements thereon, owned by the Association or other owners for the common use, enjoyment and convenience of the members of the Association. Such Common Areas shall include, but shall not be limited to such lakes, ponds, drainage and other storm water retention and detention areas and/or facilities, pedestrian paths, park identification signage and landscaped entranceway, as may be constructed thereon.

3.6 "Consumer Price Index" shall mean the Consumer Price Index - U.S. City Averages For Urban Wage Earners and Clerical Workers, All Items (1994 = 100), published by the United States Department of Labor, Bureau of Labor Statistics.

3.7 "Declarant" shall mean Podco Orchard 88, LLC, an Illinois limited liability company and any successor in interest or assignee of Declarant. To the extent that any obligations are imposed hereunder upon Declarant, those obligations shall be deemed to apply to Declarant or its respective successors in interest or assignees.

3.8 "Declaration" shall mean this Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for the Orchard 88 Business Park, as the same may be

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hereafter modified or amended.

3.9 "Developer" shall mean Podco Orchard 88, LLC, an Illinois limited liability company and its successors and assigns who are specifically assigned the respective rights and obligations of Developer hereunder. Developer, whose principal office is currently located at 2610 Lake-Cook Road, Suite 100, Riverwoods, Illinois 60015, shall act on behalf of Declarant in the performance of the rights and responsibilities of Declarant until Declarant records in the Office of the Recorder of Deeds, in Kane County, Illinois, setting forth the name and address of a replacement appointed to act on behalf of the Declarant hereunder.

3.10 "Environmental Condition" shall mean: (a) any adverse condition relating to surface water, ground water, drinking water supply, land, surface or subsurface strata or the ambient air, and includes, without limitation, air, land and water pollutants, noise, vibration, light and odors, or (b) any condition which may result in a claim of liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USCS §§ 9601 *et seq.*, and amendments thereto ("CERCLA"), or the Resource Conservation and Recovery Act, 42 USCS §§ 6901 *et seq.*, and amendments thereto ("RCRA"); or any claim of violation of the Clean Air Act, as amended, 42 U.S.C. §7401 *et seq.*, the Clean Water Act, the Toxic Substances Control Act, as amended, 15 U.S.C. §2601 *et seq.* ("TOSCA"); or any claim of liability or of violation under any federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state of Illinois, or any political subdivision thereof, relating to such matters including, but not limited to the Illinois Environmental Protection Act, as amended, 415 ILCS 5/1 *et seq.* (collectively "Environmental Laws").

3.11 "Hazardous Substance" shall have the meaning specified in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USCS §§ 9601 *et seq.*, and amendments thereto, or such broader meaning as shall be specified in any statute, law or regulation of the State of Illinois.

3.12 "Improvements" shall mean and include, without limitation, buildings, outbuildings, roads, driveways, pedestrian walkways, parking areas, outdoor lighting, fences, screening walls and barriers, retaining walls, stairs, decks, transformers, windbreaks, hedges, lawns, lakes, sidewalks, planted trees and shrubs, plantings, poles, signs, loading areas and all other structures (whether temporary or permanent) or landscaping improvements of every type and kind.

3.13 "Lot" shall mean a lot of record as defined under the City of Aurora Zoning Ordinance and being a portion of the Property, under fee simple ownership, used for or intended to be used for the construction of a non-residential structure which has frontage upon a street or accessway, but expressly excluding any Pond, roadway or other area dedicated to the City but including any property ownership of which is retained by the Association.

3.14 "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

3.15 "Owner" shall mean the record owner (or beneficiaries of a land trust which may be a record owner) whether one or more persons or entities, of a fee simple title to a Lot.

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3.16 "Person" shall mean a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

3.17 "Ponds" shall mean all retention ponds installed on the Common Areas of the Property and any paths and walkways appurtenant thereto.

3.18 "Property" shall mean the real property described in Section 1.1 and Exhibit A hereof.

3.19 "Subdivision Plat" shall mean any plat of subdivision encompassing all or part of the Property and duly recorded in the office of the Recorder of Deeds of Kane County, Illinois.

3.20 "Tenant" shall mean any occupant of any building located on a Lot, or a portion of such a building, whether such occupancy is pursuant to a written lease or an oral tenancy, including any occupant holding over possession upon expiration of the term of its lease.

ARTICLE IV

GENERAL RESTRICTIONS

4.1 Each Owner and each Tenant shall maintain or cause to be maintained its Lot and all Improvements located thereon, including, but not limited to, the exterior of any building or buildings, pedestrian walks, parking lots and landscaped areas, in a clean, sightly and safe condition, and it shall at all times cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from paved and sidewalk areas, when and as required. At all times, each Lot Owner and each Tenant thereon shall maintain its site, grounds and building(s) in good repair & condition (including, but not limited to, painting as needed) and not let its Improvements deteriorate or fall out of repair.

4.2 Notwithstanding the provisions of any lease or Mortgage, in the event of damage or destruction to any Improvement by reason of fire or other casualty, the Owner of the Lot on which such Improvements were located shall thereafter promptly restore such Improvements to the condition existing prior to such damage or destruction, or raze and remove such Improvements and landscape the Lot in a sightly manner, or construct new Improvements after complying with the provisions of Article VI as set forth below.

4.3 Subject to the consent of the holder of any Mortgage, in the event construction of any Improvement on a Lot ceases for a period of six (6) months prior to the enclosure of such Improvement, the Owner, upon written demand of the Association, shall raze and remove such building, and landscape the Lot in a sightly manner. In the event construction of any Improvement ceases for a period of six (6) months after the Improvement is fully enclosed and completed on all exterior elements pursuant to the approved plans, the Owner, upon written demand of the Association, shall landscape the Lot in a sightly manner, acceptable to the Association.

4.4 No Owner shall conduct, or permit any person, including but not limited to any Tenant, to conduct, any unlawful activity on the Lot owned by such Owner.

4.5 All equipment used in clearing, excavating or construction on a Lot that is not

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rubber-tired shall be loaded or unloaded only within the boundary lines of the Lot; provided, Declarant may, at its sole discretion, vary this requirement prior to the installation of roads on the Property. During clearing, excavating or construction, the Owner of the Lot on which the work is performed shall, at its sole cost & expense, cause the roads within or bordering on the Property to be kept reasonably clear of dirt and debris caused by such clearing, excavating or construction and shall be responsible for the repair of any damage to such roads or other Common Areas.

4.6 No trailer, temporary building or structure of any kind shall be permitted except temporary buildings or structures located upon a Lot (for not more than twelve (12) months) used during construction of a permanent Improvement upon such Lot. Such temporary building or structure shall be removed as promptly as practicable and in any event not later than thirty (30) days after the issuance by the City of any occupancy permit for such permanent Improvement.

4.7 No Owner shall cause or allow any activity which shall cause air, water, soil or noise pollution which would violate any applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Property. Without limiting the generality of the foregoing, no Owner shall willingly or knowingly drain or dump any refuse, sewage or other materials into the Lakes or any other detention or retention facility or storm sewers located on the Property.

4.8 The Association shall be responsible for and shall maintain in good condition (including necessary replacements) the Common Areas, including the Ponds. No Owner shall make any alterations to the Common Areas nor use the Common Areas in any manner that would cause damage to the Common Areas or a nuisance to other Owners.

4.9 The Association shall have all rights at law or in equity, as well as those rights contained in this Declaration, including, but not limited to Articles 9.9 and 11.7 hereof to enforce the provisions of this Article 4.

ARTICLE V

EASEMENTS, CHARGES AND RULES

5.1 Declarant hereby grants to each Owner and its successors, assigns, Tenants, agents, employees and invitees, an easement for ingress and egress to accommodate vehicular and pedestrian traffic over, upon and across any and all roads constructed from time-to-time on the Property, subject to the right of Declarant to relocate or reconfigure such roads with the consent of the Owner whose Lot shall be affected, which consent shall not be unreasonably withheld; provided such relocation or reconfiguration shall not materially interfere with any buildings or other improvements located on or prevent a contemplated use for any Lot depicted on any site plan approved for such lot by Developer.

5.2 Anything to the contrary contained in Section 5.1 notwithstanding, (i) no Owner or Tenant shall permit parking on any Common Areas, public street or any driveway; and (ii) each Owner and Tenant shall provide adequate off-street parking on its Lot for its agents, employees, guests and invitees, in compliance with applicable governmental authority parking ratio requirements for its particular use, and shall require its agents, employees, guests or invitees to park in the spaces so provided. No Owner or Tenant shall permit any of its agents, employees, guests or invitees to obstruct any road or sidewalk so as to interfere with or restrict ingress, egress or the passage of motor vehicles or pedestrians.

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5.3 Subject to the aforesaid right of relocation and restrictions concerning parking, and subject further to Declarant's right to dedicate the roads as provided in Section 5.5, the easements granted in this Article V shall be deemed perpetual non-exclusive easements, running with the land, for the benefit of all Owners, Tenants and their respective agents, employees, guests and invitees.

5.4 For so long as Declarant has an interest in the Property and has not ceded such responsibility to the Association, Declarant shall arrange for: (Prior to the dedication of all streets and rights-of-way, street lights and their acceptance by the City) the maintenance and repair of, and snow removal from the roads on the Property and the installation and maintenance from time-to-time of landscaping and streetlights and/or other illumination along the roads and park signage; provided, however, that each Owner shall bear its proportionate share of such costs (expressly excluding the cost of initial landscaping and street lighting installation which shall be installed by Developer at its sole cost), as reasonably determined by Declarant, which proportionate share shall be determined based upon a fraction, the numerator of which is the square footage of such Owner's Lot and the denominator of which is the square footage of the Property less the square footage of the Common Areas. Declarant shall estimate such costs during each calendar year until responsibility therefor has been ceded to the Association. Each Owner shall promptly pay to the Declarant its proportionate share of such estimated costs within ten (10) days after receipt of Declarant's initial statement therefor. Thereafter, on the first day of each year, Owner shall continue making the same payment until it has received notice of a change pursuant to the provisions of Article IX hereof, which Article shall govern the payment of assessments hereunder. Declarant shall have the right (with the consent, not to be unreasonably withheld, of any Owner whose Lot shall be affected), to relocate the roads and the amount of such costs for such relocated roads shall be prorated among all Owners as herein provided for the allocation of assessments; or, at Declarant's option, to cause the delinquent Owner's failure to pay to be treated as a default subject to collection as provided in Section 9.9. Declarant shall be entitled to purchase and keep in force such insurance as Declarant deems necessary or desirable in connection with the performance of (or failure to perform) its obligations under this Section 5.4. Declarant shall, to the extent practicable, name the other Owners as additional insureds under such insurance policy. The cost of such insurance shall be estimated, prorated and paid as provided in this Section 5.4 relative to the other costs hereunder. The obligations of Declarant hereunder shall be performed by and all payments to be made to Declarant hereunder shall be made to Developer, until Declarant shall otherwise direct the Owners in writing that the Association has accepted the Declarant's responsibilities whereupon the provisions of Article IX shall govern.

5.5 As soon as practicable after completion of construction of roads serving the Property or any portion thereof, and required improvements thereon, including, without limitation, any landscaping or streetlights or other illumination along the roads, Declarant shall use reasonable efforts to induce the applicable governmental authority to accept a dedication of such roads as public streets (which acceptance of dedication shall include the assumption of the responsibility for maintenance thereof and of the streetlights, and for snow removal). If such body accepts such dedication, then the easements granted hereunder with respect to such dedicated streets and Declarant's responsibilities for maintenance thereof and of the streetlights, and for snow removal therefrom and insurance relative thereto shall cease as of the date of such dedication. If the applicable governmental authority fails to accept such dedication, or any portion thereof, the provisions of this Declaration relating to Declarant's responsibilities for maintenance thereof and of the streetlights, snow removal, and insurance relating thereto shall remain in full force and effect with respect to such roads or portions thereof not so dedicated.

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5.6 Declarant hereby grants to each Owner and each Owner hereby grants to the other Owners, Declarant, Developer, and their respective successors and assigns, Fox Metro Utilities Company and the City, their respective successors and assigns, a non-exclusive easement across the areas reserved or to be dedicated by Declarant for the respective utilities for the installation, operation and maintenance, repair, replacement, removal, relocation, servicing and testing of lines, mains, conduits, cables, equipment and facilities for gas, water, telephone, electricity, cable television, storm and sanitary sewers and for the purpose of providing utility services to the respective Lots and for electricity for signage; provided, however, that the easements granted pursuant to this Section 5.6 and any easement not theretofore granted shall be established only along the property lines of the respective Lots (along the entire perimeter of each Lot). Except as otherwise agreed by Declarant and Owners, all costs and expenses of connecting utilities located within an easement area shall be paid by the Owner benefitted by such connection and such benefitted Owner shall promptly restore (or cause the appropriate utility company to restore) the affected portion of the easement area to the condition such area was in immediately prior to such installation or connection by such Owner. In no event shall such utility easements be located (or relocated) in any manner which would cause any damage to any building located on a Lot. Each Owner shall make available to Declarant and the other Owners, upon request, any drawings made by such Owner which show the location of such lines, mains, conduits, cables, equipment and facilities, provided that the Owner making such request shall reimburse such Owner for the cost of duplicating such drawings. Declarant hereby expressly reserves the right to dedicate or grant on any Lot additional easements for the purposes set forth in this Section 5.6 to other Owners, and public and private utility companies, subject to the conditions of this Section 5.6.

5.7 Intentionally omitted.

5.8 The Owners, their respective successors and assigns, shall grant, as required by the City, all easements for drainage on, upon and under the Lots; provided, that said easements shall not interfere with the construction of buildings upon the Lots. To the extent that any easement granted hereunder shall conflict with the location of a building, the Lot Owner shall negotiate with the City for the relocation of the easement to avoid said conflict.

5.9 Declarant, or the Association if the Declarant has ceded such responsibility to the Association, shall arrange for the maintenance of the storm sewers and landscaping and maintenance of the Ponds, provided that each Owner shall bear its proportionate share of the total costs therefor ("Pond Maintenance Costs"), as reasonably determined by Declarant based upon a fraction, the numerator of which is the square footage of such Owner's Lot and the denominator of which is the square footage of the Property, less the square footage of the Common Areas. Declarant may, as part of such maintenance and landscaping, construct and landscape one or more artificial ponds as Ponds. The Pond Maintenance Cost shall include, in addition to the cost of such construction, maintenance and landscaping, the cost of insuring the Pond or Ponds against liability for bodily injury, property damage or against damage thereof by casualty. The Pond Maintenance Costs may be estimated and shall be paid in the same manner as the costs relating to the roads, as set forth in Section 5.4. Anything herein to the contrary notwithstanding, if for any reason Declarant does not provide the maintenance and landscaping as provided in this Section 5.9, the various Owners may be responsible for such costs; provided, however, that each Owner shall bear only their proportionate share as provided in this Section. Nothing herein contained shall obligate Declarant to make any payment for or provide landscaping or maintenance upon any detention basin or storm sewer constructed by (or for) any Owner upon its Lot.

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5.10 Declarant may establish from time-to-time reasonable rules and regulations to provide for the orderly flow of traffic, parking, employee parking and maintenance of improvements over or on the roads and for the use of the Ponds and Declarant shall distribute copies of such rules and regulations to the Owners. Each Owner shall at all times abide by such rules and regulations. Declarant may, but shall not be obligated to, enforce such rules and regulations in the manner herein provided, but Declarant's failure to enforce such rules and regulations against any Owner shall not be deemed to constitute a waiver thereof, nor shall Declarant be liable to any Owner for failing to enforce such rules and regulations against any other Owner. If Declarant fails to enforce such rules and regulations against any Owner, any other Owner adversely affected by such violation may enforce such rules and regulations at such affected Owner's expense, by giving advance written notice to the Association and the defaulting Owner at least fifteen (15) days in advance of such enforcement action.

5.11 Each Owner shall pay its pro rata share of the utility charges, municipal, county and other governmental fees (including without limitation fire hydrant water charges) and real estate taxes and assessments, if any, assessed against the roads, Ponds, storm sewers, or any other area used in common by all Owners. Such charges and fees including any legal fees and costs incurred for such purposes, may be estimated and pro-rated and shall be paid in the same manner as the costs relating to the roads, as set forth in Section 5.4.

ARTICLE VI

DEVELOPMENT STANDARDS

6.1 No improvement shall be constructed, enlarged, reduced, altered or maintained on a Lot except in strict compliance with this Declaration, covenants and restrictions of record and with all governmental laws, ordinances, rules and regulations and during its term, the Zoning Ordinance enacted by the City for the Property.

6.2 All Lots shall be landscaped only in accordance with a plan submitted to and approved by the Architectural Control Committee pursuant to Article VII below. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs and information regarding other customary landscape treatment for the entire Lot, including fences, walls and screening, if any. Each Owner shall provide landscaped or sodded areas on his Lot, which shall comprise not less than the percent of the area of the total Lot required by the City of Aurora under its general ordinances and shall be further subject to any requirements set forth in any site plan approved by the City for such Lot. All landscaped areas shall be maintained in a sightly and well kept condition, and shall be planted with lawn, trees and shrubs so as to provide a park-like setting, in compliance with Article VII below. Each Owner shall be responsible for repairing or replacing such landscape materials that have deteriorated or been damaged. Further, each Owner whose Lot abuts any Road or street in or adjacent to the Property shall be responsible for, and shall maintain the setback areas required by the City ordinances or the Annexation Agreement by which the Property was annexed to the City, which maintenance shall be in accordance with the standards approved by the Architectural Control Committee. All landscaping shall be undertaken and completed in accordance with such approved plan and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior approval by the Architectural Control Committee in its sole discretion. Further, each Owner shall comply with all applicable landscaping regulations for the Property imposed by the City.

6.3 The maximum lot coverage for any Lot shall be as permitted under the City of

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Aurora ordinances, generally, unless a special use in the nature of a planned unit development for such Lot is granted by the City and approved by the Architectural Control Committee.

6.4 No building on the Property shall exceed the lesser of four (4) stories or forty-eight (48) feet in height.

- 6.5 (a) The minimum front yard for each Lot shall be thirty (30) feet. Parking is prohibited within the foregoing minimum front yards.
- (b) The minimum rear yard for each Lot shall be twenty (20) feet and parking is prohibited within the rear five (5) feet of such rear yard.
- (c) Where a Lot has frontage abutting two (2) streets, there shall be one front yard as described in (a) above wherein parking shall be prohibited and a side yard of twenty (20) feet with parking permitted in the rear five (5) feet of such side yard. The Committee shall determine which yard shall be a front yard and which yard shall be a side yard.
- (d) There shall be a minimum of twenty-five (25) feet between all principal buildings. The foregoing notwithstanding, in the event a building that contains 40,000 or more square feet is constructed on a Lot, there shall be a minimum of eighty (80) feet between such building and each building constructed on adjacent Lots. Provided, however, Declarant, until Declarant has ceded responsibility thereafter to the Association, shall have the right at Declarant's sole and absolute discretion, to reduce such eighty (80) foot distance, on a case by case basis, to not less than forty (40) feet.

6.6 No parking shall be permitted on any street or driveway or at any other place other than on paved parking spaces to be constructed on each Lot. The location of such construction upon each Lot, the number and size of such paved parking spaces shall be subject to approval by the Architectural Control Committee. The minimum standard shall be the total of the following:

- (a) Offices --3.4 parking spaces per 1,000 square feet; or as required by the City Zoning Ordinance, whichever shall be greater provided however, on any Lot with frontage on the Illinois Tollway, the permitted ratio shall be 3.0 parking spaces per 1,000 square feet;
- (b) Assembly & Light Manufacturing--one (1) parking space per 1,000 square feet; and
- (c) Warehouse--one (1) parking space per 1,500 square feet for the first 25,000 square feet; one (1) parking space per 5,000 square feet thereafter.
- (d) Hotels— one (1) space per guestroom, plus 1 space per 20 guestrooms (to accommodate staff) plus additional parking spaces in accordance with the provisions of the City of Aurora parking table for ancillary uses.

All off-street parking areas and access driveways shall have a finish surface of asphalt, concrete or other similar hard surfaced materials and shall be significantly graded to assure proper

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drainage. Each standard parking space shall have minimum overall dimensions of nine (9) feet by nineteen (19) feet. Adequate parking spaces shall be provided for the disabled, properly signed.

6.7 All buildings located on the Property shall be constructed with one or more of the following materials:

- (a) Face brick; or
- (b) Architectural pre-cast concrete panel, or other materials approved by the Declarant, provided, however, that no such buildings shall be so-called "wood or steel clad" or "EIFS" construction; provided, that "EIFS" construction may be installed in conjunction with other approved materials.

6.8 All trash receptacles and storage areas, service yards, electrical cage enclosures, incinerators and similar equipment for the disposal of materials, and storage tanks and mechanical systems (ground or roof mounted), shall be screened from view from roads and adjacent properties by means of a fence, berm wall or dense opaque landscaping materials. No outside storage shall be allowed unless same is fully screened and approved in advance by the Architectural Control Committee.

6.9 All curb cuts shall be designed so as to create a means of ingress and egress for each Lot consistent with efficient traffic patterns and to not unnecessarily hinder traffic flow to or from other Lots. All curb cuts shall be approved by the Architectural Control Committee.

6.10 All electrical service, gas service and telephone lines in the Property shall be placed underground, provided, however, that placement within buildings or structures or attached to their walls may be above ground so long as they are appropriately screened and approved by the Architectural Control Committee.

6.11 No signs, billboards or advertising devices of any kind shall be placed or otherwise installed on any Lot or Improvement, except such signs as may be necessary to identify the business conducted on such Lot, directional signs, informational signs, and periodic signs offering the Lot for sale or lease. Prior to installation of allowed signs, all such signs and exterior lighting fixtures and standards must first be approved by the Architectural Control Committee. In no event, however, shall there be erected on any location on the Property any neon signs, flashing signs, signs with moving lights, or signs which revolve, move or have moving parts.

6.12 No Lot shall contain less than 1.5 acres except for lot 6, which is 1.439 acres.

6.13 No noxious or offensive trades, services or activities shall be conducted within the Property, nor shall anything be done thereon which may, in the opinion of Declarant, be or become an annoyance or nuisance to any Owner or Tenant by reason of unsightliness, excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

6.14 Lots shall be utilized only for such uses as Declarant shall, in its sole discretion, determine; provided, however, said uses and architecture shall be compatible with the maintenance and development of a first class office, research and services park development, and

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shall be in compliance with the zoning and other applicable laws, rules, regulations and ordinances as amended or from which variances or special uses may be granted by the City from time-to-time.

6.15 The Property shall be used and occupied in compliance with all Environmental Laws. No Owner or tenant of any portion of the Property shall cause or contribute to, or permit or suffer any party to cause or contribute to any Environmental Condition on or about the Property. Without limiting the generality of the foregoing, without the prior written consent of all Owners, no substances shall be received, kept, maintained or used on or about the Property in any manner which would require a filing with a local emergency planning committee, the State Emergency Response Commission or the fire department having jurisdiction over the Property pursuant to § 311 and/or § 312 of the Comprehensive Environmental Response, Compensation or Liability Act of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986 ("SARA") (which latter Act includes the Emergency Planning and Community Right-To-Know Act of 1986). In the event of a filing pursuant to SARA or the maintenance of substances as to which a filing would be required, the Owner and/or tenant of the portion of the Property related to such filing shall simultaneously deliver copies thereof to all Owners or notify all Owners in writing of the presence of those substances.

6.16 Each Owner shall indemnify and save harmless every other Owner from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, that relate to any violation of Environmental Laws or the existence of any Environmental Condition (i) on or about the parcel of the Property of which the indemnifying Owner is the record title holder, and (ii) which results from acts of the indemnifying Owner, its agents, assigns or lessees.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

7.1 There is hereby created an Architectural Control Committee, consisting of five (5) persons (the "Committee"). Except as otherwise set forth herein, all members of the Committee shall be designated by Developer. The right to appoint and remove the members of the Committee appointed by it shall be vested solely in the Developer, its successors and assigns, until such time as: (i) plans and specifications for the development of the last Lot in the Property has been approved by the Committee and such property is built as approved; or (ii) the Developer relinquishes such right in favor of the Association; or (iii) ninety (90) days after the sale and transfer of title by the Owner of ninety percent (90%) of the Lots based upon the total number of Lots permitted to be developed under those Plats of Subdivision approved by the City, whichever event shall first occur. Thereafter, all members of the Committee shall be appointed by the Board and shall each serve for a term of two (2) years. Three (3) members of the Committee shall constitute a quorum and any action shall be binding on the Committee. Meetings of the Committee shall be held upon a call by the chairperson or by any two (2) members of the Committee on not less than forty-eight (48) hours written notice (which notice may be by fax or e-mail, if acknowledged by the recipient) to each member. Any member may waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Committee taken without a meeting.

7.2 No improvement shall be constructed, erected, placed, enlarged, reduced, altered or maintained on any Lot until final plans and specifications showing the site plan, all existing

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and proposed Improvements, all existing and proposed permanent signs and all exterior lighting fixtures and standards, all exterior elevations with material and colors therefor, a grading plan, a landscaping plan, utility plan, traffic engineering, including number, size and layout of parking spaces and such other information as may be requested by the Committee. Such final plans and specifications shall be submitted in triplicate and shall be accompanied by a letter requesting architectural review and signed by the Owner of the Lot for which the request is being made. Changes in approved plans and specifications, or subsequent alterations, additions and changes to any existing Improvement that affects size, placement or external appearance of Improvements must be similarly submitted to and approved by the Committee.

7.3 The Architectural Control Committee, by the written consent of a majority of the members thereof, is hereby authorized and empowered to grant reasonable variances from the provisions of Sections 6.3, 6.5, 6.7, 6.8, 6.9, 6.11, 6.12 and 7.2 of this Declaration, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein, provided, however, that said variances shall not materially injure any of the Property or Improvements within the Property, shall meet the spirit and intent of this Declaration and shall otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Property. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person, Owner or Lot. No variance need be granted.

7.4 The Committee's review of each submission made pursuant to this Article VII shall take into consideration the following criteria:

- (a) Relationship of buildings to site.
 - (i) The site shall be planned to accomplish a desirable transition with the streetscape, and to provide for adequate planning, safe pedestrian movement and parking areas.
 - (ii) Site planning in which setbacks and yards are greater than those required by the zoning restrictions of the City of the Annexation Agreement affecting the Property is encouraged to provide an interesting relationship between buildings.
 - (iii) The location of parking areas and driveways shall be designed so as to largely screen parking areas from view from public ways.
 - (iv) Without restricting the permissible limits of the City's applicable Zoning District, the height and scale of each building shall be compatible with its site and existing (or anticipated) adjoining buildings.
 - (v) Newly installed utility services and service revisions by exterior alterations shall be underground.
- (b) Relationship of buildings and site to adjoining areas.
 - (i) Landscaping treatment, screens and materials shall be used to provide a harmonious transition between buildings within the site

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and adjacent to the site which may vary in architectural style.

- (c) Landscape and site treatment. Landscape elements included in this criteria consist of all forms of planting and vegetation, ground forms, rock groupings, water patterns, and all visible construction except buildings and utilitarian structures.
- (i) Where natural or existing topographic patterns contribute to beauty and utility of a development, they shall be preserved and developed to the extent practicable.
 - (ii) Grades of walks, parking spaces, terraces and other paved areas shall provide an inviting and stable appearance for walking.
 - (iii) Plant material shall be selected for interests in its structure, texture, and color and for its ultimate growth. Plants that are indigenous to the area and others that will be hardy, harmonious to the design and of good appearance shall be used.
 - (iv) Plant materials will not be located where they will be susceptible to injury by pedestrian or motor traffic.
 - (v) Parking areas and traffic ways shall be enhanced with landscape spaces containing trees or tree groupings. Shrubs shall be used only where they will not obscure vision and will not require excessive maintenance.
 - (vi) Screening of service yards, and other places which tend to be unsightly, shall be accomplished by use of walls, fencing, planting or combinations of these. Screening shall be equally effective in winter and summer.
 - (vii) In areas where general planting will not prosper, other materials such as fences, walls and pavings of wood, brick, stone, gravel and cobbles, should be used. Carefully selected plants shall be combined with such materials where possible.
 - (viii) Exterior lighting shall enhance the building design and the adjoining landscape. Lighting standards and building fixtures shall be of a design and size compatible with the building and adjacent areas. Lighting shall be restrained in design, and designed to avoid excessive brightness and spillover to adjacent Lots.
- (d) Building design.
- (i) Architectural style is not restricted. Evaluation of appearance of a project shall be based on quality of its design and relationship to its surroundings.
 - (ii) Buildings shall have harmonious scale with permanent neighboring

development.

- (iii) Materials shall have good architectural character and shall be selected for harmony of buildings within the site. Materials shall be selected for suitability to the type of building and the architectural design of the building in which they are used.
 - (iv) Building components -- such as windows, doors, eaves and parapets -- shall have good proportions and relationship to one another.
 - (v) Colors shall be harmonious with only compatible accents.
 - (vi) Mechanical equipment or other utility hardware on roof, ground or buildings, and transformers shall be screened from public view with materials harmonious with the building, or they shall be so located so as not to be visible from any public ways.
 - (vii) Exterior lighting shall be part of the architectural concept. Fixtures, standards and all exposed accessories shall be harmonious with building design.
 - (viii) Refuse and waste removal areas, service yards, storage yards, and exterior work areas (if allowed by the Committee) shall be screened from public ways, using materials as stated in criteria for equipment screening.
 - (ix) All signage that will be visible from the exterior of any Lot shall be subject to review and approval, in its sole discretion, by the Committee.
- (e) Maintenance -- Planning and Design Factors.
- (i) The choice of materials and their use, together with the types of finishes and other protective measures, must be conducive to local conditions and provide for easy maintenance and upkeep.

7.5 The Committee may disapprove plans and specifications submitted to it in the event the same are not in accordance with this Declaration or if the plans and specifications submitted are incomplete. The Committee shall consider any request which is submitted in accordance with the terms hereof on the basis of its conformity and harmony with the criteria set forth herein. The Committee shall, within fifteen (15) days after the submission of such complete plans and specifications approve or disapprove any such request in writing. In the event such plans and specifications are disapproved, the Committee shall specify the reasons therefor. If the Committee fails to so approve or disapprove such request within thirty (30) days after such plans and specifications are submitted, such request shall be deemed denied. The decision of the Committee shall be final, but the Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications. The Committee shall ensure that the City shall receive written notice of each decision of the Committee, which notice shall be filed with the City Planning Department.

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7.6 No Owner shall apply for or obtain a building permit from the City until the Owner's plans and specifications have been approved by the Committee. Upon obtaining the approval of the Committee, the Owner shall, as soon as practicable, proceed diligently with the commencement and completion of all approved construction, placement and alterations.

7.7 Neither the Committee, the Association, the Declarant, the Developer, nor any member, employee or agent thereof, shall be liable to any Owner, to anyone submitting plans for approval, or to any other Person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications or for any other action in connection with its or their duties hereunder. In any event, the Association shall indemnify and hold harmless the members of the Committee against all liabilities to others arising out of or in connection with their duties hereunder or otherwise with regard to the Property.

ARTICLE VIII

THE ASSOCIATION

8.1 Developer has created a not-for-profit corporation known as the Orchard 88 Business Park Owner's Association which corporation through its Board shall have the power: (i) to provide for the maintenance and care of the Common Areas (including, but not limited to, all maintenance and repair obligations as specified in Article V hereof); (ii) to provide for the selection of the members to serve on the Architectural Control Committee as set forth in Article VII above; (iii) to provide for the enforcement of the provisions of this Declaration; (iv) to hold title to the Common Areas; (v) to accept and assume the right and obligations of the Declarant hereunder; (vi) to provide such other services and facilities as may be authorized from time to time by the affirmative vote of 60% of the votes cast at a meeting duly called for such purpose; (vii) in general to maintain and promote the desired character of the Property; and (viii) to exercise the powers of not-for-profit corporations pursuant to the General Not For Profit Corporation Act of Illinois. Pursuant to this Declaration, the Board of Directors of the Association shall constitute the final administrative authority (except as otherwise expressly provided in Article VII above) and all decisions of the Board with respect to the administration of the Property shall be binding. All rights, titles and obligations vested or imposed upon the Association by this Declaration shall be held and performed by the Board which may act through the manager appointed from time to time by the Board. The By-Laws for governing the Association shall be those duly enacted by the Association and shall be consistent with and shall not modify the terms of this Declaration.

8.2 Every Owner of a Lot shall be a member of the Association. No Owner shall have more than one (1) membership for each Lot owned. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. In the event any Owner shall consolidate two or more lots into one Lot, subsequent to such consolidation, the Owner shall have one membership interest for all of the consolidated lots.

8.3 The Association shall have one class of membership and each member shall have votes equal to the number of acres and fraction thereof contained in the Lot such Owner owns. Votes may be fractional. The foregoing notwithstanding, the sole vote of all the Owners in the Association shall vest in the Developer until such time as the first to occur of: (i) ninety (90) days after the sale and transfer by the Declarant of ninety percent (90%) of the Lots based upon the total number of Lots permitted to be developed under Final Plats of Subdivision approved by the

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City; or (ii) Developer's relinquishment of the right to exercise the sole vote of the Association, as aforesaid. Thereafter, the Developer shall be entitled to cast votes equal to the total acreage (or fractional part thereof) contained in the Lots owned by the Declarant. If more than one Person is the record owner of any Lot, or any Owner is a trustee, corporation, partnership or other legal entity, the votes for such Lot shall be exercised as such Owner or Owners of that Lot shall designate; provided, that in no event shall the votes for such lot be cast by more than one (1) Person. Such designation shall be made in writing to the Board or in such other manner as the Board may determine.

8.4 The Association shall be governed by a Board of Directors comprised of five (5) persons, or such greater number as may be provided in the By-Laws of the Association, who shall be appointed or elected as provided herein or in such By-Laws. Except for directors appointed by the Developer, directors shall be members who are not in default of any obligation under this Declaration, or any Rules of Regulations promulgated by the Association (or, in the case of a corporate, partnership or trustee member, any party designated by such corporation, partnership or trustee member) of the Association. Prior to the appointment of the first Board, the Developer may exercise all rights, powers and privileges and act in the capacity of the Board and may perform all of its functions as set forth in this Declaration and in the By-Laws of the Association.

8.5 Notwithstanding anything contained in this Declaration or the By-Laws of the Association to the contrary, the first Board and each subsequent Board shall consist of, and vacancies on the Board shall be filled by, such persons as the Developer shall from time to time appoint, who may, but need not be members of the Association until the first to occur of: (i) ninety (90) days after the sale and transfer of title by the Declarant of ninety percent (90%) of the Lots; or (ii) Developer's relinquishment of its right to appoint all members of the Board, which shall be delivered in writing to the Association. Without the prior written consent of the Developer, neither this Declaration, the Articles of Incorporation of the Association nor its By-Laws shall be amended, modified or changed to in any way diminish the authority of the Board or the rights of Developer while the Developer has the right to appoint any members of the Board. The Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more directors and continue to exercise its right to appoint the remaining members of the Board for the period hereinabove specified. All directors not appointed by Developer shall be elected as hereinafter provided.

8.6 Upon termination of Developer's right to appoint any or all of the directors as provided in Section 8.5 above, those directors not subject to appointment by the Developer shall be elected by the members at the annual meeting of the Association called by the President of the Association, by the Developer, or by any three (3) members, except as otherwise provided in Section 8.7. In the event Developer relinquishes its right to appoint one or more directors, but not its right to cast the sole vote in the Association, the members shall have the right to elect such director(s) in accordance with this Declaration and the By-Laws, however, the members will have no other voting rights.

8.7 The first annual meeting of members shall be held not later than the first to occur of: (i) ninety (90) days after the sale and transfer of title by the Declarant of ninety percent (90%) of the Lots; or (ii) sixty (60) days after Developer's relinquishment of its right to appoint one (1) or more members of the Board. Developer shall cause to be sent written notice of such first annual meeting not less than fifteen (15) days in advance of such meeting.

8.8 The Board shall have the authority from time to time to adopt rules and

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regulations governing the administration of the Property, subject to the terms of this Declaration.

8.9 The Board shall have the authority to retain such agents and employees as it deems necessary to maintain and operate the Common Areas, and to include any and all management or other fees in the assessments provided for herein. Anything herein to the contrary notwithstanding the Board shall have the power and authority to contract with the Declarant or entities affiliated with or related to the Declarant or Developer to manage the day-to-day operation of the Association and to pay fees therefore; provided, that said fees shall not exceed those charged by management companies unrelated to Declarant or Developer for the same or similar services. The Board, without relieving it of responsibility therefor, shall be entitled to assign any of the duties or obligations of the Association to the Association's manager.

8.10 Neither the directors nor the officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the directors and officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by, or other acts of the directors and officers on behalf of, the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such officer or director may be involved by virtue of being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to: (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director or officer; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such director or officer.

8.11 All funds collected by the Board shall be held and expended for the purposes designated in this Declaration and the By-Laws and shall be held for the benefit of all Owners. Said funds shall be administered pursuant to the provisions of this Declaration and the By-Laws. All contracts and agreements entered into by the Board or the officers of the Association shall be deemed executed by said parties, as the case may be, as agent for the Owners or the Association.

ARTICLE IX

MAINTENANCE AND OTHER ASSESSMENTS

9.1 Each Owner of a Lot, by acceptance of a deed of conveyance therefor, whether or not it shall be expressed in such deed, covenants and agrees to pay the Association for the purposes stated in this Article IX, annual assessments representing its proportionate share of the expenses or maintenance and special assessments for capital improvements and unforeseen expenses to be collected from time to time as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees in the event of failure of an Owner to pay the assessments as provided for herein, shall be the personal obligation of the

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person who is the Owner when the assessment fell due and shall in addition to all other rights of the Association under law or equity or under this Declaration, be a charge on the land and shall be a continuing lien on the Lot against which each such assessment is made.

9.2 The annual assessment levied by the Association shall be used exclusively (i) to pay the maintenance cost of the Common Areas. Maintenance costs include expenses related to maintenance and managing the Common Areas, including all such maintenance and construction work as shall be required to preserve and maintain the utility of the Common Areas (including but not limited to, all maintenance and repair obligations as specified in Article 5 hereof), reasonable management fees, all real estate and personal property taxes levied thereon, all costs of security protection on the Common Areas, all costs of cleaning, landscape maintenance and supplies for the Common Areas, and utilities relating to the Common Areas; (ii) to purchase and maintain public liability and property damage insurance; (iii) for the reasonable expenses, including professional or other services incident to the operation and management of the Committee and Association; (iv) for otherwise carrying out the duties and obligations of the Committee and/or the Association; and (v) fees of Association Manager.

9.3 Special assessments levied by the Association may be made for the purpose of defraying, in whole or in part, costs of any construction, repair or replacement of improvements in the Common Areas, provided that except in the case of emergency, any such assessment in the aggregate in excess of \$25,000.00 shall have the affirmative vote of Owners owning at least 51% of the membership vote entitled to be cast. No special assessment shall be levied with respect to the initial improvements to be located in the Common Areas.

9.4 (a) On or before January 31 following the first full twelve month calendar year of the Association and on each January 31 thereafter, the Board shall estimate the total amount necessary to pay the cost of taxes, wages, materials, insurance, services and supplies, relating to the maintenance of the Common Areas, as set forth herein, which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount necessary for a reserve for emergencies and replacements, as more specifically provided in subsection (c) below, and shall, on or before February 15, notify each Owner in writing as to the amount of such estimate and due date or dates therefor, with reasonable itemization thereof. Such annual budget shall also take into account any estimated net accruable cash income for the year from operation or use of the Property, if any. Said "estimated cash requirement" shall be assessed to each Owner as set forth herein and shall be due and payable in a lump sum or such periodic installments as are established by the Board from time to time. Payment shall be made on the due dates without further notice or billing from the Association. Each owner shall continue to make such periodic payments to the Association until notified of a change in the payment amount. On or before the date of the annual meeting of each calendar year, the Board shall supply all Owners with an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or under the actual expenditures plus reserves.

(b) If said "estimated cash requirement" proves inadequate for any reason, to defray the operating expenses and costs during any given year, then the

Board shall be authorized to adopt a supplemental budget or budgets and shall determine the amount of a supplemental assessment accordingly. The Board shall serve notice of such supplemental assessment on all Owners by a statement in writing giving the amount and reasons therefore, and such supplemental assessment shall become due within ten (10) days following the date of such notice. All Owners shall be obligated to pay such supplemental assessment.

- (c) The Board shall establish and maintain reasonable reserves for contingencies and replacements as it shall deem necessary, and any extraordinary expenditures not included in the "estimated cash requirements" shall be first charged against such reserves in the year of such expenditure. If such reserves are depleted or in the opinion of the Board, significantly reduced, then any supplemental budget, or the next regular "estimated cash requirements" shall provide for the re-establishment of such reserves as the Board shall deem reasonably appropriate.
- (d) The failure or delay of the Board to prepare or serve the annual or adjusted estimate or the itemized accounting or other document on the Owners shall not constitute a waiver or release in any manner of such Owner's obligation to pay their annual assessments as herein provided, whenever the same shall be determined. In the absence of a new annual assessment each Owner shall continue to pay the periodic charge at the then existing rate for the Lot owned by such Owner as established for the prior year until such time as a new rate is established.

9.5 The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Property, specifying and itemizing the maintenance and repair expenses of the Property and any other expenses incurred. Such records shall be available for inspection by any Owner or first mortgagee of record, at such reasonable time or times during normal business hours as may be requested by the Owner or mortgagee. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessment or other charges due and owing from such Owner.

9.6 No Owner, other than the City, may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. Except as otherwise provided elsewhere herein, the Owner of a Lot on the day on which the notice of the levying of a periodical, supplemental or special assessment is delivered shall personally be liable for the payment of such assessment.

9.7 The assessments provided for herein shall commence for each Lot on the first day of the month following the conveyance of such Lot by Declarant.

9.8 All assessments, both annual (including supplemental) and special, shall be allocated in the proportion which the area of each Lot bears to the total area of the Property, excluding the Common Areas.

9.9 In the event of failure of any Owner to pay an assessment as herein provided, then

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such assessment shall become delinquent and in addition to the unpaid assessment(s), the Owner shall be responsible for the charges as set forth below, and the Association shall have a continuing lien on each Lot against which such assessment is levied to secure payment thereof; plus interest, costs and reasonable attorneys' fees. When delinquent, payment of principal, interest, costs, reasonable attorneys' fees and administrative fees may thereafter be enforced against the Owner personally, or a lien on said Lot and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against such Lot. Should title to any Lot be held by more than one Owner, all persons constituting such Owner shall be jointly and severally liable. The Association may, at its discretion, file certificates of nonpayment of assessments in the office of the Recorder of Deeds of Kane County whenever any such assessments are delinquent. In addition to the above, unpaid assessments shall subject an Owner to the following:

- (a) an administrative fee of \$50.00 for each month, or any partial month, from the date an assessment is due until paid; plus
- (b) an amount equal to the greater of:
 - (i) One percent (1%) for each month, or any partial month, of the unpaid assessment and prior accumulated interest thereon from the date of delinquency until paid; or
 - (ii) Two percent (2%) in excess of the Prime Rate, compounded on a monthly basis, from the date of delinquency until paid.

ARTICLE X

INSURANCE

10.1 The Board shall, if practicable, obtain insurance coverage for the Common Areas to cover against loss or damage by fire or other hazards. The insurance shall be for the full insurable value (based upon current replacement cost) of the Common Areas and the insurance premiums shall be a Common Expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Association. The insurance Coverage shall, if possible, provide that the insurance as to the interest of the Association shall not be invalidated by any act or neglect of any Owner.

The coverage shall contain an endorsement to the effect that said coverage shall not be terminated for nonpayment of premiums without at least ten (10) days' prior written notice to the Association. The insurance policies shall contain waivers of subrogation with respect to the Board, its employees and agents, Owners and mortgagees.

10.2 The insurance proceeds shall be applied by the Board on behalf of the Association for the reconstruction or restoration of the Common Areas.

10.3 Payment by an insurance company to the Board of any insurance proceeds coupled with the receipt and release from the Board of the company's liability under said policy shall constitute a full discharge of said insurance carrier and said carrier shall not be under any obligation to inquire into the terms of any trust pursuant to which the proceeds may be held.

10.4 The Board shall also obtain comprehensive public liability insurance including

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liability for injuries or death to persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance, such other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, members of the Board, the Declarant, Developer and their respective employees and agents, if any, from liability in connection with the Common Areas and insuring the officers of the Association and members of the Board from liability for good faith actions and such other types of insurance as the Association shall from time to time deem prudent with respect to its activities. The premiums for such insurance shall be an assessment expense pursuant to Article 9.2 hereof.

10.5 Each Owner shall procure and maintain in full force and effect public liability insurance and property damage insurance for the benefit of the Association, Association Manager, Declarant and Developer against claims for personal injury, death or property damage occurring upon, in or about such Owner's property, with such limits, as are reasonably established by the Association from time to time. Each Owner shall provide the Association with certificates of such insurance from time to time (not less frequently than annually) to evidence that such insurance is in force. Such insurance may be written by an additional premises endorsement on any master policy of insurance carried by the Owner which may cover other property. All such insurance shall provide that the same may not be cancelled without ten (10) days prior written notice to the Association. In addition, each Owner shall indemnify and hold harmless every other Owner and the Association (Declarant, Association Manager and Developer) from and against all liabilities, obligations, claims damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney's fees and expenses) of whatever kind or nature, contingent or otherwise, known or unknown, that relate to any action by such Owner on or about such Owner's Lot and which result from the acts of the indemnifying Owner, its agents, assignees or lessees.

ARTICLE XI

OTHER PROVISIONS

11.1 The covenants, conditions and restrictions created by this Declaration shall attach to and run with the Property and shall be binding on every Person (other than the City unless the City specifically agrees to be bound by provisions of this Declaration) who may hereafter come into ownership, occupancy or possession of any portion of the Property. By the recording or acceptance of the conveyance of a Lot or any interest or right therein (including fee or leasehold), the Person to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired such interest or right. This Declaration benefits and burdens only the land described in this Declaration, and there is no intention to benefit any Persons other than those having an interest in the Property. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Lot and may not be severed or alienated from such ownership.

11.2 The Common Areas are restricted to access, recreational, utility, drainage and retention and ancillary uses and structures relating thereto, all for the benefit of the Owners. Every member shall have a right and easement of enjoyment in and to the Common Areas, subject to the terms of this Declaration and By-Laws of the Association. In addition, the Owners' tenants, and the invitees, guests and licensees of the Owners or their tenants shall be afforded pedestrian access to the Common Areas for recreational use. No motorized vehicles or devices of any kind (except municipal and maintenance vehicles) shall be operated on the Common Areas.

11.3 This Declaration shall continue and remain in full force and effect at all times with respect to the Property (subject, however, to the right to amend the provisions hereof as provided for in Section 11.4 below), until twenty (20) years from the date hereof. Thereafter, this Declaration and all provisions hereof shall automatically be renewed for ten (10) year periods, unless at the end of the first twenty (20) year period or any subsequent ten (10) year period, this Declaration and all provisions hereof are terminated by an instrument approved by Owners representing not less than 51% of the membership vote entitled to be cast and such declaration of termination is recorded in the Office of the Recorder of Deeds of Kane County, Illinois.

11.4 So long as the Developer retains the right to select members of the Board, this Declaration, any provision hereof; or any covenant, condition or restriction contained herein, may be extended, modified or amended as to the whole of the Property or any portion thereof by the consent of the Declarant; provided, that any such change does not materially and adversely affect the rights and obligations of the other Owners. After the Developer no longer has the right to select members of the Board, this Declaration, any provisions thereof; or any covenant, condition or restriction contained herein, may be extended, modified or amended, as to the whole of the Property or any portion thereof by the Board; provided that such change is approved by the Owners representing not less than 60% of the membership votes entitled to be cast. The foregoing notwithstanding, so long as the Declarant and/or Developer has any interest in any portion of the Property, no amendment which shall adversely affect the right of Developer hereunder shall be effective without Developer's express written consent. No such extension, modification or amendment shall be effective until a proper instrument in writing has been executed by the President of the Association, acknowledged by the Secretary of the Association and recorded in the Office of the Recorder of Deeds of Kane County, Illinois.

11.5 The result of every action or omission whereby any covenant, condition or restriction herein contained, including but not limited to covenants pertaining to architectural review, is violated in whole or in part is hereby declared to be and to constitute a nuisance, and (including, but not limited to, injunctive relief) every remedy either public or private, available at law or in equity against an Owner or occupant of any Lot shall be applicable against such nuisance and may be enforced by the Association, the City or by any Owner.

11.6 The failure of the Association, the City or any Owner to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision.

11.7 If any Owner defaults by failure to comply with the provisions of this Declaration, the Association may give written notice to the Owner specifying the manner in which the Owner has defaulted. If the Owner does not cure the default within thirty (30) days after notice, (unless the default cannot be cured within such thirty (30) day period, if the Owner has commenced to cure the default within such period and thereafter diligently proceeds) the Association, or its agents, may enter upon the Lot and do such work as is required to cure the default. Neither the Association nor its agents shall, by reason of entering or performing any work to cure the default, be liable to the Owner for any losses or damages thereby sustained by the Owner or by anyone claiming by or under the Owner. The cost, including reasonable administrative expenses incurred by the Association in order to cure such default, shall be a charge on the land and be a continuing lien on the Lot owned by such defaulting Owner. In addition, all costs, including reasonable attorneys' fees, to cure such default may be enforced against an Owner personally and the Association may bring an action at law or in equity against the Owner. If title to any Lot shall be held by more than one Owner, all Persons in title shall be jointly and severally liable.

11.8 The Declarant or the Board shall have the right to grant any easements for the installation, construction, reconstruction, maintenance, repair, operation and inspection of utility services over, under, across and through the Common Areas as they deem necessary or desirable.

11.9 If any of the privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, or some analogous statutory provision, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, the President of the United States on the date hereof; and Rod Blagojevich, the Governor of Illinois on the date hereof.

11.10 In the event the Association, or any Owner or Owners of a Lot or Lots, fails to comply with any of the covenants and conditions contained herein, relating to maintenance, use or capital improvements and such delinquency shall exist for a period of thirty (30) days after notification by the City of such failure, to the Association or the Owners of Lots responsible for said maintenance, use or capital improvement, the City shall have the right to provide such maintenance, compel or restrict such use as appropriate or make such capital improvements as are required and shall have the right to lien the Owners of the Lots if against the Association or the Owners of Lots responsible for said maintenance and capital improvements, and shall be entitled to enforce said liens against said Owners as if said liens were assessed by the Association. Notwithstanding the foregoing, the City shall be under no obligation to compel such compliance, and its failure to do so shall in no event be deemed a waiver of its right to do so at a later time.

- 11.11 (a) All covenants, liens and other provisions set forth herein shall be subject to and subordinate to all Mortgages now or hereafter executed, encumbering any of the Property, and none of said covenants, liens or other provisions shall supersede or in any way reduce the security or affect the validity of any such Mortgage. However, if any portion of the Property is acquired by deed in lieu of foreclosure, or under the provisions of any deed of trust in the nature of a mortgage, or sold under foreclosure of any mortgage, or under any judicial sale, any grantee under such deed or purchaser at such sale, his or its grantees, heirs, personal representatives, successors or assigns shall hold any such portion of the Property subject to all the covenants, liens and other provisions of this Declaration.
- (b) The Association shall, if requested by a holder of a mortgage of record of a Lot, give written notification of the following: (i) notice of any default of the Owner of a Lot which is the subject of such Mortgage if such default is not cured as hereinabove provided; or (ii) five (5) days prior written notice of any annual or special meeting of the Association. The request of a mortgagee for any or all of the above notices may be submitted to the Association via the Board and in such event, the giving of such notices shall continue until such time as the mortgagee shall request the same to be terminated, or until the interest of the mortgagee in the Lot is terminated, whichever shall be first in time.
- (c) Any holder of a Mortgage who takes title to a Lot or comes into possession of a Lot pursuant to remedies provided in such mortgage (including foreclosure, or a deed or assignment in lieu thereof), shall take

possession free of any claims for unpaid assessments or charges which may have accrued prior to the date of such possession; provided, however, that such mortgagee shall be liable for a pro rata share of such assessments and charges if the Board shall elect to reallocate the same among all of the Lots.

11.12 Declarant reserves the right from time to time to subdivide and resubdivide portions of the Property owned by it for the purpose of creating additional Lots within the Property without the consent of any other Owner.

11.13 INTENTIONALLY OMITTED.

11.14 This Declaration is designed to complement all governmental laws, ordinances, rules and regulations. Where any conflict exists between any provision of this Declaration and any provision of governmental laws, ordinances, rules and regulations and during its term, the Annexation Agreement by and between the City and Declarant, the most rigid or restrictive requirements for use and development of the Property shall control.

11.15 By the recording or acceptance of the conveyance of a Lot or any interest or right therein, the Owner or other Person to whom such interest is conveyed thereby consents to and waives his or its rights to protest and/or object in any manner to the establishment of The Special Service Area 113 and for Special Service Area 113 (A) affecting the Property, as has been created by the City pursuant to those relevant sections of the Illinois Revised Statutes, made and provided, and waives whatever rights such Owner may have, now or in futuro to object in any manner to the creation of such special service area, its boundaries and the extension of taxes pursuant to the creation thereof, whether or not any reference to such special service area or the creation thereof is contained in the instrument by which such Owner or other Person acquired such interest or right.

11.16 If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

11.17 Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address. The Association shall maintain a file of such addresses and make the same available to appropriate parties. A written or printed notice deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Association shall be sufficient and proper notice to such Owner wherever notices are required or permitted in this Declaration, and shall be deemed delivered three (3) days after mailing. All filings and notices required or permitted to be delivered to the Architectural Control Committee hereunder shall be personally delivered or deposited in the United States Post Office, postage prepaid, and addressed to Developer or to such other address as the Committee shall designate by written notice to all Owners.

11.18 The Developer and/or the Declarant reserve the right to transfer any and all of either's respective privileges, right, title and interest hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Kane County, Illinois.

11.19 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for development and operation of the Property.

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11.20 In the event title to a Lot is held by a land trust under which all powers of management, operation and control remain vested in the trust beneficiary or beneficiaries then the trust estate under said trust and the beneficiaries thereunder from time to time shall be liable for payment of any obligation, lien or indebtedness created under this Declaration against the Lot. No claim shall be made against any such title holder trustee personally for any claim or obligation created hereunder and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof shall continue to be a charge or lien upon the premises notwithstanding any transfers of beneficial interest or in the title to such real estate.

11.21 Until such time as the Board provided for in this Declaration is formed, the Developer shall exercise any and all of the powers, rights, duties and functions of the Association and the Board.

IN WITNESS WHEREOF, the Declarant has caused this Amended and Restated Declaration to be executed as of the day and year first above written.

PODCO ORCHARD 88, LLC

By: Phyllis Family Associates, LLC, its Sole Member

[Handwritten Signature]
By: Randy D. Podolsky, Manager

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, Nancy Lynn Gunning, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY Randy D. Podolsky, Manager of Phyllis Family Associates, LLC, the sole member of Podco Orchard 88, LLC, personally known to me to be as the same person whose name is subscribed in the foregoing instrument as such Manager appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24th day of SEPTEMBER, 2009.

[Handwritten Signature]
Notary Public

My commission expires:

5/15/2012



EXHIBIT A
REAL PROPERTY

PARCEL 1:

LOT 1A IN CANDLEWOOD SUITES SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO A PLAT THEREOF RECORDED ON SEPTEMBER 5, 2008 AS DOCUMENT NUMBER 2008K070254, IN THE TOWNSHIP OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

PIN NO. 14-12-225-011

PARCEL 2:

LOT 6, 7, 8 AND 9 IN PODOLSKY ORCHARD 88 PHASE 1 SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO A PLAT THEREOF RECORDED ON FEBRUARY 15, 2006 AS DOCUMENT NUMBER 2006K017320, IN THE TOWNSHIP OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

PIN NOS. 14-12-225-005, 14-12-225-003, 14-12-225-001 AND 14-12-225-004

PARCEL 3:

LOT 11, 12, 13, 14, 15 AND 16 IN PODOLSKY ORCHARD 88 PHASE 2 SUBDIVISION, BEING A SUBDIVISION IN PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO A PLAT THEREOF RECORDED ON AUGUST 1, 2008 AS DOCUMENT NUMBER 2008K062470, IN THE TOWNSHIP OF SUGAR GROVE, KANE COUNTY, ILLINOIS.

PIN NOS. 14-12-209-002, 14-12-209-001, 14-12-210-003, 14-12-210-001, 14-12-210-004 AND 14-12-210-002

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