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TO:

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08/22/05

## DECLARATION FOR THE GREYWALL CLUB DETACHED HOMES

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## DECLARATION FOR THE GREYWALL CLUB DETACHED HOMES

This Declaration is made by Lennar Communities of Chicago L.L.C., an Illinois limited liability company ("Declarant").

### R E C I T A L S

The Development Area is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called "Greywall Club Detached Homes" (the "Development"). The Development shall include dwelling units and certain Common Areas

Upon the Recording hereof, the Declarant shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises and shall designate portions of the Premises as either Lots or Common Area. 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 Thirteen. Thus, as Supplemental Declarations are Recorded, the Premises will expand to include more and more portions of the Development Area. As portions of the Development Area are added to the Premises and made subject to this Declaration, such portions shall also be made subject to that certain Community Declaration for The Greywall Club which shall be administered by the Community Association (as defined therein). Each Owner of a Lot hereunder shall be a member of both the Association and the Community Association and shall be responsible for the payment of assessments to each Association. It is not intended that the Community Association shall be a "master association" as defined in Section 605/18.5 of the Act or 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)). 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 Common Area. The Declarant has formed the Association under the Illinois General Not-For-Profit Corporation Act. The Association shall be responsible for administering and maintaining the Common Area and shall set budgets and fix assessments to pay the expenses incurred in connection therewith. Each Owner of a Lot and each Owner of an Unbuilt Lot shall be a member of the Association and shall be responsible for paying assessments with respect to each Lot and/or Unbuilt 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 and grant certain rights set forth in this Declaration, which rights shall include, without limitation, the right of the Declarant, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Nine, and the right for itself and each Designated Builder and each



Special Development Rights Holder to come upon the Premises in connection with efforts to sell portions of the Premises and other rights reserved in Article Nine.

Because a number of different individuals and/or entities may be constructing homes on the Premises, in order to insure that the improvements constructed on the Development will be compatible in design, quality and appearance, the Declarant shall retain the right to approve any and all proposed construction and landscaping on the Premises or any modifications thereto and shall retain the power to adopt rules and regulations concerning the maintenance of the Premises (both improved and unimproved), all more fully provided in Section 9.07.

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 Greywall Club Detached Homes Homeowners Association, an Illinois not-for-profit corporation.

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 Common 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 COMMON AREA: Those portions of the Premises which are legally described in Part II of Exhibit B hereto and designated as "Common Area", as Exhibit B may be supplemented or amended from time to time.

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

1.07 COMMON EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping and other improvements located on the Common Area; the cost of insurance for the Common Area; 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 Common Area; and any other expenses lawfully incurred by the Association for the common

Special Development Rights Holder to come upon the Premises in connection with efforts to sell portions of the Premises and other rights reserved in Article Nine.

Because a number of different individuals and/or entities may be constructing homes on the Premises, in order to insure that the improvements constructed on the Development will be compatible in design, quality and appearance, the Declarant shall retain the right to approve any and all proposed construction and landscaping on the Premises or any modifications thereto and shall retain the power to adopt rules and regulations concerning the maintenance of the Premises (both improved and unimproved), all more fully provided in Section 9.07.

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

1.07 COMMON EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping and other improvements located on the Common Area; the cost of insurance for the Common Area; 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 Common Area; and any other expenses lawfully incurred by the Association for the common

benefit of all of the Owners. Notwithstanding the foregoing, Common Expenses shall not include any payments made out of Capital Reserves.

1.08 COUNTY: Kendall 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: Lennar Communities of Chicago L.L.C., an Illinois limited liability company, its successors and assigns.

1.10 DECLARANT'S DEVELOPMENT PLAN: Declarant's current plan for the Development. Declarant's Development Plan shall be maintained by the Declarant at its principal place of business and may be changed at any time or from time to time without notice.

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

1.10 DESIGNATED BUILDER: Any legal entity which is designated, from time to time, by the Declarant as a "Designated Builder" in a Special Amendment as permitted under Section 10.01.

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

1.13 HOME: That portion of a Lot which is improved with a detached home.

1.14 LOT: Each subdivided lot which is legally described and designated in Exhibit B hereto as a "Lot", together with all improvements thereon and thereto

1.15 MUNICIPALITY: The City of Joliet, 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, an Unbuilt Lot, Platted Area or Unplatted Area, as the context requires.

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

1.18 PLATTED AREA: Those portions of the Premises which from time to time are subject to a Recorded Subdivision Plat, with all improvements thereon and rights appurtenant thereto.

1.19 PREMISES: The real estate which is legally described in Exhibit B hereto, as Exhibit B may be supplemented or amended from time to time.

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. Any one or more of the rights which may be granted by Declarant to a Special Development Rights Holder with respect to a Special Development Rights Area, as more fully provided in Article Twelve hereof.

1.23 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.

1.24 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.

1.25 SUBDIVISION PLAT. A plat of subdivision which subdivides a portion of the Premises into lots and/or outlots.

1.26 TURNOVER DATE: The date on which the right and power of the Declarant to designate the members of the Board is terminated under Section 9.05.

1.27 UNBUILT LOT: A portion of the Premises which is intended to be improved with a detached residential home but with respect to which a temporary, conditional or final certificate of occupancy has not been issued by the Municipality. For purposes hereof, each portion of the Premises which, pursuant to Declarant's Development Plan, may be improved with detached residential homes with respect to which a temporary, conditional or final certificates of occupancy have not yet been issued, shall be deemed to include that number of Unbuilt Lots which is equal to the number of detached residential lots which are planned to be constructed thereon pursuant to the Declarant's Development Plan.

1.28 UNPLATTED AREA: Those portions of the Premises which from time to time have not been made subject to a Recorded Subdivision Plat.

1.29 VOTING MEMBER: An 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, expressly intends to and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. Declarant reserves the right and power to add 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 Owner of not less than three-fourths (3/4) of the Lots and Unbuilt Lots.

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

2.05 ACCESS EASEMENT: Each Owner of a Lot or an Unbuilt Lot shall have a non-exclusive perpetual easement for ingress to and egress from his Lot or Unbuilt Lot to public streets and roads over and across the driveways and walkways located on the Common Areas, which easement shall run with the land, be appurtenant to and pass with title to every Lot or Unbuilt Lot. The Municipality 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 Common 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 and agents, shall have the right of ingress to, egress from, and parking on the Common Area, and the right to store equipment on the Common Area for the purpose of furnishing any maintenance, repairs or replacements of the Common Area as required or permitted hereunder.

2.06 RIGHT OF ENJOYMENT: Each Owner of a Lot shall have the non-exclusive right and easement to use and enjoy the Common Area and the exclusive right to use 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 any portion of the Premises 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 Common Area to Residents. An Owner shall delegate such rights to tenants and contract purchasers of the Owner's Lot who are Residents.

2.08 UTILITY EASEMENTS: The Municipality 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 those portions of the Common Area which are not improved with structures for the purpose of providing utility services to the Premises or any other portion of the Development Area; provided, that any of such parties which exercise the rights granted hereunder shall, to the extent practicable, repair any damage caused to the Premises in the exercise of such rights, including, without limitation, damage to landscaping, and restore the Premises to the condition which it was in prior to the exercise of such rights.

2.09 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 Common 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 Common Area shall be used to pay the Common Expenses. Also, the Association shall have the right and power to dedicate any part or all of the roads or parking areas located on the Common Area to the Municipality, but only with the Municipality's approval. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Lot or an Unbuilt Lot, 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.

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

2.11 NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Sections 2.08 and 2.09 above, nothing contained in this Declaration shall be

construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

2.12 OWNERSHIP OF COMMON AREA: The Common Area shall be conveyed to the Association free of mortgages no later than the Turnover Date; provided, however, Common Area which is made subject to this Declaration after the Turnover Date shall be conveyed to the Association free of mortgages no later than ninety (90) days after such Common Area is made subject to this Declaration.

2.13 REAL ESTATE TAXES FOR COMMON AREA: If a tax bill is issued with respect to Common 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 Common Area is made subject to this Declaration, and the Association shall be responsible for the balance of the tax bill.

### ARTICLE THREE Maintenance/Alterations

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

3.02 MAINTENANCE BY ASSOCIATION: The following maintenance, repairs and replacements shall be furnished by the Association as a Common Expense:

(i) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Common Area;

(ii) maintenance, repair and replacement of all improvements from time to time located on the Common Area;

(iii) maintenance of portions of the Common Area, if any, which are designated as "wetlands" by any other governmental authority which has jurisdiction over maintenance of wetlands, which maintenance shall follow guidelines, if any, from time to time issued by any such governmental authority.

The Association and the Municipality shall each have a non-exclusive, perpetual easement to come onto the Common Area for the purpose of furnishing maintenance, repairs or replacements to the Common Area which is required, provided for or permitted hereunder.

3.03 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Common Area may not be separately metered and billed to the Association. If the cost for any such utility is metered and charged to individual Lots 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 is being charged disproportionately for costs allocable to the Common 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 Common Area, and the amount thereof shall be Common Expenses hereunder.

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

3.04 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 Common Area and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Common 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.

3.05 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO LOTS: Without limiting the rights and powers provided for in Section 9.07, no additions, alterations or improvements, including, without limitation, (i) changes in the exterior color of a Home, (ii) construction of awnings, antenna or satellite dish, (iii) changes or additions to patio or deck, (iv) installation of a fence, mailbox, in-ground swimming pool, outbuilding, gazebo or shed, or (v) other similar improvements, shall be made to any Lot or any part of the Home which is visible from outside the Home by an Owner without the prior written consent of the Board, and, until the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant, and compliance with applicable ordinances of the Municipality. Notwithstanding the foregoing, no above ground swimming pool shall be permitted to be installed on any portion of the Premises. If an addition, alteration or improvement which requires the consent of the Board and/or Declarant hereunder is made to a Lot by an Owner without the prior written consent of the Board or Declarant, or both, as applicable, then (i) the Board may, in its discretion, take either of the following actions; and (ii) until such time as the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant may, in its discretion take either of the following actions:

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

(b) If the Owner refuses or fails to properly perform the work required under (a), may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board or the Declarant, as applicable; or

(c) Ratify the action taken by the Owner, and the Board may (but shall not be

required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

3.06 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMON AREA: Subject to the provisions of Article Nine, no alterations, additions or improvements shall be made to the Common Area without the prior approval of the Board and, if required under applicable Municipality ordinances, the approval of the Municipality. The Association may cause alterations, additions or improvements to be made to the Common 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 six (6) months assessments then in effect under the then current budget shall be approved in advance at a special meeting of the Owners.

#### ARTICLE FOUR Insurance/Condemnation

##### 4.01 COMMON AREA INSURANCE:

(a) The Association shall have the authority to and shall obtain fire and all risk coverage insurance covering the improvements, if any, to the Common Area and other improvements required to be 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 (i) 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, each Designated Builder, 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 Common Area, and (ii) Directors and officers liability insurance in such amounts as the Board shall deem desirable (but not less than \$1,000,000 covering all claims arising out of a single occurrence). In addition, 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 Common Expenses.

4.02 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Common Area owned by the Association, the proceeds awarded in such condemnation shall be paid to the Association and such proceeds, together with any Capital Reserve being held for such part of the Common Area, shall, in the discretion of the Board, either (i) be applied to pay the Common Expenses, (ii) be distributed to the Owners and their respective First 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 Common Area under this Declaration. Any acquisition by the Association pursuant to this Section of real estate which shall become Common 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 Common Area. The Association shall be responsible for the maintenance, repair and replacement of the Common Area.

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

5.03 VOTING MEMBERS: Subject to the provisions of Section 5.05, 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 and each Unbuilt 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 or an Unbuilt 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 or the Unbuilt Lot as the Voting Member for such Lot.

5.04 BOARD: Subject to the rights retained by the Declarant under Section 9.05, 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: Prior to the Turnover Date, all of the voting rights at each meeting of the Association shall be vested exclusively in the Declarant and the Owners (other

than Declarant) shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member shall have one vote for each Lot and each Unbuilt Lot which the Voting Member represents. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon the affirmative vote of a majority of the votes held by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

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 and his heirs, executors or administrators, against all contractual and other liabilities to the Association, the Owners 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: An independent managing agent 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 managing agent. 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 ninety (90) days written notice.

5.08 DISSOLUTION: Although it is currently anticipated that the Association will maintain the Common Area, it is possible that a governmental agency may accept responsibility for such maintenance. If that occurs and the Association has no maintenance responsibilities, then at the option of the Declarant (which may be exercised at any time prior to the Turnover Date) or at the option of the members of the Association (which may be exercised by action of the members after the Turnover Date), the Association shall be dissolved and liquidated and thereafter the provisions of this Declaration which deal with the powers and duties of the

Association shall be null and void and of no further force and effect. Any distribution of assets of the Association shall be made to the Owners of Lots and Unbuilt Lots in equal amounts for each Lot and Unbuilt Lot owned.

5.09 ATTENDANCE AT BOARD MEETINGS: 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 provided for members of condominium Associations under the Illinois Condominium Property Act.

## ARTICLE SIX Assessments

6.01 PURPOSE OF ASSESSMENTS / EXEMPTION FROM ASSESSMENTS: The assessments levied by the Association shall be limited to the purposes of administering the affairs of the Association, paying the Common Expenses and accumulating reserves for any such expenses. For purposes hereof, except as provided in (a) and (b) below, all Lots and Unbuilt Lots shall be subject to assessment hereunder:

(a) a Lot or Unbuilt Lot owned by the Declarant or a Designated Builder shall not be subject to assessment hereunder; and

(b) a Lot owned by or leased to the Declarant or a Designated Builder shall not be subject to assessment hereunder.

6.02 ASSESSMENT PROCEDURE: 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 Common Expenses;

(b) The estimated amount, if any, to maintain adequate reserves for Common Expenses including, without limitation, amounts to maintain the Capital Reserve;

(c) The estimated net available cash receipts from sources other than assessments, plus estimated excess funds, if any, from the current year's assessments;

(d) The amount of the "Common Assessment" payable by the Owners, which is hereby defined as the amount determined in (1) above, plus the amount determined in (2) above, minus the amount determined in (3) above;

(e) That portion of the Common Assessment which shall be payable with respect to the ensuing calendar year by the Owner of each Lot and each Unbuilt Lot which is subject to assessment hereunder, which shall be equal to the Common Assessment divided by the total number of Lots and Unbuilt Lots which are subject to assessment hereunder, so that each Owner shall pay equal Common Assessments for each Lot and

each Unbuilt Lot owned. The Common Assessment shall be paid quarterly or in such 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 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 Development Plan and (ii) all proposed Lots have been built, sold and are occupied. The Declarant's 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 of a Lot or Unbuilt Lot (other than the Declarant and each Designated Builder) shall pay, as the Owner's quarterly share of the Common Assessment with respect to each Lot or Unbuilt Lot owned by such Owner, an amount equal to the budgeted Common Expenses divided by the number of proposed Lots on the then current Declarant's Development Plan, so that each Owner (other than Declarant and each Designated Builder) will pay, with respect to each Lot or Unbuilt Lot owned, a Common 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 Declarant's Development Plan and all proposed Lots have been built, sold and are occupied. None of the Declarant or any Designated Builder shall be obligated to pay any Common 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 Common Assessments and working capital contributions payable by Owners (other than Declarant and each Designated Builder) under Section 6.07, less the portions thereof which are to be added to Reserves, is less than the Common Expenses actually incurred with respect to such period, then the Declarant and the Designated Builders shall share in the payment of any difference to the Association pursuant to terms agreed upon between the Declarant and the Designated Builders. From time to time prior to the Turnover Date, the Declarant and/or Designated Builders may (but shall not be obligated to) advance to the Association funds to be used by the Association to pay its expenses ("Advanced Funds"). A final accounting and settlement of the amount, if any, owed by Declarant and/or Designated Builders to the Association shall be made as soon as practicable after the Turnover Date. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, are less than the amount owed by the Declarant and/or a Designated Builders to the Association pursuant to this Section, the Declarant and/or the Designated Builders shall pay the difference to the Association. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, exceed the amount owed by the Declarant and/or Designated Builders to the Association pursuant to this Section, then the Association shall pay such excess to the Declarant and/or the Designated Builders.

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

6.04 REVISED ASSESSMENT: If the Common 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 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: The Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Common 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 Common Area or any other property owned or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of Lots and Unbuilt Lots in equal shares for each Lot and Unbuilt Lot which is then subject to assessment thereunder. 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 therefore 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 special reserve accounts to be used solely for making capital expenditures in connection with the Common Area and other property owned or maintained by the Association and periodic projections of the cost of anticipated major repairs or replacements to such property and the purchase of other property to be used by the Association in connection with its duties hereunder (the "Capital Reserve"). The Capital Reserve may be built up by separate or special assessments or out of the Common 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 Common Area shall be held by the Association as agent and trustee for the Owners of Lots and Unbuilt Lots 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 Common Area. 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 Common Assessments, separate assessments or special assessments.

6.07 INITIAL CONTRIBUTION/ADVANCE PAYMENT OF ASSESSMENT: Upon the closing of the first sale of each Lot or each Unbuilt Lot by the Declarant or a Designated Builder to a purchaser for value (other than the Declarant or a Designated Builder), the purchasing Owner (a) shall pay to the Association an amount equal to (i) six (6) months of the annual Common Assessment, plus one hundred dollars (\$100), which amount shall be added to the Capital Reserve, and (b) with respect to an Unbuilt Lot, 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 Unbuilt 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 Unbuilt 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 or Unbuilt 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 or Unbuilt Lot by acceptance of a deed therefore (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 and/or Unbuilt Lots, as applicable. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Lot or Unbuilt Lot against which such Charge is made and also shall be the personal obligation of the Owner of the Lot or Unbuilt 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 nonuse of the Common Area or by abandonment or transfer of his Lot or portion of the Premises which includes Unbuilt Lots.

7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES: The lien for Charges, provided for in Section 7.01, shall be subordinate to the First Mortgagee's mortgage on the Lot or Unbuilt 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 or Unbuilt Lot. Where title to a Lot or Unbuilt Lot is transferred pursuant to a decree of foreclosure of the First Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the First 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 or Unbuilt Lot shall be personally liable for his share of the Charges with respect to which a lien against his Lot or Unbuilt 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 Common 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 SELF-HELP BY BOARD: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach.

7.06 OTHER REMEDIES OF THE BOARD: In addition to or in conjunction with the remedies set forth above, to enforce any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Board may levy a fine or the Board may bring an action at law or in equity by the Association against any person or persons violating or attempting to violate any such provision, either to restrain such violation, require performance thereof, to recover sums due or payable or to recover damages or fines, and against the land to enforce any lien created hereunder; and failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

7.07 COSTS AND EXPENSES: All costs and expenses incurred by the Board in connection with any action, proceedings or self-help in connection with exercise of its rights and remedies under this Article, including, without limitation, court costs, attorneys' fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a lien for all the same, upon his Lot or Unbuilt Lot as provided in Section 7.01.

7.08 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 or Unbuilt Lot to enforce any lien created hereunder.

## ARTICLE EIGHT Restrictions

### 8.01 USE RESTRICTIONS:

(a) Except as provided in Article Nine or in subsections (b) and (c) of this Section, each Home shall be used only as a residence and no industrial business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises.

(b) No Resident shall be precluded with respect to his Home, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

(c) To the extent permitted under applicable laws and ordinances, a Resident may conduct an in-home business in a Home.

### 8.02 OUTBUILDINGS:

(a) No outbuilding, animal house, in-ground swimming pool, Jacuzzi, hot tub, fence, greenhouse, play set or other temporary or permanent structure shall be constructed on any Lot, except as permitted pursuant to Sections 3.05, 8.11 and 9.07.

(b) No above ground swimming pool shall be permitted to be installed on any portion of a Lot.

(c) A Jacuzzi which is permitted to be installed on a Lot shall be built into an approved deck and shall not be visible from the front of the home or from homes located on adjacent Lots.

(d) A playset which is permitted to be installed on a Lot shall be of cedar material and of the quality of what is commonly known as the "Rainbow" brand or better quality.

8.03 SIGNS: Except as otherwise provided in Article Nine 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 Common Area.

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

kept in a Home. Any pet causing or creating a nuisance or unreasonable disturbance to an Owner shall be permanently removed from the Premises upon three (3) days written notice from the Board to the Owner of the Lot containing such pet and the decision of the Board shall be final.

8.05 OBSTRUCTIONS AND REFUSE: All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Homes and streets, shall be regularly removed from the Premises, and shall not be allowed to accumulate thereon. Garbage may not be burned on a Lot. Except as permitted under Article Nine, there shall be no obstruction of the Common Area. No Owner shall store any items or materials in the Common Area without the prior written consent of the Board. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon.

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 which is not visible from the front of the Home) shall not be allowed on the Premises.

8.10 LANDSCAPE MAINTENANCE: Each Owner of a Home shall regularly mow and trim all areas of his Lot covered with grass and/or 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 CONSTRUCTION STANDARDS AND RESTRICTIONS: Without limiting the rights and powers provided for in Sections 3.05 and 9.07, the following construction standards shall apply to Lots:

(a) No structure commonly known as an "above ground swimming pool" shall be constructed on any Lot; provided, that, this restriction shall not apply to a structure

commonly known as a “hot tub” or “jacuzzi” which is built into a deck and is not visible from the front of the home or from homes located on adjacent Lots.

(b) Unless approved by Declarant or other holder of rights under Section 9.07, or if all the rights under Section 9.07 have been terminated, the Board, no temporary or permanent outbuilding, accessory building or other structure, including, without limitation, a greenhouse, play set, fountain, or trailer shall be constructed, shall be installed or maintained on a Lot.

(c) A Lot may be improved with a fence on that portion of the Lot which is between the rear lot line and the back of the home provided that the fence conforms to the following specifications:

(i) Western Red Cedar, board on board (shadow box) fence;

(ii) Unless otherwise specified under applicable ordinances of the Municipality, height shall be five feet (5’);

(iii) 1 x 6 boards, spaces edge-to-edge and back-to-back to comply with percent open and closed per municipal ordinance;

(iv) 4 x 4 posts with wood (cedar) cap, set 42” into ground and 8 feet +/- on center, with concrete footings;

(v) 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; and

(vi) 1 x 4 top cap, centered on boards.

provided, however, that if a garage service door is installed in a Home, then the fence may extend beyond the back of the Home, up to one (1) foot beyond the garage service door, but in no event shall any fence extend beyond the front of the Home.

8.12 WATERING: The Board may adopt rules and regulations governing the watering of grass, shrubs, trees and other foliage on the Common Areas. Without limiting the foregoing, the Board may require the Owner of a particular Lot to be responsible for watering specific portions of the Premises as designated from time to time by the Board.

ARTICLE NINE  
Declarant's Reserved Rights and  
Special Provisions Covering Development Period

9.01 IN GENERAL: In addition to any rights or powers reserved to the Declarant or a Designated Builder under the provisions of this Declaration or the By-Laws, the Declarant and each Designated Builder 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 (a) with respect to the Declarant five (5) years after the Declarant is no longer vested with or controls title to any portion of the Development Area and (b) with respect to each Designated Builder from and after such time as the Designated Builder is no longer vested with or controls title to any portion of the Development Area.

9.02 PROMOTION OF PROJECT: The Declarant and each Designated Builder shall have the right and power, within their 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 or the Designated Builder 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 or the Designated Builder may deem advisable and to use such model homes (including model homes which are sold and leased back to the Declarant or a Designated Builder), 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 the Designated Builder or any of their respective affiliates, without the payment of any fee or charge whatsoever to the Association. Declarant, each Designated Builder and their 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 Common Area, at any and all reasonable times without fee or charge. The Declarant and each Designated Builder 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.

9.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises, the Declarant, each Designated Builder and their respective agents and contractors, shall have the right, at the Declarant's or the Designated Builder'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 Lots, the Common Area which the Declarant or the Designated Builder deem, 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, each Designated Builder and their 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.

9.04 GRANT OF EASEMENTS AND DEDICATIONS: Declarant shall have the right to dedicate portions of the Premises to the County, the Municipality or any other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over the Premises to any governmental authority, public utility or private utility for the installation and maintenance of electrical and telephone conduit and lines, gas,

sewer or water lines, or any other utility services serving any Lot provided, that any easement granted or reserved shall not result in the reduction of the number of homes which may be built on any portion of the Unplatted Area which is not owned by Declarant.

9.05 DECLARANT CONTROL OF ASSOCIATION: Prior to the Turnover Date, 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) five (5) years after 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 either or both of such rights, or (iii) fifteen (15) years from the date of Recording hereof. The date on which the Declarant's rights under this Section 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.

9.06 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.

9.07 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. Without limiting the foregoing, no earthmoving, filling, dredging, grading, excavating, installation of landscaping, alteration of landscaping, construction of a building, home, 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 therefore, which consent may be granted or withheld in Declarant's sole and absolute discretion. 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 or party responsible for maintenance of such portion of the Premises if different from the Owner, and shall be payable to the Declarant upon demand. In the event that the party charged for such work 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 portion of the Premises owned by such party 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 or Unbuilt Lot Recorded prior to the date on which any such amount becomes a lien against a Lot or Unbuilt 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, including, without limitation to a Designated Builder or to the Association ("Assignee"). In such event, Declarant may enter into an agreement ("Transfer Agreement") with the Assignee whereby the Declarant assigns and transfers to the Assignee 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 Assignee; provided, that the execution of a 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 Assignee. From and after the effective date of the Transfer Agreement, the rights and powers of the Declarant under subsections (a) and (b) which are transferred to the Assignee 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 an Assignee 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) five (5) years from such time as the Declarant no longer holds or controls title to any portion of the Development Area.

## ARTICLE TEN Amendment

10.01 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 Fannie Mae, 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, (v) to amend Exhibit A to include additional real estate or remove real estate, or (vi) to amend Exhibit B to add previously unsubdivided portions of the Premises to Exhibit B to reflect the subdivision thereof, or (vii) to designate a Designated Builder hereunder. 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 (i) the Development has been fully developed and improved per Declarant's Development Plan, and (ii) Declarant no longer holds or controls title to any portion of the Development Area.

10.02 AMENDMENT: Subject to Section 10.01 and Article Thirteen, 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 and Unbuilt Lots; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all Mortgagees, and (ii) Article Nine, and any other provisions relating to the rights of Declarant and each Designated Builder may be amended only with the written consent of the Declarant and the Designated Builder, as applicable. 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 or Unbuilt Lot shall no longer have the legal access to a public way from his Lot or Unbuilt Lot. No amendment shall become effective until properly Recorded.

## ARTICLE ELEVEN

### Mortgagees Rights

11.01 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 or Unbuilt 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 the commencement of any condemnation or eminent domain proceedings with respect to any part of the Common Area.

(e) Notice of any default by the Owner of the Lot or Unbuilt 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 thirty (30) days of the date of the default;

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

(g) 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.

11.02 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Common Area or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Common Area, 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 or Unbuilt Lot with respect to any such distribution to or with respect to such Lot or Unbuilt Lot; provided, that, nothing in this Section shall be construed to deny to the Association the right (i) to apply insurance proceeds to repair or replace damaged Common Area or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Four.

## ARTICLE TWELVE

### Special Development Rights

12.01 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.

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

- (a) Each Special Development Rights Holder (other than a Designated Builder) shall be required to pay assessments to the Association for each Lot or Unbuilt Lot from time to time owned by it in the Special Development Rights Area on the same basis as each other Owner (other than Declarant or a Designated Builder);
- (b) The Special Development Rights Holder shall not be required to pay any fee or charge to the Association for the exercise of Special Development Rights granted to it over and above any assessments payable by the Special Development Rights Holder;
- (c) If a Special Development Rights Holder takes title (in its own name or in the name of a land trust or nominee) to Special Development Rights Area which is Unplatted Area, then no portion thereof shall be subdivided unless (i) the Declarant consents to the Recording of the proposed Subdivision Plat, in writing, on the Subdivision Plat and (ii) the Subdivision Plat identifies thereon all portions of the Premises affected thereby which shall be Common Area hereunder. Upon the Recording of a Subdivision Plat with respect to a portion of a Special Development Rights Area as provided above, the portion of the Premises with respect to which the Subdivision Plat is Recorded shall be Platted Area hereunder and the portions thereof which are designated as Common Area shall be Common Area hereunder.

ARTICLE THIRTEEN  
Annexing Additional Property

13.01 IN GENERAL: Declarant reserves the right at any time and from time to time prior to fifteen (15) 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 Premises 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 Common Area shall be referred to as "Added Common Area"; any Lots contained in the Added Premises shall be referred to as "Added Lots"; and any Unbuilt Lots in the Added Premises shall be referred to as "Added Unbuilt Lots". After the expiration of said fifteen (15) year period, Declarant may exercise the rights described herein to annex, add and subject additional portions of the Premises to the provisions of this Declaration, provided that the consent the Owners (by number) of two-thirds (2/3) of all Lots and Unbuilt Lots then subject to this Declaration is first obtained.

13.02 POWER TO AMEND: Declarant hereby reserves 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 Premises to Exhibit B, identify Added Lots and Added Unbuilt Lots 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 Common Area, Added Lots, or Added Unbuilt 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 or Added Unbuilt 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 Lots or Added Unbuilt 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 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, an Unbuilt Lot or its Owner prior to such Recording;

(e) The Declarant and each Designated Builder shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved or granted 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 or Added Unbuilt Lot which is subject to assessment hereunder shall be responsible for the payment of the Common 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 or Added Unbuilt Lot became subject to assessment hereunder.

## ARTICLE FOURTEEN Dispute Resolution

### 14.01 CONSENSUS FOR ACTION BY THE ASSOCIATION:

(a) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the affirmative vote of at least seventy-five percent (75%) of the Voting Members. A Voting Member representing Lots owned by Persons other than the Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds of the total number of Lots represented by the Voting Member. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens) , the By-Laws and reasonable rules and regulations adopted by the Board; (ii) the imposition and collection of Common Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any member commencing any proceeding to which the Declarant and/or a Designated Builder is a Party, including but not limited to an alleged defect of any improvement, the Declarant and/or the Designated Builder, as the case may be, shall have the right to be heard by the members, or the particular member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

14.02 ALTERNATIVE METHOD FOR RESOLVING DISPUTES: The Declarant, each Designated Builder, their respective officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party

covenants and agrees to submit those Claims, grievances or disputes described in Section 14.03 (collectively, "Claims") to the procedures set forth in Section 14.04.

14.03 CLAIMS: Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the provisions of this Declaration, the By-Laws and reasonable rules and regulations adopted by the Board or the rights, obligations and duties of any Bound Party under the provisions of this Declaration, the By-Laws and reasonable rules and regulations adopted by the Board, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 14.04 and, if applicable the dispute resolution provisions of the purchase agreement for the purchase of a Lot ("Purchase Agreement"). In the event of an inconsistency or contradiction between the provisions relating to dispute resolution as set forth in this Declaration and those which are set forth in the Purchase Agreement, the provisions of the Purchase Agreement shall prevail.

Notwithstanding the foregoing, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.04:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article Six;

(b) any suit by the Association, the Declarant or a Designated Builder to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article Three and/or Article Eight;

(c) any suit between or among Owners, which does not include the Declarant, a Designated Builder or the Association as a Party, if such suit asserts a Claim which would constitute a cause of action independent of the provisions of this Declaration, the By-Laws and reasonable rules and regulations adopted by the Board; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.04.

#### 14.04 MANDATORY PROCEDURES:

(a) Notice. As a condition precedent to seeking any action or remedy, a Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including defect or default, if any, in detail and the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the proposed remedy;

(iv) any evidence that depicts the nature and cause of the Claim and the nature and extent of repairs necessary to remedy the Claim, including expert reports, photographs and videotapes; and

(v) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

Notices given to Respondent pursuant to this Section shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the last known address of the Respondent as it appears on the records of the Association on the date of mailing.

(b) Claims Involving the Declarant or a Designated Builder. With respect to any Claim to which the Declarant or a Designated Builder is the Respondent:

(i) Right to Inspect. Claimant agrees to permit the Declarant or the Designated Builder and its agents to perform inspections and tests and to make all repairs and replacements deemed necessary by the Declarant or the Designated Builder to respond to the Claim. The Declarant or the Designated Builder shall have the Cure Period (defined below) to inspect and correct any alleged default. The Declarant or the Designated Builder shall be given a reasonable opportunity to perform all inspections and tests and make all repairs and/or replacements deemed to be necessary by Declarant or the Designated Builder.

(ii) Right to Cure. The Declarant or the Designated Builder shall have the right to repair, replace or pay the Claimant the reasonable cost of repairing or replacing any defective item. Unless otherwise provided by law or agreed by the Parties, the Declarant, the Designated Builder or Association, as the case may be, shall have not less than 35 days nor more than 90 days from receipt of the Notice (the "Cure Period") to cure as provided herein or to otherwise respond to the Claimant in the event that the Declarant determines that no default has occurred and/or default exists. A Claimant shall have no right to bring any action against the Declarant until expiration of the Cure Period. The Cure Period shall be extended by any period of time that Claimant refuses to allow the Declarant or the Designated Builder to perform inspections and/or perform tests as provided in subsection 14.04(b)(i) of this Article. Declarant shall have the right, but not the obligation, to take action during the Cure Period and/or respond to any notice received from Claimant.

(i) the nature of the Claim, including defect or default, if any, in detail and the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the proposed remedy;

(iv) any evidence that depicts the nature and cause of the Claim and the nature and extent of repairs necessary to remedy the Claim, including expert reports, photographs and videotapes; and

(v) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

Notices given to Respondent pursuant to this Section shall be deemed sufficient if personally delivered, delivered by commercial messenger service, or mailed by registered or certified mail, postage prepaid, return receipt requested to the last known address of the Respondent as it appears on the records of the Association on the date of mailing.

(b) Claims Involving the Declarant or a Designated Builder. With respect to any Claim to which the Declarant or a Designated Builder is the Respondent:

(i) Right to Inspect. Claimant agrees to permit the Declarant or the Designated Builder and its agents to perform inspections and tests and to make all repairs and replacements deemed necessary by the Declarant or the Designated Builder to respond to the Claim. The Declarant or the Designated Builder shall have the Cure Period (defined below) to inspect and correct any alleged default. The Declarant or the Designated Builder shall be given a reasonable opportunity to perform all inspections and tests and make all repairs and/or replacements deemed to be necessary by Declarant or the Designated Builder.

(ii) Right to Cure. The Declarant or the Designated Builder shall have the right to repair, replace or pay the Claimant the reasonable cost of repairing or replacing any defective item. Unless otherwise provided by law or agreed by the Parties, the Declarant, the Designated Builder or Association, as the case may be, shall have not less than 35 days nor more than 90 days from receipt of the Notice (the "Cure Period") to cure as provided herein or to otherwise respond to the Claimant in the event that the Declarant determines that no default has occurred and/or default exists. A Claimant shall have no right to bring any action against the Declarant until expiration of the Cure Period. The Cure Period shall be extended by any period of time that Claimant refuses to allow the Declarant or the Designated Builder to perform inspections and/or perform tests as provided in subsection 14.04(b)(i) of this Article. Declarant shall have the right, but not the obligation, to take action during the Cure Period and/or respond to any notice received from Claimant.

(iii) Time. The time periods provided for the inspection and cure by the Declarant or the Designated Builder shall be extended by any period of time that Claimant refuses to allow Declarant or the Designated Builder to make inspections, tests, repairs and/or replacements. Any inspection, test, repair or replacement performed on a business day between 9 a.m. and 5 p.m. shall be deemed to be reasonable hereunder.

(iv) Dispute Resolution. Any dispute (whether contract, warranty, tort, statutory or otherwise), including, but not limited to (a) any and all controversies, disputes or claims arising under, or related to, the Purchase Agreement, the Lot, or any dealings between the Declarant or the Designated Builder and Owner (with the exception of “consumer products” as defined by the Magnuson-Moss Warranty-Federal Trade Commission Act, 15 U.S.C. Section 2301 et seq., and the regulations promulgated thereunder), (b) any controversy, dispute or claim arising by virtue of any representations, promises or warranties alleged to have been made by the Declarant, the Designated Builder or its representative, and (c) any personal injury or property damage alleged to have been sustained by Purchaser on the Property (hereinafter individually and collectively referred to as “disputes” or “Claims”), shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration as provided in Paragraphs 15.04(c) and 15.04(d) below and as provided by the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) or applicable state law relating to arbitration and not by or in a court of law.

(v) Small Claims Court. Notwithstanding the requirement of arbitration, Claimant shall have the option, after mediation to seek relief in a small claims court for disputes or Claims within the scope of the court’s jurisdiction in lieu of proceeding with arbitration.

(vi) Mediation Fees. The Declarant or the Designated Builder shall pay for one (1) day of mediation (mediator fees plus any administrative fees relating to the mediation). Any mediator and associated administrative fees incurred thereafter shall be shared equally by the Parties.

(vii) Arbitration Fees. The fees for any claim in an amount of \$10,000 or less shall be apportioned as provided in applicable AAA rules. Unless provided otherwise by applicable AAA rules, for claims that exceed \$10,000, the filing Party shall pay up to the first \$750 of any initial filing fee to initiate arbitration. Under the following conditions, the Declarant or the Designated Builder agrees to pay up to the next \$2,000 of any initial filing fee: (1) Claimant has participated in mediation prior to initiating the arbitration; (2) the parties have mutually agreed to waive mediation; or (3) the Declarant or the Designated Builder files for arbitration under Paragraph (d)(i) below. The portion of any filing fee not covered above, and any case service fee, management fee or fees of arbitrator(s), shall be shared equally by the Parties.

(viii) The Declarant or the Designated Builder and Claimant agree that notwithstanding anything to the contrary, the rights and obligations set forth in this Article Fourteen shall survive (1) the closing of the sale of the Lot; (2) the termination of

the Purchase Agreement by either party; or (3) the default of the Purchase Agreement by either party. The waiver or invalidity of any portion of this paragraph shall not affect the validity or enforceability of the remaining portions of this paragraph. Declarant or the Designated Builder and Claimant further agree (1) that any dispute involving Declarant's, or the Designated Builder's affiliates, directors, officers, employees and agents shall also be subject to mediation and arbitration as set forth herein, and shall not be pursued in court of law; (2) that the Declarant or the Designated Builder may, at its sole election, include its sub-contractors and suppliers, as well as any warranty company and insurer as parties in the mediation and arbitration; (3) that the mediation and arbitration will be limited to the parties specified herein.

(c) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 90 days after the date of the Notice and the Cure Period has expired (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), either Party shall have 30 days from the date of Termination of Negotiations to submit the Claim to mediation. The mediation shall be filed with and administered by the American Arbitration Association ("AAA") in accordance with the AAA's Supplementary Mediation Procedures for Residential Construction Disputes in effect on the date of the Notice. If there are no Supplementary Mediation Procedures for Residential Construction Disputes currently in effect, then the AAA's Construction Industry Mediation Rules in effect on the date of the Notice shall be utilized. Unless mutually waived in writing by the Parties, submission to mediation is a condition precedent to either Party taking further action with regard to the Claim.

(iii) If a Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, then the Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that the mediation was terminated.

(d) Binding Arbitration.

(i) Upon Termination of Mediation, either Party shall thereafter be entitled to initiate binding arbitration of the Claim under the auspices of AAA in accordance with the AAA's Supplementary Arbitration Procedures for Residential Construction Disputes in effect on the date of the Notice. If there are no Supplementary Arbitration Procedures for Residential Construction Disputes in effect, then the AAA's Construction Industry Arbitration Rules in effect on the date of such Notice shall be utilized. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless the Parties agree otherwise, Claims in excess of \$10,000 but less than \$500,000 shall utilize the Regular Track Procedures of the Construction Industry Arbitration Rules, as modified by the Supplementary Arbitration Procedures for Residential Construction. If the Claim amount exceeds \$250,000 or includes a demand for punitive damages, the Claim shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(ii) At the request of any Party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the Parties.

(e) Costs and Expenses. Except as otherwise provided under subparagraphs 15.04(b) above, each Party shall bear its own costs and expenses, including attorney's fees, for any mediation and arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys fees and expenses incurred in defending such contest. In addition, if a Party fails to abide by the terms of a mediation settlement or arbitration award, the other Party shall be awarded reasonable attorneys fees and expenses incurred in enforcing such settlement or award.

14.05 AMENDMENT OF ARTICLE: Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

## ARTICLE FIFTEEN The Community Association

15.01 IN GENERAL: The Declarant intends to record that certain Community Declaration for The Greywall Club (the "Community Declaration") with respect to all of the Premises as well as other lots in other The Greywall Club subdivisions (which subdivisions were or will be created by plats of subdivision Recorded in Kenall County, Illinois), which shall be designated in the Community Declaration as Dwelling Units or Community Area. The Community Declaration provides for the incorporation of an Illinois not for profit corporation to be known as The Greywall Club Community Association (the "Community Association"). Each

Owner of a Home hereunder shall be a member of the Community Association, along with Owners of the Condominium Units and Duplex Homes (as those terms are defined in the Community Declaration) which are made subject to the Community Declaration. Owners of Dwelling Units under the Community Declaration shall be responsible for paying assessments to the Community Association, as more fully provided in the Community Declaration. The Declarant desires to provide a mechanism whereby the Association may facilitate the collection by the Community Association of assessments payable to it by the Owners of Homes hereunder.

15.02 BILLING AND COLLECTION OF COMMUNITY ASSESSMENTS: At the request of the Community Association, the Association shall invoice the Owners of Homes hereunder for Community Assessments payable by such Owners based on information furnished to the Association by the Community Association. If the Association sends such invoices and receives payment from an Owner, the Association shall remit the amount received to the Community Association. If an Owner pays a portion of the full amount invoiced to the Owner for the Community Assessments and Common Assessments or other amounts owed to the Association, without designating how the payment is to be applied, then the payment shall be applied first to current amounts owed to the Association, then to current amounts owed to the Community Association (which were invoiced by the Association), then to delinquent amounts owed to the Association, then to delinquent amounts owed to the Community Association (which were invoiced by the Association). The Association may charge the Community Association a fee for its services under this Section which fee shall reasonably approximate the additional costs incurred by the Association to furnish such services.

15.03 COLLECTION OF DELINQUENT COMMUNITY ASSESSMENTS: If an Owner is delinquent in payment of Common Assessments hereunder and is also delinquent in payment of Community Assessments under the Community Declaration, then upon the written request of the Community Association to the Association, if the Association brings legal action against the delinquent Owner for unpaid Common Assessments, it shall include a count or counts for the delinquent Community Assessments payable to the Community Association in the name of and on behalf of the Community Association. If such an action is brought by the Association, the cost thereof shall be shared between the Association and the Community Association based on the relative amounts owed to each Association. If the Association recovers any amounts as a result of its efforts, the amount recovered shall first be applied to pay costs of collection (including attorneys fees and court cost) and the balance shall be shared between the Association and the Community Association based on the relative amounts owed to each Association.

## ARTICLE SIXTEEN

### Miscellaneous

16.01 NOTICES: Subject to the provisions of Section 14.04, 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.

16.02 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.

16.03 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.

16.04 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 the President of the United States at the time of the Recording of this Declaration.

16.05 ASSIGNMENT BY DECLARANT: Except as otherwise provided herein, all rights which are specified in this Declaration to be rights of the Declarant or a Designated Builder are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant or a Designated Builder 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 or a Designated Builder hereunder as fully as if named as such party herein. No such successor assignee of the rights of Declarant or a Designated Builder hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

16.06 TITLE HOLDING LAND TRUST: In the event title to any Lot or Unbuilt Lot is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Lot or Unbuilt 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 or Unbuilt 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 or Unbuilt 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 or Unbuilt Lot.

16.07 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 or a Designated Builder has waived, and the Declarant and each Designated Builder agreed in the purchase contract that the Declarant has excluded has 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 have the right to assert a claim against Declarant or any Designated Builder for a breach of the Implied Warranty of Habitability or any other implied warranty.

Dated: August 17, 2005

**DECLARANT:**

LENNAR COMMUNITIES OF CHICAGO L.L.C.,  
an Illinois limited liability company

By: [Signature]  
Its: ER. V. V. V. PRESIDENT

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF DU PAGE        )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that WILLIAM FERENC, personally known to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that    he signed and delivered said instrument as his    own free and voluntary act, and as the free and voluntary act of Lennar Communities of Chicago L.L.C., an Illinois limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 17th day of August, 2005.

*Karen Blake*  
\_\_\_\_\_  
Notary Public





**EXHIBIT A TO  
DECLARATION FOR THE GREY WALL CLUB DETACHED HOMES**

The Development Area

PARCEL ONE:

THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE NORTH 20 RODS OF THE SOUTH 52 RODS OF THE EAST 16 RODS THEREOF, IN THE TOWNSHIP OF NA-AU-SAY, KENDALL COUNTY, ILLINOIS.

PARCEL TWO:

THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 35 (EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 35; THENCE NORTH 89 DEGREES 48 MINUTES 28 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 1314.05 FEET TO THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 35 FOR A POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 32 MINUTES 01 SECOND EAST ALONG THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 1078.14 FEET; THENCE SOUTH 89 DEGREES 27 MINUTES 59 SECONDS WEST AT RIGHT ANGLES TO THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 457.78 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 01 SECOND WEST PARALLEL WITH THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 1080.87 FEET TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 35; THENCE NORTH 89 DEGREES 48 MINUTES 28 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 457.79 FEET TO THE POINT OF BEGINNING); TOGETHER WITH THE FOLLOWING: BEGINNING AT A POINT 32 RODS NORTH OF THE CENTER OF SECTION 35; RUNNING THENCE WEST 16 RODS; THENCE NORTH 20 RODS; THENCE EAST 16 RODS; THENCE SOUTH 20 RODS TO THE PLACE OF BEGINNING, ALL OF SAID LAND BEING SITUATED IN TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KENDALL COUNTY, ILLINOIS.

PARCEL THREE:

THE WEST HALF OF THE SOUTHEAST FRACTIONAL QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER, EXCEPTING THEREFROM THE EAST 660 FEET OF THE SOUTHEAST FRACTIONAL QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN. ALSO EXCEPTING THEREFROM THE FOLLOWING LANDS: THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER OF SECTION 35, TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER; THENCE NORTH 89 DEGREES 33 MINUTES 23 SECONDS WEST 660.04 FEET ALONG THE NORTH LINE OF THE SAID SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER TO ITS INTERSECTION WITH THE WEST LINE OF THE EAST 660.00 FEET OF SAID SOUTHEAST QUARTER AND THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 09 MINUTES 35 SECONDS EAST 341.68 FEET ALONG SAID WEST LINE OF THE EAST 660.00 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER; THENCE CONTINUING SOUTH 00 DEGREES 09 MINUTES 35 SECONDS EAST 130.00 FEET ALONG SAID WEST LINE OF THE EAST 660.00 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER; THENCE SOUTH 89 DEGREES 50 MINUTES 25 SECONDS WEST 125.00 FEET; THENCE NORTH 00 DEGREES 09

MINUTES 35 SECONDS WEST 114.93 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY 15.08 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 235.00 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 01 DEGREE 59 MINUTES 53 SECONDS WEST 15.08 FEET; THENCE NORTH 00 DEGREES 09 MINUTES 35 SECONDS WEST 341.68 FEET TO SAID NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER; THENCE SOUTH 89 DEGREES 33 MINUTES 23 SECONDS EAST 125.49 FEET ALONG SAID NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTIONAL QUARTER TO THE POINT OF BEGINNING. ALSO EXCEPTING THEREFROM THE SOUTH 40.00 FEET OF SAID WEST HALF OF THE SOUTHEAST FRACTIONAL QUARTER, AND THE SOUTHEAST QUARTER OF THE SOUTHEAST FRACTION QUARTER DEDICATED TO THE PUBLIC FOR ROADWAY AND OTHER PUBLIC PURPOSES AS RECORDED IN RESOLUTION NO. 5220 RECORDED AS DOCUMENT 200400018100 ON JUNE 6, 2004, ALL IN KENDALL COUNTY, ILLINOIS.

PARCEL FOUR:

THE SOUTHWEST QUARTER OF SECTION 35 (EXCEPT THE NORTH 80 ACRES THEREOF) IN TOWNSHIP 36 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN NA-AU-SAY TOWNSHIP, KENDALL COUNTY, ILLINOIS.

PINs: 06-35-100-001, 06-35-200-001, 06-35-300-005, 06-35-400-005/006

**EXHIBIT B TO  
DECLARATION FOR THE GREYWALL CLUB DETACHED HOMES**

The Premises

I. LOTS

- A. Lots 1 through 42, both inclusive, in Greywall Club Subdivision Unit 1, being a subdivision of Part of the Northwest Quarter and West Half of the Northeast Quarter of Section 35 Township 36 North, Range 8 East of the Third Principal Meridian, all in Kendall County, Illinois, pursuant to the plat thereof recorded in Kendall County, Illinois, on September 8, 2004, as Document No. 200400025132 (“Greywall Club Subdivision Unit 1”).
- B. Lots 43 through 63, both inclusive and 150 through 221, both inclusive, in Greywall Club Subdivision Unit 5, being a subdivision of part of the Northwest Quarter and West Half of the Northeast Quarter of Section 35 Township 36 North, Range 8 East of the Third Principal Meridian, all in Kendall County, Illinois pursuant to the plat thereof recorded in Kendall County, Illinois, on May 15, 2004 as document No. 200400025705 (“Greywall Club Subdivision Unit 5”).
- C. Lots 268 through 328, both inclusive, in Greywall Club Subdivision Unit 7, being a subdivision of Part of the Northwest Quarter of Section 35, Township 36 North, Range 8 East of the Third Principal Meridian, all in Kendall County, Illinois, pursuant to the plat thereof recorded in Kendall County, Illinois, on May 20, 2005, as document No. 200500013939 (“Greywall Club Subdivision Unit 2”).
- D. Lots 64 through 74, both inclusive, and Lots 99 through 149, both inclusive, in Greywall Club Subdivision Unit 8, being a subdivision of Part of the Northwest Quarter of Section 35, Township 36 North, Range 8 East of the Third Principal Meridian, all in Kendall County, Illinois, pursuant to the plat thereof recorded in Kendall County, Illinois, on May 20, 2005, as Document No. 200500013940 (“Greywall Club Subdivision Unit 8”).

II. COMMON AREA

*None at this time.*

ADDRESSES: Various addresses on Claridge Drive, Hanbury Court, Litchfield Court, Providence Way, Rosehall Drive, Sienna Drive, Waterbury Drive, all in Joliet, Illinois.