

# **EXHIBIT A**

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THIS INSTRUMENT PREPARED  
BY AND SHOULD BE RETURNED  
TO:

Brian Meltzer  
MELTZER, PURTILL & STELLE LLC  
1515 East Woodfield Road  
Second Floor  
Schaumburg, Illinois 60173-54310



Doc#: 0628518042 Fee: \$108.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
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09/26/06

## DECLARATION FOR THE GLENS OF CONNEMARA

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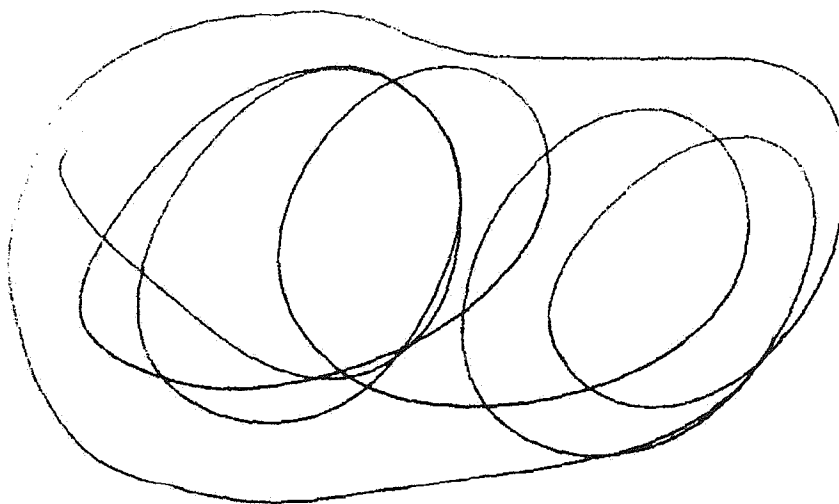
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## DECLARATION FOR THE GLENS OF CONNEMARA

This Declaration is made by HomeWerks-Lemont, LLC, an Illinois limited liability company ("Declarant").

### R E C I T A L S

Declarant is the record title holder of a portion of the Development Area which is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called "The Glens of Connemara" (the "Development").

Initially, the Declarant shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as more fully described in Article Twelve. Nothing in this Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Declaration. Those portions of the Development Area which are not made subject to the provisions of this Declaration as Premises may be used for any purposes not prohibited by law.

Certain portions of the Premises are designated as Lots and other portions are designated as Community Area. The Declarant has formed (or will form) the Association under the Illinois General Not-For-Profit Corporation Act. The Association shall have the responsibility for administering and maintaining the Community Area and shall set budgets and fix assessments to pay the expenses incurred in connection with such responsibility. Each Owner of a Lot shall be a member of the Association and shall be responsible for paying assessments with respect to the Lot owned by such Owner. It is not intended that the Association shall be a "common interest community association" as defined in Section 9-102(a)(8) of the Code of Civil Procedure (735 ILCS 5/9-102(a)(8)).

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Ten, the right to come upon the Premises in connection with Declarant's efforts to sell Lots and other rights reserved in Article Ten.

NOW, THEREFORE, the Declarant hereby declares as follows:

## ARTICLE ONE

### Definitions

For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ASSOCIATION: The Glens of Connemara Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

1.02 BOARD: The board of directors of the Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Five.

1.03 BY-LAWS: The By-Laws of the Association.

1.04 CHARGES: The Community Assessment, any special assessment levied by the Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration or the By-Laws.

1.05 COMMUNITY AREA: Those portions of the Premises which are described and designated as "Community Area" in Exhibit B hereto, together with all improvements located above and below the ground and rights appurtenant thereto. The Community Area shall generally include wetlands, detention areas and open space within the Development, together with improvements thereon, including fencing.

1.06 COMMUNITY ASSESSMENT: The amounts which the Association shall assess and collect from the Owners to pay the Community Expenses and accumulate reserves for such expenses, as more fully described in Article Six.

1.07 COMMUNITY EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping and other improvements (including fencing and monument signage) on the Community Area, landscaping on cul de sac islands in the dedicated right of ways which serve the Premises and other property owned or maintained by the Association; the cost of insurance for the Community Area, other property owned by the Association or other property which the Association is required or contractually obligated to maintain; the cost of general and special real estate taxes and assessments levied or assessed against the Community Area owned by the Association; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the maintenance of the Community Area and other property which the Association is required or contractually obligated to maintain; if not separately metered or charged to the Owners, the cost of garbage removal from the Premises and the cost of necessary utility services to the Premises; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners. Notwithstanding the foregoing, Community Expenses shall not include any payments made out of Capital Reserves.

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

1.09 DECLARANT: HomeWerks-Lemont, LLC, an Illinois limited liability company, its successors and assigns.

1.10 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.11 DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this Declaration as part of the Premises. Any portions of the Development Area which are not made subject to the provisions of this Declaration as part of the Premises may be developed and used for any purposes not prohibited by law, including, without limitation, as a residential development which is administered separate from the Development.

1.12 HOME: That portion of a Lot which is improved with a single family home.

1.13 LOT: Each subdivided lot designated in Exhibit B hereto as a Lot, together with all improvements thereon and thereto.

1.14 MORTGAGEE: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Lot.

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

1.16 OWNER: A Record owner, whether one or more persons, of fee simple title to a Lot, including contract seller, but excluding those having such interest merely as security for the performance of an obligation. The Declarant shall be deemed to be an Owner with respect to each Lot owned by the Declarant.

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

1.18 PLAT: That certain Plat of Subdivision of The Glens of Connemara Subdivision, Recorded on July 27, 2006, as Document No. 0620839075.

1.19 PREMISES: The real estate which is legally described in Exhibit B hereto, as amended or supplemented from time to time, with all improvements thereon and rights appurtenant thereto.

1.20 RECORD: To record in the office of the Recorder of Deeds for the County.

1.21 RESIDENT: An individual who legally resides in a Home.

1.22 SPECIAL DEVELOPMENT RIGHTS AREA. A portion of the Premises which is subject to Special Development Rights granted by the Declarant to a Special Development Rights Holder.

1.23 SPECIAL DEVELOPMENT RIGHTS HOLDER. A Person which acquires title to a Special Development Rights Area and to which Declarant grants Special Development Rights with respect to such Special Development Rights Area.

1.24 SPECIAL DEVELOPMENT RIGHTS. Any one or more of the following rights which may be granted by Declarant to a Special Development Rights Holder with respect to a Special Development Rights Area, pursuant to Article Fourteen hereof:

(a) The right to construct homes and to temporarily store construction equipment and materials on such Special Development Rights Area;

(b) The right to construct and maintain model homes, temporary sales or leasing offices, temporary parking areas, signs, lighting, banners and other promotional materials and facilities on such Special Development Rights Area; and

(c) The right to use the Community Area for the purpose of showing the Premises to prospective purchasers of residential units within the Special Development Rights Area.

1.25 TURNOVER DATE: The date on which the rights of the Declarant to designate the members of the Board are terminated under Section 10.04.

1.26 VOTING MEMBER: The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article Five.

## ARTICLE TWO Scope of Declaration

2.01 PROPERTY SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Premises and the holder of certain easements serving the Premises, expressly intends to and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. Declarant reserves the right to add additional real estate to the terms of this Declaration as more fully provided in Article Thirteen.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the premises, and their respective heirs,

successors, personal representatives or assigns, regardless of whether the deed or other instrument which creates or conveys the interest makes reference to this Declaration.

2.03 DURATION: Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by a Recorded instrument executed by the Owners of not less than three-fourths (3/4) of the Lots then subject to the Declaration.

2.04 LOT CONVEYANCE: Once a Lot has been conveyed by the Declarant to a bona fide purchaser for value, then any subsequent conveyance or transfer of ownership of the Lot shall be of the entire Lot and there shall be no conveyance or transfer of a portion of the Lot without the prior written consent of the Board.

2.05 ACCESS EASEMENT: The Municipality, County or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over roads and driveways located on the Community Area for police, fire, ambulance, waste removal, snow removal, or for the purpose of furnishing municipal or emergency services to the Premises. The Association, its employees, agents and contractors, shall have the right of ingress and, egress to and from the Community Area, parking on the Community Area, and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements required or permitted to be furnished by the Association hereunder.

2.06 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area and the exclusive right to use and enjoy the Owner's Lot. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Lot, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, including the right of the Association to come upon a Home to furnish services hereunder.

2.07 DELEGATION OF USE: Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Community Area and the Owner's Lot to Residents of the Owner's Home. An Owner shall delegate such rights to tenants and contract purchasers of the Owner's Home who are Residents.

2.08 RULES AND REGULATIONS: The use and enjoyment of the Community Area shall at all times be subject to reasonable rules and regulations duly adopted by the Association from time to time.

2.09 UTILITY EASEMENTS: The Municipality, County and all public and private utilities (including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching

apparatus and other equipment, into and through the Community Area for the purpose of providing utility services to the Premises or any other portion of the Development Area.

2.10 EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Community Area for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners. Any and all proceeds from leases, easements, licenses or concessions with respect to the Community Area shall be used to pay the Community Expenses. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Home, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association and duly Recorded.

2.11 ASSOCIATION'S ACCESS: The Association shall have the right and power to come onto any Lot for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder.

2.12 NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Section 2.10, nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Community Area to or for any public use or purpose whatsoever.

2.13 OWNERSHIP OF COMMUNITY AREA: The Community Area shall be conveyed to the Association free of mortgages no later than the Turnover Date, provided, that if Community Area is made subject hereto after the Turnover Date, it shall be conveyed to the Association no later than ninety (90) days after such portion is made subject hereto.

2.14 REAL ESTATE TAXES FOR COMMUNITY AREA: If a tax bill is issued with respect to Community Area which is made subject to this Declaration in the middle of a tax year (regardless of when it is conveyed to the Association), then the tax bill shall be prorated so that the Declarant shall be responsible for the payment of that portion of the tax bill from January 1<sup>st</sup> of the tax year to the date that such Community Area is made subject to this Declaration, and the Association shall be responsible for the balance of the tax bill.

### ARTICLE THREE

#### Community Area/Association Maintenance

3.01 IN GENERAL: The restrictions and limitations contained in this Article shall be subject to the rights of the Declarant set forth in Article Ten.

3.02 MAINTENANCE, REPAIR AND REPLACEMENT BY ASSOCIATION: The cost of any maintenance, repairs and replacement furnished by the Association pursuant to this

Section shall be Community Expenses. The following maintenance, repairs and replacements shall be furnished by the Association:

(a) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Community Area and on cul de sac islands in the dedicated rights of way;

(b) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the landscape buffer area located on the northerly side of 131<sup>st</sup> Street and lying south of the fence installed by the Declarant whether located on a Lot or in the dedicated right of way as delineated and depicted on the Plat ("Landscape Buffer Area");

(c) maintenance, repair and replacement of the sidewalks located within the Landscape Buffer Area, but not including snow removal;

(d) maintenance, repair and replacement of fencing along the Landscape Buffer Easement;

(e) maintenance, repair and replacement of dry detention areas on the Community Area;

(f) maintenance, repair and replacement of monument signs, fencing and other improvements located on the Community Area;

(g) maintenance of wet detention basins on the Community Area, which maintenance shall follow guidelines, if any, from time to time issued by the any governmental authority which has jurisdiction over maintenance of the wet detention basins; and

(h) maintenance, repair and replacement of real estate which is not part of the Premises and which the Association is required or contractually obligated to maintain, including, but not limited to, the following, which may be Recorded with respect to the Premises and other real estate:

- (i) Easement Agreement with Chicago Title Land Trust Company as Successor Trustee to Chicago Title and Trust Company not personally but solely as trustee under the provisions of a trust agreement dated April 26, 1963 known as Trust Number 45553 Recorded December 22, 2004 as document number 0435733211;
- (ii) Centerline Easement/Storm Sewer Easement with Commonwealth Edison Company Recorded November 24, 2003 as document number 0332829281;
- (iii) Grant for Roadway and Sub-Surface Facilities (Dundee Lane) with Commonwealth Edison Company Recorded November 24, 2003

as document number 0332829279 (note: Dundee Lane is now known and is depicted on the Plat as Waterford Drive); and

- (iv) Grant for Roadway and Sub-Surface Facilities (Highland Drive) with Commonwealth Edition Company Recorded November 24, 2003 as document number 0332829280 (note: Highland Drive is now known and is depicted on the Plat as Dunmoor Drive).

### 3.03 MAINTENANCE BY OWNER:

(a) Except as otherwise specifically provided for in this Declaration each Owner of a Lot shall be responsible for the maintenance, repair and replacement of the Owner's Lot, including fencing and/or landscaping installed by the Declarant thereon, and the Home thereon.

(b) If, in the judgment of the Board, an Owner fails to maintain those portions of the Owner's Lot which the Owner is responsible for maintaining hereunder in good condition and repair or the appearance of such portions is not of the quality of that of other Lots in the Development or in compliance with rules and regulations adopted by the Board from time to time, then the Board shall have the right (but shall be obligated) to take the following action:

(i) advise the Owner of the work which must be done and allow the Owner at least twenty (20) days (or less in the case of an emergency) to cause the work to be done; and

(ii) if the work is not done to the satisfaction of the Board, in its sole judgment, then the Board may seek injunctive relief, levy a fine and/or cause such work to be done and the cost thereof shall be a Charge payable by the Owner to the Association upon demand.

3.04 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA: No alterations, additions or improvements shall be made to the Community Area without the prior approval of the Board. The Association may cause alterations, additions or improvements to be made to Community Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than four (4) months assessments then in effect under the then current budget shall be approved in advance at a special meeting of the Owners.

3.05 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Community Area may not be separately metered and billed to the Association. If the cost for any such utility is metered and charged to individual Homes rather than being separately metered and charged to the Association, then the following shall apply:

(a) If in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost for such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(b) If in the opinion of the Board, the Owner of a Home is being charged disproportionately for costs allocable to the Community Area, then the Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Board is properly allocable to the Community Area and the amount thereof shall be Community Expenses hereunder.

Any determinations or allocations made hereunder by the Board shall be final and binding on all parties.

3.06 DAMAGE BY RESIDENT: If, due to the act or omission of a Resident of a Home, or of a household pet or guest or other authorized occupant or invitee of the Owner of a Lot, damage shall be caused to the Community Area and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Community Expense, then the Owner of the Lot shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance carried by the Association.

#### ARTICLE FOUR Insurance/Condemnation

##### 4.01 ASSOCIATION AND COMMUNITY AREA INSURANCE:

(a) The Association shall have the authority to and shall obtain, to the extent required under applicable easement or other agreements, fire and all risk coverage insurance covering the improvements, if any, to the Community Area and other property which the Association is required or contractually obligated to maintain, including, without limitation, any fencing on Lots which are maintained by the Association (based on current replacement cost for the full insurable replacement value) of such improvements.

(b) The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with, the Community Area and adjacent dedicated rights of way or detention areas and other property which the Association is required or contractually obligated to maintain. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(c) Fidelity bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling funds of the Association may be obtained by the Association in such amounts as the Board may deem desirable.

(d) The premiums for any insurance obtained under this Section shall be Community Expenses.

4.02 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Community Area Capital Reserve being held for such part of the Community Area, shall, in the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Community Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Community Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Association and Recorded.

## ARTICLE FIVE

### The Association

5.01 IN GENERAL: Declarant has caused or shall cause the Association to be incorporated as a not-for-profit corporation under Illinois law. The Association shall be the governing body for all of the Owners for the administration and operation of the Community Area. The Association shall be responsible for the maintenance, repair and replacement of the Community Area and other property which is not part of the Premises and which the Association is required or contractually obligated to maintain.

5.02 MEMBERSHIP: Each Owner shall be a member of the Association. There shall be one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Lot within ten (10) days after such change.

5.03 VOTING MEMBERS: Subject to the provisions of Section 10.04, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Lot. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot.

5.04 BOARD: Subject to the rights retained by the Declarant under Section 9.04, the Board shall consist of that number of members provided for in the By-Laws, each of whom shall be an Owner or Voting Member.

5.05 VOTING RIGHTS: Any or all members may be present at any meeting of the members, but the voting rights shall be vested exclusively in the Voting Members; provided,

that, prior to the Turnover Date, the voting rights shall be vested exclusively in the Declarant and the Voting Members shall have no voting rights. From and after the Turnover Date, each Voting Member, including those designated by Declarant with respect to Homes owned by Declarant, shall be entitled to one vote for each Lot which the Voting Member represents. The Voting Members may vote in person or by proxy. All proxies shall be in writing, revocable, valid only for eleven (11) months from the date of execution and filed with the Secretary.

**5.06 DIRECTOR AND OFFICER LIABILITY:** 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 and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant, and each of the directors and officers, his heirs, executors or administrators, against all contractual and other liabilities to the Owners, the Association or 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 criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel 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 director may be involved by virtue of such person 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 been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, 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 criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer.

**5.07 MANAGING AGENT:** The Declarant (or an entity controlled by the Declarant) may be engaged by the Association to act as the managing agent for the Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Association and the Declarant (or an entity controlled by the Declarant). Any management agreement entered into by the Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Association without payment of a termination fee on 90 days written notice.

**5.08 ATTENDANCE AT BOARD MEETINGS BY OWNERS:** Owners may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion. It is not the intention that Owners shall have the right to attend meetings of the Board in the same manner as provided for members of condominium associations under the Illinois Condominium Property Act.

## ARTICLE SIX

### Assessments

6.01 PURPOSE OF ASSESSMENTS: The use of assessments levied by the Association shall be limited to the purposes of (i) maintaining the Community Area and other real estate which is not part of the Premises and which the Association is required or contractually obligated to maintain (ii) administering the affairs of the Association, (iii) paying the Community Expenses, and (iv) accumulating reserves for any such expenses. For purposes hereof, (a) a Lot owned by Declarant shall only be subject to assessment hereunder from and after such time as an occupancy certificate has been issued with respect to a Home constructed thereon, and, (b) a model home owned by Declarant shall not be subject to assessment hereunder.

6.02 COMMUNITY ASSESSMENT: Each year on or before December 1, the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year, which shall show the following with reasonable explanations and itemizations:

- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Community Expenses including, without limitation, amounts to maintain the Capital Reserve;
- (c) The estimated net available cash receipts, if any, from the operation and use of the Community Area plus the estimated excess funds, if any, from the current year's assessments;
- (d) The amount of the "Community Assessment" payable by the Owners, which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above;
- (e) That portion of the Community Assessment which shall be payable with respect to the ensuing calendar year by the Owner of each Lot which is subject to assessment hereunder, which shall be equal to the Community Assessment divided by the number of Lots subject to assessment hereunder, so that each Owner shall pay equal Community Assessments for each Lot owned. The Community Assessment shall be paid in periodic installments as determined by the Board from time to time, but no less frequently than once each calendar year.

Anything herein to the contrary notwithstanding the provisions of this paragraph shall apply with respect to the period prior to the Turnover Date. Any annual budget prepared by the Board prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's then current plan for the Development ("Current Development Plan") and (ii) all proposed Homes have been built and are occupied. The Current Development Plan shall be kept on file with the Association and may be modified from time to time by Declarant. Prior to the Turnover Date, each Owner (other than the Declarant) shall pay as the Owner's share of the annual Community Assessment an amount equal to the budgeted Community Expenses for such year divided by the number of proposed Homes on the then Current Development Plan so that each Owner (other than Declarant) will pay, with respect to each Lot owned, an annual Community Assessment equal to what such Owner would be paying with respect to the Owner's Lot if the Development were fully constructed pursuant to the

Current Development Plan and all proposed Homes have been built and are occupied. Each Owner shall pay such assessment at such times as determined by the Board, but not less frequently than once each year. The Declarant shall not be obligated to pay any Community Assessments to the Association prior to the Turnover Date. However, if with respect to the period commencing on the date of the Recording of this Declaration and ending on the Turnover Date, the amount of Community Assessments and working capital contributions under Section 6.07 payable by Owners (other than Declarant), less the portions thereof which are to be added to Reserves, is less than the Community Expenses actually incurred with respect to such period, then the Declarant shall pay any difference to the Association. From time to time prior to the Turnover Date, the Declarant shall deposit with the Association amounts which reasonably approximate Declarant's obligation hereunder as estimated by the Declarant. A final accounting and settlement of the amount, if any, owed by Declarant to the Association or by the Association to the Declarant shall be made as soon as practicable after the Turnover Date.

**6.03 PAYMENT OF COMMUNITY ASSESSMENT:** Each Owner of a Lot which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Community Assessment which is payable by each Owner of a Lot under Section 6.02(e) at such times as the Board shall determine from time to time.

**6.04 REVISED ASSESSMENT:** If the Community Assessment proves inadequate for any reason (including nonpayment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 6.02(e) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

**6.05 SPECIAL ASSESSMENT:** After the Turnover Date the Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Community Area, or any other property which the Association is required or contractually obligated to maintain; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of Lots in equal shares. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

**6.06 CAPITAL RESERVE:** The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Community Areas, including a reserve fund for replacements (the "Capital Reserve"). If the Association elects to establish a Capital Reserve, the Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Areas and equipment owned by the Association as well as periodic projections of the

cost of anticipated major repairs or improvements to the Community Areas or the purchase of equipment to be used by the Association in connection with its duties hereunder. The Capital Reserve may be built up by separate or special assessments or out of the Community Assessment as provided in the budget. Special accounts set up for portions of the Capital Reserve to be used to make capital expenditures with respect to the Community Areas shall be held by the Association as agent and trustee for the Owners of Homes with respect to which the Capital Reserve is held and such accounts shall be deemed to have been funded by capital contributions to the Association by the Owners. The budgets which will be adopted from time to time by the Boards appointed by the Declarant prior to the Turnover Date shall include reserve buildups which the Board deems to be appropriate based on information available to the Board. Boards elected by the Owners after the Turnover Date may use different approaches from those used by Boards appointed by the Declarant for the buildup of reserves or may choose not to provide for the buildup of reserves for certain capital expenditures or deferred maintenance for repairs or replacements of the Community Areas. If the Board chooses not to provide for the buildup of reserves for a particular anticipated expenditure or if the buildup of reserves that the Board does provide for in its budgets does not result in sufficient funds to pay for the expenditure when the expenditure must be made, then (i) neither the Board nor any of its past or present members shall be liable to the Association or the Owners for failing to provide for sufficient reserves and (ii) the Board shall have the right and power to either levy a separate or special assessment to raise the funds to pay the expenditure or to borrow funds to pay the expenditure and repay the borrowed funds out of future Community Assessments, separate assessments or special assessments.

**6.07 INITIAL CONTRIBUTION/ADVANCE PAYMENT OF ASSESSMENT:** Upon the closing of the first sale of each Lot by the Declarant to a purchaser for value, the purchasing Owner (a) shall pay to the Association an amount equal to one-half of the annual Community Assessment at the rate which shall become effective with respect to the Lot as of the closing, which amount shall be held and used by the Association for its working capital needs, plus one hundred dollars (\$100), which amount shall be added to the Capital Reserve and (b) unless otherwise agreed by Declarant, shall make an advance payment of one year's assessments at the rate which shall become effective with respect to the Lot as of the closing. Any advance assessment payment made pursuant to (b) above shall be applied as an advance payment of assessments with respect to such period; however, if assessments increase during such period the Owner of the Lot shall be required to pay the amount of the increase.

**6.08 PAYMENT OF ASSESSMENTS:** Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Lot and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Article Seven.

## ARTICLE SEVEN

### Collection of Charges and Remedies for Breach or Violation

**7.01 CREATION OF LIEN AND PERSONAL OBLIGATION:** The Declarant hereby covenants, and each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner on the Owner's Lot. Each Charge, together with interest thereon and reasonable costs of collection, if

any, as hereinafter provided, shall be a continuing lien upon the Lot against which such Charge is made and also shall be the personal obligation of the Owner of the Lot at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

7.02 COLLECTION OF CHARGES: The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

7.03 NON-PAYMENT OF CHARGES: Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the due date to the date when paid. The Association may (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney's fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action), and (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by abandonment or transfer of his Lot.

7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 7.01, shall be subordinate to the Mortgagee's mortgage on the Lot which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Lot. Where title to a Lot is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of the Lot shall be personally liable for his share of the Charges with respect to which a lien against his Lot has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Community Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Lot, as provided in this Article.

7.05 ENFORCEMENT BY OWNERS: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Lot to enforce any lien created hereunder.

7.06 ENFORCEMENT BY THE MUNICIPALITY: The Municipality is hereby granted the right, but shall not be obligated, to maintain any property located in a dedicated right of way. If the Association fails to comply with any covenants and obligations in regards to maintenance hereunder, the Municipality shall have the right (but shall not be obligated) to give notice to the Association of its failure to perform its obligations. If such notice is given and the Association does not perform to the satisfaction of the Municipality within thirty (30) days after the giving of such notice, then the Municipality may (but shall not be obligated to) enter upon the Premises

and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Municipality. The Association shall, upon demand, reimburse the Municipality for the reasonable cost of such work, plus interest at the rate of eighteen percent (18%) per annum from the date incurred and paid by the Municipality through the date the Municipality is reimbursed for such cost, and if payment is not made within thirty (30) days after demand, then the amount due, plus reasonable costs of collection, including reasonable attorneys' fees, shall become a lien on the property of the Association, effective as of the date on which such work was completed; provided, however, that such lien shall be subordinate to the lien of any first mortgage on a Lot Recorded prior to the date on which any such cost becomes a lien against the Lot as provided above.

**7.07 ENFORCEMENT OF DETENTION AREA MAINTENANCE BY THE MUNICIPALITY:** The Municipality is hereby granted the right, but shall not be obligated, to maintain any detention areas located on the Premises. If the Association fails to comply with any covenants and obligations in regards to maintenance of the detention areas hereunder, the Municipality shall have the right (but shall not be obligated) to give notice to the Association of its failure to perform its obligations. If such notice is given and the Association does not perform to the satisfaction of the Municipality within thirty (30) days after the giving of such notice, then the Municipality may (but shall not be obligated to) enter upon the Premises and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Municipality. The Association shall, upon demand, reimburse the Municipality for the reasonable cost of such work, plus interest at the rate of eighteen percent (18%) per annum from the date incurred and paid by the Municipality through the date the Municipality is reimbursed for such cost, and if payment is not made within thirty (30) days after demand, then the amount due, plus reasonable costs of collection, including reasonable attorneys' fees, shall become a lien on the property of the Association, effective as of the date on which such work was completed; provided, however, that such lien shall be subordinate to the lien of any first mortgage on a Lot Recorded prior to the date on which any such cost becomes a lien against the Lot as provided above.

**7.08 BACKUP SSA:** The Municipality may establish a Special Service Area to serve as what is commonly referred to as a "Backup Special Service Area", to give the Municipality the power to levy taxes to pay the cost of maintaining the Community Area if the Association fails to do so and the Municipality chooses to furnish such services.

## ARTICLE EIGHT

### Use Restrictions

**8.01 RESIDENTIAL USE:** Each Lot shall be used only for residential purposes, as a private residence, and no professional, business or commercial use shall be made of a Lot or any portion thereof, nor shall any Resident's use of a Lot endanger the health or disturb the reasonable enjoyment of any other Owner or Resident, except that professional and quasi-professional persons may use their residence as an ancillary or secondary facility to an office elsewhere. The foregoing restrictions shall not, however, be construed to prohibit a Resident from: (a) maintaining his personal professional library; (b) keeping his personal business or professional records or accounts; (c) handling his personal business or professional telephone

calls or correspondence therefrom, or (d) conducting an in-home business not prohibited by applicable laws, ordinances or regulations.

8.02 OUTBUILDINGS: Except as permitted pursuant to Section 8.11, if applicable, without the prior written consent of the Board, no outbuilding, shed, storage shed, animal house, above ground swimming pool, jacuzzi, fence, greenhouse, play set or other temporary or permanent structure shall be constructed on any Lot.

8.03 SIGNS: Except as otherwise provided in Article Ten, or specifically approved, in writing, by the Board, no advertising sign (except one "For Rent" or "For Sale" sign of not more than five square feet), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any Lot or the Community Area.

8.04 PETS: No animals, livestock or poultry of any kind shall be raised, bred, or kept on the Community Area. The Board may from time to time adopt rules and regulations governing (a) the keeping of pets in the Home, which may include prohibiting certain species of pets from being kept in the Home and (b) the use of the Community Area by pets.

8.05 TRASH: All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Homes and streets, and shall be regularly removed from the Premises, and shall not be allowed to accumulate thereon. Garbage may not be burned on a Lot.

8.06 NUISANCE: No nuisance, noxious or offensive activity shall be carried on in the Premises nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of any Home.

8.07 PLANTS: No plants, seeds, or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of the Premises.

8.08 PARKING: Parking areas and driveways shall be used for parking operable automobiles only and no part of any Lot shall be used for storage use, or parking of mobile homes, trailers, commercial vehicles, snowmobiles or boats except within the confines of a garage. No repair or body work of any motorized vehicle shall be permitted except within the confines of the garage. Any violation of this provision shall be deemed a nuisance under Section 8.06. Passenger motor vehicles in non-operative condition shall not be parked, except in garages.

8.09 ANTENNA/SATELLITE DISHES: Subject to applicable federal, state or local laws, ordinances or regulations, the operation of "ham" or other amateur radio stations or the erection of any communication antenna, receiving dish or similar devices (other than a simple mast antenna or a satellite dish of less than one (1) meter in diameter which is not visible from the front of the Home) shall not be allowed on the Premises.

8.10 LANDSCAPE MAINTENANCE: Each Owner shall regularly mow and trim all areas of his Lot covered with ground cover and shall keep all areas of his Lot designed or intended for the property drainage or detention of water, including swale lines and ditches, unobstructed and shall mow and maintain such areas regularly so as to keep such areas in good

and functional condition.

8.11 FENCES: A Lot may be improved with a fence on that portion of the Lot which is between the rear lot line and the front of the Home provided that the fence at all times conforms to the following specifications:

- (a) Western Red Cedar, board on board (shadow box) fence;
- (b) Height to comply with municipal codes and if not so specified in the municipal codes, height shall be 4 - 6';
- (c) 1 x 6 boards, spaces edge-to-edge and back-to-back to comply with percent open and closed per municipal ordinance;
- (d) 4 x 4 posts with wood (cedar) cap, set 42" into ground and 8 feet +/- on center, with concrete footings;
- (e) Two 2 x 4 back rails (1-1/2" wide); one at the top of the boards and one 12" up from bottom of the boards;
- (f) 1 x 4 top cap, centered on posts; and
- (g) Decorative fencing will be allowed to extend from the front of the Home towards the front lot line that is no more than 10' in length.

Any such fence shall be maintained, repaired and replaced by the Owner of the Lot on which the fence is located.

## ARTICLE NINE

### Design and Maintenance Controls and Architectural Standards

#### 9.01 DESIGN AND MAINTENANCE CONTROLS:

(a) The Declarant shall have the right and power from time to time to adopt reasonable rules, regulations, guidelines, and standards governing the design and exterior finish (including color) of all improvements or landscaping from time to time constructed, installed or proposed to be constructed, installed or modified on the Premises including, without limitation, those proposed to be constructed or installed by a Special Development Rights Holder. Without limiting the foregoing, no earthmoving, filling, dredging, grading, excavating, installation of landscaping, alteration of landscaping, construction of a building, driveway, walkway, fence, signs or other advertising or promotional devices or any other temporary or permanent improvement to any portion of the Premises or any modification, alteration, renovation, addition or removal of any of the foregoing, including change of exterior color ("Regulated Work") shall be commenced or maintained with respect to any portion of the Premises without the prior written consent of the Declarant to the plans therefor, which consent may be granted or withheld in Declarant's sole and absolute discretion. Without limiting the foregoing, Regulated Work performed on the Premises shall be performed in accordance with any annexation agreements

created upon annexation to the Municipality. The Declarant reserves the right and power to promulgate and amend from time to time standards, policies, procedures and guidelines in order to implement the foregoing. If any Regulated Work which requires Declarant approval as provided above is commenced without obtaining the required written consent of the Declarant, then the Declarant may seek any remedy or take any action provided for herein or permitted at law or in equity in order to enforce the provisions hereof, including injunctive relief to stop work and/or restore the portion of the Premises to its condition prior to the commencement of the work.

(b) The Declarant shall have the right and power from time to time to adopt rules, regulations, guidelines, and standards governing the maintenance and upkeep of portions of the Premises, including without limitation, improvements thereto, signs, advertising and landscaping thereon. Without limiting the foregoing, those portions of the Premises on which construction of improvements has not yet commenced shall at all times be maintained in a neat and clean condition and all weeds shall be periodically cut. If in the sole judgment of the Declarant a portion of the Premises is not being maintained in good condition and repair or the appearance of any such portion of the Premises is not of the character and quality of that of other portions of the Premises or is not in compliance with rules, regulations, guidelines, and standards adopted from time to time by the Declarant, then without limiting any rights or remedies available to the Declarant hereunder, at law or in equity, Declarant shall have the right to enter upon any such portion of the Premises and perform any maintenance or repair work which it deems necessary or appropriate. The cost of any such work shall be charged to the Owner and shall be payable to the Declarant upon demand. In the event that the Owner fails to make prompt payment of any such amount within thirty (30) days after demand, such amount shall become and continue to be a lien upon the Owner's Lot until such time as payment is made in full; provided, that any such lien shall be subordinate to the lien of any first mortgage on a Lot Recorded prior to the date on which any such amount becomes a lien against a Lot as provided above.

(c) Any one or more of the rights and powers of the Declarant under this Section may be delegated to one or more individuals or entities designated from time to time by the Declarant.

(d) Subject as hereinafter provided, from time to time, the Declarant may enter into an agreement ("Transfer Agreement") with the Association whereby the Declarant assigns and transfers to the Association some or all of its rights and powers under Subsections (a) and (b). Any Transfer Agreement shall be executed by both the Declarant and the Association and shall be recorded; provided, that the execution of the Transfer Agreement by the Association shall be approved in advance by action of the Voting Members at an annual meeting or special meeting of the Voting Members. A Transfer Agreement may include such terms as are agreed upon between the Declarant and the Association. From and after the recording of a Transfer Agreement, the rights and powers of the Declarant under Subsections (a) and (b) which are transferred to the Association pursuant to the Transfer Agreement, shall be administered as provided in the Transfer Agreement. Any rights and powers of the Declarant under Subsections (a) and (b) which are not transferred to the Association pursuant to a Transfer Agreement shall expire and terminate at such time as (i) the Development has been fully developed and improved per Declarant's Development Plan and (ii) the Declarant no longer holds or controls title to any portion of the Development Area.

9.02 EXTERIOR ARCHITECTURAL DESIGN: The architectural style of all residential structures constructed upon any Lot shall be of a traditional style in exterior design. Contemporary designs shall not be permitted.

9.03 MINIMUM FLOOR AREA CALCULATIONS: The allowable floor area shall be defined and calculated as habitable space excluding basements and garages. No Home shall be erected or maintained on the Premises unless the floor area of the Home is at least 2,600 square feet for a ranch-style Home (one-story), and 3,000 square feet for two-story Home. All multi-level floor plans shall also have a minimum floor area of 1,500 square feet on the first floor. For the purpose of calculating the floor area of a unit under this Section, the floor area shall consist of the gross horizontal area of the several floors to the Home, measured from the interior faces of the exterior walls, exclusive of basements, garages, attics, porches and any unheated or non-living space

9.04 EXTERIOR WALL AREA MATERIALS:

(a) Fifty percent (50%) of the exterior wall surface of the entire Home must be constructed of stone, culture stone, brick or other acceptable masonry materials.

(b) Second floor exterior wall surfaces may be constructed of cedar, dryvit, cement siding, vinyl siding or face brick. No aluminum siding, stucco or synthetic stucco shall be permitted. Soffits and gutters, however, may be constructed from aluminum.

9.05 ROOF MATERIAL: The roof of each Home may only be constructed of at least a 30 year Architectural Grade ( i.e. Oak Ridge II, Timberline, etc. ) shingle or other shingles as approved by the Declarant or the Association, if a Transfer Agreement has been Recorded.

9.06 ROOF PITCH: The minimum of roof pitch of each Home shall be as follows:

(A) One-Story Home – 6/12

(B) Two or More Stories Home – 6/12

Roof pitch, however, may be less than those prescribed if in the sole and absolute discretion of the Declarant or the Association, if a Transfer Agreement has been Recorded.

9.07 SKYLIGHTS: All skylights or like structures shall be placed in such a way that they are not visible from the street in front of the Home. At no time shall skylights or like structures be placed on the front roof line.

9.08 WINDOWS: Windows on the front of all Homes shall be placed in a symmetrical pattern and shall be at least sixty (60) inches in height on the first floor and forth-eight (48) inches in height on the second floor or balanced in a traditional style.

9.09 GARAGES: All Homes shall have attached garages of a minimum 2 ½ car capacity and the doors shall face the side, rear or front of the Lot. A two-car garage may be permitted if it is a side-load or rear-load load and with the garage facing a side or rear lot line. All front-loaded

three-car garages must have a break in the roof line by stepping one stall back a minimum of one foot. The Declarant shall have the sole and exclusive authority to grant approvals for the construction of frontload, side-load or rear-load garages in order to maintain the necessary ratio of each type of garage

9.10 CHIMNEYS: Chimneys located on exterior walls must be constructed of dryvit, face brick or natural stone. Chimneys which are not located on exterior walls shall be encased in a decorative enclosure in conformity with the architectural style of the Home.

9.11 PLUMBING AND HEATING STACKS: All stacks, including but not limited to, plumbing, heating and ventilation stacks shall be located on the rear portion of the roof. Furnace exhausts located on sidewalls must be located on the rear of any Home. All other vents or exhausts may not be located on the front of the Home.

9.12 MONOTONY CLAUSE: Approval shall be withheld of the design, elevation, exterior and interior size, exterior shape and materials or color scheme of a proposed Home that is substantially similar to an adjacent Home. In no event shall a particular model or elevation of Home be duplicated within two hundred forty (240) feet adjoining on a common front lot line or directly across the street from a substantially similar model or elevation of Home. A different model or elevation of Home would incorporate a significant change, i.e., a gable roof would be modified to a hip roof.

## ARTICLE TEN

### Declarant's Reserved Rights and Special Provisions Covering Development Period

10.01 IN GENERAL: In addition to any rights or powers reserved to the Declarant under the provisions of this Declaration or the By-Laws, the Declarant shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. If not sooner terminated as provided in this Article, the provisions of this Article shall terminate and be of no further force and effect with respect to the Declarant from and after such time as the Declarant is no longer vested with or controls title to any portion of the Development Area.

10.02 PROMOTION OF PROJECT: The Declarant shall have the right and power, within its sole discretion, to (i) construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Declarant may, from time to time, determine to be necessary or advisable, (ii) construct and maintain model homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable and to use such model homes (including model homes which are sold and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Homes on the Premises or at other properties in the general location of the Premises which are being offered for sale by the Declarant or any of its respective affiliates, without the payment of any fee or charge whatsoever to the Association. Declarant and its respective agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Community Area, at any and all reasonable times without fee or charge. The Declarant shall

have the right and power to lease any Home owned by it to any person or entity which it deems appropriate in its sole discretion.

**10.03 CONSTRUCTION ON PREMISES:** In connection with the construction of improvements to any part of the Premises, the Declarant and its respective agents and contractors, shall have the right, at the Declarant's own expense, (but shall not be obligated) to make such alterations, additions or improvements to any part of the Premises including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any structure which shall contain Homes which the Declarant deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or planting and replanting of any unimproved portions of the Premises. In connection with the rights provided in the preceding sentence, the Declarant and its respective agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store construction equipment and materials on the Premises without the payment of any fee or charge whatsoever.

**10.04 DECLARANT CONTROL OF ASSOCIATION:** The first and all subsequent Boards shall consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not, be members under Section 5.02. Declarant's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any part of the Development Area, (ii) the giving of written notice by Declarant to the Association of Declarant's election to terminate such rights, or (iii) seven (7) years from the date of Recording hereof. The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date". From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Declarant and the Owners shall have no voting rights.

**10.05 OTHER RIGHTS:** The Declarant shall have the right and power to execute all documents and do all other acts and things affecting the Premises which, in Declarant's opinion, are necessary or desirable in connection with the rights of Declarant under this Declaration.

**10.06 ASSIGNMENT BY DECLARANT:** All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No such successor assignee of the rights of Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

**10.07 GRANT OF EASEMENTS AND DEDICATIONS:** Declarant shall have the right to dedicate portions of the Community Area to the County, the Municipality or any municipality or other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over the Community Area to any governmental authority, public utility or private utility for the installation and maintenance of cable TV, electrical and telephone conduit and lines, gas, sewer or water lines, or any other utility services serving any Lot.

## ARTICLE ELEVEN

Amendment

11.01 SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Declarant reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Lots, (iii) to correct errors, omissions, ambiguities or inconsistencies in the Declaration or any Exhibit, (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations, or (v) to amend Exhibit A to include additional real estate. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate five (5) years after such time as Declarant no longer holds or controls title to a portion of the Development Area.

11.02 AMENDMENT: Subject to Section 11.01 and Article Twelve, the provisions of this Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least Seventy-Five percent of the total votes or by an instrument executed by Owners of at least Seventy-Five Percent (75%) of the Lots; except, that (i) the provisions of this Section 11.02 may be amended only by an instrument executed by all of the Owners and all Mortgagees, (ii) Article Ten or any other provisions relating to the rights of Declarant may be amended only with the written consent of the Declarant, and (iii) no amendment to the Declaration which changes the ratio of assessments against Owners shall become effective without the consent of all Mortgagees. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Lot shall no longer have the legal access to a public way from his Lot. No amendment under this Section shall be effective without the approval of the Municipality; said approval shall not be unreasonably withheld. Any proposed amendments under this Section shall be submitted to the Municipality in writing and unless the Owners or their representative are notified of the Municipality's disapproval within twenty-one (21) days of receipt of the written notice, the proposed amendment shall be deemed approved. No amendment shall become effective until properly Recorded.

ARTICLE TWELVE  
Mortgagees Rights

12.01 NOTICE TO MORTGAGEES: Upon the specific, written request of Mortgagee or the insurer or guarantor of a Mortgagee's mortgage, such party shall receive some or all of the following:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Lot covered by the Mortgagee's mortgage;

(b) Any audited or unaudited financial statements of the Association which are prepared for the Association and distributed to the Owners; provided, that, if an audited statement is not available, then upon the written request of the holder, insurer or guarantor of a Mortgage, the Association shall permit such party to have an audited statement for the preceding fiscal year of the Association prepared at such party's expense;

(c) Copies of notices of meetings of the Owners;

(d) Notice of any default by the Owner of the Lot which is subject to the Mortgagee's mortgage under this Declaration, the By-Laws or the rules and regulations of the Association which is not cured within 30 days of the date of the default;

(e) The right to examine the books and records of the Association at any reasonable times; and

(f) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

The request of any such party shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association.

12.02 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Community Area other property which the Association is required or contractually obligated to maintain, any such distribution shall be made to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the Mortgagee of a Lot with respect to any such distribution to or with respect to such Lot; provided, that, nothing in this Section shall be construed to deny to the Association the right to apply insurance proceeds to repair or replace damaged Community Area other property which the Association is required or contractually obligated to maintain.

ARTICLE THIRTEEN  
Annexing Additional Property

13.01 IN GENERAL: Declarant reserves the right at any time and from time to time prior to ten (10) years from the date of Recording of this Declaration to annex, add and subject additional portions of the Development Area to the provisions of this Declaration as additional Premises by recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Development Area which is subjected to this Declaration by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Community Area shall be referred to as "Added Community Area"; and any Lots contained in the Added Premises shall be referred to as "Added Lots". After the expiration of said ten (10) year period, Declarant may exercise the rights described herein to annex, add and subject additional portions of the Development Area to the provisions of this Declaration, provided that the consent the Owners (by number) of two-thirds (2/3) of all Lots then subject to this Declaration is first obtained.

13.02 POWER TO AMEND: Declarant hereby retains the right and power to Record a Supplemental Declaration, at any time and from time to time as provided in Section 13.01, which amends or supplements Exhibit B. Exhibit B may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit B and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or parts of the Added Premises as the Declarant deems necessary or appropriate.

13.03 EFFECT OF SUPPLEMENTAL DECLARATION: Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects Added Premises, Added Community Area, or Added Lots to this Declaration, as provided in this Article, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Premises and inure to the benefit of and be binding on any Person having at any time any interest or estate in the Added Premises in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Premises, and Persons having an interest or estate in the Premises, subjected to this Declaration prior to the date of the Recording of the Supplemental Declaration;

(b) Every Owner of an Added Lot shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Lot immediately prior to the Recording of such Supplemental Declaration;

(c) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Community Area and Added Lots, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect

and the same as if such Added Premises were subjected to this Declaration at the time of the Recording hereof;

(d) The Recording of each Supplemental Declaration shall not alter the amount of the lien for any Charges made to a Lot or its Owner prior to such Recording;

(e) The Declarant shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved by the Declarant in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(f) Each Owner of an Added Lot which is subject to assessment hereunder shall be responsible for the payment of the Community Assessment pursuant to Section 6.02, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Lot became subject to assessment hereunder.

#### ARTICLE FOURTEEN Special Development Rights

14.01 GRANT OF SPECIAL DEVELOPMENT RIGHTS: The Declarant shall have the right and power (but shall not be obligated) to grant Special Development Rights to a Special Development Rights Holder. The grant of Special Development Rights may be made in the deed which conveys a portion of the Premises to the Special Development Rights Holder or in a separate Recorded instrument ("Granting Document"). If a grant of Special Development Rights is made, the Granting Document shall include the following:

- (a) A legal description of the portion of portions of the Premises which are subject to the Special Development Rights (the "Special Development Rights Area");
- (b) A specific list of description of the Special Development Rights granted;
- (c) An expiration date for each Special Development Right granted, which shall in no event be later than such time as the Special Development Rights Holder no longer holds title to any portion of the Special Development Rights Area;
- (d) Limitations or restrictions on the exercise of Special Development Rights;
- (e) Such other provisions as the Declarant and the Special Development Rights Holders may agree upon.

14.02 EXERCISE OF SPECIAL DEVELOPMENT RIGHTS: Special Development Rights shall be exercised subject to the following:

- (a) Each Special Development Rights Holder shall be required to pay assessments to the Community Association for each Lot from time to time owned by it in the Special Development Rights Area on the same basis as each other Owner;

(b) The Special Development Rights Holder shall not be required to pay any fee or charge to the Community Association for the exercise of Special Development Rights granted to it over and above any assessments payable by the Special Development Rights Holder.

ARTICLE FIFTEEN  
Approval of Litigation

15.01 IN GENERAL: The Association shall not initiate or voluntarily participate in litigation, arbitration, claim to regulatory authorities, or any other binding legal proceeding with respect to any matter affecting or arising from the Premises ("Litigation") except upon compliance with the requirements of this Article.

(a) Before the Association incurs expenses or potential liabilities in connection with Litigation including, but not limited to, attorneys' fees, court filing fees, litigation-related expenses and exposure for costs and fees of an adverse party, the Association must hold a meeting of Owners and obtain the approval of Owners holding more than 50% of the total votes entitled to be cast by all Owners, excluding the vote of any Owner who would be a defendant in such proceedings.

(b) If the Litigation arises from an alleged "Defect" (as defined in Section 16.01 below) the Association shall provide all Owners with at least the following information about the proposed Litigation not later than the time the vote of Owners is taken:

(i) a reasonably detailed description of the alleged Defect;

(ii) an accurate description of any attempts to correct the alleged Defect by the person alleged to be responsible for it, and the opportunities provided to that person to correct the alleged Defect;

(iii) a certification from an architect or engineer licensed in the State of Illinois that the alleged Defect exists, along with a description of the scope of work necessary to cure the alleged Defect and a resume of the architect or engineer;

(iv) a good faith estimate of the cost to cure the alleged Defect;

(v) the name and professional background of any attorney retained (or proposed to be retained) by the Association to pursue the claim arising from the alleged Defect, and a description of the relationship between the attorney and member(s) of the Board or the Association's management company (if any);

(vi) a description of the fee arrangement between the attorney and the Association;

(vii) a good faith estimate of the attorneys' fees, expenses and costs, including, but not limited to, fees and costs associated with any experts to be retained in connection with the Litigation, necessary to pursue the claim;

(viii) a good faith estimate of the time necessary to conclude the action (including possible appeals);

(ix) a good faith estimate of the fees and costs the Association may be required to pay to the other party in the event that the Association's claim is unsuccessful; and

(x) an affirmative statement from a majority of the members of Board that the proposed action is in the best interests of the Association and the Owners and the basis for that conclusion.

(c) The fees and costs of any Litigation shall be paid by the Association only with monies that are collected for that purpose by Common Assessment. The Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations to pay for the fees and costs of any Litigation.

(d) Each Owner shall notify prospective purchasers of any Litigation initiated by the Board.

(e) In the event that Litigation arising from an alleged Defect is successfully pursued, any recovery shall be applied (after payment of applicable attorneys' fees and other litigation-related costs and expenses) to curing the alleged Defect or repaying the Association expenses previously incurred in curing the alleged Defect. Any excess funds remaining after curing the alleged Defect shall be retained in to the Association's reserve funds.

#### 15.02 EXEMPT PROCEEDINGS:

(a) The requirements set forth in Section 15.01(a) above shall not apply to any proceedings initiated by the Association to (i) collect unpaid Assessments; or (ii) enforce a contract entered into by the Association with vendors providing services or materials to the Association.

(b) Litigation shall not be construed to mean litigation, arbitration, or other proceedings in which the Association is participating by reason of having been named a defendant, and the requirements set forth in Section 15.01(a) above shall not apply to such proceedings.

15.03 INCURRING EXPENSES: Nothing in this Section shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (a) enforce the Declaration and related documents; (b) comply with the statutes or regulations related to the operation of the Association; (c) amend the Declaration and related documents, in accordance with their terms; (d) grant easements or convey Common Area as provided in the Declaration; or (e) perform any of the obligations of the Association as provided in the Declaration.

ARTICLE SIXTEEN  
RIGHT TO CURE ALLEGED DEFECT

16.01 IN GENERAL: If the Association, the Board or any Owner or other person ("Claimant") claims, contends, or alleges that a "Defect" exists in any improvements within the Premises including, but not limited to, the residential structures constructed on the Lots, the person that constructed the improvement or is alleged to be responsible for the alleged Defect shall have the right to inspect, repair and/or replace the alleged Defect as set forth herein.

16.02 DEFECT DEFINED: As used in this Declaration, Defect shall mean failure to construct or install improvements in accordance with (a) approved plans and specifications, (b) applicable governmental requirements; (c) contractual obligations; (d) applicable covenants; (e) standards of good practice in the applicable industry, using acceptable materials or procedures; or (f) other applicable legal or contractual obligations.

16.03 NOTICE OF ALLEGED DEFECT: A Claimant shall give written notice of any alleged Defect ("Notice of Alleged Defect") to the person or persons believed by the Claimant to be responsible for the alleged Defect within 15 days after discovering the alleged Defect. The Notice of Alleged Defect shall include a reasonably detailed description of the alleged Defect and any action the Claimant believes to be necessary to cure the alleged Defect.

16.04 RIGHT TO ENTER, INSPECT, REPAIR AND/OR REPLACE: Within a reasonable time after the receipt of a Notice of Alleged Defect, the person who received the Notice of Alleged Defect shall have the right, upon reasonable notice to the Claimant and during normal business hours, to enter the affected portion of the Premises for the purposes of inspecting and/or conducting testing and, if the person so chooses in its sole discretion, repairing and/or replacing the alleged Defect. Any agreement made in writing for repair, replacement or other curative action shall be enforceable against both parties to the agreement without requiring either party to again go through the notice and other procedures provided for in this Article Sixteen or to go through the negotiation and mediation procedures set forth in Sections 17.02 and 17.03 below.

16.05 SCOPE OF WORK: INDEMNITY: In conducting such an inspection, testing, repair and/or replacement, the person receiving the Notice of Alleged Defect shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Any person entering the property of a Claimant, or performing testing, repair and/or replacement pursuant to this Article Fourteen, shall defend, indemnify and hold the Claimant harmless for, from and against all claims, demands, costs, losses, and liabilities of every kind and nature arising from exercise of the entry and curative rights provided for in this Section.

16.06 NO ADDITIONAL OBLIGATIONS: IRREVOCABILITY AND WAIVER OF RIGHT: Nothing set forth in this Article Fourteen shall be construed to impose any obligation on any person to inspect, test, repair, or replace any item or alleged Defect for which the person is not otherwise obligated under applicable law or other binding legal obligation. The right to enter, inspect, test, repair and/or replace an alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to any person except by a written document executed by that person.

ARTICLE SEVENTEEN  
Alternative Dispute Resolution

17.01 IN GENERAL: Any dispute, controversy, disagreement or claim of any kind or nature arising in any way from the Premises, including, but not limited to, the physical condition, use, appearance, or operation of the Premises or any portion of it, or agreements or other legally binding instruments or obligations pertaining to the Premises or any portion of it (each, a "Dispute") shall be processed progressively by negotiation, mediation and arbitration in accordance with this Article Fifteen, unless specifically exempted, if the Dispute is between or among (i) the Declarant or any builder (or the officers, directors, employees, brokers, agents, consultants, contractors, or subcontractors of either of them) and any Owner or the Association; or (ii) the Association and any Owner. This Section applies to any such Dispute regardless of whether it involves theories based upon contract, tort, statute or other legal theory. No person bound by this Article Fifteen may commence legal proceedings of any kind including, but not limited to judicial and regulatory complaints, in lieu of complying with the procedures and requirements set forth herein. The procedures shall not apply to Disputes relating to the payment of any type of Assessment or to claims by any of the foregoing persons against third parties not listed above (unless the third party has agreed to comply with the procedures set forth in this Article Fifteen).

17.02 NEGOTIATION: Any person wishing to pursue resolution of, or a remedy for, a Dispute (the "Complainant"), must give written notice of the Dispute to the person or persons believed to be responsible for the circumstances causing the Dispute, or believed to be responsible for remedying those circumstances (in either case, the "Respondent"). The notice must set forth in reasonable detail the circumstances alleged to give rise to the Dispute and the remedy or other action sought by the Complainant. The Complainant must thereafter follow the procedures set forth in this Section.

(a) Opportunity to Meet. Following delivery of such a notice, the Respondent shall be afforded a reasonable opportunity to meet with or otherwise communicate with the Complainant for a discussion of the circumstances giving rise to the Dispute and possible resolution of the Dispute and an examination of any physical conditions or written instruments giving rise to the Dispute.

(b) Deadline for Resolution. If the Dispute is not resolved to the satisfaction of the Complainant and the Respondent by negotiation within 30 days following delivery of the original notice by the Complainant and the Complainant wishes to pursue the Dispute further, the Complainant shall give notice to the Respondent that mediation pursuant to Section 17.03 below is required.

(c) Defect Disputes. If the Dispute involves an alleged Defect and the procedures set forth in Article Sixteen above have been followed, this Section 17.02 shall be deemed satisfied and Section 17.03 below shall become applicable.

(d) Enforcement of Agreements. Any written agreement by the Respondent and the Complainant entered into for the purposes of resolving the Dispute shall be enforceable against either party in accordance with the provisions of Section 17.05 below.

17.03 MEDIATION: The Complainant shall initiate mediation by submitting the Dispute to mediation by the American Arbitration Association (or any successor thereto or any other independent entity providing similar services mutually accepted by the parties) pursuant to the commercial mediation procedures then in effect, as modified by this Section 17.03 (unless the parties otherwise agree).

(a) Expenses of Mediation. If a dispute is not resolved pursuant to Section 17.02, the expenses of witnesses for either side shall be paid by the party producing the witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless the parties to the Dispute otherwise agree. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with the mediation.

(b) Enforcement of Agreements. Any written agreement by the Respondent and the Complainant entered into through mediation for the purposes of resolving the Dispute shall be enforceable against either party in accordance with Section 17.05 below.

(c) Termination of Mediation. If after all parties to the Dispute have participated in mediation in good faith, the Mediator, in his or her sole discretion, determines that the parties will not be able to resolve the Dispute through mediation, the mediator shall so state, in writing, and shall provide a copy of the statement to that effect to each of the parties and, if applicable, to their attorneys at their current or last known business address.

17.04 FINAL AND BINDING ARBITRATION: If the parties cannot resolve their Dispute pursuant to the procedures described in Section 17.02 and Section 17.03 above, the Complainant shall have 30 days following termination of mediation proceedings (as determined by the mediator in writing) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 17.04. If the Complainant does not submit the Dispute to arbitration within 30 days after termination of mediation proceedings, the Complainant shall be deemed to have waived any claims related to the Dispute, and all other parties to the Dispute shall be released and discharged from any and all liability to the Complainant on account of the Dispute; provided, nothing herein shall release or discharge any party from any liability to persons who are not a party to the proceedings. An arbitration pursuant to this Section 17.04 shall not be combined with any other arbitration without the consent of all parties to this arbitration.

(a) Necessary Parties. The parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No person shall be required to participate in the arbitration proceeding if (i) all parties against whom the person would have necessary or permissive cross-claims or counterclaims (a "Necessary Party") are not or cannot be joined in the arbitration proceedings, or (ii) the enforcement of this

Section 17.04 would materially impair insurance coverage for the person that would have otherwise provided the person protection with respect to the Dispute.

(b) Opt Out. If any party to arbitration determines in good faith that it cannot join a Necessary Party in the arbitration or that its insurance coverage applicable to the Dispute would be materially impaired, the party may elect not to participate in the arbitration and allow any claims against it to be determined by other legal proceedings. If a party makes such an election, it must give written notice of its election to all other parties in the arbitration. Within 10 days following receipt of such a notice, any other party to the arbitration that would (or reasonably might) be adversely affected by the absence of the party that elected not to participate may likewise elect not to participate in the arbitration by giving written notice to all other remaining parties. If any party wishes to contest whether a party electing not to participate in the arbitration is entitled to make that election, it shall commence a legal action seeking a judicial determination of the validity of the election and arbitration proceedings will be stayed until that issue is finally determined judicially. Any such judicial proceeding to determine the validity of an election not to participate in arbitration shall deal only with that issue and shall not be used for a determination of the issues being decided in the arbitration.

(c) Place. The arbitration proceedings shall be held in Oswego, Illinois unless otherwise agreed by the parties and the arbitrator.

(d) Arbitrator. A single arbitrator shall be selected. The arbitrator shall not have served as mediator in the Dispute. The parties to the Dispute shall select the arbitrator within 30 days after the Dispute is submitted to final and binding arbitration pursuant to Section 17.04 above. If the arbitrator resigns or becomes unwilling or unable to continue to serve in the subject Dispute, a replacement shall be selected in accordance with this Section (d).

(e) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

(f) Final Award. THE DECISION AND AWARD WILL BE MADE BY THE ARBITRATOR WITHOUT A COURT TRIAL AND WITHOUT A JURY. Each party to the arbitration WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A JURY OR BY A COURT and agrees to accept the award of the arbitrator as final. The arbitrator shall decide all issues in the Dispute by strictly applying Illinois law, and this Section 17.04. Subject to the limitations imposed in this Section 17.04, the arbitrator shall have the authority to try all issues, whether of fact or law. The arbitrator shall render a final decision in writing no later than 60 days following the conclusion of the arbitration proceedings, or such longer period as the parties to the Dispute mutually agree in writing. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, 710 I.L.C.S. 5/1, et seq.

(g) Limitation on Remedies/Prohibition on the Award of Punitive and Consequential Damages. Notwithstanding any contrary provisions of the commercial arbitration rules or any other provision of this Section 17.04, the arbitrator in any proceeding shall not have

the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies, including, but not limited to, the power to award compensatory damages.

(h) Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by the party. Each party to the Dispute shall share equally all charges of the arbitrator unless otherwise agreed to by the parties.

17.05 ENFORCEMENT OF RESOLUTION: If the parties to a Dispute resolve the Dispute through negotiation or mediation in accordance with Sections 17.02 or 17.03 above, and any party thereafter fails to abide by the terms of the agreed resolution, or if an arbitration award is made in accordance with Section 17.04 above and any party to the Dispute thereafter fails to comply with award, then the other party to the Dispute may file suit to enforce the agreement or to confirm and enforce the award without the need to again comply with the procedures set forth in this Article Seventeen. In that event, the party taking action to enforce the terms of the agreement or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all expenses reasonably incurred to enforce the agreed or awarded terms including, but not limited to, attorneys' fees, witness fees, costs and all litigation-related expenses.

## ARTICLE EIGHTEEN

### Miscellaneous

18.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if (i) mailed, postage prepared, to his or its last known address as it appears on the records of the Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or e-mail address as either appears on the records of the Association at the time of such transmittal, or (iii) when personally delivered to his or its Lot. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

18.02 CAPTIONS: The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

18.03 SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration which shall, and all other provisions, remain in full force and effect.

18.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then

such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of George H. W. Bush, former President of the United States at the time this Declaration is Recorded.

18.05 TITLE HOLDING LAND TRUST: In the event title to any Lot 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 beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. 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 Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.

18.06 WAIVER OF IMPLIED WARRANTY OF HABITABILITY: Illinois courts have held that every agreement for the construction of a new home in Illinois carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. The courts have also held that this "Implied Warranty of Habitability" does not have to be in writing to be a part of the agreement and that it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defect in workmanship which may not easily be seen by the purchaser. However, the courts have also held that a seller-builder and purchaser may agree in writing that the Implied Warranty of Habitability is not included as a part of their particular agreement. Each purchaser of a Home from Declarant agreed in the purchase contract that the Declarant has excluded and disclaimed the Implied Warranty of Habitability and all other implied warranties, whether created judicially, statutorily or by common law, including the implied warranty of fitness for a particular purpose. Such exclusion and disclaimer shall apply to and bind any subsequent Owner of a Home and, accordingly, no Owner of a Home shall be able to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

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Dated: 10/11, 2006

**DECLARANT:**

HOMEWERKS-LEMONT, LLC, an Illinois limited liability company

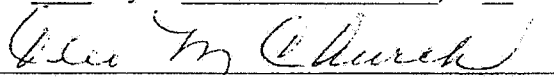
By: 

Its:  **MANAGER**

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that Angelo Palumbo appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of the HomeWerks-Lemont, LLC for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 11<sup>th</sup> day of October, 2006.

  
Notary Public



# CONSENT OF MORTGAGEE

Midwest Bank and Trust Company, as holder of a mortgage dated September 28, 2005 and recorded in the office of the Recorder of Deeds of Cook County, Illinois, on October 11, 2005, as Document No. 0528404041, with respect to the Parcel, hereby consents to the recording of this Community Declaration to which this Consent is attached and agrees that its mortgage shall be subject to the terms of this Community Declaration.

Dated: Oct 11, 2006

Midwest Bank & Trust  
By: [Signature]  
Its: Executive Vice President

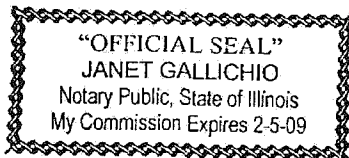
ATTEST:

By: [Signature]  
Its: VICE PRESIDENT

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

The undersigned, a Notary Public in and for said County and State, do hereby certify that MARY M. HENTHORN and CAROLYN A. OWEN, the EXECUTIVE VP and VICE PRESIDENT respectively, of Midwest Bank and Trust Company (the "Bank"), and, as such EXECUTIVE VP and VICE PRESIDENT appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 11th day of OCTOBER, 2006.



[Signature]  
Notary Public



EXHIBIT A TO  
DECLARATION FOR  
THE GLENS OF CONNEMARA

The Development Area

PARCEL 1: LOTS 1 THROUGH 140, BOTH INCLUSIVE, AND OUTLOTS A, B, C, D, E AND F IN THE GLENS OF CONNEMARA, BEING A SUBDIVISION OF PART OF THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

PARCEL 2: EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF THAT PART OF PARCEL 1 NORTH AND ADJOINING THERETO, AS CREATED BY GRANT OF EASEMENT BY THE COMMONWEALTH EDISON COMPANY RECORDED NOVEMBER 24, 2003 AS DOCUMENT 0332829279, OVER THAT PART OF THE LAND DEPICTED ON EXHIBIT B ATTACHED THERETO.

PARCEL 3: EASEMENT FOR INGRESS AND EGRESS FOR THE BENEFIT OF THAT PART OF PARCEL 1 NORTH AND ADJOINING THERETO, AS CREATED BY GRANT OF EASEMENT BY THE COMMONWEALTH EDISON COMPANY RECORDED NOVEMBER 24, 2003 AS DOCUMENT 0332829280 OVER THAT PART OF THE LAND DEPICTED ON EXHIBIT B ATTACHED THERETO.

PARCEL 4: EASEMENT FOR THE BENEFIT OF PART OF PARCEL 1 AS CREATED BY STORM SEWER EASEMENT RECORDED NOVEMBER 24, 2003 AS DOCUMENT 0332829281 FROM COMMONWEALTH EDISON COMPANY TO HOMEWERKS-LEMONT, LLC FOR THE CONSTRUCTION AND MAINTENANCE OF A STORM SEWER OVER THAT PART OF THE LAND DEPICTED ON EXHIBIT B ATTACHED THERETO.

PARCEL 5: A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT DATED AUGUST 10, 2004 AND RECORDED DECEMBER 22, 2004 AS DOCUMENT 0435733211 FROM CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE TO CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 26, 1963 AND KNOWN AS TRUST NUMBER 45553 TO HOMEWERKS-LEMONT, LLC FOR THE USE OF A DETENTION AREA OVER THE FOLLOWING DESCRIBED LAND:  
THE NORTH 500.00 FEET OF THE EAST 500.00 FEET OF THE WEST 3/4 OF THE SOUTH 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

EXHIBIT B TO  
DECLARATION FOR  
THE GLENS OF CONNEMARA

The Premises

- I. Lots. Each of the following described lots shall be a "Lot" hereunder:

Lots 1 through 140, both inclusive, in The Glens of Connemara, being a subdivision of part of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of Section 35, Township 37 North, Range 11 East of the Third Principal Meridian in Cook County, Illinois.

- II. Community Area:

Outlots E and F in The Glens of Connemara, being a subdivision of part of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of Section 35, Township 37 North, Range 11 East of the Third Principal Meridian in Cook County, Illinois.

PINs: 22-35-200-013-0000

ADDRESSES: Various addresses on Waterford Drive, Dunmoor Drive, Ballycastle Court, Lismore Lane, Tullamore Lane, Kinsale Court, all in Lemont, , Illinois.