

**AMENDED AND RESTATED  
SANCTUARY OF BULL VALLEY MASTER OPERATING ASSOCIATION, INC.,  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS AMENDED AND RESTATED SANCTUARY OF BULL VALLEY OPERATING ASSOCIATION, INC., DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made as of this 28<sup>th</sup> day of November, 2005, by KNICKERBOCKER PROPERTIES LLC, a Delaware limited liability company, which has a mailing address of 2100 West Lake Shore Drive, Woodstock, Illinois 60098 ("**Phase One Declarant**") and ROSLIN SANCTUARY LLC, a Delaware limited liability company, which has a mailing address of 901 North Elm Street, Suite 212, Hinsdale, Illinois 60521 ("**Phase Two/Three Declarant**").

**RECITALS**

**A.** Phase One Declarant and Phase Two/Three Declarant are sometimes referred to herein collectively as the "**Declarant**."

**B.** Phase Two/Three Declarant acquired from Phase One Declarant and is the owner of: (i) that certain real estate situated in the City of Woodstock, County of McHenry, State of Illinois legally described on the attached **Exhibit A-2** (the "**Phase Two Property**") and (ii) that certain real estate situated in the City of Woodstock, County of McHenry, State of Illinois legally described on the attached **Exhibit A-3** (the "**Phase Three Property**").

**C.** The Phase One Property, the Phase Two Property and the Phase Three Property are collectively referred to herein as the "**Property**."

**D.** Phase One Declarant caused that certain instrument captioned "THE SANCTUARY OF BULL VALLEY MASTER OPERATING ASSOCIATION, INC., DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS" to be prepared and recorded by the McHenry County Recorder on September 11, 2003 as Document No. 2003R0125701 (the "**Original Declaration**"), and that certain instrument captioned "FIRST AMENDMENT TO THE SANCTUARY OF BULL VALLEY MASTER OPERATING ASSOCIATION, INC., DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED WITH THE MCHENRY COUNTY RECORDER OF DEEDS OFFICE AS DOCUMENT NO. 2003R0125701 ON SEPTEMBER 11, 2003" to be prepared, recorded by the McHenry County Recorder on February 18, 2004 as Document No. 2004R0012647, and re-recorded by the McHenry County Recorder on September 17, 2004 as Document No. 2004R0084022 (the "**First Amendment**") and that certain instrument captioned "SECOND AMENDMENT TO THE SANCTUARY OF BULL VALLEY MASTER OPERATING ASSOCIATION, INC., DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED WITH THE MCHENRY COUNTY RECORDER OF DEEDS OFFICE AS DOCUMENT NO. 2003R0125701 ON SEPTEMBER 11, 2003" to be prepared, recorded by the McHenry County Recorder on May 26, 2004 as Document No. 2004R0047445, and re-recorded by the McHenry County Recorder on September 17, 2004 as Document No. 2004R0084023 (the "**Second Amendment**").

**E.** Phase One Declarant and Phase Two Declarant intend that the Original Declaration, as amended by the First Amendment and by the Second Amendment, shall be amended and restated in its entirety by this Declaration, from and after the date hereof.

**F.** At the time the Original Declaration was executed, Phase One Declarant was the owner of that certain real estate situated in the City of Woodstock, County of McHenry, State of

Illinois legally described on the attached **Exhibit A-1** in its entirety (the "**Phase One Property**").

**G.** Phase One Declarant has caused the Phase One Property to be subdivided pursuant to the Phase One Final Plat (as defined herein) and has entered into various contracts, several of which have closed, for the sale of Lots within Phase One to individual homebuyers and to builders.

**H.** Declarants, notwithstanding the foregoing contracts and sales, possesses the reserved right and power, pursuant to Article XIII, Section 3 of the Original Declaration, to record a Special Amendment to the Original Declaration at any time and from time to time which amends the Original Declaration, *inter alia*, to correct clerical or typographical errors in the Original Declaration or any Exhibit thereto or any supplement or amendment thereto, or to record a Special Amendment that benefits directly or indirectly the interests of all the Owners. In furtherance of the foregoing, Article XIII, Section 3 of the Original Declaration reserves and grants to Declarant an irrevocable power coupled with an interest to vote in favor of, make, consent to, execute and record a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Declarants, subject to certain limitations set forth in Article XIV, Section 12 of the Original Declaration, are also entitled to amend the Original Declaration at any time within the first ten (10) years of its Term.

**I.** Phase One Declarant and Phase Two/Three Declarant have determined that this Amendment and Restatement of the Original Declaration, as previously amended, will benefit the interests of all of the Owners, including but not limited to the benefits that will accrue by (i) consolidating the provisions of the Original Declaration, the First Amendment and the Second Amendment into a single document; (ii) articulating and accommodating the specific plans for the development and ownership of Phase Two and Phase Three; and (iii) articulating and accommodating the relative rights and responsibilities of the Phase One Declarant and the Phase Two/Three Declarant.

**J.** Phase One Declarant has subdivided the Phase One Property pursuant to that certain Final Plat consisting of four (4) pages and recorded by the McHenry County Recorder on September 8, 2004 as Document 2003R0123486 (the "**Phase One Final Plat**") into the following components:

(i) Lots numbered thereon as 1 through 105, inclusive, each of which is referred to herein as an "**Estate Lot**" and is intended for development of a single-family Dwelling Unit (each such residence being referred to as an "**Estate Residence**" herein);

(ii) Lot numbered 106 thereon ("**Lot 106**"), which Phase One Declarant (with or without Phase Two/Three Declarant) may develop as a bath and tennis club or similar recreational facility in accordance with Article V hereof, or which Phase One Declarant may develop with one or two single-family Estate residences;

(iii) Lot numbered 107 thereon, which Phase One Declarant dedicated thereby to the City of Woodstock;

(iv) Approximately 31.67 acres of outlots identified thereon as Outlot A through Outlot J, inclusive (collectively, the "**Phase One Outlots**"); and

(v) Approximately 55.549 acres of right-of-way dedicated thereby to the City of Woodstock.

**K.** Phase One Declarant, also pursuant to the Phase One Final Plat, designated approximately 68.964 acres of the Phase One Property as "D.R.O.S" or "Deed Restricted Open

Space”.

**L.** Phase One Declarant has already constructed or is in the process of constructing those Facilities (as hereafter defined) located or to be located in, under, over, across, upon or through the Phase One Property.

**M.** Phase Two/Three Declarant has subdivided or intends to subdivide the Phase Two Property pursuant to the recording of two Final Plats, one for Phase “2a” and one for Phase “2b,” (collectively, as from time to time approved by the City and recorded by the McHenry County Recorder, the “**Phase Two Final Plat**”) into the following components:

- (i) Lots numbered thereon as 1 through 97, inclusive, each of which is referred to herein as a “**Villa Lot**” and is intended for development of a single-family Dwelling Unit (each such residence being referred to as an “**Villa Residence**” herein);
- (ii) Six (6) outlot areas identified thereon as Outlots J through Outlot O, inclusive (collectively, the “**Phase Two Outlots**”);
- (iii) Right-of-ways dedicated thereby to the City of Woodstock; and
- (iv) Nine (9) areas designated thereon as “Access Easements” and labeled thereon as Bunting Court (or Outlot II), Warbler Circle (or Outlot GG), North Warbler Court (or Outlot FF), South Warbler Court (or Outlot HH), Redtail Court (or Outlot AA), Redtail Circle (or Outlot BB), Redtail Lane (or Outlot CC), East Finch Court (or Outlot EE) and West Finch Court (or Outlot DD) (collectively herein referred to as the “**Villa Drives**”).

**N.** Phase Two/Three Declarant is currently undertaking construction of those Facilities to be located in, under, over, across, upon or through the Phase Two Property.

**O.** Phase Two/Three Declarant is currently undertaking construction of the Villa Maintenance Free Areas or MFAs (each as defined herein) to be located in, under, over, across, upon or through the Villa Lots.

**P.** Phase Two/Three Declarant has subdivided or intends to subdivide the Phase Three Property pursuant to the recording of two Final Plats, one for Phase “3a” and one for Phase “3b,” (collectively, as from time to time approved by the City and recorded by the McHenry County Recorder, the “**Phase Three Final Plat**”) into the following components:

- (i) Lots numbered thereon as 1 through 85, inclusive, each of which is referred to herein as a “**Premier Lot**” and is intended for development of a single-family Dwelling Unit (each such residence being referred to as an “**Premier Residence**” herein);
- (ii) Eight (8) outlot areas identified thereon as Outlot G, Outlot J, and Outlots O through Outlot Q, inclusive (collectively, the “**Phase Three Outlots**”); and
- (iii) Rights-of-way dedicated thereby to the City of Woodstock.

**Q.** Phase Two/Three Declarant is currently undertaking construction of those Facilities to be located in, under, over, across, upon or through the Phase Three Property.

**R.** Phase One Declarant intends that the Phase One Property and each portion thereof

shall be submitted to the provisions of this Declaration.

**S.** Phase Two/Three Declarant intends that the Phase Two Property and each portion thereof and the Phase Three Property, and each portion thereof shall be submitted to the provisions of this Declaration.

**T.** As further described herein, the Facilities are intended to benefit each of the Lots (as defined herein) as well as the residents of any buildings that may hereafter be constructed thereon, and the Villa Drives and MFAs are intended to benefit the Villa Lots and the residents of any of the Villa Residences constructed within the Phase Three Property.

**U.** Each Declarant is further desirous of establishing for its own respective benefit and for the mutual benefit of all future owners or occupants of the Property or any part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

**V.** Each Declarant desires to reserve unto itself the right to add certain additional real estate which is contiguous to the Property to the plan of ownership established hereby.

**W.** Each Declarant deems it desirable for the efficient preservation of the value of the Property and of the improvements and amenities constructed thereon to create an agency for the purpose of maintaining and administering (i) the Facilities and such additional facilities as may be constructed on the Property and which are classified, pursuant to the terms hereof, as Common Properties and (ii) the Villa Drives and the MFAs, and for the additional purpose of administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the assessments and the charges hereinafter created.

**X.** Phase One Declarant has therefore caused to be incorporated, under the laws of the State of Illinois, a not-for-profit corporation, the corporate title of which is The Sanctuary of Bull Valley Master Operating Association, Inc. for the purpose of performing those functions set forth in the preceding Recital and as further described herein.

**NOW THEREFORE**, the Phase One Declarant with respect to the Phase One Property and the Phase Two Declarant with respect to the Phase Two Property and the Phase Three Property, each does hereby declare that the Property and each portion thereof shall be transferred, held, sold, conveyed and occupied, subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

## **ARTICLE I EFFECT OF THIS INSTRUMENT, RECITALS, EXHIBITS AND DEFINITIONS**

**Section 1. Effect of this Instrument.** The Original Declaration, as amended by the First Amendment and Second Amendment, is hereby amended and restated in its entirety, effective as of the date hereof. In no way shall this amendment and restatement be deemed to alter or diminish any priority of the Original Declaration as amended by the First Amendment and Second Amendment, and this Declaration shall have the same priority as the Original Declaration in every respect and with respect to any deed, mortgage, trust deed or other instrument recorded against the Property or any portion thereof.

**Section 2. Incorporation of Recitals.** The foregoing recitals are incorporated into this Declaration as if fully recited herein.

**Section 3. Incorporation of Exhibits.** The Exhibits attached to this Declaration and listed below are by this reference made a part of this Declaration:

- Exhibit A-1: Legal Description of the Phase One Property
- Exhibit A-2: Legal Description of the Phase Two Property
- Exhibit A-3: Legal Description of the Phase Three Property
- Exhibit B: Amended and Restated By-Laws
- Exhibit C: Add-On Property
- Exhibit D: Assessment Shares for Estate Lots
- Exhibit E: ARB Guidelines for Villa Residences and Premier Residences

**Section 4. Additional Definitions.** For the purpose of this Declaration, the following additional definitions shall control:

**(a) Annexation Agreement:** That certain annexation agreement entered into between Phase One Declarant and the City recorded August 23, 2002 by the McHenry County Recorder's Office as Document No. 2002R0073920 as amended by that certain agreement entered into by and between these same parties and recorded September 5, 2003 by the McHenry County Recorder's Office as Document No. 2003R 0123003.

**(b) ARB:** The Architectural Review Board, which shall be comprised of three (3) individuals, two (2) designated by Phase One Declarant and one (1) designated by Phase Two/Three Declarant, and may be changed by the applicable Declarant at any time. In the event such a designated individual elects to discontinue service on the ARB, and the applicable Declarant no longer exists to designate such individual's replacement, then the Association shall appoint the individual's replacement to the ARB.

**(c) Association:** The Sanctuary of Bull Valley Master Operating Association, Inc., an Illinois not-for-profit corporation, and its successors and assigns. 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)) or a "master association" as defined in Section 18.5(a) of the Illinois Condominium Property Act (765 ILCS 605/18.5(a)).

**(d) Board:** The Board of Directors of the Association selected pursuant to the terms of this Declaration, the Articles of Incorporation of the Association and the By-Laws thereof.

**(e) By-Laws:** The Amended and Restated By-Laws of the Association, a copy of which is attached hereto and made a part hereof as **Exhibit B** and by reference incorporated herein as if fully set forth.

**(f) City:** The City of Woodstock, State of Illinois, an Illinois municipal corporation, and its successors or assigns.

**(g) Common Properties:** The Phase One Outlots, Phase Two Outlots, and the Phase Three Outlots. The Common Properties do not include any Villa Drives or any Maintenance Free Areas.

**(h) Declaration:** This instrument, which may sometimes be referred to in other documents as The Amended and Restated Sanctuary of Bull Valley Master Operating Association, Inc., Declaration of Covenants, Conditions and Restrictions.

**(i) Deed Restricted Open Space of D.R.O.S.:** Those portions of the Phase One Property designated as "Deed Restricted Open Space or "D.R.O.S." on the Phase One Final Plat, which portions are required to be maintained in their natural, undisturbed state in accordance with the Guidelines.

**(j) Dwelling:** Any single residential housing unit constructed on any portion of the

Property consisting of a group of rooms that are designated or intended for the exclusive use as living quarters. The term "Dwelling" includes any Estate Residence, any Premier Residence, and any Villa Residence and any additions made to any of the foregoing from time to time or at any time. The term "Dwelling" shall specifically include, without limitation: attached and detached garages, sunrooms, porches, decks, patios, exterior steps, roofs, slabs, foundations, footings, outer surfaces of exterior walls, windows and doors, eaves, gutters, window treatments and any utility lines located within a Lot that service only one Dwelling.

**(k) Facilities:** (i) The Stormwater Detention Facilities; (ii) the Kettles (as defined in the Annexation Agreement); (iii) mailboxes for each Dwelling Unit; and (iv) all pavement, bridges, mowed paths, landscaping, lighting systems, irrigation systems, monuments, water features, directional and monument signage, retaining walls, decorative walls markings or similar installations and associated utility facilities occurring in, through, upon, over, across and under the Common Properties (and, to the extent the Association and City so agree, some or all of the foregoing as they occur within the Property's dedicated rights of way), including the well located in Outlot F of the Phase One Property.

**(l) First Mortgagee:** The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering one or more Lots. A person or entity shall not qualify as a First Mortgagee hereunder if such person is related to an Owner or such entity, whether a corporation, trust partnership or other entity, has majority ownership or control by an Owner or a party related to an Owner. For purposes of determining who is a party related to an Owner, a related party shall include, without limitation, a member of the Owner's immediate family, including, a spouse, child, parent, brother, sister, half-brother or half-sister or any ancestor or lineal descendant.

**(m) Guidelines:** Shall have the meaning set forth in Section 12 of Article X hereof.

**(n) Laws:** Applicable governmental or quasi-governmental laws, statutes, ordinances, rules, regulations and requirements.

**(o) Lot:** (i) Each Estate Lot; (ii) each Premier Lot; (iii) each Villa Lot; and (iv) each portion of land intended for development and use as a single dwelling that is a subdivided lot pursuant to a final plat of subdivision pertaining to any Add-On Property.

**(p) Mortgage:** A mortgage or trust deed owned and held by a First Mortgagee (as defined herein).

**(q) Owner:** The person, persons or entities whose estates or interests individually or collectively aggregate fee simple absolute ownership of a Lot and all family members, heirs, successors and assigns of such Owner, but excluding those who have an interest merely as security for the performance of an obligation and excluding those contract purchasers who have not yet acquired title to a Lot. Unless expressly set forth herein to the contrary, the term Owner shall include each Declarant to the extent of the number of Lots owned by such Declarant.

**(r) Plat:** (i) the Phase One Final Plat with respect to the Phase One Property; (ii) the Phase Two Final Plat with respect to the Phase Two Property; (iii) the Phase Three Final Plat with respect to the Phase Three Property; and (iv) any recorded final plat of subdivision of all or any portion of the Add-On Property.

**(s) Stormwater Detention Facilities:** All on-site facilities, improvements, drainage easement areas designated on the Plat, retention and detention areas and/or basins and stormwater sewer lines directly serving such basins, drainage swales, surface drainage facilities and all areas necessary for the management of stormwater and the uninterrupted flow of water

from the Property in, upon, over and under those portions of the Common Properties, established pursuant to final engineering plans as approved by the City or as is otherwise determined necessary with respect to the foregoing by any one or more Declarants or the Association, as the case may be.

(t) **Underlying Association:** An Illinois not-for-profit corporation, if any, formed to be an association of the owners of only a particular Phase, or only the Add-On Property, or only a portion of the Add-On Property, as well as such corporation's successors and assigns.

## **ARTICLE II SITE PLAN**

**Section 1. Site Plan.** Declarants, in accordance and in compliance with City requirements and the Annexation Agreement, have created certain site plans for the development of the Property, by the implementation of which modern master planning objectives may be realized for the common good and enhancement of property values within the community. Each Owner shall be deemed to have acknowledged by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, that Declarants have substantial interest to be protected with regard to assuring compliance with and enforcement of, the covenants, conditions, restrictions and reservations contained in the Annexation Agreement, this Declaration and any amendments or supplements thereto.

**Section 2. No Limitations on Subdivision.** The following shall apply to the Phase One Declarant with respect to the Phase One Property and the Phase Two/Three Declarant with respect to the Phase Two Property and the Phase Three Property. Nothing in this Declaration shall limit, and no Owner or the Association (including the Board or the ARB) shall do anything to interfere with the right of a Declarant to subdivide or resubdivide any portion of the Property owned by such Declarant, to complete excavation and grading and construction of improvements on the Property or on the Common Properties (which improvements shall be completed in a manner consistent with the Annexation Agreement and the approved engineering plans on files with the City), to alter the foregoing or construction plans and designs for the foregoing, or to construct such additional improvements as Declarant deems advisable in the course of development of the Property so long as the affected portions of the Property are owned by a Declarant or are undertaken with the prior written consent of the Owners owning the other portions Property that are reasonably likely to be affected. Such right shall include, without limitation, grading of the Property, and erecting, constructing and maintaining on the Property such structures and displays as may be reasonably necessary for the conduct of the applicable Declarant's business, construction of improvements and the sale, lease or other conveyance of Lots and Dwellings. This Declaration shall not limit the right of any Declarant to establish on the Property additional licenses, easements, reservations and rights-of-way for itself, utility companies or other third parties, as may be reasonably necessary to the proper development and sale or transfer of all or portions of the Property; provided that each Declarant's exercise of such rights does not adversely affect existing improvements located on any Lot, or adversely and materially impair the usability of the Lot by the Owner of the Lot for its intended use as a single residential Lot. Neither Declarant must seek or obtain the approval of the Association, the other Declarant or the ARB for any improvement constructed or placed by such Declarant on any portion of the Property owned by such Declarant. All or any of the rights of a Declarant in this Section and elsewhere in this Declaration may be assigned by such Declarant.

**Section 3. Right to Landscape.** The following shall apply to the Phase One Declarant with respect to the Phase One Property and the Phase Two/Three Declarant with respect to the Phase Two Property and the Phase Three Property. Notwithstanding the provisions of Article VI, Section 1 with respect to the obligation of the Association to maintain the Common

Properties, each Declarant reserves for the entire term of this Declaration the right, at the applicable Declarant's cost and expense, to landscape the Common Properties, subject to Laws and in accordance with the applicable landscaping plan approved by the City. Each Declarant's initial obligation for the landscaping of the Common Properties is set forth in the Annexation Agreement and in Laws.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Every Owner of a Lot which is a part of the Property shall, as a condition to holding fee simple title to any such Lot, be a member of the Association and shall remain as such so long as such individual or entity remains an Owner of a Lot. Upon the termination of the interest of an Owner in a Lot, that individual's or entity's membership shall thereupon automatically terminate as to such Lot and shall transfer and inure to the Owner succeeding to the interest of such individual or entity. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

**Section 2. Voting.** The Association shall have two (2) classes of voting membership:

(a) **Class A.** Class A members shall be all Owners (except the Declarants) and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot, and the Owner or Owners of such Lot shall advise the Board in writing as to which single person shall be entitled to cast the vote for the Lot. Where no such written designation has been given to the Board, no vote may be cast for such Lot.

(b) **Class B.** The Class B members shall be each Declarant. Each Declarant shall each be entitled to three (3) votes for each Lot owned; provided, however, a Declarant shall be entitled to only (1) vote per Lot upon the earliest to occur of the following events:

- (1) With respect to the Phase One Declarant, in the event all of the Add-On Property has been subjected to the terms of this Declaration, when seventy-five percent (75%) of the Lots have been sold and conveyed by Phase One Declarant to purchasers ("**75% Date**");
- (2) With respect to the Phase One Declarant, in the event less than all of the Add-On Property has been subjected to the terms of this Declaration, five (5) years after the 75% Date, unless any portion of the Add-On Property is subjected to the terms of this Declaration after the 75% Date and prior to the expiration of the five (5) year period that, when including such portion of the Add-On Property, causes less than seventy-five percent (75%) of the then existing Lots to be sold and conveyed by Phase One Declarant to purchasers;
- (3) With respect to each Declarant, ten (10) years after the date the first Lot is conveyed by that Declarant to a third party purchaser; or
- (4) With respect to each Declarant, upon written notice of election by such Declarant sent to the Association as of the date specified in the notice.

### **ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES AND OTHER EASEMENTS**

**Section 1. Owners' Rights of Enjoyment.**



(a) Subject to (i) the rights and remedies of Declarants and the Association, and (ii) the covenants, conditions and restrictions contained in this Declaration, each Owner shall have the perpetual, non-exclusive right and easement in and to the Common Properties and the Facilities in common with all other Owners granted in Article IV, Section 3 hereof, and such right and easement shall be appurtenant to and pass with the title to every Lot. Such right and easement shall inure to the benefit of each Owner and each Owner's family, guests, invitees, and contract purchasers.

(b) Subject to (i) the rights and remedies of Declarants and the Association, and (ii) the covenants, conditions and restrictions contained in this Declaration, each Villa Lot Owner shall have the perpetual, non-exclusive right and easement for vehicular and pedestrian ingress and egress in, over, and across the Villa Drive, if any, that is adjacent to such Owner's Lot in common with all other Villa Lot Owners having Lots adjacent to such Villa Drive, and such right and easement shall be appurtenant to and pass with the title to every such Villa Lot. Such right and easement shall inure to the benefit of the Owners of each such Villa Lot and each such Owner's family, guests, invitees, and contract purchasers.

**Section 2. Title to Common Properties.** On or before either Declarant conveys any individual Lot or Dwelling within Phase 1, 2a, 2b, 3a or 3b to a third-party purchaser, such Declarant shall convey to the Association: (i) the Common Properties platted by such Declarant that are within the same Phase as such Lot or Dwelling and (ii) the Facilities installed or constructed by such Declarant for such Lot, Dwelling or Phase. After each such conveyance, the Association shall own, hold, maintain and administer the same, and bear the cost thereof, for the uses and purposes and upon the terms and conditions set forth herein. After such conveyance, and except as otherwise expressly provided herein, the Common Properties shall not be mortgaged or conveyed without the consent of the Owners having not less than sixty-six and two-thirds percent (66 ⅔ %) of the total vote of the Association (excluding the Declarants); provided, however, that so long as there is a Class B membership that is entitled to more than one vote per Lot (a "**Weighted Vote Membership**"), each Declarant must (if required by the rules and regulations promulgated by such entity) obtain the prior approval of any entity that is a federal agency or is federally related and is insuring, guaranteeing or holding a mortgage on a Dwelling (any of the foregoing, a "**Federal Entity**") before mortgaging any Common Properties.

**Section 3. Common Properties Pedestrian Easement.** Subject to all of the covenants, conditions and restrictions contained herein and in any rules and/or regulations adopted from time to time by the Association, there is hereby granted, declared and conveyed a non-exclusive, perpetual easement upon, over across and in the Common Properties, for the benefit of the Owners, for the passive use and visual enjoyment of the Common Properties and for pedestrian passage along any mowed paths and recreational trails created therein by either Declarant or by the Association.

**Section 4. Maintenance Easement.** Subject to all of the covenants, conditions and restrictions contained herein, except for the obligation for payment of any assessments hereunder or the payment of any other fees for the maintenance of the Common Properties, there is hereby created a non-exclusive, perpetual easement appurtenant to and for the benefit of Declarant and the Association and their respective employees, contractors and agents, in, upon, across, under, over and through the Property and each portion thereof, for ingress, egress, installation, replacement, repair and maintenance of the Property and Lots, including the front yards, side yards and back yards of every Lot, including, without limitation, all D.R.O.S., all MFAs, the exteriors of all Dwellings, and any other structures and other improvements located on or under the Property or a Lot. By virtue of this easement, it shall be expressly permissible for the Association or Declarant, if so directed by the Association and their respective employees, contractors and agents, in, to undertake any of the foregoing as required or permitted hereunder. Except as expressly set forth in Article VI, Section 2, Article VIII, Article

IX, Article X and Article XI hereof, neither Declarant nor the Association shall have any obligation for the maintenance, repair and/or replacement of any Dwellings, additions, structures or other improvements on or under a Lot. The maintenance easement shall not include the right of access to the interiors of any Dwellings within the Property.

## **ARTICLE V BATH AND TENNIS CLUB, ALTERNATIVE DEVELOPMENT OF LOT 106**

**Section 1. Bath and Tennis Club.** Declarant reserves the right to construct or cause to be constructed a bath and tennis club or similar recreational facility upon the Property, to be located on Lot 106 (as designated on the Phase One Final Plat). Each Owner hereby expressly consents to the construction of such club or facility, and hereby grants Declarant, its successors and assigns, a power coupled with an interest and all easement rights necessary for Declarant to construct or cause to be constructed such club or facility in accordance with plans specifications approved by the City, without requiring any further notices to, or any further consent from, any Owner. The use of such club or facility shall be upon the terms, conditions and procedures promulgated by the operator of such club or facility.

**Section 2. Alternative Development of Lot 106.** Phase One Declarant reserves the right to undertake and complete all necessary or advisable actions to construct or cause to be constructed one or two Estate Dwellings on Lot 106, following receipt of any and all necessary permits and approvals by the City (including, without limitation, the subdivision of Lot 106 into two Lots so as to permit the construction of two Dwellings on the land underlying Lot 106). Promptly following receipt of the necessary permits and approvals from the City for residential construction to proceed on Lot 106 (or a subdivided portion thereof), Phase One Declarant shall provide written notice thereof to the Board and to the other Declarant. Without any requirement for further amending this Declaration, Lot 106 (or, if applicable, each of the two subdivided portions of Lot 106) shall thereupon be deemed Estate Lot(s) for all purposes hereunder.

## **ARTICLE VI MAINTENANCE OBLIGATIONS**

**Section 1. Common Properties and Facilities.** The Association shall have the obligation and the right to undertake the following, all in accordance with the Declaration, the Guidelines, and Laws: to operate, maintain, inspect, repair, replace and preserve the Common Properties, Facilities, and D.R.O.S. (including, without limitation, any water features, lighting, signage, drainage, landscaping and hardscape elements therein, including, without limitation, rip-rap ditches, curbs and other roadway edging, pavers, paved or mowed pedestrian paths, pumps, valves, backflow preventers, liners, pipes, ground lights and associated underground wiring) and the Villa Drives (including, without limitation, all pavement, curbing, pedestrian paths, lighting and landscaping located therein). The foregoing right and obligation of the Association shall pertain to both surface and underground conditions, hardscape and vegetative elements, man-made and natural features, the grading in the Common Properties, and the preservation of the hydraulic characteristics of the Stormwater Detention Facilities. Subject to Article IX hereof, all Stormwater Detention Facilities shall be maintained in perpetuity and cannot be developed for any other use which would limit or cause to limit their use and function for the management of stormwater. The Association also shall have the obligation to remove snow and ice from the driveways and walkways within the Maintenance Free Areas in accordance with this Declaration, including but not limited to Section 2 of this Article VI. After conveyance by Declarant, the Association also shall own the Common Properties, the Facilities, and the Villa Drives, but not the Maintenance Free Areas or the D.R.O.S.. Each Owner shall bear his proportion of responsibility and cost for the foregoing activities of the Association by payment of its Assessments. The Association's right and obligation of maintenance shall not prevent the

Association from allowing an Estate Lot Owner to maintain that portion of the D.R.O.S. on its Lot at such Owner's sole expense or a Villa Lot Owner to maintain that the Maintenance Free Areas on its Lot at such Owner's sole expense.

**Section 2. Maintenance Free Areas.**

(a) As used herein, the term "***Maintenance Free Area***" or "***MFA***," shall mean all portions of a Villa Lot other than the Dwelling on such Lot, but only commencing on the date an Owner other than Phase Two/Three Declarant purchases such Villa Lot or the date Phase Two/Three Declarant commences paying MFA Assessments to the Association for such Villa Lot.

(b) As implied by the definition of "Dwelling," the Maintenance Free Areas will include all trees, shrubs, flowers, grass and other landscaping (including mulch and flowers) located on the exterior portions of a Villa Lot as well as driveways and walkways. Maintenance Free Areas do not, however, include any underground utility lines located on a Villa Lot other than irrigation facilities installed by a Declarant or the Association. The Association's maintenance of the landscaping within the Maintenance Free Areas shall include weeding, watering, planting, pruning, replacement of plants, mowing and fertilizing (although lawn fertilizers and pesticides shall be used, if at all, only to the extent permitted by the ARB and in strict accordance with the Guidelines. The Association's also shall promptly remove snow and ice from the driveways, front walkways and front steps of each Villa Residence. All other maintenance, repair and replacement of such driveways, walkways and steps shall be the sole responsibility of the applicable Villa Lot Owner.

(c) The costs of the Association's activities with respect to the Maintenance Free Areas and Villa Drives, including an equitable portion of the insurance costs associated with the Maintenance Free Areas shall be the responsibility of each Villa Lot Owners, which responsibility shall be satisfied by such Owner's payment of MFA Assessments.

**Section 3. Association Insurance.** During the Term, the Association shall purchase and maintain the following types of insurance:

- (1) insurance on the Common Properties, Facilities, D.R.O.S. and Villa Drives against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements and as reasonably required by First Mortgagees in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof. The "full insurable replacement cost" of the Common Properties, Facilities and Villa Drives shall be determined from time to time by the Board, which determination may be based upon appropriate insurance appraisals. The cost of any and all such appraisals shall be included in determining the assessments payable by the Owners hereunder;
- (2) comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in, on or about the Common Properties, Facilities, Villa Drives and D.R.O.S., or upon, in or about the streets and passageways and other areas adjoining any of the foregoing, such public liability and property damage insurance to afford protection to such limits as the Board shall deem desirable (but in no event for less than One Million Dollars (\$1,000,000.00)) with respect to liability for personal injury or property damage arising out of a single

accident);

- (3) such workman's compensation insurance as may be necessary to comply with Laws;
- (4) employer's liability insurance in such amount as the Board shall deem desirable;
- (5) in the event that the Property is situated in a flood plain or is subject to special flooding hazards, flood insurance in such amounts as the Board shall deem desirable; and
- (6) such other insurance (including insurance with respect to officers and directors' liability) in such reasonable amounts as the Board shall deem desirable which insurance shall include general liability insurance for claims arising out of maintenance of the Common Properties, Facilities, Villa Drives and D.R.O.S. areas by the Association and which policies shall include the listing of each lot owner as additional insureds (proof of said insurance shall be provided to each lot owner).

**Section 4. Owner Obligations.** Each Owner shall be responsible for the maintenance, repairs and/or replacement of the following on such Owner's respective Lot:

(a) For all Lots: insurance on the Dwelling in the full replacement cost thereof consisting of, or providing all the protections afforded by, the insurance now generally described as fire, extended coverage, with additional extended coverage, vandalism and malicious mischief, as well as insurance on such Owner's personal property and belongings and comprehensive public liability insurance, including liability for injuries to and death of persons, in such limits as Owner deems desirable;

(b) For the Estate Lots and Premier Lots: all vegetation, landscaping, trees, shrubs, walkways, and fencing, if any, on a Lot, whether planted or installed by Declarant, the Association, or by any resident or Owner of the Lot (provided, however, that the foregoing shall not be construed to diminish, in any respect, any obligations of the resident or Owner to obtain the prior approval of the ARB for such planting or installation);

(c) For the Villa Lots: all vegetation, landscaping, trees, shrubs, fencing, if any, on a Lot planted or installed by any resident or Owner of the Lot (provided, however, that the foregoing shall not be construed to diminish, in any respect, any obligations of the resident or Owner to obtain the prior approval of the ARB for such planting or installation);

(d) For all Lots: all decorating and furnishings within each Owner's Dwelling, including painting, wallpapering or other wall covering, paneling, floor covering, light fixtures and other furnishings and interior decorating, and any window coverings, whether by drapes, shades or other items visible on the exterior of the Dwelling. (The window coverings visible to the exterior of the dwelling shall be subject to the rules and regulations of the ARB.);

(e) For all Lots: the maintenance, restoration, replacement and repair of the roof of the Dwelling, as well as the maintenance of the interior surfaces of all perimeter walls of the Dwelling and the surfaces of all floors, ceilings and stairways therein;

(f) For all Lots: the interior and exterior surfaces of the Dwelling, and other improvements on a Lot (including patios), including without limitation, periodic painting, caulking and the maintenance, restoration, replacement and repair of masonry, siding, chimneys and trim of the Dwelling and any attached or detached garages;

(g) For the Estate Lots and Premier Lots: the driveways and sidewalks, if any, located in the front yard of the Lot (including snow removal on such driveways and sidewalks), any hardscape, landscaping and lighting elements of any front yard, side yard and back yard located on the Lot, excluding, however, all D.R.O.S., if any, located on the Lot;

(h) For all Lots: such other items as are reasonable and appropriate as the Association may hereafter determine.

**Section 5. Additional Owner's Obligations.** Notwithstanding anything stated herein to the contrary, in the event any property, building, structure, landscaping, improvement or other item which it is the obligation of the Association to maintain is damaged or destroyed by the negligent or willful acts or omissions of any Owner, it shall be such Owner's obligation to promptly repair or replace such property, building or other items to the same condition as existed prior to such damage or destruction.

## ARTICLE VII COVENANT FOR ASSESSMENTS

**Section 1. Creation of Lien and Personal Obligation for Assessments.** Declarant, for itself and its successors and assigns, and each Owner by the acceptance of a conveyance of any portion of the Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (i) the Initial Capital Contribution(as defined herein); (ii) the Annual Assessments (as defined herein); and (iii) Special Assessments (as defined herein), all as fixed, established and levied, from time to time, as hereinafter provided. For each Villa Lot, Annual Assessments and Special Assessments shall include the MFA Assessment as well. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Property and shall be a continuing lien upon each Lot or other portion of the Property, and improvements against which or with respect to which such Assessment is made. Each Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal, joint and several obligation of the person, persons or entities who was or were the Owner of such portion of the Property at the time the Assessment was due and payable. No Owner may waive or otherwise escape liability for any Assessment by abandonment of such Owner's Lot. No sale or transfer shall relieve any Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

**Section 2. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the following purposes:

- (a) the specific Association activities described in Article VI hereof;
- (b) additional activities identified by the Association that are consistent with this Declaration, the Guidelines and Laws and will promote the health, safety and welfare of the residents and Owners of the Property; and
- (c) the Association's administrative and management expenses, including, without limitation, the payment of taxes and assessments on real or personal property owned by the Association, if any, utilities and insurance thereon, the repair, replacement, maintenance, security and operation thereof, construction of additions thereto, the cost of labor, equipment, materials, management and supervision thereof (including the fees described in Section 12 of this Article VII) and the establishment of accounts for future needs pursuant to the By-Laws. The MFA Assessments levied by the Association shall be used exclusively for the Maintenance Free Areas in accordance with Article VI, Section 3, and no portion of the other assessments may be used for such purposes.

**Section 3. Amount and Allocation of Assessments.** The Association shall, in accordance with the By-Laws, fix the Assessments at such amounts as the Association estimates to be necessary to meet the expenses of the Association. Each Lot will be assessed its proportionate share of each total Assessment (and each Villa Lot will be assessed its proportionate share of the total MFA Assessment) in accordance with the following:

(a) The MFA Assessments shall be allocated equally among those Villa Lots for which Assessments have commenced under Article VII, Section 4. For example, if forty (40) Villa Lots have been purchased by third-party Owners, each Villa Lot will be responsible for one fortieth ( $1/40^{\text{th}}$ ) of the overall MFA Assessment. No other portion of the Property shall owe any MFA Assessment.

(b) Assessments other than the MFA Assessments shall be first allocated among Lot 106, the Phase One Property (other than Lot 106), the Phase Two Property, and the Phase Three Property, based upon relative acreage. Lot 106 (unless and until it becomes one or two Estate Lots) including approximately 2.5 acres or one percent (1%) of the overall Property, shall be allocated 1% of each Assessment. The Phase One Property, including approximately 194.5 acres or sixty-five percent (65%) of the overall Property, shall be allocated 65% of each Assessment. The Phase Two Property, being approximately 33 acres, shall be allocated eleven percent (11%) of each Assessment. The Phase Three Property, being approximately 69 acres, shall be allocated twenty-three percent (23%) of each Assessment.

(c) The sixty-five percent (65%) of each Assessment that shall be allocated to the Phase One Property (or the sixty-six percent (66%) of each Assessment, if Lot 106 is appropriately included therewith) shall then be allocated among those Estate Lots for which Assessments have commenced under Article VII, Section 4 based on the Phase One Declarant's initial determination of the value of each such (undeveloped) Lot as set forth in Exhibit D.

(d) The 11% of each Assessment that shall be allocated to the Phase Two Property shall be allocated equally among those Villa Lots for which Assessments have commenced under Article VII, Section 4 in the same manner as the MFA Assessment.

(e) The 23% of each Assessment that shall be allocated to the Phase Three Property shall be allocated equally among those Premier Lots for which assessments have commenced under Article VII, Section 4. For example, if fifty (50) Villa Lots have been purchased by third-party Owners, each Villa Lot will be responsible for one fiftieth ( $1/50^{\text{th}}$ ) of the 23% of the total Assessment.

**Section 4. Date of Commencement of Assessments.** Each Owner shall become liable for Assessments from and after the date on which such Owner purchases and takes title to a Lot. Assessments with respect to any Lot shall be adjusted according to the number of months remaining in the period for which the Assessment or MFA Assessment is applicable following such commencement and shall be payable upon the purchase of a Lot or in installments as determined by the Board in its sole discretion.

**Section 5. Initial Capital Contribution.** Upon the purchase of a Lot, each Owner (other than a Declarant) shall pay to the Association an initial capital contribution equal to four (4) months of the Annual Assessment (including any applicable MFA Assessment) for the calendar year during which the purchase occurs, as initial working capital to be deposited with the general funds of the Association and to be used by the Association in accordance with the terms hereof. The payment shall be deemed to be the property of the Association and shall not be refundable or applied as a credit against any subsequent assessments. No Owner shall have any vested or other rights with respect to any such payments.

**Section 6. Annual and Special Assessments.**

(a) No later than December 1<sup>st</sup> of each calendar year, the Board shall prepare an estimate of the total amount of funds required during the upcoming calendar year for the matters specified in Section 2 of this Article VII and shall notify each Owner in writing of such total amount, with reasonable itemization thereof, and containing each Owner's respective portion thereof (each such portion, being referred to herein as an "**Annual Assessment**").

(b) In the event that the Board, from time to time or at any time, deems it necessary or appropriate to collect additional Assessments for casualties, extreme weather conditions, contingencies, replacements, extraordinary expenditures and similar matters or shortfalls in the current Annual Assessment (a "**Cash Requirement**"), the Board shall notify each Owner in writing of such amount, with reasonable itemization thereof, and containing each Owner's respective assessment therefore (a "**Special Assessment**"). As used herein, the term "**Assessment**" shall mean any Annual Assessment or Special Assessment.

(c) Each notice from the Board pursuant to subsection (a) or (b) of this Section 6 shall indicate the date or schedule of dates on which the applicable Assessment is due. The Board may determine to collect the Annual Assessment at one time or in installments provided that the same collection schedule is applied to each Lot and provided that no payment may be due less than twenty (20) calendar days following the date the notice is delivered. Each Owner shall remit payment to the Association's Treasurer of the applicable Assessment in immediately available funds on or before the due date set forth in the applicable notice.

(d) Subject to the provisions of Article XIV, Section 8, each Owner shall be personally liable for and obligated to pay its respective Assessments.

(e) If, at the close of a calendar year, there is a surplus in collected Assessments after payment of all costs and expenses and after prudent deposits are made into reserves for contingencies and replacements, the Board shall apply such surplus to the expenses for the following calendar year and shall adjust the Annual Assessment for the following year accordingly.

(f) The approval of at least two-thirds (2/3) of each class of members at a meeting called for that purpose with at least sixty percent (60%) (or, if sixty percent (60%) do not attend the first meeting, a second meeting called with at least thirty percent (30%)) of the Owners or their proxies present after notice as provided in the By-Laws is required for an increase in an Annual Assessment that exceeds that prior year's by more than fifteen percent (15%) and for the levying of a Special Assessment that exceeds the current year's Annual Assessment by more than fifteen percent (15%). In accordance with the foregoing, the Board shall have the power to increase the Annual Assessment without a vote or approval of any class of members, so long as such increase does not exceed fifteen percent (15%) of the previous year's Annual Assessment. Likewise, the Board shall have the power to levy a Special Assessment without a vote or approval of any class of members, so long as such Special Assessment does not exceed fifteen percent (15%) of the current year's Annual Assessment.

**Section 7. Status of Collected Funds.** All funds collected hereunder shall be held and expended by the Association for the purposes designated herein.

**Section 8. Remedies for Failure to Pay Assessments or ARB Fees.** If an Owner fails to pay the Assessments or fees required to be paid hereunder when due, those Assessments and ARB fees, together with all costs and expenses incurred by the Association in collecting such amounts (including court costs and attorneys' fees) and all monetary damages, together with interest on the foregoing Assessments, ARB fees, costs, expenses and monetary damages at the

greater of: (a) the rate of twelve percent (12%) per year, and (b) the maximum rate permitted by a Federal Entity, until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien, as of the date the Assessment or other expense is due, for all of the same upon the Lot owned by such defaulting Owner and upon all additions and improvements to the Lot. In addition to the foregoing, the Association shall have such rights and remedies to enforce the collection of the foregoing amounts as shall be provided or permitted by law or equity from time to time, including, without limitation, the right to bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot and any additions or improvements thereon.

**Section 9. Subordination of Lien to a Mortgage.** Notwithstanding anything to the contrary contained in this Declaration, the lien provided in the preceding Section 8 shall be subordinate only to (i) taxes, special assessments and special taxes levied, either before or after the date of the failure to pay the Assessments provided herein, by any political subdivision or municipal corporation of Illinois and other state or federal taxes which by law are a prior lien on the interest of such Owner, and (ii) the lien of a Mortgage on the interest of the Owner in any such Lot. Notice is hereby given to all mortgagees that paid assessment letters should be obtained from the Association before funding your loan.

**Section 10. Exempt and Partially Exempt Property.** The following property subject to this Declaration shall be exempt from the Assessments created herein:

(a) All properties not otherwise comprising a Lot which are dedicated to and accepted by a local public authority or public utility company.

(b) Any other provision of this Declaration notwithstanding, all properties not otherwise comprising a Lot which are dedicated to and accepted by the City shall not be subject to the terms and conditions of this Declaration.

(c) The Common Properties and the Villa Drives.

**Section 11. Books and Records.** The Board shall keep full and correct books of account in chronological order of the costs and expenses incurred by the Association as provided herein, together with all receipts and invoices relevant thereto. Such records, receipts and invoices, as well as a copy of this Declaration and the Articles of Incorporation of the Association, as either may be amended from time to time, shall be available for inspection by the Owner or any First Mortgagee at the office of the Association, if any, at such reasonable time(s) during normal business hours as may be requested by the Owner or First Mortgagee.

**Section 12. Fees for Services.** Pursuant to those powers set forth in the By-Laws, the Association shall have the right to hire or employ a management or other professional organization to manage the day-to-day operations of the Association and other professionals and service providers including, without limitation, accountants and attorneys.

**Section 13. Collection of Underlying Association Assessments.** Upon the direction of the Association, and at the option of the Association, if requested by any Underlying Association, each Owner shall pay to the Association, along with the assessments provided for herein, such amounts as determined by the Underlying Association. Upon receipt of assessment payments for the Association and the Underlying Association, the Association shall pay to the Underlying Association its proportionate share of all Assessments received from an Owner; provided, however, all funds received from an Owner shall first be applied to the Association dues and all excess, if any, shall then be paid to the Underlying Association. The Association shall have no obligation to pay such amounts unless it in fact receives such amounts from an Owner. Further, the Association shall not be obligated to make payment to the Underlying



Association unless and until such Underlying Association fully complies with the provisions of this Declaration and the declaration of such Underlying Association, and fulfills all its obligations and is in no way in violation or breach of any covenant, condition or restriction hereunder or thereunder. The Association shall not be responsible for enforcing the collection of the amounts due the Underlying Association, but shall only have the duty to notify the Underlying Association of any delinquent amounts unpaid by an Owner. Any liens against Owners for non-payment of Assessments of the Association created pursuant to Section 1 of this Article VII shall have equal priority with those liens created pursuant to the declaration of the Underlying Association for non-payment of assessments of the Underlying Association; provided, however, upon the request of the Underlying Association, and approval of the Association, the Association, as agent and on behalf of the Underlying Association, shall take all necessary actions, including but not limited to, the filing, enforcing and foreclosing of liens, or otherwise enforcing the collection of any delinquent amounts due such Underlying Association. No Underlying Association shall have the right to cause its expenses to become assessments to the Owners who are not members of such Underlying Association.

### **ARTICLE VIII COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY**

**Section 1. Covenants, Conditions and Restrictions.** The Lots and the Property shall be owned, occupied and used subject to the following covenants and restrictions:

(a) No part of the Property shall be used for other than housing and related purposes for which the Property was designed. Each Lot, or, if approved, any two or more adjoining Lots used together, shall be used solely as a residence for a single family with associated parking or any other uses permitted by this Declaration, but for no other purpose.

(b) No structure, landscaping or other improvement shall be constructed, installed, planted or placed in or upon any Lot by or through any Owner (and accordingly, no building permit will be issued therefor), unless and until the Owner of any such Lot and any intended structure, landscaping and/or improvement complies with the terms and provisions of this Declaration, including, without limitation, Article X hereof. Notwithstanding anything stated herein to the contrary, unless otherwise approved by the ARB, no Owner may remove or relocate any trees, shrubs or other vegetation or landscaping of any kind which was installed or placed on the Property by Declarant or the Association in contravention of the landscaping plan approved by the City and without replacing the same with such trees, shrubs or vegetation or landscaping of similar type, quality, density and quantity at similar locations to provide the same appearance. Lawn fertilizers and pesticides shall be used, if at all, only to the extent permitted by the ARB and in strict accordance with the Guidelines. The foregoing shall not apply to the initial construction and development of the Property by either Declarant.

(c) No Dwelling or other structure, including, without limitation, guest quarters, servant's quarters, swimming pools, therapy pools, spas (including hot tubs), tennis courts, detached garages, greenhouses, tool sheds, playhouses, doghouses, out-buildings, parking lots or other ancillary improvements to a Dwelling or Lot shall be constructed or installed upon a Lot without the prior consent of the ARB. The foregoing shall not apply to the initial construction and development of the Property by either Declarant.

(d) Except in connection with the construction activities of either Declarant or their employees, agents or contractors, no vehicles shall be parked or left on any street located on the Property at any time and no recreational vehicle, mobile home, park model trailer, travel trailer or habitable motor vehicle of any kind, boat or boat trailer, school bus, truck or commercial vehicle may be kept or parked at any time on any Lot unless the same are fully enclosed within the garage located on such Lot. Notwithstanding the foregoing, an Owner, and an Owner's

guests and invitees, shall be allowed to park along those portions of the streets and Villa Drives as designated by the Association for a special event if such Owner obtains prior approval from the Association for such special event. The storage of inoperative vehicles in driveways or on any Lot, except within the garage, is prohibited. Further, driveways within Lots shall not be used for the permanent, regular or nightly parking of vehicles; provided, however, an Owner's guests and invitees shall be permitted to park their vehicles in an Owner's driveway or in a parking space located in a cul-de-sac so long as such vehicles are not parked for more than two consecutive nights or otherwise regularly parked on the Property. All driveways within Lots are intended solely for the temporary parking of vehicles and ingress and egress to garages. All vehicles, except as temporarily necessary, shall be parked or stored in the garages on a Lot. Garage doors shall remain closed at all times other than when entering or exiting. Parking spaces in the cul-de-sacs, if any, are intended for guest parking only and shall not be utilized by an Owner, an Owner's family members or tenants, other persons residing on a Lot or any other person for the regular parking of vehicles. Garage size and location and parking for Dwellings shall be as approved by the ARB. The Board may authorize such vehicles and items parked in violation of this provision to be towed away and any such towing charge shall become a lien on the Owner if he owns the vehicle or item.

**(e)** Owners and their families, tenants, guests and invitees shall not permit and shall be obligated to refrain from any noxious, offensive or other activities and/or actions that may be or become an annoyance or nuisance to other Owners, tenants or occupants.

**(f)** No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational, or otherwise, and whether designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained or permitted on any Lot.

**(g)** No signs, including, without limitation, "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such location and in such form, as shall be determined by the ARB; provided, however, that the right is reserved by each Declarant to maintain on the Property until the sale of such Declarant's last Lot or Dwelling, all models, sales offices and advertising signs, banners and lighting in connection therewith at such locations and in such forms as the applicable Declarant shall determine, together with the right of ingress, egress and transient parking therefor through the Common Properties.

**(h)** Nothing shall be altered or constructed on or in, or removed from the Common Properties, D.R.O.S. or MFAs or Villa Drives without the prior written consent of Declarant or if Declarant is no longer in existence, the ARB.

**(i)** Nothing herein contained (including the preceding subsection (f)), shall be construed in such a manner as to prohibit Owners from: (i) maintaining their professional libraries in a Dwelling; (ii) keeping their personal business or professional records or accounts therein; or (iii) handling their personal business or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation hereof.

**(j)** No protective, decorative or other fence, wall or hedge of any kind, and no shrubs, trees or vegetation of any kind, shall be built, maintained, planted, installed or permitted on, or removed from, any Lot unless and until the materials, color, design, style, height, location and compatibility or removal of such above referenced items shall have been approved by the ARB in its sole discretion. The foregoing shall not apply to the initial construction and development of the Property by either Declarant.

**(k)** All firewood not stored inside a Dwelling shall be stored in such locations on the

Lot only as approved by the ARB.

(l) Any lease or rental agreement concerning an individual Lot, Dwelling or any other portion of the Property must be in writing. Any lease or rental agreement other than a lease-to-purchase or corporate housing agreement made by a Declarant shall require the written approval of the Board prior to occupancy by a tenant. Any lease, rental, or corporate housing agreement is subject to all other requirements of this Declaration and the Association. A copy of each executed instrument shall be supplied to the Board within five (5) business days after the lease is executed and prior to occupancy.

(m) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed on any Lot or Dwelling unless installed by a Declarant.

(n) No Lots or Dwellings may be sold or operated under any time-sharing, time-interval or similar right-to-use programs; provided, however, the foregoing shall not preclude any Declarant from offering lease-to-purchase or seller-financing on the sale of Villa Residences and Premier Residences or from permitting occupancy of Villa Residences and Premier Residences as corporate housing.

(o) No construction or alterations of any Dwellings or improvements on any Lots shall be undertaken or conducted on Sundays except (i) for construction activities of a Declarant or its employees, agents or contractors; (ii) for emergency situations involving the potential loss, injury or damage to persons or property; or (iii) as otherwise permitted by the ARB.

(p) No window air conditioning units shall be permitted except as approved by the ARB, and no window surfaces shall be covered by sheets, newspapers or other unsightly window treatments.

#### **ARTICLE IX SPECIFIC COVENANTS, CONDITIONS AND RESTRICTIONS RELATING TO THE PROPERTY**

**Section 1. Restrictions on Modification to Facilities.** No part of the Common Properties, Facilities D.R.O.S., Villa Drives or MFAs shall be used for any purposes other than those set forth in this Declaration or the Guidelines. In the event a Declarant or the Association authorizes or conducts any other use, such party shall do so at such party's sole cost and expense, and such cost and expense shall not be levied against any Owner and shall not be subject to the lien rights for Assessments set forth herein. The Association shall only be permitted to make alterations, modifications or changes in the topography and ground elevations of the Stormwater Detention Facilities if, and only if:

(a) such modifications, changes or alterations are done in such a manner, to such engineering specifications and with such results that the additional or alternative alterations, modifications, or changes in the topography and ground elevations of the Stormwater Detention Facilities do not:

- (1) reduce the required stormwater detention capacity of the Stormwater Detention Facilities for the benefit of the Property;
- (2) affect or alter the drainage patterns from the Property;
- (3) reduce the compensatory storage volumes of the Stormwater Detention

Facilities for the benefit of the entire Property; or

- (4) increase the flood heights at the exterior boundaries of the Stormwater Detention Facilities from the respective capacities, patterns and volumes provided for in any permits obtained in connection therewith; and

(b) such additional or alternative alterations, modifications or changes in the topography and ground elevation of the Stormwater Detention Facilities meet the rules and requirements and have received the approval, where applicable and if required, of (i) the U.S. Army Corps of Engineers, (ii) the Illinois Department of Transportation, Division of Water Resources, (iii) McHenry County, (iv) the City, and (v) any other regulatory agency or agencies having or exercising jurisdiction over the development of the Stormwater Detention Facilities or the Property.

**Section 2. Approval of Changes to Property.** In furtherance of the general restrictions set forth in this Declaration, the following additional restrictions shall apply to all of the Property. No Owner shall alter, modify or change in any way the existing topography, ground elevations or hydrology of any Lot or other portion of Property unless such alternation, modification or change is in accordance with the engineering plans approved by the City (as modified from time to time) and specifically approved by the Declarant of the Phase in which such Lot is located, in its sole discretion, and any other governmental entity having authority therefore with respect thereto; provided, however that additional or alternative alterations, modifications or changes in the topography and ground elevations of the Property may be made by either Declarant in its sole discretion from time to time. Notwithstanding the provisions set forth in this section, no alterations, modifications or changes in the topography and ground elevations may be made by a Declarant to any platted lot that has been previously deeded to an Owner without such Owner's consent.

**Section 4. Duration and Modification.** The specific restrictions set forth in this Article IX shall continue in full force and effect for the full Term of this Declaration and shall not be subject to amendment or modification by the Association unless expressly approved in writing by both Declarants. Any attempt to modify or amend this Section 4 shall be null and void.

## ARTICLE X ARCHITECTURAL REVIEW BOARD

**Section 1. Regulation of Dwellings.** In addition to the other responsibilities set forth herein, the ARB shall regulate the design and appearance of all Lots, Dwellings, outbuildings, driveways, fences, walls or other structures to be erected, altered, remodeled, landscaped, placed or permitted upon the Property and all grading conducted in or on a Lot or portion of the Property upon which such structures are located, in such a manner so as to preserve and enhance the quantity and quality of water recharge and the value of the Lots and any Dwellings located thereon, to maintain a harmonious relationship among the Dwellings and to protect and preserve the first-class utility and integrity of the Property.

**Section 2. Construction and Alterations.** No Lot or Dwelling shall be constructed, installed, landscaped or have the exterior or roof remodeled, altered, reconstructed, expanded, painted, repainted or otherwise be designed or modified in a manner that would affect the aesthetics of the Dwelling or Lot, including for example purposes only and without limitation, changes in the size, color, materials, type and/or location of window glass and treatments, storm and screen doors, garage doors, exterior doors and trim, vegetation, driveways, walkways, exterior lighting, mailboxes, awnings, antennas, railings, decks, patios, porches, dog runs, benches, flower boxes and shutters (hereinafter collectively referred to as "**Work**"), nor shall any Work commence, until the Owner planning the Work has complied with the terms,

provisions and covenants of this Article X.

**Section 3. Submittal of Plans.** Each Owner, by accepting title to a Lot, shall conclusively be deemed to have covenanted and agreed, jointly and severally, to submit to the ARB, for the ARB's approval, prior to the commencement of Work relating to a Lot or Dwelling, such plans and documentation as required by the ARB and/or the Guidelines, which may include but shall not be limited to the following documentation (hereinafter referred to as the "*Plans*"):

(a) Three (3) sets of complete prints of the Dwelling for which the Owner intends to commence Work, which prints must include, without limitation, a foundation plan, floor plan, all exterior elevations, location and width of the driveway, projected finish grades and any other plans for the Lot and proposed Work (the ARB may also require the proposed Dwellings or improvements to be physically staked or otherwise marked on the Lot in order for an on-site inspection to be conducted by the ARB);

(b) A document setting forth descriptive information on those materials which are to be used in the Work including, without limitation, all brick, stone, siding, roofing and window treatments, and a description of the planned exterior color scheme accompanied by actual color and texture samples of such materials;

(c) A grading plan of existing and proposed grades for those areas of the Lot surrounding the proposed or existing Dwelling;

(d) Landscape plans showing the existing vegetation and proposed location, size and materials for new vegetation and other landscape treatments, which shall also include a plan for preservation of trees and vegetation originally placed by Declarant or the Association;

(e) Financial information, references and other information reasonably required by the ARB with respect to the builders and contractors of the Dwellings, improvements and other items on the Lots.

**Section 4. Review of Plans.** Upon receipt of the Plans, the ARB shall review the same and shall, in its sole and exclusive discretion, either reject or approve the Plans. Upon the receipt of a letter of approval from the ARB and a building permit from the City, the Owner may commence the Work. Should the Owner receive a letter of rejection from the ARB, the Work upon the Lot in question shall not be permitted, and the Owner, should it so desire, may submit revised Plans to the ARB for the ARB's approval or rejection. If any such revised Plans are approved in writing by the ARB, the Owner may then commence the Work; but if the revised Plans are rejected by the ARB, any such Work shall continue to be prohibited until the Owner receives approval, if at all, of any further revised Plans. In the event the ARB fails to approve or reject the Plans (or any revised Plans) within thirty (30) days after the same have been submitted to the ARB, such Plans shall be deemed rejected. Upon approval of such Plans, Owner shall promptly apply for a building permit from the City and upon issuance of said building permit, all Work shall be promptly commenced by the Owner and diligently pursued to completion. All Work shall be completed within one year after approval of such Work by the ARB. In the event of failure to complete such Work within the one year time period, the ARB's approval shall expire; provided, however, the Association shall have the right to complete all such Work and charge to Owner the costs to complete such Work, with all such costs to be payable immediately upon receipt by Owner of a bill therefore, or at the option of the Association, at the time and in the manner of payment of assessments hereunder. In the event that the Owner has diligently pursued construction of the Owner's improvement and has not completed same within the one year period, upon Owner's request, the ARB may extend the time for construction of the improvement up to an additional eight (8) months.

**Section 5. Change of Plans.** Should any Owner, subsequent to the approval of its Plans as provided above, alter, modify or change the same, such alteration, modification or change must be submitted to the ARB for approval before the Owner commences or continues the Work. Further, should any Owner, subsequent to the completion of the Work, desire to reconstruct, or substantially improve, alter or change, the design and/or appearance of his/her Dwelling, such Owner must submit the plans and specifications for any such reconstruction, improvement, alteration or change to the ARB for its approval. The approval process for any of the foregoing reconstructions, improvements, alterations, modifications or changes shall be the same as that provided in Section 4 of this Article X.

**Section 6. Work in Accordance with Plans and Codes.** Each Owner, by accepting title to a Lot, shall conclusively be deemed to have covenanted and agreed, jointly and severally, to complete all Work in accordance with (a) the Plans approved by the ARB, and (b) Laws.

**Section 7. Security.** Notwithstanding anything stated herein to the contrary, each Declarant shall be permitted, but shall not be obligated, to require any Owner of a Lot within its Phase to deliver to such Declarant such security as may be satisfactory to such Declarant to insure the full and faithful compliance by the Owner of the covenants and provisions of this Article X. If requested by such Declarant, such security shall be provided by the Owner to the Declarant prior to the commencement of any Work and shall, in the event the Owner fully and faithfully complies with the terms and provisions of this Article X, be returned to the Owner within thirty (30) days after the completion of the Work. Should the Owner, in the Declarant's reasonable judgment, fail to comply with the terms and provisions of this Article X, Declarant may retain the security, not as a penalty, but as liquidated damages for such Owner's violation or breach of the terms and provisions of this Article X (it being understood that Declarant's damages would be difficult to ascertain in the event an Owner breached such terms and provisions); provided, however, the recovery of the foregoing damages shall not be deemed to limit, restrict or prohibit Declarant's ability or right to seek those remedies granted elsewhere in this Declaration. It is hereby understood that each Declarant may, if it so desires, retain security from some Owners and not others, and that any such security may be of differing amounts for different Owners. It is further understood that any security retained by a Declarant may be commingled with Declarant's other funds, that Declarant may not charge any Owner for holding any such security, and that no Owner shall be entitled to interest or earnings on such amounts.

**Section 8. Processing Fee.** Notwithstanding anything stated herein to the contrary, the Association shall be permitted, but shall not be obligated, to require any Owner to pay a reasonable processing or other fee in connection with the ARB's review of the Plans. Such fee, if required, shall be payable by such Owner, no later than ten (10) days after receipt of written notice of such fee, regardless of whether the Plans are approved or disapproved. Such fee may be used for payment of any costs or expenses incurred by the ARB or the Association, including, without limitation, payment of fees for consulting architects, engineers, designers, inspectors or attorneys retained by the ARB or the Association.

**Section 9. Approval of Builders.** Only those builders and contractors who have been approved by the ARB may construct Dwellings or improvements on the Property. The ARB shall approve or disapprove of such builders and contractors at the same time and in the same manner as provided herein for the approval of the Work on the Property.

**Section 10. No Warranties.** Notwithstanding anything to the contrary contained in this Declaration, it is understood that neither the ARB, the Association nor any Declarant, by reason of the ARB's approval of any Plans (or any other items set forth herein), warrants or represents that (a) such Plans (or other items) are in compliance with Laws applicable to the Lot and/or the Work or other construction, installation, remodeling, alteration, improvement,

reconstruction or addition of or to a Dwelling thereon, or (b) the Dwelling to be constructed, installed, remodeled, altered, improved, reconstructed or added to by the Owner will be structurally sound, functional, operational, habitable or fit for its intended use or purpose; it being hereby expressly covenanted and agreed that all Owners, by accepting title to a Lot, waive any and all claims against each Declarant, Association and the ARB, and their respective officers, employees or agents, for damages, costs, liabilities or expenses incurred by any Owner by reason of the violation of any Laws and/or the failure of the Work or Dwelling to be structurally sound, functional, operational, habitable or fit for its intended use or purpose.

**Section 11. Underlying Association Requests.** Any Underlying Association shall request approval from the ARB prior to undertaking any Work or making other improvements to the real property governed by such Underlying Association; shall pay the full cost of completion of all such Work in a timely manner and continue to maintain and carry reasonable insurance as approved by the ARB for all such Work or other improvements.

**Section 12. ARB Guidelines and Rules and Regulations.** The ARB shall promulgate architectural, environmental and landscaping guidelines and amendments thereto governing all improvements and landscaping of the Lots, including, without limitation, with respect to all D.R.O.S., Maintenance Free Areas and Villa Drives (the "**Guidelines**"). All or a portion of the Guidelines for a Phase may differ from the Guidelines for another Phase or Phases. The ARB Guidelines for the Phase Two Property and the Phase Three Property are: (i) those attached attached as **Exhibit E** hereto; and (ii) the Ecological Assessment and Restoration Plan prepared by Applied Ecological Services, Inc. for the Phase Two Property and the Phase Three Property dated September 2005 (the "**Phase Two/Three EARP**"). All or any portion of the Guidelines may be amended or revised from time to time by a two-third (2/3) vote of the ARB; provided, however, that the Phase Two/Three EARP and the Ecological Assessment and Restoration Plan prepared by Applied Ecological Services, Inc. dated May 2003 and included within the Guidelines for the Phase One Property (together, the "**Restoration Plan**"), may be amended only with the mutual approval of each Declarant so long as each Declarant exists, the ARB and the City; provided (i) such approval shall not be unreasonably denied or delayed; and (ii) the approval of the City shall not be required if amendments to the Restoration Plan are required by other governmental entities with proper jurisdiction over the Property. The Guidelines shall be available for review at all reasonable times at the offices of the Association, and copies thereof shall be delivered to any Owner upon request. The ARB may also adopt rules and regulations controlling the procedures, timing, documents and fees for applications for approval from the ARB, which rules and regulations may or may not be embodied in the Guidelines. Such rules and regulations may include, without, limitation, rules to regulate temporary lighting, holiday and other decorations, gazebos, lawns decorations, animals, antennas, signs, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, grills, maintenance, types and placement of mailboxes, landscaping, planting and the addition or removal of vegetation, timing of watering of lawns and vegetation and the size and configuration of Dwellings. Additionally, such rules and regulations may include matters that may be adverse to an Owner's general free use and enjoyment of an Owner's Lot. Such general rules may be amended by two-thirds (2/3) vote of the ARB. During January of each year, the Association shall deliver to the City a certified copy of the Guidelines and any rules and regulations, noting any material changes thereto that were adopted during the preceding calendar year. Notwithstanding the provisions of this Section 12, once an Owner has built a house and landscaped its Lot in compliance with the ARB Guidelines then in existence, he will not be required to comply with subsequent amendments to the ARB Guidelines which would require the Owner to make changes to the improvements, including the landscaping on the lot.

**Section 13. Enforcement.** By acceptance of any deed or other conveyance for a Lot each Owner, for itself, its successors and assigns, acknowledges and agrees that failure to comply

with the terms of this Article X, the Guidelines for its Phase or the rules and regulations of the ARB or the terms of any approval given by the ARB could significantly alter the quality and character of the Property and, accordingly, the ARB shall be entitled to (a) levy fines in such amounts as are set forth in the Guidelines for its Phase or the rules and regulations (which shall constitute individual assessments), which fines may be designated as deterrents or penalties, or (b) seek injunctive relief against any Owner who attempts to construct or constructs any improvements or landscaping on any Lot without the requisite ARB approval or in non-compliance with the approval given by the ARB (including relief in the form of an order requiring the dismantling and removal of such non-complying improvements or landscaping or requiring the Owner to bring the same into compliance), and each Owner acknowledges that injunctive relief is both necessary and appropriate for violations of this Article X as the ARB, the Association and Declarants would have no adequate remedies at law. All costs of enforcement of this Article X, including, without limitation, attorneys' fees and costs, shall be the responsibility of such Owner and shall be an assessment against such Owner's Lot, and the remedies for failure to pay same are more particularly set forth in Section 8 of Article VII hereof.

**Section 14. Declarants' Property Not Applicable.** Notwithstanding anything stated herein to the contrary, this Article X shall not apply to any portion of the Property owned by a Declarant, its affiliates or the successors or assigns of any of such entities; provided, however, that neither Owners purchasing Lots for their own occupancy nor builders purchasing Lots for construction purposes shall be deemed to be successors or assigns of Declarant or its affiliates. In lieu of the provisions of this Article X, the Declarants and the applicable affiliates and successors shall proceed by submitting to the ARB three (3) sets of plans that exemplify multiple Dwelling Units (and/or, if preferred by the submitting Person, plans for individual Dwelling Units). Provided such model or individual plans are materially consistent with the provisions of Exhibit E applicable to the Dwelling Unit(s) at issue, the ARB shall, within ten (10) calendar days of receipt of such plans, stamp the plans as approved and forward such plans to the City.

## **ARTICLE XI REMEDIES**

**Section 1. Remedies, Generally.** In addition to the rights set forth elsewhere in this Declaration, each of the covenants, conditions, restrictions and easements contained in this Declaration shall be enforceable at law and/or in equity by each Declarant, the City and/or the Association; provided, however, in the event of a breach or violation of any such covenant, condition, restriction or easement, there shall be no forfeiture or reversion of title; provided further, however, failure to enforce any of the foregoing matters shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding the foregoing, the provisions of this Article XI shall not apply to the terms and conditions of Article VII (Covenant For Assessments) of this Declaration, which Article VII contains separate remedies.

**Section 2. City Enforcement and Remedies.**

(a) The duly designated officials, employees, agents, consultants, or contractors, as the case may be, of the City, are hereby granted an easement to enter upon, on and over the Facilities, Villa Drives, Common Properties and the D.R.O.S. (and, to the extent necessary, those portions of the Lots not constituting the D.R.O.S.) for the purpose of inspecting such areas to determine whether the Stormwater Detention Facilities, the Facilities, the Common Properties, Villa Drives and D.R.O.S. are being properly maintained, as reasonably determined by the City.

(b) If the City reasonably determines that the Stormwater Detention Facilities, the Common Properties, the Facilities, the Villa Drives and/or the D.R.O.S. are not being properly



maintained as provided above or the Stormwater Detention Facilities, the Common Properties, the Facilities, the Villa Drives and/or the D.R.O.S. are not operating as designed or intended, and the City wishes corrective action to be made, the City shall give the Association fifteen (15) days' written notice of such determination.

**(c)** In such event, if such corrective action is not completed within fifteen (15) days of the submission of such notice, the City is hereby empowered and granted the right to undertake correction of such problem concerning maintenance or repair, although notice shall not be required in the event that the City determines that the failure to properly maintain such areas constitutes an immediate threat to public health, safety and welfare. If the Association fails to perform the necessary maintenance within 15 days from the submission of notice by the City, the City shall have the right, but not the obligation, to perform or cause to be performed such maintenance or other operations necessary to preserve the drainage and detention structures and characteristics of the Stormwater Detention Facilities and/or repair or maintenance of the Common Properties, the D.R.O.S., the Villa Drives or the Facilities as reasonably determined by the City. If the City performs such services, it shall be entitled to complete reimbursement upon demand to the Association. The City shall, in addition to such right of reimbursement, have and be entitled to a legally enforceable lien on the Lots, or applicable portion thereof, subordinate to any Mortgage on the Lots, for the costs of such maintenance and repairs. The City may recover the cost of such maintenance and/or repairs by the foreclosure of its lien. The City shall also be entitled to recover its costs and attorneys' fees in connection with such action to enforce or interpret its rights as set forth herein.

**(d)** The easement described in this section is an easement appurtenant, running with the land; it shall at all times be binding upon each Declarant, all of its grantees and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

**(e)** If, at any time prior to or after the recording of this Declaration, the City or any other governmental or quasi-governmental authority having the requisite powers under applicable law elects to include the Property within a special service area, as that term is defined in 35 ILCS 200/27-5 (2002), and to assess the Lots for purposes of providing for the maintenance of the Common Properties, Facilities and/or D.R.O.S. required under this Declaration, then regardless of whether Declarant or the Association has previously conveyed all or any portion of such property, the obligations of the Association hereunder with respect to the maintenance of those portions of the Facilities, Common Properties and D.R.O.S. included within the responsibility of such special service area shall be transferred to an entity designated by the City, automatically and without any act on the part of either Declarant or the Association, but only to the extent provided in the ordinance or ordinances from time to time establishing such special service area, the cost of which maintenance shall be assessed against each Lot in the manner provided in said statutes and ordinances. However, if requested by the City or such governmental or quasi-governmental authority, each Declarant, or if such Declarant is no longer a member, the appropriate officers of the Association, shall have the power and authority to execute and record an amendment to this Declaration setting forth such matters with respect to such special service area as may be requested by the City or such other governmental or quasi-governmental authority, without first obtaining the approval or a vote by the members of the Association. Assessments within the special service area shall be deferred until such time as and if and to the extent that the City or such other governmental or quasi-governmental authority, as the case may be, determines that the Association or the not-for-profit corporation or other person or entity charged with responsibility for maintenance has failed to fulfill its obligations with respect thereto. Each Declarant hereby consents, which consent shall be binding on any portion of the Property from time to time owned by such Declarant and any other Owner, to the (i) creation of such a special service area for the purposes described herein; and (ii) levy of taxes for such purposes against all Lots (excluding any Common Properties or portions exempt from the levy of taxes by reason of being owned by

the City or any other governmental or quasi-governmental authority). Further, each Declarant hereby waives, for itself and for any subsequent Owners, the right to file a statutory objection to the creation of such a special service area or the levy of taxes. In the event the City undertakes to perform any maintenance with respect to the Facilities, Common Properties or D.R.O.S. as provided above, such undertaking by the City shall in no event be deemed an acceptance of any of such properties by the City nor an assumption of any obligation by the City to maintain such properties.

## **ARTICLE XII ADD-ON PROPERTY**

Declarants hereby reserve the right (subject to the consent of the other Declarant, if that other Declarant still owns any portion of the Property), for a period of ten (10) years from the date of the Original Declaration, to add certain additional property legally described on **Exhibit C** attached hereto and made a part hereof (the "**Add-On Property**") to the Property presently designated in this Declaration. In the event either Declarant elects, from time to time, to subject all or any portion of the Add-On Property to the provisions of this Declaration, such Declarant shall record a supplementary declaration ("**Supplementary Declaration**") setting forth, among other items, the legal description of any such additional property. All such Supplementary Declarations, and the portion of the Add-On Property covered therein, shall be subject to the terms and conditions of this Declaration, and all voting rights and the liability for assessments specified in this Declaration shall be reallocated accordingly. The recording of a Supplementary Declaration shall not alter or affect the amount of any liens for assessments due from Owners of Lots already a part of the Property ("**Existing Lots**") or the respective amounts theretofore assessed to or due from the Owners of Existing Lots or other fees and charges theretofore assessed.

Each Declarant further reserves unto itself (subject to the consent of the other Declarant, if that other Declarant still owns any portion of the Property) the right to add portions of the Add-On Property to the Property at different times (and to determine the order thereof), and to fix the boundaries of such portions of the Add-On Property. Any Supplementary Declaration may contain such additions and modifications to the terms hereof, including, without limitation, the granting of additional easements over Lots and designation of additional Common Properties, as are necessary to reflect the differences in character, if any, of the Add-On Property and the Property. The terms and provisions of this Article XII shall not be construed as imposing upon either Declarant an affirmative obligation to exercise the rights and powers herein reserved. The Add-On Property shall not be bound hereby unless and until the property is submitted to the provisions of this Declaration by a Supplementary Declaration.

Notwithstanding anything contained in this Article XII, neither Declarant shall have any right to record a Supplementary Declaration with respect to any portion of the Add-On Property, and no portion of the Add-On Property shall be subject to the terms and provisions of this Declaration, unless and until such Declarant shall have acquired fee title ownership of the same, and neither this Declaration, nor any attempt to record any such Supplementary Declaration shall encumber or otherwise affect title to any portions of the Add-On Property not so acquired by such Declarant.

## **ARTICLE XIII RIGHTS OF DECLARANTS**

**Section 1. In General.** In addition to any rights or powers reserved or granted to Declarants under this Declaration or the By-Laws, each Declarant shall have the rights and powers set forth in this Article XIII. In the event of a conflict between the provisions of this Article XIII and any other provisions of this Declaration or the By-Laws, the provisions of this

Article XIII shall govern. Except as otherwise provided in this Article XIII, each Declarant's rights under this Article XIII shall terminate at such time as such Declarant is no longer vested with or controls title to a portion of any Lot.

**Section 2. Promotion Efforts.** At all times and from time to time prior to the sale of the last Lot on the Property, each Declarant shall have the right, in its discretion, to maintain sales and leasing offices, displays, signs and other forms of advertising and, to the extent not prohibited by law, to come upon any portion of the Property for the purpose of showing the Property to prospective purchasers of Lots, all without the payment of any fee or charge whatsoever. Each Declarant shall have the right and power to sell a Lot within such Declarant's Phases to whomever it chooses on whatever terms it, in its sole discretion, shall deem appropriate.

**Section 3. Special Amendment.** In addition to any other rights of Declarants set forth herein, but in any event subject to the provisions of Article XIV, Section 12, each 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 (a) to comply with the requirements of any Federal Entity, (b) to induce any Federal Entity to make, purchase, sell, insure or guarantee first mortgages covering Lots, (c) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (d) that benefits directly or indirectly the interests of all the Owners; provided, however, no Special Amendment shall be effective if such Special Amendment purports to either (i) amend this Section 3 or (ii) amend Article XI of this Declaration or (iii) amend, modify or alter Facilities unless the City shall consent to such Special Amendment, which consent may be withheld in the City's sole discretion as to items (i) and (ii) of this Section 3 or in its reasonable discretion as to item (iii) of this Section 3. In furtherance of the foregoing, an irrevocable power coupled with an interest is hereby reserved and granted to the Declarants to vote in favor of, make, consent to, execute and record a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. 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 Declarants' authority to execute and record Special Amendments. The right of Declarants to act pursuant to rights reserved or granted under this Section 3 shall terminate upon the latest date on which the initial membership meeting of the Owners must be held, whether or not it has actually been held. No Special Amendment shall be made without the consent of both Declarants.

**Section 4. Construction.** Each Declarant, its respective agents, employees and contractors shall have the right to come upon the Property for the purpose of making alterations or improvements to the Property and shall have the right to store equipment and materials used in connection with such work on the Property without payment of any fee or charge whatsoever.

**Section 5. Dedication Rights Reserved.** Each Declarant hereby reserves the right in its sole discretion to dedicate or otherwise convey portions of the Property within the Phases controlled by such Declarant (but not those portions on which a Dwelling is situated) to any public agency or governmental authority or quasi-public utility for purposes of utilities, and right-of-way and easements therefore. The right to make such dedications or conveyances shall not require the consent, approval or signatures of either the Board or any Owner, and such dedication or conveyance shall be considered fully accomplished and conclusively binding upon each of the Owners and upon the Association when set forth in writing or in a plat of dedication executed by the applicable Declarant that has been recorded with the County Recorder's office where the Property is located; provided, however, that nothing in this Section shall be construed to in any manner require or obligate any Declarant to make any conveyance or dedication; provided further, however, that so long as there is a Weighted Vote Membership, each Declarant must (if required by the rules and regulations promulgated by such entity) obtain the prior approval of any applicable Federal Entity before dedicating any portion of the Common Properties. In

furtherance of the foregoing, an irrevocable power coupled with an interest is hereby granted to each Declarant, as agent and attorney-in-fact, to make dedications, or conveyances. Each deed, mortgage, trust deed or other instrument with respect to a Lot and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power and to such attorney-in-fact and shall be deemed to reserve to it the foregoing powers and rights. As to each individual Lot, this right shall expire upon the sale of said Lot.

#### **ARTICLE XIV GENERAL PROVISIONS**

**Section 1. Severability.** Each covenant, condition, restriction and easement contained herein shall be considered to be an independent and separate right or obligation, and in the event one or more of such covenants, conditions, restrictions or easements shall for any reason be held to be invalid or unenforceable, all remaining covenants, conditions, restrictions and easements shall nevertheless remain in full force and effect.

**Section 2. Binding Upon the Land.** Unless otherwise expressly provided herein, each covenant, condition, restriction and easement set forth in this Declaration shall run with the land and shall be binding upon each and all of the record titleholders of the land and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or acceptance of a deed conveying any interest in the Property, the individual or entity to whom such interest is conveyed shall, except as otherwise provided in this Declaration, be deemed to accept and agree to be bound by and subject to all of the terms and provisions of this Declaration, whether or not mention thereof is made in the deed, except that with respect to the Add-On Property, the covenants, conditions, restrictions and easements set forth in this Declaration or in any Supplementary Declaration shall run with the land and become binding on the record titleholders thereof (and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees) only upon the recording of a Supplementary Declaration by Declarant after Declarant acquires fee title ownership of such Add-On Property.

**Section 3. Notices.** Notices provided for in this Declaration shall be in writing. Notices for the Board, Association or ARB shall be sent to the President of the Association at the address to be provided by the President in writing to each Declarant and Owner. Notices for any Owner shall be sent to the address of the Owner's Dwelling. The President of the Association is hereby designated as the person to mail and receive all notices for the Board, Association and ARB as provided for in this Declaration. The ARB, Board or Association may designate a different address for notices only after giving written notice thereof to all Owners and to each Declarant (so long as such Declarant continues to own any portion of the Property) Any Owner may designate a different address for notices only after giving written notice thereof to the Board. Notices to Owners shall be deemed delivered when mailed by United States mail, or when delivered in person, or, if addressed to an Owner, when deposited at the door of the Owner's Dwelling or in his mailbox. Notices to the ARB Board or Association shall be deemed delivered when mailed by United States registered mail to such entity.

**Section 4. Notices to Deceased Owner.** Notices required to be given any devisee, heir or personal representative of a deceased Owner may be delivered either personally or by mail to such party at the address appearing in the records of the court wherein the state of such deceased Owner is being administered.

**Section 5. No Release.** Wherever in this Declaration either or both Declarant(s) have reserved unto itself, themselves or the City any easement or easements, and rights thereunder, with respect to any part or all of the Property, the exercise or failure to exercise any or all of such rights shall in no event release the Association or the Owners from the responsibilities

otherwise imposed on such parties in any covenant, condition, restriction or provision set forth in this Declaration.

**Section 6. No Waiver.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 7. Successors and Assigns.** All rights granted to a Declarant under this Declaration shall inure to, and all obligations of such Declarant under this Declaration shall be binding upon, the successors and assigns of such Declarant; provided, however, that the Owners purchasing Dwellings for their own occupancy shall not be deemed to be successors or assigns of any Declarant; provided further, however, that the rights granted to any Declarant under this Declaration in respect of the ARB shall be solely that of such Declarant whether such Declarant owns all or none of the Property, and such rights shall not inure to the benefit of any successor and/or assign of such Declarant unless such rights are specifically assigned to such successor and/or assign.

**Section 8. Land Trust.** In the event title to any Lot is conveyed to a land trust, under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder from time to time shall, jointly and severally, be responsible for the payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings relating to or chargeable against any such Lot, and shall be deemed to be the Owner as that term is used herein. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created, but the amount of such lien or obligation shall continue to be a charge or lien upon the Lot and the beneficiary or beneficiaries of any such trust shall remain personally liable for any such amounts, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of such Lot.

**Section 9. Headings.** The headings contained in this Declaration are for convenience only and shall not in any way affect the meaning or interpretation of this Declaration.

**Section 10. Duration.** The term of this Declaration (the "*Term*") and the covenants, conditions and restrictions contained herein shall commence as of the date of recording of the Original Declaration and shall continue in full force and effect for a period of ninety-nine (99) years and for successive periods of thirty (30) years unless revoked by an affirmative vote of the members holding 75% or more of the total votes then eligible to be cast by the members of the Association.

**Section 11. Rule Against Perpetuities.** 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 applicable statutory or common law rules imposing limitations upon the time for which such matters may be valid, then the provision in question shall continue and endure only until twenty-one (21) years after the death of the last to survive of the class of persons consisting of all the now living lawful descendants of George H. W. Bush, former President of the United States.

**Section 12. Amendment.** This Declaration, including, without limitation, the By-Laws, may be amended by the affirmative vote of the members holding 75% or more of the total votes then eligible to be cast by the members of the Association; provided, however, it is hereby understood that neither the Association, nor its Board, officers or members, may adopt, amend, repeal, alter or change this Declaration, the By-Laws of the Association, or any rules or

regulations relating to the Association or this Declaration such that any such adoption, amendment, repealer, alteration or change that adversely affects the ARB or either Declarant, any rights under this Declaration of either Declarant or both of them, or any proposed development of the Property (as such proposed development currently exists or may hereinafter change) by either Declarant or both of them. Notwithstanding the foregoing, this Declaration may be amended, modified, altered or repealed by both of the Declarants at any time during the ten (10) year period after the date of recording of the Original Declaration; provided, however, no such amendment, modification, alteration or repealer shall be effective if it adversely affects the priority of the lien of any Mortgage; provided further, however, that so long as there is a Weighted Vote Membership, the Declarants must (if required by the rules and regulations promulgated by such entity) obtain the prior approval of any applicable Federal Entity before making any amendment to this Declaration. All amendments, repealers, alterations and changes to this Declaration and the By-Laws shall be recorded with the County recorder's office where the Property is located. For purposes of this Section 12, a Supplementary Declaration shall not be deemed an amendment, alteration or repealer of this Declaration. Any other term of this Section 12 to the contrary notwithstanding, any amendment, modification, alteration or repeal that purports to (1) amend this Section 12 or Section 14 of this Article XIV, (ii) amend Article VIII to the extent the provisions thereof relate to the Common Properties or the Facilities, (iii) amend those portions of Article IX or Article X that grant the City approval rights, (iv) amend Article XI of this Declaration, (v) amend, modify or alter the Facilities, or (vi) result in a material adverse change to the quantity and quality of water recharge in respect of the Property, shall not be effective unless the City shall consent to such amendment, modification, alteration or repeal, which consent may be withheld in the City's sole discretion as to items (i) and (iv) of this Section 12 or in its reasonable discretion as to items (ii), (iii), (v) and (vi) of this Section 12.

**Section 13. Conflict.** In the event of any conflict between the terms and provisions of this Declaration, on the one hand, and any plat(s) of subdivision relating to the Property or the By-Laws, on the other hand, the terms and provisions of the plat(s) of subdivision shall control.

**Section 14. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land or the interest of any Owner to enforce any lien created by these covenants, and against the Association for failure to discharge its duties and responsibilities hereunder. The failure of the Association, either Declarant or both of them, the City or any Owner to enforce any covenant or restriction herein contained, or exercise any rights or easements granted hereby, shall in no event be deemed a waiver of the right to do so thereafter. The City may, in its discretion, enforce the covenants contained in this declaration without the obligation to do so. In the event the City institutes an action to enforce these covenants and restrictions, each Declarant hereby agrees that the City shall have standing to institute such an action, and that, in the event the City shall be the prevailing party therein, it shall have the right to receive its reasonable attorneys' fees and costs incurred in connection therewith.

**Section 15. Waiver of Claims.** To the extent permitted by applicable law, each Owner hereby waives and releases any and all claims which such Owner may have against any other Owner, occupant, the Association, its officers, members of the Board, either Declarant or both of them, the managing agent, if any, and their respective employees and agents, for damage to the Common Properties, the MFAs, the Dwellings, or to any personal property located in the Dwellings, the MFAs or Common Properties, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance. Neither Declarant nor any of its respective representatives or designees shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted to or delegated to it by or pursuant to this Declaration, or in any Declarants' capacity as developer, contractor, owner, manager or seller of the Property, including all claims for, or arising by reason of, the

Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Owner, occupant, the Board, the Association and their respective agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function, or disrepair of, any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.).

**Section 16. Damages.** Each Owner shall be responsible for any damages to the Common Properties or to any Dwelling and also for the maintenance, repairs or replacements caused by or resulting from his negligent act or omission, or the negligent act or omission of a member of his family, his household pet, his guests, visitors or his invitees or of an occupant of his Dwelling, including the household pets, guests, visitors or invitees of an occupant of his Dwelling.

**Section 17. Association Rules and Regulations.** Subject to Article XIV, Section 12, the Association shall have the authority, as it deems necessary, to adopt general rules and regulations to implement the purposes set forth in this Declaration, interpret the covenants, conditions and restrictions contained herein and in furtherance of the powers and duties set forth in the By-Laws. Such general rules and regulations may be amended in the same manner as provided herein for the amendment of this Declaration.

**Section 18. Covenant in Event of Dissolution of the Association.** In the event the Association is dissolved, all Owners and titleholders of any portion of the Property agree that all provisions contained herein regarding maintenance, repair and replacement in, on or to the Property shall still apply and that this Declaration shall be in full force and effect. In the event of a dissolution of the Association, the assets of the Association shall be conveyed to a nonprofit organization with purposes similar to that of the Association.

**Section 19. Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class development.

**Section 20. Lease.** The provisions of this Declaration and By-Laws, and rules and regulations that relate to the use of the Dwellings or the Common Properties shall be applicable to any person leasing a Dwelling and shall be deemed to be incorporated in any lease of any Dwelling.

**Section 21. Interpretation.** Whenever from the context it is appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and each term stated in either the masculine or feminine shall include both the masculine and feminine.

**Section 22. Declarants.** Any liability of the Declarants hereunder or with respect to the Property shall be several and in no cases joint. The Declarants are neither partners nor joint venturers with one another, nor is there an agency relationship between them. The Phase One Declarant shall have no liability with respect to the Phase Two Property or the Phase Three Property other than that liability, if any, that may have arisen prior to the Phase One Declarant's transfer of the Phase Two Property and Phase Three Property to the Phase Two/Three Declarant. The Phase Two/Three Declarant shall have no liability hereunder concerning either (i) the Phase One Property; or (ii) the Phase Two Property or Phase Three Property arising prior to its acquisition thereof. Whenever from the context it is appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and each term stated in either the masculine or feminine shall include both the masculine and feminine.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, this Declaration is executed on the day and year first above written.

**PHASE ONE DECLARANT:**

**KNICKERBOCKER PROPERTIES LLC,** a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF McHENRY        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of KNICKERBOCKER PROPERTIES LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such officer of such limited liability company, he signed and delivered said instrument as such officer, pursuant to authority given by the members of the limited liability company as his free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of November, 2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, this Declaration is executed on the day and year first above written.

**PHASE TWO/THREE DECLARANT:**

**ROSLIN SANCTUARY LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Name: William J. Ryan  
Its: Manager

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF DUPAGE        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William J. Ryan, personally known to me to be the Manager of Roslin Sanctuary LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as such Manager as his free and voluntary act and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of November, 2005.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**This instrument prepared by  
and after recording return to:**  
Danielle Meltzer Cassel, Esq.  
DLA Piper Rudnick Gray Cary US LLP  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601  
(312) 368-7053

**CONSENT OF MORTGAGEE**

**RBC CENTURA BANK**, a North Carolina banking corporation, ("Mortgagee") is the holder of the Mortgage, Security Agreement and Fixture Financing Statement with Assignment of Leases and Rents ("Mortgage") dated February 11, 2005, and recorded in the office of the Recorder of Deeds of McHenry County, Illinois, on February 18, 2005, as Document No. 2005R0012872. With respect to the Premises, Mortgagee hereby consents to the recording of the Declaration to which this Consent is attached and agrees that the Mortgage shall be subject to the terms of this Declaration.

Dated: \_\_\_\_\_, 2005

**RBC CENTURA BANK**, a North Carolina banking corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS            )  
  )SS.  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that \_\_\_\_\_, a \_\_\_\_\_ of RBC CENTURA BANK, a North Carolina banking corporation ("Mortgagee"), as such \_\_\_\_\_ appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument as his/her free and voluntary act, and as the free and voluntary act of Mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

### EXHIBITS A-1, A-2 AND A-3

#### **A-1: Legal Description of the Phase One Property**

Part of the East Half of the Southeast Quarter of Section 10, part of the Southeast Quarter of the Northeast Quarter of Section 10, the Southwest Quarter of the Southwest Quarter of Section 11, part of the East Half of the Southwest Quarter of Section 11, part of the West Half of the Northwest Quarter of Section 14, Township 44 North, Range 7, East of the Third Principal Meridian, described as follows: Beginning at the Northwest corner of the East Half of the Southwest Quarter of said Section 11; thence North 89 degrees 52 minutes 00 seconds East along the North line thereof, 59.95 feet to the centerline of Country Club Road; thence Southeasterly 82.39 feet along said centerline, being a non-tangent curve to the right, having a radius of 1,182.0 feet, chord length of 82.37 feet and bears South 45 degrees 47 minutes 18 seconds East; thence South 43 degrees 47 minutes 30 seconds East along said centerline, 200.23 feet; thence Southeasterly 408.78 feet along said centerline being along a curve to the left, having a radius of 1,205.00 feet, chord length of 406.82 feet and bears South 53 degrees 07 minutes 14 seconds East; thence South 62 degrees 50 minutes 20 seconds East along said centerline, 25.12 feet; thence Southeasterly 544.40 feet along curve to the left, having a radius of 4,000.0 feet, chord length of 543.98 feet and bears South 66 degrees 44 minutes 17 seconds East; thence South 70 degrees 38 minutes 13 seconds East along said centerline, 122.97 feet to the Westerly line of the property described in Book "C" of Deeds, page 437; thence South 26 degrees 18 minutes 12 seconds West along said West line, 1,347.19 feet; thence South 21 degrees 33 minutes 12 seconds West along said West line 768.24 feet to the South line of the East Half of the Southwest Quarter of said Section 11; thence South 89 degrees 51 minutes 53 seconds West along said South line, 353.72 feet to the Southwest corner thereof; thence South 00 degrees 28 minutes 14 seconds West along the East line of the West Half of the Northwest Quarter of Section 14, a distance of 1,383.20 feet; thence South 89 degrees 36 minutes 06 seconds West, 834.74 feet; thence North 75 degrees 12 minutes 03 seconds West, 82.59 feet; thence North 42 degrees 57 minutes 53 seconds West, 270.91 feet; thence North 51 degrees 24 minutes 02 seconds West, 271.34 feet to the West line of the said West half of the Northwest Quarter of Section 14; thence North 00 degrees 22 minutes 50 seconds East along the East line thereof, 997.25 feet to the Southeast corner of the said East half of the Southeast Quarter of Section 10; thence North 00 degrees 27 minutes 07 seconds East along the East line thereof, 55.72 feet; thence South 89 degrees 20 minutes 12 seconds West, 87.89 feet; thence North 43 degrees 51 minutes 50 seconds West, 69.18 feet; thence North 53 degrees 03 minutes 15 seconds West, 145.61 feet; thence North 23 degrees 07 minutes 19 seconds East, 76.16 feet; thence North 37 degrees 40 minutes 02 seconds West, 75.32 feet; thence North 07 degrees 12 minutes 08 seconds East, 11.57 feet; thence North 82 degrees 47 minutes 52 seconds West, 31.53 feet; thence Northwesterly 150.03 feet along a curve to the right having a radius of 130.00 feet, chord length of 141.84 feet and bears North 49 degrees 44 minutes 11 seconds West; thence North 16 degrees 40 minutes 30 seconds West, 127.52 feet; thence Northwesterly 101.06 feet along a curve to the left having a radius of 170.00 feet, chord length of 99.58 feet and bears North 33 degrees 42 minutes 17 seconds West; thence Northwesterly 203.91 feet along a curve to the right having a radius of 530.00 feet and a chord length of 202.66 feet and bears North 39 degrees 42 minutes 46 seconds West; thence North 28 degrees 41 minutes 27 seconds West, 105.05 feet; thence Northerly 141.89 feet along a curve to the right having a radius of 530.00 feet, chord length of 141.46 feet and bears North 21 degrees 01 minutes 17 seconds West; thence North 13 degrees 21 minutes 07 seconds West, 60.38 feet; thence Northwesterly 72.93 feet along a curve to the left having a radius of 150.00 feet, chord length of 72.22 feet and bears North 27 degrees 16 minutes 52 seconds West; thence North 41 degrees 12 minutes 37 seconds West, 35.25 feet; thence Northwesterly 134.00 feet along a curve to the right having a radius of 210.00 feet, chord length of 131.74 feet and bears North 22 degrees 55 minutes 48 seconds West; thence Northwesterly 45.94 feet along a curve to the left having a radius of 30.00 feet and a chord length of 41.58 feet and bears North 48 degrees 31 minutes 01 seconds West; thence Southwesterly 59.38 feet along a curve to the left having a radius of 470.00 feet, chord length of

59.34 feet and bears South 83 degrees 59 minutes 47 seconds West; thence South 80 degrees 22 minutes 38 seconds West, 138.85 feet; thence Westerly 92.53 feet along a curve to the right having a radius of 530.00 feet, chord length of 92.41 feet and bears South 85 degrees 22 minutes 44 seconds West; thence North 89 degrees 37 minutes 11 seconds West, 150.84 feet to the West line of the said East half of the Southeast Quarter of Section 10; thence North 00 degrees 22 minutes 49 seconds East, 1,364.72 feet to the Southwest corner of the said Southeast Quarter of the Northeast Quarter of Section 10; thence North 00 degrees 14 minutes 32 seconds East along the West line thereof, 754.16 feet to a line 330.0 feet South of and parallel to the centerline of Country Club Road as measured along the said West line; thence South 61 degrees 06 minutes 44 seconds East along said parallel line, 451.02 feet; thence North 00 degrees 15 minutes 16 seconds East, 330.00 feet to the centerline of Country Club Road; thence South 61 degrees 03 minutes 17 seconds East along said centerline, 429.88 feet; thence South 63 degrees 12 minutes 44 seconds East along said centerline, 226.74 feet; thence South 61 degrees 57 minutes 07 seconds East along said centerline, 211.45 feet thence southeasterly 183.30 feet along a curve to the left having a radius of 1,005.21 feet, chord length of 183.05 feet and bears South 67 degrees 10 minutes 33 seconds East to the East line of the said Southeast Quarter of the Northeast Quarter; thence South 00 degrees 14 minutes 56 seconds West, 390.63 feet to the Northeast corner of the said West half of the Southwest Quarter of Section 11; thence South 00 degrees 27 minutes 07 seconds West along the East line thereof, 1,318.14 feet to the Northwest corner of the Southwest Quarter of the Southwest Quarter of Section 11; thence North 89 degrees 51 minutes 56 seconds East along the North line thereof, 1,311.51 feet to the Northeast corner thereof; thence North 00 degrees 15 minutes 24 seconds East along the West line of the said East half of the Southwest Quarter of Section 11, a distance, of 1,318.07 feet to the Place of Beginning, in McHenry County, Illinois.

#### **A-2: Legal Description of the Phase Two Property**

##### **PHASE 2A**

The Southeast Quarter of the Southeast Quarter of Section 10, also part of the East Half of the Northeast Quarter of Section 15, Township 44 North, Range 7, East of the Third Principal Meridian, Commencing at the Southwest corner of said Southeast Quarter of the Southeast Quarter of said Section 10; thence South 89 degrees 50 minutes 52 seconds East along the South line thereof, 625.62 feet to the Place of Beginning; thence North 00 degrees 41 minutes 31 seconds East, 330.01 feet to a line 330.00 North of and parallel with the said South line of the Southwest Quarter of the Southwest Quarter; thence North 89 degrees 50 minutes 52 seconds West, 627.41 feet to the West line of the East Half of the Southeast Quarter; thence North 00 degrees 22 minutes 49 seconds East along said West line, 943.03 feet to the South right-of-way line of Oakmont Drive in The Sanctuary of Bull Valley Phase 1, being a Subdivision of part of the East Half of the Southeast Quarter of Section 10, part of the Southeast Quarter of the Northeast Quarter of Section 10, the Southwest Quarter of the Southwest Quarter of Section 11, part of the East Half of the Southwest Quarter of Section 11, part of the West Half of the Northwest Quarter of Section 14, all in Township 44 North, Range 7 East of the Third Principal Meridian, according to the Plat thereof recorded September 8, 2003 as Document No. 2003R0123486; thence South 89 degrees 37 minutes 11 seconds East along said South right-of-way line, 150.84 feet; thence Northeasterly along said South right-of-way line 92.53 feet along a curve to the left, having a radius of 530.00 feet and a chord length of 92.41 feet and bears North 85 degrees 22 minutes 43 seconds East; thence North 80 degrees 22 minutes 38 seconds East along said South right-of-way line, 138.85 feet; thence Northeasterly along said South right-of-way line 59.38 feet along a curve to the right, having a radius of 470.00 feet and a chord length of 59.34 feet and bears North 83 degrees 59 minutes 47 seconds East; thence Southeasterly 45.94 feet along a curve to the right, having a radius of 30.00 feet, a chord length of 41.58 feet and bears South 48 degrees 31 minutes 01 seconds East to the West right-of-way line of said Sanctuary of Bull Valley Phase 1; thence Southeasterly along said West right-of-way line 134.00 feet along a curve to the left, having a radius of 210.00 feet, a chord length of 131.74 feet and

bears South 22 degrees 55 minutes 48 seconds East; thence South 41 degrees 12 minutes 37 seconds East along said West right-of-way line, 35.25 feet; thence Southeasterly 72.93 feet along a curve to the right, having a radius of 150.00 feet and a chord length of 72.22 feet and bears South 27 degrees 16 minutes 52 seconds East ; thence South 13 degrees 21 minutes 07 seconds East along said West right-of-way line, 60.38 feet; thence Southeasterly along said West right-of-way line 141.89 feet along a curve to the left, having a radius of 530.00 feet and a chord length of 141.46 feet and bears South 21 degrees 01 minutes 17 seconds East ; thence South 28 degrees 41 minutes 27 seconds East along said West right-of-way line, 105.05 feet; thence Southeasterly 203.91 feet along a curve to the left, having a radius of 530.00 feet and a chord length of 202.66 feet and bears South 39 degrees 42 minutes 46 seconds East; thence Southeasterly along said West right-of-way line 101.06 feet along a curve to the right, having a radius of 170.00 feet, a chord length of 99.58 feet and bears South 33 degrees 42 minutes 17 seconds East; thence South 16 degrees 40 minutes 30 seconds East along said West right-of-way line, a distance of 127.52 feet; thence Southeasterly along said West right-of-way line 150.03 feet along a curve to the left, having a radius of 130.00 feet and a chord length of 141.84 feet and bears South 49 degrees 44 minutes 11 seconds East; thence South 82 degrees 47 minutes 52 seconds East along said West right-of-way line, 31.53 feet; thence South 07 degrees 12 minutes 08 seconds West, 11.57 feet; thence South 37 degrees 40 minutes 02 seconds East, 39.61 feet; thence South 38 degrees 09 minutes 07 seconds West, 174.86 feet; thence South 14 degrees 06 minutes 13 seconds West, 71.86 feet; thence South 52 degrees 14 minutes 16 seconds West, 145.22 feet; thence North 00 degrees 59 minutes 52 seconds East, 64.65 feet to the Point of Beginning, in McHenry County, Illinois.

#### **PHASE 2B**

The Southeast Quarter of the Southeast Quarter of Section 10, also part of the East Half of the Northeast Quarter of Section 15, Township 44 North, Range 7, East of the Third Principal Meridian, Commencing at the Southwest corner of said Southeast Quarter of the Southeast Quarter of said Section 10; thence South 89 degrees 50 minutes 52 seconds East along the South line thereof, 625.62 feet; thence South 00 degrees 59 minutes 52 seconds West, 64.65 feet to the Place of Beginning; thence South 89 degrees 42 minutes 11 seconds East, 145.22 feet; thence North 52 degrees 14 minutes 16 seconds East, 239.82 feet; thence North 14 degrees 06 minutes 13 seconds East, 71.86 feet; thence North 38 degrees 09 minutes 07 seconds East, 174.86 feet to the Southwesterly line of The Sanctuary of Bull Valley Phase 1, being a Subdivision of part of the East Half of the Southeast Quarter of Section 10, part of the Southeast Quarter of the Northeast Quarter of Section 10, the Southwest Quarter of the Southwest Quarter of Section 11, part of the East Half of the Southwest Quarter of Section 11, part of the West Half of the Northwest Quarter of Section 14, all in Township 44 North, Range 7 East of the Third Principal Meridian, according to the Plat thereof recorded September 8, 2003 as Document No. 2003R0123486; thence South 37 degrees 40 minutes 02 seconds East along the said Southwesterly line, 35.71 feet; thence South 23 degrees 07 minutes 19 seconds West along the Southwesterly line of Sanctuary of Bull Valley Phase 1, a distance of 76.16 feet; thence South 53 degrees 03 minutes 15 seconds East along the Southwesterly line thereof, 145.61 feet; thence South 43 degrees 51 minutes 50 seconds East along the Westerly line thereof, 69.18 feet; thence North 89 degrees 20 minutes 12 seconds East along the Southerly line thereof, 87.89 feet to the East line of the Southeast Quarter of the Southeast Quarter of said Section 10; thence South 00 degrees 27 minutes 07 seconds West along said East line, 55.85 feet to the Southeast corner of the said Southeast Quarter of the Southeast Quarter; thence South 00 degrees 22 minutes 50 seconds West along the East line of the East Half of the Northeast Quarter of said Section 15, a distance of 946.54 feet; thence South 52 degrees 11 minutes 25 seconds West, 228.09 feet; thence Northwesterly 55.37 feet along a non-tangent curve to the right, having a radius of 440.00 feet, a chord length of 55.34 feet and bears North 36 degrees 23 minutes 20 seconds West; thence North 32 degrees 47 minutes 00 seconds West, 360.12 feet; thence Northwesterly 330.29 feet along a curve to the left, having a radius of 310.00 feet and a chord length of 314.88 feet and bears North 63 degrees 18 minutes 22 seconds West; thence South 86 degrees 10

minutes 17 seconds West, 12.30 feet to the East line of The Ponds of Bull Valley Phase 1 being a Subdivision of part of the said Northeast Quarter of Section 15, according to the Plat thereof recorded April 22, 2002 as Document 2002R0036784; thence North 00 degrees 32 minutes 40 seconds East along said East line, 104.96 feet; thence South 78 degrees 22 minutes 30 seconds West, 4.70 feet; thence North 00 degrees 59 minutes 52 seconds East, 431.69 feet to the Place of Beginning, in McHenry County, Illinois.

### **A-3: Legal Description of the Phase Three Property**

#### **PHASE 3A**

Part of the East Half of the Northeast Quarter of Section 15, and Part of the West Half of the Northwest Quarter and part of the West Half of the Southwest Quarter of Section 14, all in Township 44 North, Range 7, East of the Third Principal Meridian, described as follows: Commencing at the Southeast corner of said Northeast Quarter; thence North 00 degrees 22 minutes 50 seconds East along the East line of said Northeast Quarter, 93.90 feet to a point on the centerline of McConnell Road; thence North 71 degrees 06 minutes 06 seconds West along said centerline, 230.74 feet to the Place of Beginning, thence continuing North 71 degrees 06 minutes 06 seconds West along said centerline, 534.34 feet to the Southeast corner of The East line extended Southerly of the Ponds of Bull Valley Phase 1 being a Subdivision of part of the said Northeast Quarter of Section 15, according to the Plat thereof recorded April 22, 2002 as Document 2002R0036784; thence North 00 degrees 52 minutes 21 seconds East, along the East line thereof and said line extended, 1160.79 feet to the South line of Lot 96 in The Ponds of Bull Valley Phase 2 being a Subdivision of part of the said Northeast Quarter of Section 15, according to the Plat thereof recorded August 14, 2003 as Document 2003R0110869; thence South 82 degrees 16 minutes 33 seconds East along the South line thereof, 10.13 feet to the Southeast corner of said Lot 96; thence North 00 degrees 32 minutes 40 seconds East along the East line of said The Ponds of Bull Valley Phase 2, a distance of 529.93 feet; thence North 86 degrees 10 minutes 17 seconds East, 12.30 feet; thence Southeasterly 330.29 feet along a curve to the right, having a radius of 310.00 feet, a chord length of 314.88 feet and bears South 63 degrees 18 minutes 22 seconds East; thence South 32 degrees 47 minutes 00 seconds East, 360.12 feet; thence Southeasterly 55.37 feet along a curve to the left, having a radius of 440.00 feet, a chord length of 55.34 feet and bears South 36 degrees 23 minutes 19 seconds East; thence North 52 degrees 11 minutes 25 seconds East, 228.09 feet to the East line of the said East Half of the Northeast Quarter; thence South 00 degrees 22 minutes 50 seconds West along said East line, 50.71 feet to the most Southwesterly corner of Outlot J in The Sanctuary of Bull Valley Phase 1, being a Subdivision of part of the East Half of the Southeast Quarter of Section 10, part of the Southeast Quarter of the Northeast Quarter of Section 10, the Southwest Quarter of the Southwest Quarter of Section 11, part of the East Half of the Southwest Quarter of Section 11, part of the West Half of the Northwest Quarter of Section 14, all in Township 44 North, Range 7 East of the Third Principal Meridian, according to the Plat thereof recorded September 8, 2003 as Document No. 2003R0123486; thence South 51 degrees 24 minutes 02 seconds East along the Southwesterly line thereof, 271.34 feet; thence South 42 degrees 57 minutes 53 seconds East along said Southwesterly line and Southwesterly line extended, 270.91 feet; thence South 75 degrees 12 minutes 03 seconds East, 82.59 feet; thence South 28 degrees 28 minutes 16 seconds West, 51.46 feet; thence South 15 degrees 29 minutes 18 seconds West, 146.14 feet; thence South 61 degrees 30 minutes 55 seconds West, 81.93 feet; thence South 21 degrees 31 minutes 57 seconds West, 171.01 feet; thence South 10 degrees 11 minutes 58 seconds East, 152.00 feet; thence South 23 degrees 08 minutes 16 seconds East, 121.04 feet; thence Southwesterly 231.50 feet along a non-tangent curve to the left, having a radius of 400.00 feet, a chord length of 228.29 feet and bears South 48 degrees 13 minutes 29 seconds West; thence Westerly 37.28 feet along a curve to the right, having a radius of 25.00 feet, a chord length of 33.92 feet and bears South 74 degrees 22 minutes 02 seconds West; thence Westerly 219.71 feet along a curve to the left, having a radius of 566.00 feet, a chord length of 218.33 feet and bears North 74 degrees 01 minutes 50 seconds West; thence Westerly 99.47 feet along a curve to the

right, having a radius of 940.00 feet, a chord length of 99.42 feet and bears North 82 degrees 07 minutes 10 seconds West; thence South 10 degrees 54 minutes 43 seconds West, 225.34 feet; thence South 18 degrees 53 minutes 54 seconds West, 98.92 feet to the Place of Beginning, in McHenry County, Illinois.

**PHASE 3B**

Part of the East Half of the Northeast Quarter of Section 15, and Part of the West Half of the Northwest Quarter and part of the West Half of the Southwest Quarter of Section 14, all in Township 44 North, Range 7, East of the Third Principal Meridian, described as follows: Commencing at the Southeast corner of said Northeast Quarter; thence North 00 degrees 22 minutes 50 seconds East along the East line of said Northeast Quarter, 93.90 feet to a point on the centerline of McConnell Road; thence North 71 degrees 06 minutes 06 seconds West along said centerline, 230.74 feet to the Place of Beginning, thence North 18 degrees 53 minutes 54 seconds East, 98.92 feet; thence North 10 degrees 54 minutes 43 seconds East, 225.34 feet; thence Easterly 99.47 feet along a non-tangent curve to the left, having a radius of 940.00 feet, a chord length of 99.42 feet and bears South 82 degrees 07 minutes 10 seconds East; thence Southeasterly 219.71 feet along a curve to the right, having a radius of 566.00 feet, a chord length of 218.33 feet and bears South 74 degrees 01 minutes 50 seconds East; thence Northeasterly 37.28 feet along a curve to the left, having a radius of 25.00 feet, a chord length of 33.92 feet and bears North 74 degrees 22 minutes 02 seconds East; thence Northeasterly 231.50 feet along a curve to the right, having a radius of 400.00 feet, a chord length of 228.29 feet and bears North 48 degrees 13 minutes 29 seconds East; thence North 23 degrees 08 minutes 16 seconds West, 121.04 feet; thence North 10 degrees 11 minutes 58 seconds West, 152.00 feet; thence North 09 degrees 56 minutes 23 seconds West, 27.75 feet; thence North 21 degrees 31 minutes 57 seconds East, 171.01 feet; thence North 61 degrees 30 minutes 55 seconds East, 81.93 feet; thence North 15 degrees 29 minutes 18 seconds East, 146.14 feet; thence North 28 degrees 28 minutes 16 seconds East, 51.46 feet to the South line of The Sanctuary of Bull Valley Phase 1, being a Subdivision of part of the East Half of the Southeast Quarter of Section 10, part of the Southeast Quarter of the Northeast Quarter of Section 10, the Southwest Quarter of the Southwest Quarter of Section 11, part of the East Half of the Southwest Quarter of Section 11, part of the West Half of the Northwest Quarter of Section 14, all in Township 44 North, Range 7 East of the Third Principal Meridian, according to the Plat thereof recorded September 8, 2003 as Document No. 2003R0123486; thence North 89 degrees 36 minutes 06 seconds East along the said South line, 834.74 feet to the East line of the said West Half of the Northwest Quarter of Section 14; thence South 00 degrees 28 minutes 14 seconds West along said East line, 1,339.31 feet; thence North 71 degrees 06 minutes 06 seconds West, 89.76 feet; thence South 00 degrees 28 minutes 14 seconds West parallel with the said East line, 264.00 feet to the Centerline of McConnell Road; thence North 71 degrees 06 minutes 06 seconds West along said Centerline, 1,523.83 feet to the Place of Beginning, in McHenry County, Illinois.



## **EXHIBIT B**

### **Amended and Restated By-Laws of The Sanctuary of Bull Valley Master Operating Association, Inc.**

#### **ARTICLE I Name and Location**

The name of the corporation is The Sanctuary of Bull Valley Master Operating Association, Inc., an Illinois not-for-profit corporation (hereinafter referred to as the "**Association**"). The principal office of the Association shall initially be located in Woodstock, Illinois, but meetings of the members and the Board may be held at such places within the State of Illinois, County of McHenry, as may be designated by the Board.

#### **ARTICLE II Definitions**

Except as expressly defined herein, all capitalized terms are used in these By-Laws with the same meaning as such terms are used in the Declaration.

#### **ARTICLE III Meetings of Members**

Section 1. Annual Meetings. The first annual meeting of the members shall be held upon ten (10) days' prior written notice given by both Declarants to the members. The first annual meeting shall be held no later than the first to occur of the following events (unless otherwise required by any Federal Entity):

- (a) in the event all of the Add-On Property has been subjected to the terms of the Declaration, within ninety (90) days after the 75% Date;
- (b) in the event less than all of the Add-On Property has been subjected to the terms of this Declaration, five (5) years after the 75% Date, unless any portion of the Add-On Property is subjected to the terms of this Declaration after the 75% Date and prior to the expiration of the five (5) year period that, when including such portion of the Add-On Property, causes less than seventy-five percent (75%) of the then existing Lots to be sold and conveyed by Phase One Declarant to purchasers;
- (c) ten (10) years after the date the first Lot is conveyed by either Declarant to a third party purchaser; or
- (d) upon written notice of election by both Declarants sent to the Association as of the date specified in the notice.

Each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter at the hour of 7:00 p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time after the first annual meeting by (a) the president of the Association, (b) the Board, (c) upon written request of the members who are entitled to vote a total of one-fourth (1/4) of the total

votes of the Class A membership, or (d) upon request of the Class B membership.

Section 3. Notice of Meetings. Except as may be otherwise provided by the Declaration, written notice of each meeting of the members shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting by mailing a copy of such notice, postage prepaid, at least ten (10) days, but not more than thirty (30) days, before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, and/or of proxies entitled to cast, ten percent (10%) of the total votes of each class of membership shall constitute a quorum for any action, except as otherwise provided by Laws, in the Articles of Incorporation, the Declaration or these By-Laws. If a quorum is present, the affirmative vote of a majority of the total votes present, either in person or by proxy, shall be the act of the members, unless otherwise provided by Laws, in these By-Laws or in the Declaration. If, however, such quorum shall not be present or represented at any meeting, a majority of those members present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. The adjournment shall specify the date for the adjourned meeting, which shall not be more than thirty (30) days from the date of the initial meeting.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Section 6. Voting Rights. The Association has two (2) classes of voting membership, which classes of membership are more specifically described in Article III of the Declaration.

#### **ARTICLE IV Board of Directors; Selection; Term of Office**

Section 1. Number. The affairs of the Association shall be managed by the Board. The Board shall initially consist of five (5) directors. Three (3) of these directors shall be designated by Phase One Declarant, and the Phase One Declarant may remove and designate these three (3) directors in its sole discretion, until the first annual meeting after the Phase One Declarant no longer has any interest in the Property. The other two (2) of the initial five directors shall be designated by Phase Two/Three Declarant, and the Phase Two/Three Declarant may remove and designate these two (2) directors in its sole discretion, until the first annual meeting after the Phase Two/Three Declarant no longer has any interest in the Property.

Section 2. Election. At the first annual meeting of the members occurring after the Phase One Declarant no longer has any interest in the Property, the members shall elect three (3) new directors. Two (2) such directors shall be elected for a term of one (1) year and one (1) such director for a term of two (2) years. At the first annual meeting of the members occurring after the Phase Two/Three Declarant no longer has any interest in the Property, the members shall elect two (2) new directors. One (1) such director shall be elected for a term of one (1) year and one (1) such director for a term of two (2) years. At each annual meeting thereafter, the members shall elect the vacancies for directors as they come due on the expiration of a director's term for a term of two (2) years. Directors may succeed themselves. From and after the commencement of elections for all five (5) directors, the members shall strive to have at least one director from the Phase One Property, one director from the Phase Two Property, and one director from the Phase Three Property at all times. Accordingly, in the event the board lacks a

director from a Phase of the Property, the only candidates who may be elected to fill the next vacancy on the Board shall be Owners of Lots within such Phase.

Section 3. Removal. Any director elected pursuant to Article IV, Section 2 of these Bylaws may be removed from the Board, with or without cause, by a document signed by the members having not less than seventy-five percent (75%) of the total vote of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve until the time of the next election of directors. In the event that the term of the directorship vacated as above shall not have expired at the time of the next election following the appointment of a successor by the remaining Board members as provided above, in addition to the directorships normally to be filled at that election, the members shall also elect a director to serve the remaining unexpired term of the directorship vacated.

Section 4. Compensation. No director shall receive compensation for any service he or she may render to the Association; provided, however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting that they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### **ARTICLE V Nomination and Election of Directors**

Section 1. Nomination. Nomination for election to the Board shall be made from the floor at any applicable annual meeting. Such nominations may be made from among members only. The Board may also solicit candidates for up to sixty (60) days prior to the annual meeting, and place the names of the candidates in nomination before the annual meeting by written notice to the members.

Section 2. Election. Election to the Board shall be by secret written ballot. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

#### **ARTICLE VI Meetings of Directors**

Section 1. Annual Meetings. Annual meetings of the Board shall be held at such place and hour as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. The majority of the number of directors then constituting the Board shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Voting. Each member of the Board shall have one (1) vote.

**ARTICLE VII**  
**Powers, Duties and Liability of the Board of Directors**

Section 1. Powers. The Board shall have the power to:

- (a) Perform, exercise, transact, permit or consent to any and all actions or functions that the Board deems necessary or appropriate to enforce, abide by or act in accordance with the terms and provisions of the Declaration, including, without limitation, the power to engage or contract for the services of others, and make purchases for the maintenance, repair, replacement and operation of those facilities that the Association is obligated or permitted to maintain pursuant to the Declaration;
- (b) Suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment or other expenses levied by the Association;
- (c) Exercise any and all powers and duties permitted by the Illinois General Not-For-Profit Corporation Act, as amended, and the Declaration; and
- (d) Procure and maintain any insurance which the Board deems necessary or appropriate to protect the Association, its Board, officers, members, agents, employees and other similarly situated individuals from any and all claims, liabilities, expenses, costs, damages or causes of action.

Section 2. Duties. It shall be the duty of the Board to:

- (a) Cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the members at the annual meetings of the members or at any special meeting when such statement is requested in writing by sixty percent (60%) of the Class A members who are entitled to vote;
- (b) Supervise all officers, agents and employees of the Association and see that their duties are properly performed;
- (c) Fix the amount of the assessments against each Lot as provided in the Declaration, and foreclose the lien against any Lot for which assessments are not paid after the due date or bring an action against the Owner personally obligated to pay the same, and otherwise ensure the compliance by each Owner with the Declaration and these By-Laws;
- (d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) Cause all officers or employees having fiscal responsibilities to be bonded as it may deem appropriate;
- (f) Cause the Association to maintain those portions of the Property that it is obligated or permitted to maintain pursuant to the terms of the Declaration;

- (g) Pursuant to the Declaration, procure and maintain insurance that the Board deems necessary or appropriate to protect the Association, its Board, officers, members, agents, employees and other similarly situated individuals from any and all claims, liabilities, expenses, costs, damages or causes of action; and
- (h) Maintain at all times monies for contingencies and replacements in an amount deemed reasonably necessary to be utilized as the Board deems appropriate for repairs, improvements, maintenance or other needs.

Section 3. Liability of the Board of Directors. The members of the Board (including without limitation those designated by Declarant pursuant to Article IV, Section 1 hereof) shall not be personally liable to the members of the Association, and no cause of action may be brought, for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Board members, except for any acts or omissions found by a court to constitute willful or wanton misconduct in the performance of a duty, which, for purposes of these By-Laws, means a course of action that shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.

## **ARTICLE VIII Duties and Liabilities of Officers**

Section 1. Enumeration of Officers. The officers of the Association shall be a president and vice president who shall at all times be members of the Board, a secretary and a treasurer and such other officers as the Board may determine from time to time.

Section 2. Election of Officers. The election of officers shall take place at each annual meeting of the Board.

Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless any such individual shall sooner resign, or shall be removed or otherwise be disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. The president may not hold any other office.

Section 8. Duties. The duties of the officers shall be those usually vested in their respective office for a not-for-profit corporation, including, but not limited to, the following:

- (a) President. The president shall preside at all meetings of the Board; shall see that

orders and resolutions of the Board are carried out; shall sign all contracts and other written instruments; and shall co-sign all checks and promissory notes;

- (b) Vice President. The vice president shall act in the place and stead of the president in the event of his or her absence, inability or refusal to act; and shall exercise and discharge such other duties as may be required of him or her by the Board;
- (c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association, together with their addresses; and shall perform such other duties as required by the Board; and
- (d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy thereof to each of the members.

Section 9. Liability of Officers. The officers of the Association shall not be personally liable to the members of the Association, and no cause of action may be brought, for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such officers, except for any acts or omissions found by a court to constitute willful or wanton misconduct in the performance of a duty, which, for purposes of these By-Laws, means a course of action that shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.

#### **ARTICLE IX Committees**

The Board shall appoint committees as deemed appropriate in carrying out its purpose, including a committee comprised of Owners of the Villa Lots to address affairs specific to the Villa Drives and Maintenance Free Areas.

#### **ARTICLE X Not-For-Profit Status**

Neither the Board, the Association nor the members shall be deemed to be conducting a business of any kind. All funds collected by the Board shall be held and expended for the purposes designated in these By-laws and in the Declaration and shall be deemed to be held for the benefit, use and account of all the members.

#### **ARTICLE XI Indemnification**

Section 1. Actions other than by or in the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a director, officer, employee or agent of the

Association, or who is or was serving at the request of the Association as a director, officer, employee or agent of another Association, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person (a) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, or (b) to the extent permitted by applicable law, is not liable to the members of the Association pursuant to the provisions of Article VII, Section 3 or Article VIII, Section 9 hereof. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to the best interests of the Association or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Actions by or in the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another Association, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, provided that no indemnification shall be made with respect to any claim, issue, or matter as to which the acts or omissions of such person have been found by a court to constitute willful or wanton misconduct in the performance of a duty, unless, and only to the extent that, notwithstanding the provisions of Article VII, Section 3 or Article VIII, Section 9 hereof, the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under Section 1 and Section 2 of this Article XI (unless ordered by a court) shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 and Section 2 of this Article XI. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by advice of independent legal counsel in a written opinion, or (3) by the members entitled to vote. In any determination denying indemnification, the burden of proof shall be on the Association to prove by clear and convincing evidence that indemnification should not be allowed.

Section 4. Payment of Expenses in Advance. Notwithstanding any other provisions of this Article XI, expenses incurred in defending a civil or criminal action, suit or proceeding shall, unless the Board determines otherwise, be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized in this Article XI.

Section 5. Successful Defenses. Notwithstanding any other provisions of this Article XI to the extent that a director, officer, employee or agent of the Association has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 1 and Section 2 of this Article XI, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 6. Provisions Not Exclusive. The indemnification and advancement of expenses provided by or granted under the other Sections of this Article XI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, vote of members or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Insurance. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a director, officer, employee or agent of another Association, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this Article XI.

Section 8. Notice to Members. If the Association has paid indemnity or has advanced expenses to a director, officer, employee or agent, the Association shall report the indemnification or advance in writing to the members entitled to vote with or before the notice of the next meeting of the members entitled to vote.

Section 9. Definitions. For purposes of this Article XI, references to "the Association" shall include, in addition to the surviving corporation, any merging corporation (including any corporation having merged with a merging corporation) absorbed in a merger which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers, and employees or agents, so that any person who was a director, officer, employee or agent of such merging corporation, or was serving at the request of such merging corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article XI with respect to the surviving corporation as such person would have with respect to such merging corporation if its separate existence had continued.

Section 10. Continuation of Rights. The indemnification and advancement of expenses provided by or granted under this Article XI shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of that person.

Section 11. Payments a Business Expense. Any payments made to any indemnified party under these By-Laws or under any other right to indemnification shall be deemed to be an ordinary and necessary business expense of the Association, and payment thereof shall not subject any person responsible for the payment, or the Board, to any action for corporate waste or to any similar action.

## **ARTICLE XII Amendment**

These By-Laws may only be amended by the Association in the same manner as provided in the



Declaration for the amendment of the Declaration. Notwithstanding anything to the contrary contained herein, so long as there is a Weighted Vote Membership, any applicable Federal Entity shall have the right to veto amendments to these By-Laws, so long as the rules and regulations promulgated by such Federal Entity require that it have such veto right.

**EXHIBIT C**

**Add-On Property**

NONE

**EXHIBIT D**  
**PHASE 1 ASSOCIATION LOT COST SHARE**

LOT	% SHARE		LOT	% SHARE		LOT	% SHARE
Lot 1	1.48%		Lot 36	1.20%		Lot 71	0.50%
Lot 2	1.55%		Lot 37	1.20%		Lot 72	0.54%
Lot 3	1.66%		Lot 38	1.20%		Lot 73	0.68%
Lot 4	1.71%		Lot 39	1.18%		Lot 74	0.74%
Lot 5	1.53%		Lot 40	1.28%		Lot 75	0.77%
Lot 6	1.53%		Lot 41	1.25%		Lot 76	0.74%
Lot 7	1.71%		Lot 42	1.23%		Lot 77	0.74%
Lot 8	1.71%		Lot 43	1.22%		Lot 78	0.74%
Lot 9	1.75%		Lot 44	1.21%		Lot 79	0.74%
Lot 10	1.66%		Lot 45	1.21%		Lot 80	0.76%
Lot 11	1.30%		Lot 46	1.21%		Lot 81	0.77%
Lot 12	1.30%		Lot 47	1.21%		Lot 82	0.74%
Lot 13	1.32%		Lot 48	1.21%		Lot 83	0.80%
Lot 14	1.59%		Lot 49	1.21%		Lot 84	0.77%
Lot 15	1.48%		Lot 50	1.21%		Lot 85	0.74%
Lot 16	1.36%		Lot 51	1.20%		Lot 86	0.74%
Lot 17	1.38%		Lot 52	0.67%		Lot 87	0.75%
Lot 18	1.21%		Lot 53	0.66%		Lot 88	0.78%
Lot 19	1.09%		Lot 54	0.71%		Lot 89	0.58%
Lot 20	1.06%		Lot 55	0.68%		Lot 90	0.49%
Lot 21	1.05%		Lot 56	0.66%		Lot 91	0.50%
Lot 22	1.04%		Lot 57	0.66%		Lot 92	0.50%
Lot 23	1.08%		Lot 58	0.72%		Lot 93	0.58%
Lot 24	1.07%		Lot 59	0.75%		Lot 94	0.62%
Lot 25	1.05%		Lot 60	0.82%		Lot 95	0.54%
Lot 26	1.06%		Lot 61	0.77%		Lot 96	0.49%
Lot 27	1.21%		Lot 62	0.58%		Lot 97	0.49%
Lot 28	1.30%		Lot 63	0.50%		Lot 98	0.54%
Lot 29	1.21%		Lot 64	0.67%		Lot 99	0.54%
Lot 30	1.03%		Lot 65	0.60%		Lot 100	0.54%
Lot 31	0.99%		Lot 66	0.64%		Lot 101	0.54%
Lot 32	1.03%		Lot 67	0.66%		Lot 102	0.62%
Lot 33	1.08%		Lot 68	0.52%		Lot 103	0.62%
Lot 34	1.03%		Lot 69	0.49%		Lot 104	0.62%
Lot 35	1.20%		Lot 70	0.49%		Lot 105	0.65%

To determine monthly Assessment, multiply applicable share by Annual Budget and divide by twelve. For example, if Annual Budget was \$200,000.00, Lot 33 monthly Assessment would be \$180, as follows:  $(.0108) \times 200,000/12 = \$180$ .

**EXHIBIT E**

**ARB Guidelines for the Phase Two Property and the Phase Three Property**

	<b>VILLA RESIDENCES</b>	<b>PREMIER RESIDENCES</b>
<b>1-story Min. SF</b>	2100 SF	2300 SF
<b>2-story Min. SF</b>	2300 SF	2500 SF
<b>Front yard setbacks</b>	20' from back side of curb	30'
<b>Side yard setbacks</b>	0/10'	Min.10'-Total 20'
<b>Rear yard setbacks</b>	10'	30'
<b>Side load garages</b>	N/A	Yes
<b>Architectural Materials</b>		
Roofing	Cedar shakes/ copper flashing. Minimum 8/12 pitched roofs	
Roof Venting	All venting through rear of house and lead-flashed. No B-vents allowed	
Garage Doors	Front or front side load	Side- or front-side load only. Depending on lot constraints, front-loads may be allowed if substantially setback from front elevation or as approved by ARB.
Siding	Natural or cultured stone, brick, cedar siding. No more than 25% stucco or EIFS finish. No aluminum, vinyl or composite allowed other than Hardi-board or equal. Any change of material must wrap or return to an inside corner of foundation.	
Fascia & Soffits	Cedar or Hardi-Board or equal	
Chimneys	Masonry w/ stone, brick or stucco finish. No pre-fab, B- vents, or box chimneys allowed. Direct vent allowed if it exits on side or rear of house only and not through roof. Bump outs with shed roofs are not allowed for direct vents.	
Mailboxes	Provided by Master Operating Association (MOA)	
Coach Lights	TBD	One coach light per driveway with standard approved by MOA (3)
Signage	ARB must approve in accordance with Declaration and Guidelines requirements	
Landscaping	ARB must approve in accordance with Declaration and Guidelines requirements	