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LAKE COUNTY, IL RECORDER  
04/18/2005

**LAKWOOD ORCHARD**

**HOMEOWNERS ASSOCIATION**

**DECLARATION**

**OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS**



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**1.2 Association:**

Lakewood Orchard Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns, or if such name is not available, a not-for-profit corporation having a similar name chosen by Developer. For purposes of these Covenants, references to the Association or its Board of Directors shall mean the Developer until such time as the Association is formed.

**1.3 Village:**

The Village of Round Lake.

**1.4 Landscape Easement Area.**

All those portions of the Property described as "Landscape Easement" and/or "Landscape and Signage Easement" on the Plat and/or by a separate recorded easement.

**1.5 Common Areas:**

All those portions of the Property owned or to be owned and/or maintained by the Association for the common use and enjoyment of the Owners, including, but not limited to, any portion thereof which is designated as a Common Area, Landscape Easement Area, open space, detention or retention easement or area, for the benefit of Owners and the general public (to the extent not within a public right of way) or outlot on the Plat or by separate instrument recorded by Developer.

**1.6 Common Facilities:**

All non-public improvements and fixtures situated on or in rights of way within the Property and on or in Common Areas owned by the Association including, but not limited to, fences, pavings, landscape islands, brick pylons and portals, if any, and all personal property owned by the Association.

**LAKWOOD ORCHARD  
HOMEOWNERS ASSOCIATION  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

THIS DECLARATION, made this 14<sup>th</sup> day of April, 2005, by Lakewood Orchard Phase III LLC, a Delaware limited liability company (hereinafter, together with its successors and assigns, called "Developer").

**WITNESSETH:**

WHEREAS, Developer is the owner of the real property located in Lake County, Illinois, described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer desires to develop a residential single family home development on the Property to be known as "Lakewood Orchard" (the "Development"); and

WHEREAS, Developer desires to subject the Property described on Exhibit "A" to the provisions of this Declaration and to thereafter from time to time to subject portions of the real estate described on Exhibit "B" (the "Additional Land") to the provisions of this Declaration.

NOW THEREFORE, Developer declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration.

**Article 1**

**Definitions**

The following words when used in this Declaration shall have the following meanings:

**1.1 Additional Land:**

The real estate legally described on Exhibit "B" attached hereto and made a part hereof.

**1.7 Developer:**

Lakewood Orchard Phase III LLC, a Delaware limited liability company, and its successors and assigns.

**1.8 Entry Monuments:**

All entranceway monuments or identification monuments installed by the Developer on or within the Property, on or in rights of way within the Property, and on or in Common Areas owned by the Association or for the benefit of the Association.

**1.9 First Mortgagee:**

The holder of any recorded first mortgage lien on one or more Units.

**1.10 Owner:**

The record owner, whether one or more persons or entities and including the Developer, where applicable, of the fee simple title to any Unit situated in the Development. Owner shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or transfer in lieu of foreclosure.

**1.11 Plat:**

Collectively, any plat or plats of subdivision recorded in respect to the Property.

**1.12 Property:**

The real estate legally described on Exhibit "A" attached hereto and made a part hereof and all or any portion of the real estate described on Exhibit "B" hereafter subject to the provisions hereof.

**1.13 Unit:**

A platted lot or portion thereof upon which a single family residence is or could be constructed, (for example the platted lot upon which a detached single family home is or could be situated would be deemed a Unit and each half of a platted lot upon which an attached single family home is or could be situated would also be deemed a Unit).

Excluded from the definition of Unit is any platted lot designated as a common area or for common use or benefit. The Developer's conveyance of a portion of a platted lot shall, unless the Developer specifies to the contrary, be conclusive evidence that such portion constitutes a Unit.

**Article 2****Property Subject to this Declaration****2.1 Purposes.**

Developer desires, by the imposition of the covenants, conditions, restrictions and easements hereinafter set forth, to create on the Property a residential single family home development for future Owners of Units for the following general purposes:

**2.1.1 Community.**

to provide a harmonious single family home community for the benefit of the Property and the Owners;

**2.1.2 Protect Values.**

to enhance and protect the values of the Development;

**2.1.3 Prevent Improper Use.**

to prevent the improper use of Units which may depreciate the value of the other Units in the Development;

**2.1.4 Ensure Adequate Development.**

to ensure adequate and reasonable development of the Property; and

**2.1.5 Provide for Maintenance.**

to provide for the maintenance of the Common Areas and Common Facilities.

**2.2 Declaration.**

The Property is hereby specifically declared to be subject to the provisions of this Declaration effective upon the recording of this Declaration and upon recording of this Declaration, the Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

**2.3 Addition of Property Without Approval of Class "A" Members.**

Developer shall have the unilateral right, privilege, and option, from time to time and at any time within seven (7) years from the date this Declaration is recorded, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the Additional Land. Such addition shall be accomplished by filing in the Office of Recorder of Deeds for Lake County, Illinois, an amendment to this Declaration adding such property, and from and after the date of such filing the property so subject shall be deemed part of the Property for all purposes of this Declaration. Such amendment shall not require the consent of the Class A members defined in Section 8.5.1. Any such addition shall be effective upon the filing for record of such amendment. Developer shall have the unilateral right to transfer to any other person the said right, privilege, and option to add the Additional Land which is herein reserved to Developer, provided that the transfer is memorialized in a written instrument executed by the Developer and recorded in the Office of Recorder of Deeds for Lake County.

**2.4 Removal of Property Without Approval of Class "A" Members.**

Developer shall have the unilateral right, privilege, and option, from time to time and at any time within seven (7) years from the date this Declaration is recorded, to remove from to the provisions of this Declaration and the potential jurisdiction of the Association all or any portion of the Additional Land. Such addition shall be accomplished by filing in the Office of Recorder of Deeds for Lake County, Illinois, an amendment to this Declaration removing such property, and from and after the date of such filing the property so subject shall be not deemed part of the Additional Land for all purposes of this Declaration. Such amendment shall not require the consent of the Class A members defined in Section 8.5.1. Any such exclusion shall be effective upon the filing for record of such amendment. Developer shall have the unilateral right to transfer to any other person the said right, privilege, and option to remove the Additional Land which is herein reserved to Developer, provided that the transfer is memorialized in a written instrument executed by the Developer and recorded in the Office of Recorder of Deeds for Lake County.

**Article 3****Maintenance Obligations****3.1 Maintenance of Easement Areas.**

Easements for installation and maintenance of the utilities, sewer pipelines and facilities and drainage facilities over each of the Units, and all pipelines and other facilities located and to be located in said easements are reserved as shown on the Plat or as created with this Declaration or any amendments hereof. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the

direction in the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Unit and all improvements in it shall be maintained continuously by the Owner of the Unit, except for those improvements for which a public authority, a private or public utility company or the Association is responsible. Any portion of any Unit which is designated as a drainage or Village easement on the Plat shall be kept free of obstructions to drainage including, for purposes of illustration only and not limitation, shrubbery, fencing and other structures not approved by the Village. Unless otherwise specifically directed by the Village, the respective Unit Owners shall be responsible for the control of erosion within those portions of any such easements which are part of their respective Units.

### **3.2 Maintenance of Common Areas and Common Facilities.**

The Association shall maintain, operate, and manage all the Common Areas and Common Facilities (whether such Common Area or Common Facilities are dedicated to public bodies or not unless such public bodies expressly accept responsibility thereof).

### **3.3 Maintenance of Entry Monuments.**

The Association shall maintain, operate, and manage all Entry Monuments (whether such Entry Monuments are dedicated to public bodies or not unless such public bodies expressly accept responsibility thereof).

### **3.4 Maintenance of Landscape Easement Area.**

The Association shall maintain, operate, and manage the Landscape Easement Area and have a right of access thereto.

## Article 4

### Architectural Standards

#### 4.1 Authority.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committee established in Section 4.2. This Article may not be amended without the Developer's written consent so long as a Declarant or a partnership in which the Developer is the general partner owns any land subject to this Declaration or subject to annexation to this Declaration.

#### 4.2 Review Committee.

The Board of Directors shall establish a Review Committee ("RC") to consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Developer until one hundred (100%) percent of the Property has been developed and conveyed to purchasers in the normal course of development and sale. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Developer. Upon the expiration of such right, the Board of Directors shall appoint the members of the RC. The RC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions or alterations, shall be submitted to the RC for approval. No permission or approval shall be required to repaint in accordance with an original exterior color scheme, or to rebuild in accordance with original plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner

to remodel the interior of any Unit, or to paint the interior of his Unit any color desired.

In the event that the RC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved. The RC shall have the right to approve and designate mail boxes which may also be installed within the Properties. After obtaining the RC's approval, applicants shall be responsible for obtaining all permits necessary for the approved modifications, additions or alterations.

#### **4.3 No Waiver of Future Approvals.**

The approval of the RC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

### **Article 5**

#### **Building and Use Restrictions**

##### **5.1 Uses Limited to Residential Purposes.**

The Property shall be used only for residential, recreational, and related purposes, which purposes may include, without limitation, offices for any property manager employed by or retained by the Association or any neighborhood association or business and sales offices for the Developer.

**5.2 Vehicle Parking and Storage.**

Commercial vehicles, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, boat trailers and unlicensed or inoperable motor vehicles shall be parked and stored on Units only within garages with the doors thereto closed except when the parked or stored vehicle, boat or trailer is being moved in or out within a forty-eight (48) hour time frame. Operable, licensed motor vehicles, including motorcycles, shall be parked only within garages or on the driveway or driveway apron. Operable, licensed motor vehicles, including motorcycles, shall not be parked on the lawn or on any other areas of outdoor open space within any Unit. As used herein, the term "commercial vehicles" does not include two (2) axle vehicles which are not larger than minivans or pick-up trucks.

**5.3 Antennas.**

To the extent permitted by law, no antennas, aerials, satellite dishes larger than thirty (30) inches in diameter, or other apparatus for the transmission and receipt of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of a Unit which is not located solely within the interior of the building located on a Unit. With the prior approval of the RC, satellite dishes 30 inches or less may be installed within the Properties so long as not attached to the exterior of a building located on a Unit and are appropriately screened from view as determined by the RC.

**5.4 Basketball Equipment.**

No basketball hoops and backboards other than those (i) mounted on free-standing poles which are cemented into the ground between the sidewalk and the house, facing the driveway or (ii) which are portable so long as the basketball hoop and backboard are stored in the Unit's garage when not in use, shall be permitted within the Property.

**5.5 Clotheslines.**

No clotheslines or clothes poles shall be erected or installed on any Unit.

**5.6 Guns.**

The discharge of firearms within the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

**5.7 Air Conditioning Units.**

No window air conditioning units may be installed in any Unit.

**5.8 Lighting.**

Seasonal holiday decorative lights may be displayed between October fifteenth (15<sup>th</sup>) and January tenth (10<sup>th</sup>) only.

**5.9 Fences.**

No fences of any kind, other than board on board fences constructed of unpainted/unstained natural cedar shall be permitted on any Unit. Said fences shall be five (5) feet in height and shall conform to the standards on Exhibit "C". Developer may install fences of varying heights in locations selected by the Developer on any Unit or as required by the Village. No fences installed by Developer shall be removed by the Unit Owner. Owners may install fences no greater than six (6) feet in height conforming to the standards on Exhibit "C" on the perimeter of the Development.

**5.9.1 Fence Maintenance.**

Fences on any Unit shall be maintained by the Owner of the Unit at the Owner's expense. If an Owner fails to maintain the fences on such Owner's Unit, the Association shall have the right, but not the obligation, to undertake the repairs after first giving notice to Owner

describing the needed repairs (the "Notice Repairs"). If the Notice Repairs are not made within thirty (30) days after notice from the Association, the Association shall have the right, but not the obligation, to enter upon the Unit to make the Notice Repairs and send an invoice to the Owner for the costs thereof. Invoices not paid within forty-five (45) days, shall be deemed delinquent and the Association shall have the same rights with respect thereto as provided in Section 9.10 for delinquent assessments.

#### **5.10 Above-Ground Pools or Spas.**

The installation of an above-ground swimming pool or spa within any Unit is prohibited unless such pool or spa is decked and skirted and installed pursuant to plans approved by the RC in accordance with the Village Ordinance which requires the installation of fences five (5) feet in height around the perimeter of Units with above-ground swimming pools and spas. Such fences shall conform to the standards shown on Exhibit "C".

#### **5.11 Storage Buildings and Sheds.**

Storage buildings and sheds of all kinds shall not be installed on the Property unless approved by RC and consistent in color and materials with home.

#### **5.12 Modifications and Alterations.**

The height of buildings and structures containing dwelling units shall not be increased above the height when initially constructed. The size of the driveways and driveway aprons on Units containing dwelling units shall not be increased or the location of such driveways and driveway aprons changed from the size and location established when initially constructed and installed. No dwelling unit shall be expanded so as to encroach onto the front yard, side yard or rear yard setbacks established by the applicable plat of subdivision or applicable ordinances. The original exterior color scheme of a building or

structure may be changed either 1) seven years after the issuance of a certificate of occupancy for the Unit with the written approval of the Review Committee or 2) at any time with the written approval of Developer. Notwithstanding anything to the contrary, Developer may change the original exterior color scheme for Units owned by Developer.

**5.13 Mail Boxes.**

All mail boxes on the Property shall be installed by Developer and maintained by the Unit Owner at the Unit Owner's expense.

**5.14 Signs.**

No sign of any kind shall be erected nor displayed within the Property by any Owner without the written consent of the ARC. No "for rent" signs may be erected nor displayed on the Property. Notwithstanding the foregoing, Owners may erect and display one "for sale" sign parallel with the street within the front yard area of Units. If an Owner owns multiple units within the Property, then the Owner may install only one "for sale" sign for all of its Units. The restrictions contained in this Section shall not apply to the Developer.

**5.15 Landscape Easement Area.**

Owners are prohibited from constructing any improvements of any kind within the Landscape Easement Area. All landscaping within the Landscape Easement Area shall be maintained by the Association.

**Article 6****Special Conditions****6.1 Improvement of Common Areas Prohibited.**

Owners are prohibited from constructing improvements of any kind within the Common Areas.

**6.2 Storm Water Management Facilities.**

Storm water management facilities shall not be used for fishing, swimming or boating.

The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the storm water management facilities and any other water features including streams and ponds within the Property.

**6.3 Unsightly or Unkempt Conditions.**

It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. All rubbish, trash, and garbage shall be stored in the Unit's garage, shall be regularly removed from the Property, and shall not be allowed to accumulate thereon.

**Article 7****Dormant Special Service Area****7.1 Dormant Special Service Area.**

In the event that the Village in its discretion elects to maintain any of the Common Areas on the Property, the Owners, Developer, their successors and assigns agree that the Village may create a Special Service Area(s) to pay for such maintenance in accordance with the Constitution and statutes of the State of Illinois. Owners, Developer, their successors and assigns agree not to raise and hereby waive any objection or veto by

petition or otherwise to the creation of the Special Service Area(s), the Special Service Tax, or any proposed bond issue financed by the Special Service Tax.

## **Article 8**

### **The Association**

#### **8.1 Formation of Association.**

Developer shall form an Illinois not-for-profit corporation to be known as the "Lakewood Orchard Homeowners Association" which shall provide for maintenance and operation of the Common Areas and Common Facilities. If such name is not available, the not-for-profit corporation shall bear a similar name chosen by the Developer.

#### **8.2 Directors and Officers.**

##### **8.2.1 Board**

The Association shall have a Board of Directors (the "Board") of five (5) directors, who shall be residents of the Development and members of the Association, who shall be elected by the members of the Association at such intervals as the Articles of Incorporation and By-Laws of the Association shall provide, except that the first Board and subsequent Boards (until the Turnover Date) may be made up of employees, agents or appointees of the Developer.

##### **8.2.2 Offices**

The Association shall have such officers as shall be appropriate from time to time, which shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. The directors and officer of the Association shall not be liable to the Owners or any others for any mistake of

judgment or any acts or omissions made in good faith as such directors or officers.

#### **8.3 Turnover.**

The Developer shall, through the Board appointed by it in accordance with Section 8.2.1, exercise control over all Association matters until the earlier of (a) the date Developer elects voluntarily to turn over to the members of the Association the authority to appoint the Board, or (b) the earlier of (i) four (4) months after 75% of the units have been conveyed to purchasers of units or (ii) three (3) years after the first unit is conveyed to a member (the "Turnover Date"). On or before the Turnover Date, the Developer shall convey to the Association, and the Association shall accept, the Common Areas and Common Facilities to be owned by the Association hereunder and the Association shall maintain the Common Areas and Common Facilities as required hereunder. Prior to the Turnover Date, Developer shall have all of the rights and powers herein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board.

#### **8.4 Membership.**

Every person or entity who is a record owner of a fee or undivided fee interest in any Unit in a portion of the Development shall be a member of the Association and said membership shall be appurtenant to said Unit, and each purchaser of any Unit by acceptance of a deed therefor covenants and agrees to be a member of the Association whether or not it shall be so expressed in any such deed or other conveyance, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

**8.5 Membership Classes.**

The Association shall have two classes of voting membership:

**8.5.1 Class A.**

Class A members shall be all those Owners as defined in Section 1.10 with the exception of the Developer. Class A members shall be entitled to one vote for each Unit in which they hold the interest required for membership by Section 8.4. When more than one person holds such interest in any Unit, all such persons shall constitute one member. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. With respect to Units owned by a land trust, if a trustee designated in writing a person to cast votes on behalf of the Unit Owner, the designation shall remain in effect until a subsequent document is filed with the Association.

**8.5.2 Class B.**

The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Unit in which it holds the interest required for membership by Section 8.4, provided that the Class B membership shall close and be converted to Class A membership on the Turnover Date.

**8.6 Transfer of Membership.**

Membership held by any Owner of a Unit is an appurtenance to such Unit and shall not be transferred, alienated or pledged in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser of such Unit. Any attempt to make a transfer except by the sale or encumbrance of a Unit is void. Reference to the transfer of

membership need not be made in an instrument of conveyance or encumbrance of such Unit for the transfer to be effective, and the same shall automatically pass with title to the Unit.

### **8.7 Powers and Duties of the Association.**

The Association, in addition to its other powers, rights and duties as set forth in this Declaration and in its Articles of Incorporation, By-Laws and any rules and regulations which the Association may promulgate as hereinafter provided, and as any of the same may be amended, has the power and duty to:

#### **8.7.1 Power to Maintain Common Areas and Facilities.**

Maintain, operate and manage all the Common Areas and Common Facilities (whether such Common Areas or Common Facilities are dedicated to public bodies or not unless such public bodies expressly accept responsibility therefor) including, but not limited to, if any, entry monuments, retaining walls, wetlands and mitigation areas, detention areas and trees located on the Common Areas (it being understood that the Association may delegate one or more of such duties to one or more independent contractors including, without limitation, Developer and entities affiliated with Developer, or agents or employees of the Association, by lease or contract).

#### **8.7.2 Power to Employ Manager**

Employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.

**8.7.3 Power to Pay Taxes**

Pay all real estate taxes, personal property taxes or other charges which may be assessed against or levied upon the Common Areas and Common Facilities.

**8.7.4 Power to Maintain Grounds**

Maintain and otherwise manage the landscaping and grounds including any wetland/mitigation and storm water detention facilities located in the Common Areas.

**8.7.5 Power to Maintain Insurance**

Maintain continually in effect, and to pay the premium of, fire and extended coverage insurance on the insurable portion of the Common Facilities, comprehensive public liability insurance covering all of the Common Area and Common Facilities, a fidelity bond or insurance policy covering all persons who are responsible for handling the funds of the Association and such other insurance as the Board shall deem to be necessary or desirable, all of which shall be in such amounts and with such companies as the Board shall determine; provided, however, that if and for so long as any First Mortgagee shall be the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other Federal, State or local agency or instrumentality, then the insurance coverage carried by the Association shall, at a minimum, comply with any applicable requirements of such association, corporation, agency and/or instrumentality. The extent and frequency of the activities of the Association in carrying out the duties of maintenance and management set forth above shall be decided by the Board, and the Board may also promulgate rules and regulations to aid in carrying out of said maintenance

and management duties, and may amend said rules and regulations from time to time.

## Article 9

### **Covenant for Capital Contributions And Maintenance Assessments**

#### **9.1 Creation of Lien and Personal Obligation of Capital Contributions and Assessments.**

Developer, if and to the extent provided in Section 9.12, and each purchaser of any Unit by acceptance of a deed or other instrument of conveyance therefore, whether or not it shall be so expressed in any deed or other instrument of conveyance, hereby covenants and agrees, for himself, his heirs, personal representatives, successors and assigns, to pay to the Association: (a) annual assessments or charges; (b) special assessments for payment of excess real estate taxes; and (c) capital contributions (described in Section 9.5). Such contributions and assessments are to be fixed, established and collected from time to time as hereinafter provided. Such capital contributions and assessments (or installments of either), together with such interest thereon, late charges, attorney's fees and costs of collection thereof as are hereinafter provided, when due and not fully paid shall be a charge on the land, and shall be a lien upon the property against which each call for such contributions or assessment (or installment of either) is made until the same shall be paid in full. Each such capital contribution or assessment (or installment of either), together with such interest thereon, late charges, attorney's fees and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when such contribution or assessment (or installments of either) falls due.

to carry out its duties set forth herein or in its Articles of Incorporation or By-laws. The Association may also, at its option, levy assessments for the payment of property hazard insurance premiums on a master policy covering all of the Units in the Development.

#### 9.4 Assessments.

From the date any Unit becomes subject to this Declaration and until the calendar year beginning January 1, 2006, the annual assessment shall be not more than Three Hundred Twenty Five Dollars and Twenty Four Cents (\$325.24 ) per Unit. On and after January 1, 2006, for each succeeding year, on an annual basis, the annual assessment may be increased by vote of the Owners of the Association, as provided in Section 9.6. In the event the annual assessment is not increased by vote of the members of the Association, as provided in Section 9.6, this assessment may be increased effective the first day of January of each year on and after January 1, 2006, by action of the Board and without the necessity for a vote of the Owners. The Board may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at an amount more or less than the annual assessment established in accordance with this Article. If taxes on real estate owned by the Association, as shown by the tax bills received by the Association each year, shall exceed the amounts estimated for such taxes in the budget previously used in determining the annual assessment for such year, the Board may, without the assent of the members, cause the Association to levy a special assessment to provide funds for payment of such increase in taxes, in such manner and time or times as the Board shall determine. Monies received by the Association pursuant to this Section shall be deposited in the general account of the Association. In the event that the sum of the annual and special assessments for any calendar year shall exceed the Association's expenses including reserves for such calendar year, the Board shall cause

**9.2 Assessment Deposit.**

Upon the initial conveyance of each Unit from Developer to a purchaser, the purchaser shall establish an assessment deposit with the Association, which shall constitute a capital contribution, in an amount equal to two (2) times the then current monthly assessment for such Unit. The assessment deposit shall not be refunded to purchaser upon a subsequent conveyance unless and until the party to whom purchaser conveys deposits a like amount with the Association. The foregoing shall apply to all subsequent conveyances of the Unit so that a two (2) month assessment deposit shall be held by the Association at all times as to each Unit, so long as this Declaration is in effect. The foregoing shall not be deemed a limitation on the Association's use of said deposits.

**9.3 Purpose of Assessments.**

The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare and enjoyment of the Development, and in particular for the maintenance of the Common Areas, the Common Facilities and properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas the Common Facilities including, but not limited to, the payment of real estate taxes on the Common Areas, the payment of liability, casualty, worker's compensation, and fidelity insurance premiums and such other insurance premiums as may be deemed necessary from time to time on the Common Areas and/or the Common Facilities, fund reserves for replacement of improvements to the Common Areas or Common Facilities, the payment of interest, the cost of maintenance, upkeep and repair of the Common Areas and/or the Common Facilities, the cost of labor, management, supervision and operation necessary or desirable for the use and enjoyment of the Common Areas and Common Facilities, and to provide funds for the Association

the Association either to return the amount of such excess assessments to the members of the Association promptly after the end of such calendar year or to apply the amount of such excess against the members' annual assessments for the next following calendar year. Any such excess assessments which the Board elects to return to the members shall be returned to those persons who are members of the Association on the last day of the calendar year in which such excess arose. For purposes of this Section, the Association's expenses for a calendar year shall be conclusively deemed to equal the expenses reported on the Association's federal income tax return for such calendar year. The Association shall establish and maintain from annual assessments collected hereunder, an adequate reserve fund for the costs of maintenance, repair and replacement of the Common Areas and Common Facilities or any improvements or landscaping therein which are the obligation of the Association hereunder.

#### **9.5 Capital Contributions.**

In addition to the annual and special assessments authorized by Section 9.4, the Board may (and in the case of inadequate reserves for replacement of improvements to the Common Areas, or Common Facilities shall) cause the Association to require, from time to time on at least thirty (30) days' advance written notice to all members, a capital contribution to the Association (which may be payable in installments if so designated by the Board and, in the case of capital contributions for the replacement of improvements to the Common Areas or Common Facilities, shall be payable in monthly installments), for the purpose of (a) paying capital expenditures, including without limitation, the cost of any construction or reconstruction, alteration or replacement of one or more capital improvements upon the Common Areas or Common Facilities, the cost of the necessary fixtures and personal property related thereto, and the cost of acquisition or replacement

of any major specified item or items of personal property owned or to be owned by the Association, or (b) making principal payments on loans made to the Association, or (c) providing the Association with working capital as reserves against future expenses, or (d) providing funds to cover losses incurred by the Association. Notwithstanding the foregoing, such capital contributions may not be levied without the assent of two-thirds (2/3) of the votes of each class of voting membership in the Association, cast in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all voting Owners at least thirty (30) days in advance and which shall set forth the purpose of the meeting. The purpose(s) of each capital contribution shall be specified in the aforementioned notice and all monies received by the Association in payment of the capital contributions referred to in this Section shall be segregated from all other monies of the Association in a separate bank account or other investment approved by the Board, to be held by the Association and identified as being for funds for the purpose called for in the said notice to the membership.

#### **9.6 Change in Assessments by Action of the Membership.**

Subject to the limitations of Section 9.4, for the calendar year 2006 and for each annual period thereafter, the Association may, notwithstanding any action or inaction by the Board, change the annual assessment fixed pursuant to said Section 9.4 prospectively for any such period, provided that any such change shall have the consent of a majority of the votes of each class of the voting Owners of the Association, cast in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all voting Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

respectively (and whether or not such assessment, or capital contribution, shall be payable in installments) shall be fixed in the resolution authorizing such assessment.

**9.9 Duties of Board of Directors as to Assessments.**

At least thirty (30) days in advance of the due date for any capital contribution assessed pursuant to Section 9.5 above, or annual or special assessment of the first installment of such contribution or assessment, the Board of the Association shall fix the amount of such contribution or assessment against each Unit. Subject to the provisions of Section 9.12, any such contribution or assessment shall be allocated equally among each Unit subject to this Declaration; provided, however, that nothing herein contained shall be deemed to restrict the remedies available to the Association against any particular Unit or Unit Owner(s) in the event of non-payment of contributions or assessments when due, or for costs assessed to Unit Owner(s) as a result of willful or negligent acts of Owner(s), their family, guests or invitees. The Board shall prepare a roster of the Units and capital contributions and assessments applicable thereto which shall be kept in the office of the Association and such roster, as well as the other books and records of the Association, shall be open to inspection by any Owner or First Mortgagee. Written notice of the assessment or capital contribution, or both, shall thereupon be sent to every Owner and First Mortgagee (in possession) subject thereto. The Board may, in its discretion, designate a form of periodic payments. The Board may also, in its discretion, designate and retain any agent to collect such capital contributions and assessments on behalf of the Association, to whom payments of such contributions and assessments shall be made.

**9.10 Non-Payment.**

If the capital contributions or assessments (or any installments or either) are not paid on the date when due, they shall be deemed delinquent, and such delinquent contribution,

**9.7 Quorum for Actions under Sections 9.5 and 9.6.**

The quorum required for any action authorized by Sections 9.5 and 9.6 of this Article shall be as follows: At the first meeting called, as provided in said Sections 9.5 and 9.6, the presence at such meeting of Owners of the Association, or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of voting members shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in said Sections 9.5 and 9.6 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the immediately preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the date of the immediately preceding meeting.

**9.8 Date of Commencement.**

The annual assessments provided herein shall commence as to each Unit on the first day of the calendar month following recordation of this Declaration, subject in all instances to the provisions of Section 9.12 of this Article. The annual assessment shall become due and payable in equal monthly installments to be paid each month in advance, on or before the first day of the month commencing on the first day of January of the year for which the assessment is levied, unless the Board designates another form of periodic payments. The amount of the annual assessment which may be levied for the balance remaining in the first calendar year of assessment against a Unit shall be an amount which bears the same relationship to the annual assessment provided for in Section 9.4 for such year as the remaining number of months in that calendar year bears to twelve (12). The due date of any special assessment or capital contribution under Section 9.4 or Section 9.5 hereof

assessment or installment of either shall, together with such interest thereon and the cost of collection thereof as are hereinafter provided, thereupon become a lien on the Unit of the delinquent Owner which shall bind such Owner, his heirs, devisees, personal representatives and assigns and the Association shall have the right to record in the Recorder's Office within which the Property is located, a notice of lien upon the Unit of the delinquent Owner. The personal obligation of the then Owner to pay such capital contribution or assessment however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. Sale or transfer of any Unit shall not affect the continuing lien on such Unit for the amount of any unpaid capital contributions or assessments (or installments of either). If a capital contribution or assessment (or installment of either) is not paid within thirty (30) days after the due date thereof, such contribution, assessment or installment shall bear interest from such due date at the highest rate permitted by Illinois law, and the Association, or its collecting agent designated by the Board, may bring any legal action against the Owner personally obligated to pay the same and/or to execute or foreclose upon the Association's lien against the delinquent Owner's Unit, and there shall be added to the amount of such contribution, assessment or installment the costs of preparing and filing the complaint in such action and, in the event a judgment is obtained, such judgment shall include interest on the contribution or assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the cost of the action. In addition thereto, the Association may deny to the delinquent Owner the use and enjoyment of any of the Common Areas and Common Facilities used for recreation, except the right to use for ingress and egress to and from the Owner's Unit (which right shall be perpetual and pass with the conveyance of each Unit), until the delinquent contribution assessment or installment is paid, together with any interest, costs and other sums set forth above which

the Association is entitled to receive. No Owner may avoid liability for the capital contributions and assessments provided for herein by non-use of the Common Areas and/or the Common Facilities, by set-off of any claims he may have against the Association, or by abandonment of his Unit. In addition to the foregoing, the Association may, to the extent permitted by law, maintain an action against a delinquent Owner for forcible entry and detainer under 735 ILCS 5/9-102, pursuant to the provisions thereof. Any unpaid assessment which cannot be promptly collected from an Owner of a Unit may (but need not) be reassessed by the Board as a common expense to be collected from all of the Owners, including (by way of illustration and not limitation) a purchaser who acquires title to the Unit owned by the defaulting Owner at a sheriff's sale of such Unit pursuant to execution upon a lien against such Unit (including, without limitation, the Association's lien for delinquent capital contribution(s) and/or assessment(s), his successors and assigns and any holder of a mortgage who comes into possession of a Unit by deed in lieu of foreclosure or any transfer or assignment in lieu of foreclosure).

#### **9.11 Subordination.**

The lien of the capital contributions and assessments provided for herein shall be subordinate to the lien of any first mortgage placed upon the Unit subject to such capital contribution or assessment prior to the time such capital contribution or assessment becomes a lien on such Unit; provided, however, that such subordination shall apply only to the contributions, assessments or installments which have become due and payable prior to the date of sale of such Unit pursuant to a decree of foreclosure of such mortgage or prior to the date of a deed, or other instrument of conveyance, of such Unit given by the mortgagor in lieu of foreclosure. Any First Mortgagee who comes into possession of a Unit on which it holds or held a mortgage, through foreclosure of such mortgage, or by

deed (or assignment) in lieu of foreclosure, shall take the Unit free of any claims for unpaid assessments, capital contributions, or other charges against such Unit which have accrued prior to the time such First Mortgagee comes into possession of such Unit (except for claims for a pro rata share of such assessments, capital contributions or other charges resulting from a pro rata reallocation thereof by the Association to all Units including the mortgaged Unit). Such sale, or deed or instrument of conveyance in lieu of foreclosure, shall not relieve such Unit from liability for any capital contributions or assessments, or installments of either, which thereafter become due nor from the lien of any such subsequent contribution, assessment or installment.

#### **9.12 Exempt Units.**

Each Unit, for the period prior to the time a single-family home is constructed thereon and sold and conveyed by Developer, shall be exempt from the capital contributions, assessments, charges and liens of the Association created herein for any amount in excess of sixty percent (60%) of capital contributions, and/or monthly assessments paid by other Unit Owners. Such exemption for any such unconveyed Unit shall continue until the time of the closing of the sale and conveyance of such Unit by Developer to a purchaser. Upon the conveyance by Developer to an Owner other than Developer of a Unit which was theretofore entitled to the above partial exemption, such exemption shall be terminated ipso facto and such Unit shall thereafter be subject to the full amount of capital contributions and assessments elsewhere set forth in this Article prorated from the date of such conveyance. It is further understood that the following property subject to this Declaration shall be exempt from the capital contributions and assessments, charges and liens created herein: (a) properties dedicated to and accepted by a local public authority and devoted to public use, from and after the time of acceptance of such dedication; (b)

all Common Areas and Common Facilities; and (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Illinois, so long as such properties are not used as a dwelling.

**9.13 Certificate of Payment.**

The Association shall, upon demand, furnish, within ten (10) days after demand therefor be made, to any Owner liable for said capital contribution or assessment, a certificate in writing signed by an officer of the Association, setting forth whether the annual assessments or capital contributions on a specified Unit have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Said certificates shall be conclusive evidence that any assessment or capital contribution therein stated to have been paid has in fact been paid. No charge shall be made for issuing from time to time said certificates to the Developer on Units then owned by Developer.

## Article 10

### Use and Rights in Common Areas

**10.1 Use and Rights of Owners and the Association.**

Except as the right may be suspended under Article 9 hereof for non-payment of delinquent assessments, or as provided below, each Owner, at the time he becomes an Owner and for so long as he is an Owner, is hereby granted rights of easement for ingress and egress over and across, and use of, enjoyment in and access to all of the Common Areas and Common Facilities subject to the rules and regulations of the Association as promulgated from time to time and subject to the right of the Association or its designee(s) for use of one or more of the Common Areas and/or Common Facilities and subject to such restrictions, including, without limitation, access restrictions set forth in

any easement grant and wetlands restrictions set forth in that certain Wetland and Wetland Buffer Restrictive Covenant by Plat, filed September 28, 2004 with the Lake County recorder as Document No. 5653412. Such easements and restrictions shall be deemed to be appurtenant to such Owner's Unit, shall run with the land and shall pass with the title to such Unit. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Areas will be void unless the Unit to which that interest is allocated is also transferred. If construction, reconstruction, repair, shifting, settlement, or other movement of any portion of improvements results either in the Common Areas encroaching on any Unit or in a Unit encroaching on a Common Area or another Unit, an easement is hereby granted for both the encroachment and its maintenance for the period during which the encroachment exists. The Association shall have the right to grant permits, licenses, or easements over or dedicate all or portions of the Common Areas owned by the Association and/or Common Facilities to any public body, agency, authority or utility for utilities, roads & other purposes necessary for the proper operation of the Development, provided that each Owner shall continue to have ingress and egress to his Unit; and further provided that no such dedication shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of voting membership has been recorded, agreeing to such dedication and unless written notice of the proposed dedication is mailed or hand delivered to every Owner at least ninety (90) days in advance of any action taken. Any Unit Owner may delegate in accordance with the By-laws of the Association, his right of enjoyment to the Common Areas to the members of his family, his tenants or contract purchasers who reside on such Unit.

#### **10.2 Utility Easements.**

The Common Areas owned by the Association, and the Developer's conveyance thereof to the Association, shall be subject to utility easements granted or to be granted for sewer, water, drainage, cable television, gas, electricity, telephone and any other necessary utilities. If such utilities are not installed, or easements therefore are not granted or reserved prior to the conveyance of the Common Areas, such easements shall be granted later by the Association at the request of the Developer. As a part of its program of development of the Development into a residential community and to encourage the marketing thereof, the Developer shall have the right to use the Common Areas and Common Facilities thereon for any reasonable purposes including signage, without charge, during the sales and construction period for the Property.

#### **10.3 Use and Rights of Public Authorities.**

The duly designated officials, employees and contractors of governmental bodies having jurisdiction over the Development, shall have an easement to enter upon on, and over the Common Areas in the Development for the purpose of providing police and fire protection and enforcing the applicable laws, ordinances, rules and regulations of the said governmental bodies. The Developer and the Association shall hold police and governmental personnel harmless from civil or criminal actions arising through a charge of trespass for entering on the Common Areas in performance of their duties.

#### **10.4 Condemnation.**

In the event of condemnation or destruction of any Common Areas or Common Facilities, and in the event of liquidation or termination of the Association, any losses or proceeds resulting therefrom shall be shared equitably between the Unit Owners effected by such event(s), as reasonably determined by the Board. The Association is hereby

designated to represent the members thereof in any proceedings, negotiations, settlements or agreements regarding any such condemnation or destruction, and each Member, by acceptance of a deed for a Unit appoints the Association as its attorney-in-fact for the foregoing purposes. Any proceeds from any such settlements shall be payable to the Association for the benefit of the Members and their mortgage holders.

## **Article 11**

### **Documents and Records**

#### **11.1 Records.**

The Association shall maintain the following records and make them available for examination and copying at convenient hours of weekdays by any Owners or their mortgagees and their duly authorized agents and attorneys:

##### **11.1.1 Organizational Documents**

Copies of the recorded Declaration, Articles of Incorporation and By-Laws of the Association, and any amendments thereto, annual reports and rules and regulations adopted by the Association, as well as the Association's books, records, and financial statements;

##### **11.1.2 Receipts and Expenditures**

Detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association;

**11.1.3 Minutes of Meetings**

The minutes of all meetings of the Owners and the Board for not less than seven (7) years;

**11.1.4 Ballots and Proxies**

Ballots and proxies related thereto, if any, for any election held for the Board and for any other matters voted on by the Owners, for not less than one (1) year;

**11.1.5 Other Records**

Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to the General Not for Profit Corporation Act of the State of Illinois; and

Where a request for records under this Section is made in writing to the Association or its agent, failure to provide the requested record or to respond within thirty (30) days shall be deemed a denial by the Association. A reasonable fee may be charged by the Association for the cost of copying records. If the Association fails to provide records properly requested under this Section within thirty (30) days, the Owner may seek appropriate relief, including an award of attorneys' fees and costs.

**Article 12****Meetings and Finances****12.1 Annual Budget**

Each Owner shall receive, at least thirty (30) days prior to the adoption thereof by the Board, a copy of the proposed annual budget. The Board shall annually supply to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the

budget or assessment, and showing the next excess or deficit of income over expenditures plus reserves. Each Owner shall receive written notice mailed or delivered no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of the proposed annual budget or any increase in the budget, or establishment of an assessment.

## **12.2 Meetings of the Board of Directors.**

Meetings of the Board shall be open to any Owner, except for the portion of any meeting held:

### **12.2.1 Litigation**

To discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;

### **12.2.2 Employment**

To consider information regarding appointment, employment, or dismissal of an employee; or

### **12.2.3 Violations of Rules**

To discuss violation of rules and regulations of the Association or unpaid common expenses owned to the Association.

Any vote on the foregoing matters shall be taken at a meeting or portion thereof open to any Owner. Any Owner may record the proceeding at meetings required to be open by this Section by tape, film, or other means; the Board may prescribe reasonable rules and regulations to govern the right to make such recordings. Notice of meetings shall be

mailed or delivered at least forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the persons entitled to notice before the meeting is convened.

Copies of notice of meetings of the Board shall be posted in entranceways, elevators, or other conspicuous places in the Development at least forty-eight (48) hours prior to the meeting of the Board. In the event of a resale of a Unit, the purchaser of a Unit from a seller other than Developer, pursuant to an installment contract for purchase shall, during such times as he/she resides in the Unit, be counted toward a quorum for purposes of election of members of the Board at any meeting of the Owners called for purposes of electing members of the Board, and shall have the right to vote for the election of members of the Board and to be elected and to serve on the Board unless the seller expressly retains in writing any or all of these rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office, or be elected and serve on the Board. Satisfactory evidence of the installment contract shall be made available to the Association or its agents. "Installment Contract" shall have the same meaning as set forth in subsection (e) of Section 1 of the Dwelling Unit Installment Contract Act of the State of Illinois.

### Article 13

#### Administration of Project Prior to Election of Initial Board of Directors

##### 13.1 Developer's Authority.

Until the election by Owners of the Board, the same rights, titles, powers, privileges, trusts, duties, and obligations that are vested in or imposed on the Board by this Declaration shall be held and performed by the Developer.

**13.2 Election of Initial Board.**

The election of the initial Board by the Owners shall be held not later than the Turnover Date. Developer shall give at least twenty-one (21) days notice of the meeting to elect the initial Board and shall upon request provide any Owner within three (3) working days of the request, the names, addresses, telephone numbers (if in the records of the Association), and vote of each Owner entitled to vote at the meeting. Any Owner shall upon request be provided with the same information, within three (3) working days of the request, with respect to each subsequent meeting to elect members of the Board. If the initial Board is not elected by the Owners at the time established, Developer shall at least once a year thereafter conduct meetings to turn over the Association following the procedures set forth in this Section. Developer shall continue in office until an initial Board is elected or until thirty (30) days after the Developer sends notice of its resignation of Board responsibilities to all Owners entitled to vote at an election for members of the Board, at which time Developer shall have no further rights, duties, or obligations to the Members other than to turn over Association records and documents as herein provided to a duly constituted Board.

**13.3 Delivery of Records.**

Within sixty (60) days after the election of a majority of the Board other than Developer by Owners, Developer shall deliver to the Board:

**13.3.1 Original Documents**

All original documents as recorded or filed pertaining to the community, its administration, and the Association, such as this Declaration, the Articles of Incorporation, other instruments, annual reports, minutes, rules, and regulations and contracts, leases, or other agreements entered into by the Association. If any

original documents are unavailable, a copy may be provided if certified by affidavit of the Developer, or an officer or agent of Developer as being a complete copy of the actual document recorded or filed.

#### **13.3.2 Detailed Accounting**

A detailed accounting by Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance, and operation of the community, copies of all insurance policies, and a list of any loans or advances to the Association which are outstanding.

#### **13.3.3 Funds**

Association funds, which shall have been at all times segregated from any other moneys of the Developer.

#### **13.3.4 Property**

A schedule of all real or personal property, equipment, and fixtures belonging to the Association, including documents transferring the property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

#### **13.3.5 Litigation**

A list of all litigation, administrative action, and arbitrations involving the Association

#### **13.3.6 Government Notices**

Any notices of governmental bodies involving actions taken or which may be taken concerning the Association.

**13.3.7 Specifications**

To the extent available, engineering and architectural drawings and specifications as approved by any governmental authority

**13.3.8 Filed Documents**

All other documents filed with any governmental authority, all governmental certificates, correspondence involving enforcement of any association requirements, copies of any documents relating to disputes involving Owners, and originals of all documents relating to everything listed in this subsection.

**13.4 Agreements.**

Any contract, lease, or other agreement made prior to the election of a majority of the Board other than Developer by or on behalf of the Owners, which extends for a period of more than two (2) years from the recording of this Declaration, shall be subject to cancellation by more than 50% of the votes of the Owners, other than Developer, cast at a special meeting of members called for that purpose during a period of ninety (90) days prior to the expiration of the two (2) year period. At least sixty (60) days prior to the expiration of the two (2) year period, the Developer shall send notice to every Owner, notifying them of this provision, of what contracts, leases, and other agreements are affected, and of the procedure for calling a meeting of the members for the purpose of acting to terminate such contracts, leases, or other agreements. During the ninety (90) day period, the other party to the contract, lease, or other agreement shall also have the right of cancellation.

**13.5 Statute of Limitations.**

To the extent permitted by law, the statute of limitations for any actions in law or equity which the Association may bring shall not begin to run until the Owners have elected a majority of the members of the Board.

**Article 14****Resale of Units****14.1 Document Delivery.**

In the event of any resale of a Unit by an Owner other than Developer, the Owner may obtain from the Board and shall make available for inspection to the prospective purchaser, upon demand, the following:

**14.1.1 Declaration**

A copy of this Declaration, other instruments, and any rules and regulations.

**14.1.2 Statement of Account**

A statement of any liens, including a statement of the account of the Unit setting forth the amounts of unpaid assessments and other charges due and owing.

**14.1.3 Capital Expenditures**

A statement of any capital expenditures anticipated by the Association within the current or succeeding two (2) fiscal years.

**14.1.4 Reserves**

A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specific project by the Board.

**14.1.5 Financial Condition**

A copy of the statement of financial condition of the Association for the last fiscal year for which such a statement is available.

**14.1.6 Pending Litigation**

A statement of the status of any pending suits or judgments in which the Association is a party.

**14.1.7 Insurance**

A statement setting forth what insurance coverage is provided for all Owners by the Association.

**14.1.8 Other Documents**

Any other documents required by law.

The principal officer of the Association or such other officer as is specifically designated shall furnish the information when requested to do so in writing within thirty (30) days of receiving the request. A reasonable fee covering the direct out-of-pocket costs of copying and providing such information may be charged by the Association to the Unit seller.

**Article 15****Errors and Omissions****15.1 Omissions or Errors.**

If there is an error or omission or scrivener's error in this Declaration or other instrument of the Association, the Association may correct the error or omission by an amendment to this Declaration or other instrument, as may be required to correct such error, omission or scrivener's error or to conform the Declaration to any applicable statute, or to conform

any other instrument this Declaration. The amendment shall be adopted by vote of 2/3 of the members of the Board or by a majority vote of the members at a meeting called for that purpose, unless the Declaration specifically provides for greater percentages or different procedures.

#### **15.2 Ratification.**

If an omission or error or a scrivener's error in this Declaration or other instrument is corrected by vote of 2/3 of the members of the Board pursuant to the authority established in Section 15.1, the Board, upon written petition by Owners with 20% of the votes of the Association, received within 30 days of the Board action, shall call a meeting of the Owners within 30 days of the filing of the petition to consider the board action. Unless a majority of the votes of the Owners are cast at the meeting to reject the action, it is ratified whether or not a quorum is present.

#### **15.3 Affected Owners' Consent.**

The procedures for amendments set forth in Sections 15.1 and 15.2 cannot be used if such an amendment would materially or adversely affect property rights of the Owners unless the affected Owners consent in writing. This Section shall not restrict the powers of the Association to otherwise amend this Declaration, the By-Laws, or other instruments, but authorizes a simple process of amendment requiring a lesser vote for the purpose of correcting defects, errors, or omissions when the property rights of Owners are not materially or adversely affected.

#### **15.4 Correction by Court Action.**

If there is an error or omission in this Declaration or other instruments that may not be corrected by an amendment procedure set forth, then the Circuit Court in the County in

which the Association is located shall have jurisdiction to hear a petition of one or more Owners thereon or of the Association, to correct the error or omission, and the action may be a class action. The court may require that one or more of the methods or correct be submitted to the Owners to determine the most acceptable correction. All Owners must be joined as parties to the action. Service of process on Owners may be by publication, but the plaintiff shall furnish all Owners not personally served with process with copies of the petition and final judgment of the court by certified mail, return receipt requested, at their last known address.

#### **15.5 Legal Requirements.**

Nothing contained in this Article shall be construed to invalidate any provision of this Declaration authorizing the Developer to amend an instrument prior to the latest date on which the initial members meeting must be held, whether or not it has actually been held, to bring the instrument into compliance with the legal requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veteran Administration, or their respective successors and assigns, or other purposes specified herein.

### **Article 16**

#### **General Provisions**

##### **16.1 Enforcement.**

These Covenants shall run with, and be binding upon the Property and shall inure to the benefit of and shall be binding upon the Association and all persons owning, leasing, subleasing, or occupying any such land and their heirs, executors, administrators, personal representatives, successors, and assigns. These Covenants may be enforced by the Association, which shall have the right to expend Association monies in pursuance

thereof, and may also be enforced by the Owner of any Unit in the Development or any one or more of the aforesaid persons benefited thereby. If these Covenants are enforced by appropriate proceedings by any such Owner or Owners, such Owner or Owners, if successful in such enforcement and if the Association had theretofore refused such enforcement, shall be reimbursed by the Association for all or any part of the cost incurred, but such reimbursement shall be solely in the discretion of the Board. Enforcement of these Covenants shall be by any proceeding at law, equity, or otherwise against any person or persons violating or attempting to violate any of these Covenants either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and failure by the Association or any Owner to enforce any of the Covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### **16.2 Duration, Termination and Amendment.**

Subject to the provision hereof, these covenants shall remain in full force and effect for a period of thirty-five (35) years from the date hereof, and thereafter they shall be deemed to have been automatically renewed for successive terms of ten (10) years except that at any time, and from time to time, they may be amended or terminated by the vote of the Owners of not less than sixty-seven percent (67%) of the Units then in the Association.

#### **16.3 Powers Retained by Developer.**

A power coupled with an interest is hereby retained by and granted to the Developer (acting by and through its duly authorized officers), its successors, assigns or designees, as attorney-in-fact, to amend this Declaration, the By-laws of the Association, or the Articles of Incorporation of the Association, for any of the following purposes: (a) compliance with requirements of the Veterans Administration, the Department of

Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, any successor to any of such organizations and any other federal, state or local governmental entity or agency, including, but not limited to, amendments which give mortgagees the right to participate in or approve certain decisions of the Board or Association; (b) correcting any typographic or scrivener's error (including defining or redefining terms); and (c) meeting requirements of the Internal Revenue Code as now, or hereafter amended, (i) relating to organizations exempt from tax or (ii) specifically exempting homeowners' association from any Federal income tax; provided that Developer shall have no obligation to cause any such amendment to be made. The acceptance of each deed, mortgage or other instrument with respect to any Unit which is subject to these Covenants shall be deemed to be a confirmation of such power to such attorney-in-fact and shall be deemed to constitute a consent and agreement to and acceptance, confirmation and ratification of all such amendments, which shall be effective upon the recording in the office of the Recorder of Deeds of the County within which the Community is located of an appropriate instrument, setting forth the amendment, and its authorization pursuant to this Section, which instrument shall be executed and acknowledged by Developer.

#### **16.4 Temporary Sales Facilities.**

The Developer may maintain a temporary sales and construction office within the Property. The aforesaid office may be located in a trailer or in a model or residential home.

**16.5 Assignment of Developer's Rights.**

Notwithstanding anything herein to the contrary, Developer hereby reserves the right to transfer, assign, mortgage or pledge any and all of its privileges, rights, title and interest hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds in the County in which the Property is located. Upon such assignment the assignee shall be deemed the "Developer" for purposes hereof, and Developer shall be relieved of any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of Developer shall have or incur any liability for the obligations or acts of any predecessor in interest.

**16.6 Leases.**

Any lease or rental agreement affecting any Unit must be in writing, for a period of at least six (6) months, and shall be subject to these Covenants, and the Articles of Incorporation and By-Laws of the Association.

**16.7 Professional Management Contracts.**

Developer shall not directly or indirectly bind the Association to any professional management contract unless such contract includes a right of termination without cause that the Association can exercise at any time after transfer of control. Said right of termination shall not require any payment of any penalty or advance notice of more than ninety (90) days.

**16.8 Village Ordinances Prevail.**

None of the covenants, conditions, restrictions or provisions of the Declaration are intended to supersede or prevail over the ordinances of general or specific applicability of

the Village as they currently exist or as they may be amended from time to time, in which the Development is located, and in the event of any conflict, the applicable ordinances of the Village shall supersede and prevail over the covenants, conditions, restrictions and provisions of this Declaration.

**16.9 Severability.**

Invalidation of any one or more of the provisions of these Covenants or portions thereof by judgment or court order shall in no way affect the validity of any of the other provisions or portions thereof, which shall remain in full force and effect.

**16.10 Notices.**

Any notice or other communication required to be sent to any Owner under the provisions of this instrument shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner, Eligible Mortgagee, or First Mortgagee on the records of the Association at the time of such mailing. Notice to the Association shall be sent in the manner addressed to its President or Secretary at 2700 W. Higgins Road, Suite 100, Hoffman Estates, Illinois, 60195, or to such other address of which the Association shall have notified the Unit Owners in the aforesaid manner.

**16.11 Captions.**

The Section captions in this instrument are for convenience only and do not in any way define, limit, describe or amplify the terms and provisions of this instrument or the scope or intent thereof.

IN WITNESS, Lakewood Orchard Phase III LLC, a Delaware limited liability company has caused its name to be signed to this instrument by its managing member this 14th day of April, 2005.

Lakewood Orchard Phase III LLC, a Delaware limited liability company

By: Lakewood Holmes, Inc.  
its managing member

By: President

Attest:

  
Secretary

STATE OF ILLINOIS )  
 )  
 )SS

COUNTY OF Cook )

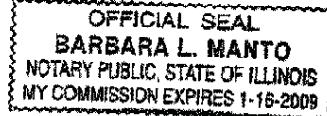
I, Barbara L. Manto, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Bert Hoffman and Rich Simons personally known to me as the President and Secretary respectively, of Lakewood Homes, Inc., personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the same instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and seal this 14<sup>th</sup> day of Apr. 1, 2005.

Barbara L. Manto  
Notary Public

My commission expires:

1/16/09



Prepared by and Return to:

John H. Mays  
Gould & Ratner  
222 North LaSalle Street  
Suite 800  
Chicago, Illinois 60601  
Phone: (312) 236-3003

SCHEDULE OF EXHIBITS

A = Property  
B = Additional Land  
C = Fences

**EXHIBIT A  
PROPERTY**

**Lots 1 through 102**, both inclusive and **Outlots A, B, C, D, E, F, G, H AND I** in Lakewood Orchard being a subdivision of part of the south half of the northwest quarter of section 5, township 44 north, range 10 east of the third principal meridian, according to the plat thereof recorded September 28, 2004, as document number 5653411 and amended by document recorded December 3, 2004 as document number 5693874, in Lake County, Illinois.

P.L.N.: 10-05-100-008-0000

**Lots 103 through 110**, both inclusive and **Outlots A and B** in Lakewood Orchard 2 being a subdivision of part of the south half of the northwest quarter of section 5, township 44 north, range 10 east of the third principal meridian, according to the plat thereof recorded December 3, 2004, as document number 5693873 in Lake County, Illinois.

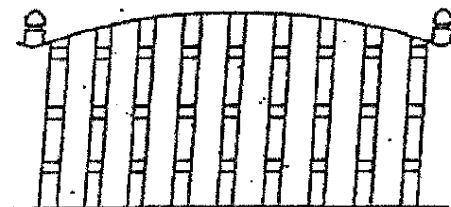
P.L.N.: 10-05-100-007-0000

**EXHIBIT B**  
**ADDITIONAL LAND**

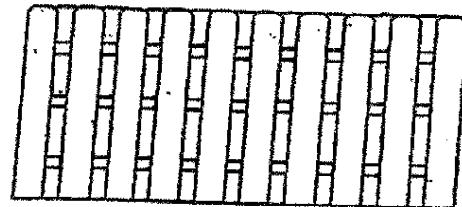
Any real estate within a mile radius of the Property described on Exhibit "A", provided the total Units subject to this Declaration does not exceed (1,000) Units.

## EXHIBIT C

## FIVE-FOOT AND SIX-FOOT FENCES



BOARD ON BOARD ARCHED



BOARD ON BOARD DOG EAR

X = SIX-FOOT ALLOWABLE FENCES - PERIMETER ONLY

