

UNOFFICIAL COPY



Doc#: 0414127077
Eugene "Gene" Moore Fee: \$214.00
Cook County Recorder of Deeds
Date: 05/20/2004 01:10 PM Pg: 1 of 96

**VILLAGE OF LEMONT
ORDINANCE NO. 0-718-03**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT
FOR A 7.58 ACRE PARCEL, LOCATED WEST OF ASHBURY WOODS PHASE I,
BETWEEN 128TH AND 129TH STREETS, INCLUDING 15223, 15237, AND
15309 WEST 129TH STREET IN LEMONT, ILLINOIS
(ASHBURY WOODS SUBDIVISION, PHASE II)**

**ADOPTED BY THE
PRESIDENT AND BOARD OF TRUSTEES
OF THE VILLAGE OF LEMONT**

THIS 27th DAY OF OCTOBER, 2003

**Published in pamphlet form by
authority of the President and
Board of Trustees of the Village
of Lemont, Cook, DuPage, and Will
Counties, Illinois this 27th
day of October, 2003.**

UNOFFICIAL COPY

ORDINANCE NO. 0-11-03

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT FOR A 7.58 ACRE PARCEL, LOCATED WEST OF ASHBURY WOODS PHASE I, BETWEEN 128TH AND 129TH STREETS, INCLUDING 15223, 15237, AND 15309 WEST 129TH STREET

WHEREAS, Donven Homes, Inc. is the owner of the territory which is the subject of an Annexation Agreement is ready, willing, and able to enter into said agreement and perform the obligations as required therein and;

WHEREAS, a copy of said Annexation Agreement has been attached hereto and included herein; and

WHEREAS the statutory procedures provided for in the Illinois Municipal Code for the execution of said agreement have been fully complied with.


NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lemont, Counties of Cook, DuPage, and Will, State of Illinois, as follows:

Section 1. That the President be and is hereby authorized and directed, and the Village Clerk is directed to attest to a document know as the "Ashbury Woods Subdivision, Phase II Annexation Agreement" dated the 27th of October, 2003 a copy of which is attached hereto and made a part hereof.

Section 2. That this ordinance shall be in force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LEMONT, COUNTIES OF COOK, WILL, AND DU PAGE, ILLINOIS, on this 27th day of October, 2003.

| | <u>AYES</u> | <u>NAYS</u> | <u>PASSED</u> | <u>ABSENT</u> |
|-------------------|-------------|-------------|---------------|---------------|
| Debby Blatzer | ✓ | | | |
| Peter Coules | ✓ | | | |
| Brian Reaves | ✓ | | | |
| Steven Rosendahl | ✓ | | | |
| Ron Stapleton | ✓ | | | |
| Jeanette Virgilio | ✓ | | | |



JOHN F. PIAZZA, Village President

Attest:



CHARLENE M. SMOLLEN, Village Clerk

Approved as to form: _____
JOHN ANTONOPOULOS, Village Attorney

UNOFFICIAL COPY

ASHBURY WOODS SUBDIVISION, PHASE II ANNEXATION AGREEMENT

| <u>ARTICLE</u> | <u>TITLE</u> |
|----------------|---|
| I | Annexation |
| II | Zoning and Land Use Restrictions |
| III | Required Improvements |
| IV | Dedication and Construction of Streets, Sidewalks, Miscellaneous |
| V | Changes to Development Plan |
| VI | Contributions and Annexation Fees |
| VII | Water System Improvement Contribution |
| VIII | Easements and Utilities |
| IX | Development Codes and Ordinances and General Matters |
| X | Model Units, Sales Trailer, Advertising Sign |
| XI | Approval of Plans |
| XII | Notice of Violations |
| XIII | Maintenance Bond |
| XIIV | Damage to Public Improvements |
| XV | Binding Effect and Term and Covenants Running with the Land |
| XVI | Notices |
| XVII | Certificates of Occupancy |
| XVIII | Warranties and Representations |

UNOFFICIAL COPY

| <u>ARTICLE</u> | <u>TITLE</u> |
|----------------|---|
| XIX | Continuity of Obligations |
| XX | No Waiver or Relinquishment of Right to Enforce Agreement |
| XXI | Village Approval or Direction |
| XXII | Singular and Plural |
| XXIII | Section Headings and Subheadings |
| XXIV | Recording |
| XXV | Authorization to Execute |
| XXVI | Amendment |
| XXVII | Counterparts |
| XXVIII | Curing Default |
| XXIX | Conflicts Between the Text and Exhibits |
| XXX | Severability |
| XXXI | Definition of the Village |
| XXXII | Reimbursement of Costs |
| XXXIII | Execution of this Agreement |

UNOFFICIAL COPY

EXHIBITS

| <u>EXHIBIT</u> | <u>TITLE</u> |
|----------------|---|
| A | Legal Description of Subject Property |
| B | Plat of Annexation of Subject Property |
| C | Preliminary Site Plan |
| D | Preliminary Engineering Plan |
| E | Architectural Building Elevations and Floor plans |
| F | Preliminary Landscape Plans |
| G | Preliminary Tree Preservation Plan |
| H | Existing Tree Survey |
| I | List of Variations for Wood Decks |
| J | Declaration for Ashbury Woods Development, LLC |
| K | 129 th Street Proposed Roadway Alignment |

UNOFFICIAL COPY

ASHBURY WOODS SUBDIVISION, PHASE II ANNEXATION AGREEMENT

THIS AGREEMENT, made and entered into this 27th day of October, 2003, between the VILLAGE OF LEMONT, a municipal corporation of the Counties of Cook, DuPage and Will, in the State of Illinois (hereinafter referred to as "VILLAGE") and DONVEN HOMES INC., (hereinafter referred to as the "OWNER") and ASHBURY WOODS DEVELOPMENT, LLC (hereinafter referred to as the "DEVELOPER").

WHEREAS, the OWNER is the Owner of Record of the real estate, the legal description of which is attached hereto as Exhibit "A" (hereinafter referred to as the "TERRITORY") and by this reference is made a part hereof; and

WHEREAS, the TERRITORY has not been annexed to any municipality; and,

WHEREAS, the TERRITORY constitute an area that is contiguous to and may be annexed to the VILLAGE, as provided under the Illinois Municipal Code, 65 ILCS 5/7-1-1, et. seq.; and,

WHEREAS, the OWNER and VILLAGE agree that they will be bound by the terms of this Annexation Agreement; and,

WHEREAS, the VILLAGE would extend its zoning, building, health and other municipal regulations and ordinances over the TERRITORY, thereby protecting the VILLAGE from possible undesirable or inharmonious use and development of unincorporated areas surrounding the VILLAGE; and,

WHEREAS, the new boundaries of the VILLAGE OF LEMONT, resulting from this Annexation shall extend to the far side of every highway and shall include all of every highway not already annexed; and,

WHEREAS, the parties desire, pursuant to Chapter 65, Article 5, Section 11-15.1 of the Illinois Municipal Code, to enter into an Agreement with respect to Annexation of the TERRITORY and various other matters; and,

WHEREAS, pursuant to the provisions of the Statute, the corporate authority of said VILLAGE has duly fixed a time for and held a hearing upon the Annexation Agreement and has given notice of said hearing; and,

WHEREAS, The corporate authority of the VILLAGE has considered the Annexation of the TERRITORY described in the Petition and has determined that the best interest of the VILLAGE will be met if the TERRITORY are annexed to the VILLAGE and developed in accordance with the provisions of the Agreement.

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter contained, the parties agree as follows:

I

ANNEXATION

1. Subject to the provisions of Chapter 65, Article 5 Section 7 of the Illinois Municipal Code, the parties hereto respectively agree to do all things necessary or appropriate to cause the TERRITORY to be validly annexed to the VILLAGE as promptly as possible after execution of this agreement.

2. The Plat of Annexation of said TERRITORY is attached hereto as Exhibit "B". Said Plat extends the new boundaries of the VILLAGE to the far side of any adjacent highway not already annexed and includes all of every highway within the TERRITORY so annexed. In the case of 129th Street, as illustrated on the preliminary engineering plan (Exhibit "D"), the "far side" shall mean the south side of the street as dedicated by the OWNER within the TERRITORY.

II

ZONING AND LAND USE RESTRICTIONS

1. Upon the Annexation of the TERRITORY to the VILLAGE, the parcel shown on the plat of annexation attached as Exhibit "B" shall be classified under the existing zoning ordinance, as amended, as R-5 Single Family Attached Residence District with a Planned Unit Development. Prior to the date of this Agreement, such public hearings as are necessary to enable the VILLAGE lawfully to grant said zoning classification as to the TERRITORY have been conducted upon proper notice, and no further action need be taken by the OWNER to cause the TERRITORY to be re-zoned once the TERRITORY is annexed to the VILLAGE. The TERRITORY shall be developed in accordance with Preliminary P.U.D. Site Plan, prepared by Joseph Schudt & Associates and dated 10/06/03 attached hereto and incorporated herein as Exhibit "C"; Preliminary Engineering Plan, prepared by Joseph Schudt and Associates and dated 10/06/03 attached hereto and incorporated herein as Exhibit "D"; Architectural Building Elevations and Floor Plans, prepared by Donven Homes, Inc. and date stamped 10/10/03 attached hereto and incorporated herein as Exhibit "E"; Preliminary Landscape Plans, prepared by Wehler Peterson and Associates, Ltd and date stamped 10/10/03 attached hereto and incorporated herein as Exhibit "F"; Preliminary Tree Preservation Plan, prepared by Wehler Peterson and Associates, Ltd. and date stamped 10/10/03 attached hereto and incorporated herein as Exhibit "G"; Existing Tree Survey, prepared by BW Consulting and dated 10/08/03 attached hereto and incorporated herein as Exhibit "H"; List of Variations for Wood Decks, prepared by Donven Homes, dated 10/08/03 attached hereto and incorporated herein as Exhibit "I"; Declaration for Ashbury Woods Development, LLC, prepared by Donven Homes, Inc., dated 01/08/03 attached hereto and incorporated herein as Exhibit "J" and 129th Street Proposed Roadway Alignment,

UNOFFICIAL COPY

prepared by Donven Homes, Inc., dated 08/04/03 attached hereto and incorporated herein as Exhibit "K".

2. Planned Unit Development approval shall lapse in the event the DEVELOPER does not file a complete application for a site development permit within one (1) year of the effective date of this AGREEMENT.

3. As provided in Chapter XVI.H.2.&8. (Special Use – Planned Unit Developments) of the Lemont Zoning Ordinance, the Village has deemed it appropriate to approve the following selected bulk exceptions as part of the Planned Unit Development for Ashbury Woods Subdivisions, Phase II.

- a. Zoning variations to reduce setbacks for decks in the rear yards on selected units from 30 feet to a minimum of 22 feet as provided in Exhibit "I" of this Agreement;
- b. Subdivision variations to reduce right of way width from 128th Street and Ashbury Place from 66 feet to 60 feet;
- c. Subdivision variations to reduce right of way width from 129th Street from 66 feet to 48 feet. 129th Street shall be 27 feet back of curb to back of curb and shall replace the existing street surface as shown on Exhibit "K". DEVELOPER shall remove and restore pavement and extend existing driveway aprons where necessary and address drainage where necessary as a result of the reconstruction of 129th Street.

4. Within 30 days after receipt of an application by OWNER for a building permit for construction of any buildings, or other improvements on the TERRITORY, the VILLAGE shall either issue a permit authorizing such construction, issue a permit authorizing such construction subject to satisfaction of specified conditions consistent with the terms of this Agreement, or issue a letter of denial of such permit specifying the basis of said denial by reference to the provisions of the VILLAGE's Building Code applied in accordance with this Agreement, which the subject construction would allegedly violate. If the VILLAGE conditionally approves such a permit, the VILLAGE shall issue the permit unconditionally within five (5) working days after satisfaction by the OWNER of the specified conditions.

Any stop order issued by the VILLAGE directing work stoppage on any building or other improvement on the TERRITORY shall specify the section of the VILLAGE's Building Code allegedly violated by the OWNER and shall give the OWNER 30 days in which to cure or diligently commence cure of such violation. Upon correction of any such violation, work on any improvement subject to a stop order may recommence.

5. It is understood and agreed, except as otherwise provided for herein, the Zoning Ordinance, Subdivision Ordinance and Regulations, Building Code and all other ordinances including all fees and charges of the VILLAGE, shall not be frozen during the term of this Agreement, and such ordinances, as the same may from time to time be amended and enforced throughout the VILLAGE, shall apply to the TERRITORY.

UNOFFICIAL COPY

III

REQUIRED IMPROVEMENTS

1. **Water Supply.** DEVELOPER shall have the right to construct and install at their expense all necessary on-site water mains to service the TERRITORY. All water mains shall be constructed and installed in accordance with the Code of the VILLAGE and final engineering plans approved by the VILLAGE. The VILLAGE agrees to permit connection of the aforementioned water mains to the water facilities of the VILLAGE and to furnish water service on the same basis as said services are furnished to other parts of the VILLAGE.

2. **Sanitary and Storm Sewers.** DEVELOPER shall have the right to construct and install at its expense all necessary sanitary sewers to service the TERRITORY in accordance with the Subdivision Regulations of the VILLAGE and final engineering plans approved by the VILLAGE. The VILLAGE agrees to permit connection of the aforementioned sanitary sewers to the sanitary sewer facilities of the VILLAGE and to furnish sewer service on the same basis as said services are furnished to other parts of the VILLAGE. DEVELOPER agrees that no surface water is to be discharged into the sanitary sewerage collection system and will make adequate provisions that this will not occur. Tap-on fees required by the Village shall not be waived. DEVELOPER agrees that no surface water is to be discharged into the sanitary sewerage collection system and will make adequate provisions that this will not occur. All detention areas and appurtenant structures such as drains, inlets, and outlets shall be owned and maintained by the DEVELOPER, with right of access by the VILLAGE for emergency maintenance purposes.

3. **Recapture.** The DEVELOPER acknowledges that there is an existing Recapture Ordinance regulating connection fees for sewer and water under Ordinance No. 0-80-98 commonly known as the Chestnut Recapture Agreement and the DEVELOPER agrees to pay said connection fees only to the extent the Development or any portion connects to the Chestnut Crossing sewer and water facilities.

4. **Detention Area/Open Space.** The DEVELOPER agrees to construct detention basins in accordance with Village standards which include the requirement to sod the detention basins which are to be conveyed and owned by the homeowner association, along with Open Space Areas as delineated on the Plan along with various landscaping amenities detailed in the Landscape Plan.

IV

DEDICATION AND CONSTRUCTION OF STREETS; SIDEWALKS; MISCELLANEOUS

1. **Public Improvements.** All streets and other improvements will be constructed in accordance with the plans and specifications as referred to in Article II of this Agreement including

UNOFFICIAL COPY

but not limited to, street lights, sidewalks, and landscaping.

2. Dedications. The OWNER/DEVELOPER shall design streets within the TERRITORY according to Article II of this Agreement that comply with Village standards for local streets. All interior streets within the Territory when developed shall be dedicated to the VILLAGE. Said streets shall be constructed in accordance with the final engineering plans approved by the VILLAGE.

3. Miscellaneous. The cost of any sidewalks and street trees to be installed on public rights of way shall be included in the required letters of credit for each phase of the development of the

TERRITORY with the amounts to be computed on the same basis as the amounts to be included in the letter of credit for all other public improvements for the TERRITORY.

V

CHANGES TO DEVELOPMENT PLAN

The DEVELOPER agrees to submit revised plans to the VILLAGE for any changes to the Development Plan. Any request to increase the number of dwelling units, change the pattern of land use, change the location of streets or street intersections, change the fundamental architectural character of the development, or obtain a variance from the Subdivision Regulations not part of this Agreement, shall be considered "major" changes; other changes shall be considered "minor", in accordance with Section XVI.F of the Lemont Zoning Code. "Major" changes shall require published notice and a public hearing before the Lemont Zoning Board of Appeals to consider an amendment of a Special Use Permit for a Residential Planned Development. After said public hearing the Zoning Board shall forward its recommendation to the Village Board of Trustees, which shall approve or deny the requested amendment. If the changes are "minor," the VILLAGE may approve the Final Plat of Subdivision without additional review and recommendation by the Zoning Board.

VI

CONTRIBUTIONS AND ANNEXATION FEES

1. The OWNER/DEVELOPER shall make cash contributions at the time a final development plan or Plat of Subdivision is filed with the VILLAGE, in accordance with the ordinances of the Village. If a final development plan or Plat of Subdivision is filed within one (1) year of the effective date of this Agreement, the required contributions shall be as follows:

| <u>District/Purpose</u> | <u>Contribution Amount</u> |
|-------------------------------|----------------------------|
| School District 113A | \$13,432.83 |
| High School District | \$ 3,340.17 |
| Park District (land donation) | 0.76 acres |
| Library District | \$ 3,297.74 |

UNOFFICIAL COPY

Village Annexation Fee \$ 2,250.00

TOTAL: **\$22,320.74**

2. If a final plat of subdivision is submitted to the VILLAGE more than one (1) year after the effective date of this Agreement, the aforesaid contributions and the annexation fee shall be paid in amounts calculated in accordance with the terms of the ordinances of the VILLAGE in effect at the time such final plan or Plat is submitted to the VILLAGE.

3. Planning contribution. In recognition of the need for land use planning in advance of further land development within the area between by the south side of 127th Street and property on both sides of 129th Street and between the east side of State Street and the TERRITORY, OWNER agrees to deposit funds in escrow that will fund an independent planning study to be directed by the Village that shall propose future general land use patterns, density, intensity, access & circulation, storm water management, and utility layouts & improvements, within the study area defined above. OWNER'S contribution hereunder shall not exceed the total sum of twenty thousand dollars (\$20,000) and the Village shall be obligated to commence the study within one (1) year from the date of execution of this Ordinance and Agreement or shall be required to refund the entire escrow deposit to the OWNER. In the event that additional funds remain in such escrow after the completion of the study the OWNER shall be refunded the balance upon written request. The VILLAGE may adopt the resulting study as an amendment to the Comprehensive Plan of the VILLAGE.

4. Contributions Agreement. OWNER/DEVELOPER agrees that any and all contributions, dedications, donations and easements, provided for in this Agreement substantially advance legitimate governmental interests of the VILLAGE, including, but not limited to, providing its residents, and in particular the future residents of the TERRITORY, with access to and use of public utilities, libraries, schools, parks and recreational facilities, police protection, and emergency services. OWNER/DEVELOPER further agrees that the contributions, dedications, donations and easements required by this Agreement are uniquely attributable to reasonably related to and made necessary by the development of the TERRITORY.

VII

WATER SYSTEM IMPROVEMENT CONTRIBUTION

The OWNER shall contribute to the VILLAGE the cost of expanding the VILLAGE well and storage capacity to allow the VILLAGE to supply water to the TERRITORY. The contribution to the VILLAGE shall be added to the usual and customary connection fee and shall be paid at the time of connection. The parties agree that \$1,000.00 shall be paid for each attached single-family unit.

UNOFFICIAL COPY

VIII

EASEMENTS AND UTILITIES

The DEVELOPER agrees to grant to the VILLAGE, and/or obtain grants to the VILLAGE of, all necessary easements for the extension of sewer, water, street, or other utilities, including cable television, or for other improvements, subject to the provisions of the Subdivision Control Ordinance, which are necessary to the TERRITORY.

All such easements to be granted shall name the VILLAGE and/or other appropriate entities designated by the VILLAGE as grantee thereunder. It shall be the responsibility of the DEVELOPER to obtain all easements, both on site and off site, necessary to serve the TERRITORY.

All electricity, telephone, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at the DEVELOPERS option, upon approval of the respective utility company.

IX

DEVELOPMENT CODES AND ORDINANCES AND GENERAL MATTERS.

The development of the TERRITORY annexed shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the VILLAGE as they exist on the date each respective permit for development is issued. Planning and engineering designs and standards shall be in accordance with the then existing ordinances of the VILLAGE or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the VILLAGE of Lemont at such time. All fees, etc. set forth under the various ordinances of the VILLAGE shall be paid by the DEVELOPER at the rate set forth in the VILLAGE ordinances at the time each permit is issued.

No occupancy permit shall be issued for any building prior to the completion of the required public improvements, including street signs. Provided, however, the construction and installation of the public improvements to be done by DEVELOPER may be commenced at any time after approval of this Agreement by the Village and issuance of permits therefore.

Prior to final plat approval, DEVELOPER shall deliver to VILLAGE an irrevocable letter of credit, in a form satisfactory to, and from a bank or other financial institution approved by, the VILLAGE in the amount of 115% of the DEVELOPER'S Engineers estimate of the cost of construction and installation of all such public improvements as approved by the VILLAGE Engineer, including all required lighting, sidewalks, landscaping, street trees, sewer and water lines and storm water management facilities, except to the extent such facilities are to remain private, and after approval of a site development permit by the VILLAGE. At no time shall the Letter of Credit funds

UNOFFICIAL COPY

be utilized by the DEVELOPER for the future payment of contractors, materials salaries and wages and the like. The VILLAGE makes no guarantees regarding the timely reduction of said Letter of Credit and therefore should not be used for time-sensitive payment purposes. The VILLAGE Engineer may, in his/her discretion, recommend the amount of said letter of credit to be reduced, from time to time, as major public improvements are completed, upon approval of the VILLAGE Board.

DEVELOPER, at DEVELOPERS own cost, agrees to provide the VILLAGE "as built", engineering plans and specifications upon substantial completion of the public improvements or at the request of the VILLAGE Engineer but in no event later than the time required by Ordinance No.456, as amended.

It is agreed that all of the public improvements contemplated herein shall upon acceptance thereof by the VILLAGE, become the property of VILLAGE and be integrated with the municipal facilities now in existence or hereinafter constructed and VILLAGE thereafter agrees to maintain said public improvements. Acceptance of said public improvements shall be by resolution of the President and Board of Trustees only after the VILLAGE Engineer or VILLAGE Engineer Consultant has issued his Certificate of Inspection affirming the improvements have been constructed in accordance with approved Engineering Plans and Specifications. DEVELOPER agrees to convey by appropriate instrument and VILLAGE agrees to promptly accept, subject to terms hereof, the public improvements constructed in accordance with the Approved Engineering Plans and Specifications.

DEVELOPER agrees not to let debris or excessive construction waste accumulate on the TERRITORY. DEVELOPER shall, within ten (10) days of notification of a violation by the VILLAGE, remove all debris from the locations as specified by the VILLAGE. If debris is not removed within this time period, the VILLAGE shall have the right to draw upon the Letter of Credit provided for in this Agreement to remove any such debris on the TERRITORY. The VILLAGE will not draw upon the Letter of Credit if DEVELOPER removes the debris as directed by the VILLAGE within the ten (10) day notice period.

X

MODEL UNITS, SALES TRAILER, ADVERTISING SIGN

The VILLAGE agrees that the provisions contained in Articles VI and VII of that certain "Ashbury Woods Annexation Agreement" dated March 11, 2002, between the VILLAGE and DEVELOPER pertaining to model units, sales trailer and an advertising sign and specifically, the obligations of the DEVELOPER thereunder, shall be incorporated herein and extended during the construction of the Ashbury Woods Subdivision, Phase II.

UNOFFICIAL COPY

XI

APPROVAL OF PLANS

VILLAGE agrees to expeditiously take action to approve or disapprove all plats, plans and engineering submitted to VILLAGE by DEVELOPER. If VILLAGE shall determine that any such submission is not in substantial accordance with this Agreement and applicable ordinances, the VILLAGE shall promptly notify DEVELOPERS in writing of the specific objection to any such submission so that DEVELOPER can make any required corrections or revisions.

XII

NOTICE OF VIOLATIONS

The VILLAGE will issue no stop orders directing work stoppage on building or parts of the project without giving notice of the Section of the Code allegedly violated by OWNER, so the OWNER may forthwith proceed to correct such violations as may exist. Moreover, the OWNER shall have an opportunity to correct possible violations. This paragraph shall not restrain the Building Official from issuing a stop work order in any case where he considers a continuation of the work to constitute a threat to the health or safety of the public or personnel employee on or near the site. VILLAGE shall provide OWNER notice as required by Statute of any matter, such as public hearing, proposed building code changes and policy changes or other matters which may affect the TERRITORY of development of it under this Agreement.

XIII

MAINTENANCE BOND

At the time or times of acceptance by VILLAGE of the installation of any part, component or all of any public improvement in accordance with this Section, or any other section of the Agreement, OWNER shall deposit with the VILLAGE a Letter of Credit in the amount of ten percent (10%) of the cost of the approved engineer's estimate of original construction costs. This guarantee shall be deposited with the VILLAGE and shall be held by the VILLAGE for a period of two (2) years after completion and acceptance of all improvements. In the event of a defect in material and/or workmanship within said period, then said security shall not be returned until correction of said defect and acceptance by VILLAGE of said corrections.

XIV

DAMAGE TO PUBLIC IMPROVEMENTS

The OWNER shall replace and repair any damage to public improvements installed within, under or upon the subject realty resulting from construction activities by OWNER, their successors or

UNOFFICIAL COPY

assigns and their employees agents, contractors or subcontractors during the term of this Agreement. OWNER shall have no obligation hereunder with respect to damage resulting from ordinary usage, wear and tear.

XV

BINDING EFFECT AND TERM AND COVENANTS RUNNING WITH THE LAND

This Agreement shall be binding upon and insure to the benefit of the parties hereto, successor OWNER's record of the TERRITORY, assignees, lessees and upon any successor municipal authorities of said VILLAGE and successor municipalities, for a period of 20 years from the date of execution hereof.

The terms and conditions of this Agreement relative to the payment of monies to the various VILLAGE recapture funds, contributions to the VILLAGE construction and/or dedication of public improvements, granting of easements to the VILLAGE, dedication of rights-of-way to the VILLAGE and the developmental standards established herein shall constitute covenants which shall run with the land.

It is further agreed that any party to this Agreement, either in law or in equity, by suit, action, mandamus, or other proceeding may enforce or compel the performance of this Agreement, or have other such relief for the breach thereof as may be authorized by law or that by law or in equity is available to them.

XVI

NOTICES

Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the VILLAGE:

Village Clerk
418 Main Street
Lemont, IL 60439

For the DEVELOPER:

Ashbury Woods
Development, LLC
6428 Joliet Road
Countryside, IL 60525

With copy to:

Goldstine, Skrodzki,
Russian, Nemeč and
Hoff, Ltd.
835 McClintock Dr.
Burr Ridge, IL 60527

Or such other addresses that any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

UNOFFICIAL COPY

XVII

CERTIFICATES OF OCCUPANCY

1. Within five (5) days after request by OWNER for a final inspection of a building within the TERRITORY, the VILLAGE shall issue a final certificate of occupancy for such building or issue a letter of denial of a certificate of occupancy identifying the correction necessary as a condition of a certificate of occupancy and specifying the section of the Building Code relied on by the VILLAGE in its request for correction.

2. The VILLAGE, in accordance with the requirements and customary practice of the VILLAGE Building Department, will grant provisional permits for structures between November 1st and June 1 if weather prevents the OWNER from completing grading, landscaping and exterior concrete or asphalt work for any such structure (it being understood that if other work remains to be done, no occupancy permit, provisional or otherwise, will be issued).

As a condition of the issuance of any such provisional occupancy permit, the OWNER shall provide the VILLAGE with a timetable (acceptable to the VILLAGE) for completion of the outstanding work, which timetable shall be deemed a part of the occupancy permit.

XVIII

WARRANTIES AND REPRESENTATIONS

The OWNER and DEVELOPER represents and warrants to the VILLAGE as follows:

1. That Donven Homes, Inc. identified on page 4 hereof is the OWNER as legal title holder and owner of record of all the respective parcels of the TERRITORY.

2. That other than the OWNER and DEVELOPER, no other entity or person has any interest in the TERRITORY or its development as herein proposed.

3. That OWNER and DEVELOPER have provided the legal description of the TERRITORY set forth in this Agreement and the attached Exhibits and that said legal descriptions are accurate and correct.

XIX

CONTINUITY OF OBLIGATIONS

Notwithstanding any provisions of this Agreement to the contrary, including but not limited to the sale and/or conveyance of all or any part of the TERRITORY by OWNER and DEVELOPER,

UNOFFICIAL COPY

OWNER and DEVELOPER shall at all times during the term of this Agreement remain liable to the VILLAGE for the faithful performance of all obligations imposed upon them by this Agreement until such obligations have been fully performed or until the VILLAGE, at its sole option, has otherwise released OWNER and DEVELOPER from any all of such obligations.

XX

NO WAIVER OR RELINQUISHMENT OF RIGHT TO ENFORCE AGREEMENT

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

XXI

VILLAGE APPROVAL OR DIRECTION

Where VILLAGE approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the VILLAGE unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

XXII

SINGULAR AND PLURAL

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

XXIII

SECTION HEADINGS AND SUBHEADINGS

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

UNOFFICIAL COPY

XXIV

RECORDING

A copy of this Agreement and any amendments thereto shall be recorded by the VILLAGE at the expense of the DEVELOPER within 30 days after the execution hereof.

XXV

AUTHORIZATION TO EXECUTE.

The President and Clerk of the VILLAGE hereby warrant that they have been lawfully authorized by the VILLAGE Board of the VILLAGE to execute this Agreement. The OWNER and VILLAGE shall, upon request, deliver to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

XXVI

AMENDMENT

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced in writing and signed by them.

XXVII

COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

XXVIII

CURING DEFAULT

It is understood by the parties hereto that time is of the essence of this Agreement. The parties to this Agreement reserve a right to cure any default hereunder within fifteen (15) days from written notice of such default.

UNOFFICIAL COPY

XXIX

CONFLICT BETWEEN THE TEXT AND EXHIBITS

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

XXX

SEVERABILITY

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such court shall determine that the VILLAGE does not have the power to perform any such provisions, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve VILLAGE from performance under such invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve VILLAGE from performance under such invalid provision of this Agreement.

XXXI

DEFINITION OF VILLAGE

When the term VILLAGE is used herein it shall be construed as referring to the Corporate Authorities of the VILLAGE unless the context clearly indicates otherwise.

XXXII

REIMBURSEMENT OF COSTS

The DEVELOPER agrees to reimburse the VILLAGE for reasonable attorney's fees, planning consultants and engineering costs incurred by the VILLAGE in connection with the annexation of the TERRITORY, or in the enforcement of any of the terms of the Annexation Agreement upon a default by the OWNER. Such payment shall be made promptly upon receipt of a request from the VILLAGE of such reimbursement, with copies of the bills attached.

XXXIII

EXECUTION OF AGREEMENT

This Agreement shall be signed last by the VILLAGE and the President of the VILLAGE shall

UNOFFICIAL COPY

affix the date on which he signs this Agreement on page 4 hereof which date shall be the effective date of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

VILLAGE OF LEMONT
an Illinois Municipal Corporation

By: *[Signature]*
Village President

ATTEST:

By: *[Signature]*
Village Clerk

OWNER; DONVEN HOMES, INC.:

[Signature]
Donald A. Stevens, President

DEVELOPER; ASHBURY WOODS
DEVELOPMENT LLC:

By: *[Signature]*
Managing Member

By:

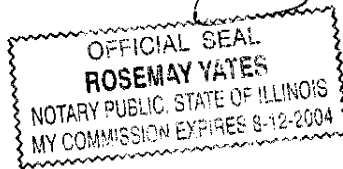
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that JOHN F. PIAZZA personally known to me to be the President of the Village of Lemont, and CHARLENE M. SMOLLEN, personally known to me to be the Village clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

UNOFFICIAL COPY

GIVEN under my hand and official seal, this 27th day of October, 2003.

Rosemay Yates
Notary Public

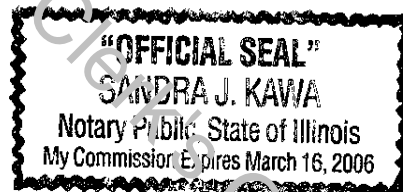


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Donald A. Stevens, president of Donven Homes, Inc., and Scott A. Stevens, Managing Member of Ashbury Woods Development, LLC personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 28th day of October, 2003.

Sandra J. Kawa
Notary Public



UNOFFICIAL COPY

Exhibit "A"

PLAT OF ANNEXATION LEGAL DESCRIPTION

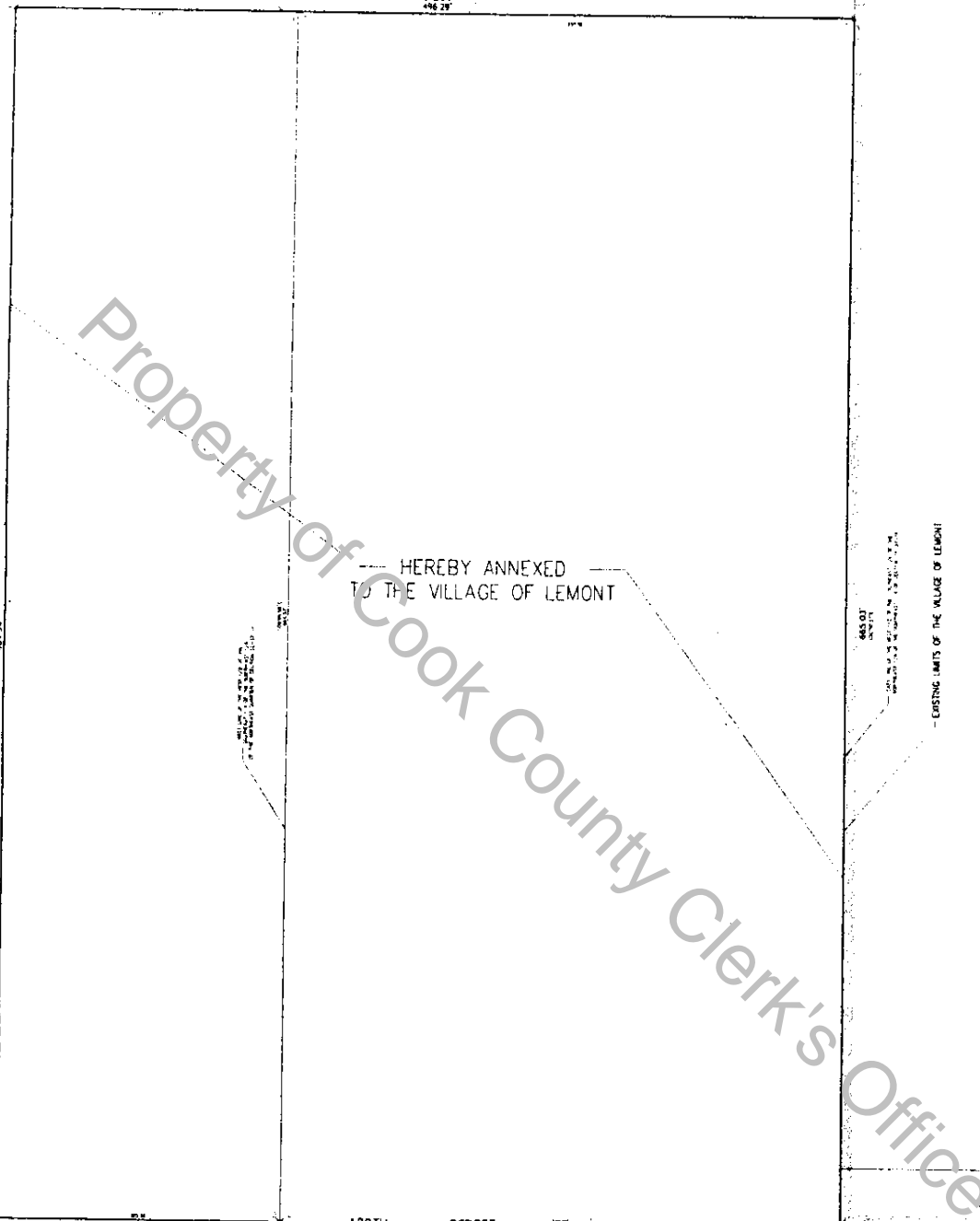
THE EAST ½ OF THE EAST ½ OF THE SOUTHWEST ¼ OF THE
NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 32, TOWNSHIP 37
NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE
WEST ½ OF THE SOUTHEAST ¼ OF THE NORTHEAST QUARTER OF THE
NORTHEAST ¼ OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST
OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

Exhibit "B"

UNOFFICIAL COPY

RECORDS SECTION
COUNTY CLERK'S OFFICE
JANUARY 1984
1984 JAN 23 10 11 AM
1984 JAN 23 10 11 AM



HEREBY ANNEXED TO THE VILLAGE OF LEMONT

EXISTING LIMITS OF THE VILLAGE OF LEMONT

129TH STREET
496.20



SUBJECT: [Illegible]

STATE OF ILLINOIS
COUNTY OF [Illegible]

BEFORE ME, the undersigned authority, on this day personally appeared [Illegible], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this [Illegible] day of [Illegible] 19[Illegible].

[Illegible Signature]

LEMONT PROFESSIONAL LAND SURVEYOR NO. 027-0001

PREPARED FOR:
[Illegible]
[Illegible]
[Illegible]

Exhibit "C"

UNOFFICIAL COPY

GRAPHIC SCALE

LEGAL DESCRIPTION

SECTION 28, TOWNSHIP 36N, RANGE 10E, COOK COUNTY, ILLINOIS

127th Street

VICINITY MAP

128th Street

129th Street

Site Data

ASHBURY WOODS (TOTAL)

TOTAL LAND AREA 26.91 ACRES
 TOTAL UNITS 117 UNITS
 GROSS DENSITY 4.35 DU/AC

ASHBURY WOODS ADDITION

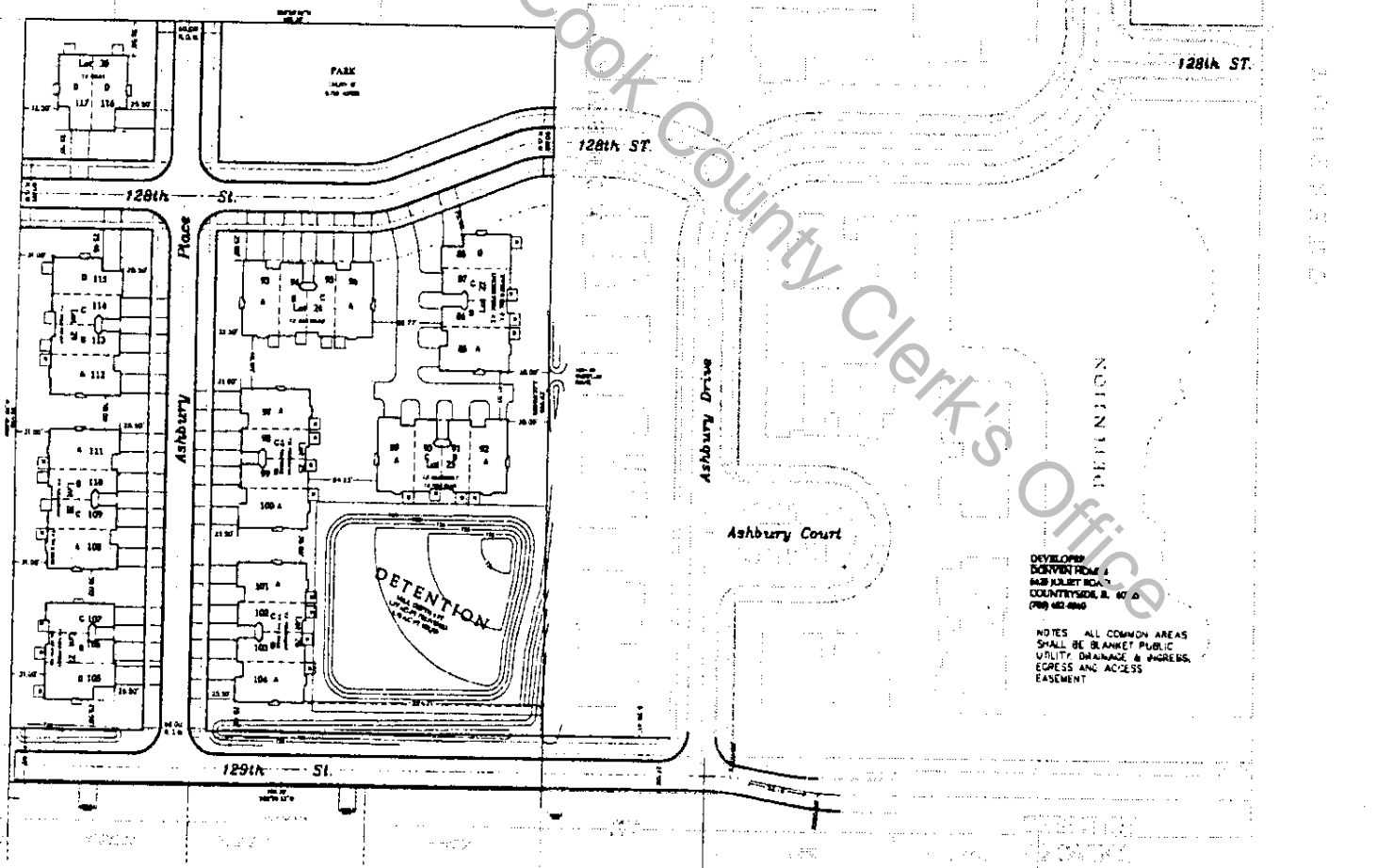
ASHBURY WOODS ADDITION 7.50 ACRES (329,980 SF)
 ADDITIONAL UNITS 33 UNITS
 GROSS DENSITY 4.35 DU/AC
 OPEN SPACE 0.95 ACRES
 GREEN SPACE 3.15 ACRES

FRONT YARD SETBACK 25'
 REAR YARD SETBACK 15'
 SIDE YARD SETBACK 15'
 CORNER SIDE SETBACK 25'
 PROPERTY BORDER SETBACK 15'

DEDICATED STREET R.O.W. (INCLUDING 20' SIDEWALK) 0.08 ACRES (85,538 SF)
 STORMWATER DETENTION AREA 0.11 ACRES (26,916 SF)
 PARK AREA 0.76 ACRE (33,200 SF)

NET UNIT LOT AREA 212970 SF (4.88 ACRES)
 AVERAGE UNIT LOT AREA 6,453 SF / DU

EXISTING ZONING COOK COUNTY R-4
 PROPOSED ZONING VILLAGE OF LEMONT - R-3 PUD



DEVELOPER:
 BORVEN FROM A
 628 JULIET ROAD
 COUNTRYSIDE, IL 60140
 (708) 452-0400

NOTES: ALL COMMON AREAS
 SHALL BE BLANKET PUBLIC
 UTILITY, DRAINAGE & EGRESS,
 EGRESS AND ACCESS
 EASEMENT

| | | | |
|---|---|--|---|
| <p>DATE: 2-1-03 SCALE: 1"=40' DRAWN BY: JAS</p> | <h3>Ashbury Woods Addition</h3> <h3>Lemont, Illinois</h3> <h3>Preliminary P.U.D. Site Plan</h3> | <p>REVISIONS: 1-11-03 6-28-03 1-11-03 10-03</p> | <p>Joseph A. Schudt & Associates 19350 S. HAWLEM AVENUE, FRANKFORD, IL 60423 PHONE 708-720-1000 FAX 708-720-1065 WWW: JASASSOCIATES.COM E-MAIL: JAS@JASASSOCIATES.COM</p> <p>CIVIL ENGINEERING LAND SURVEYING ENVIRONMENTAL LAND PLANNING GIS SERVICES</p> |
|---|---|--|---|

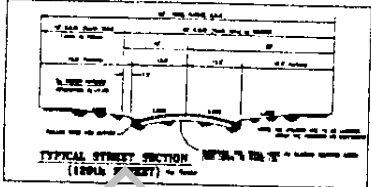


Exhibit "D"

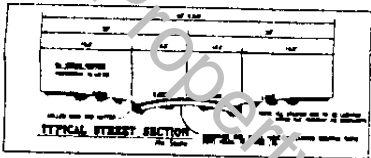
UNOFFICIAL COPY



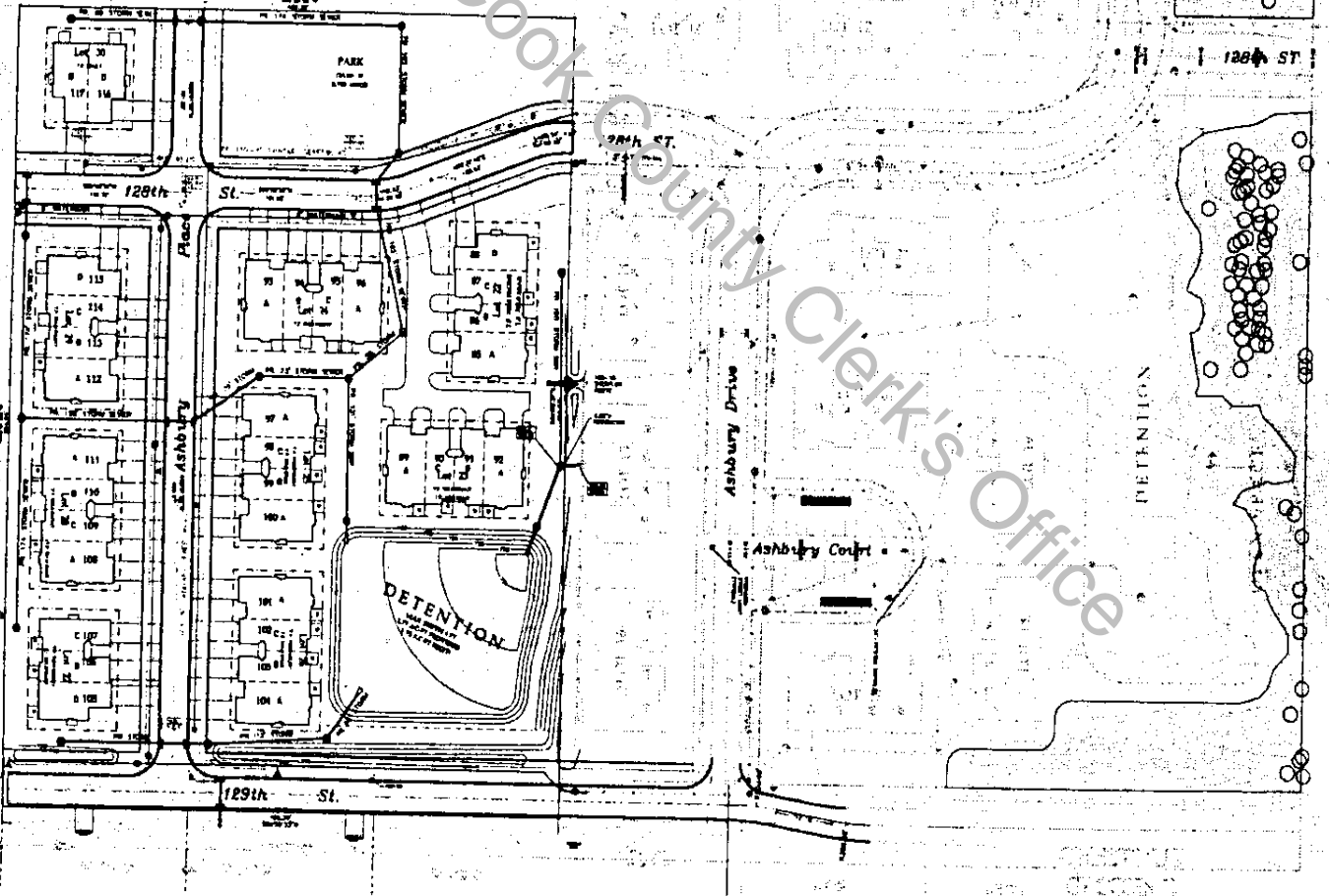
MUNITY MAP
THE PROJECT
PROJECT BY LOCATION



TYPICAL STREET SECTION
(180ft. STREET)



TYPICAL STREET SECTION
(180ft. STREET)



Ashbury Woods Addition
Lemont, Illinois
Preliminary Engineering Exhibit

REVISIONS 1-15-01 1-27-01
2-1-02 2-28-02 5-15-02
9-1-02



Joseph A. Schudt & Associate
19350 S HARLEM AVENUE FRANKFORD, IL 6042
PHONE 708-720-1000 FAX 708-720-1026
WWW.JASCHUDT.COM

CIVIL ENGINEERING LAND SURVEYING ENVIRONMENTAL LAND PLANNING GPS SURVEYING

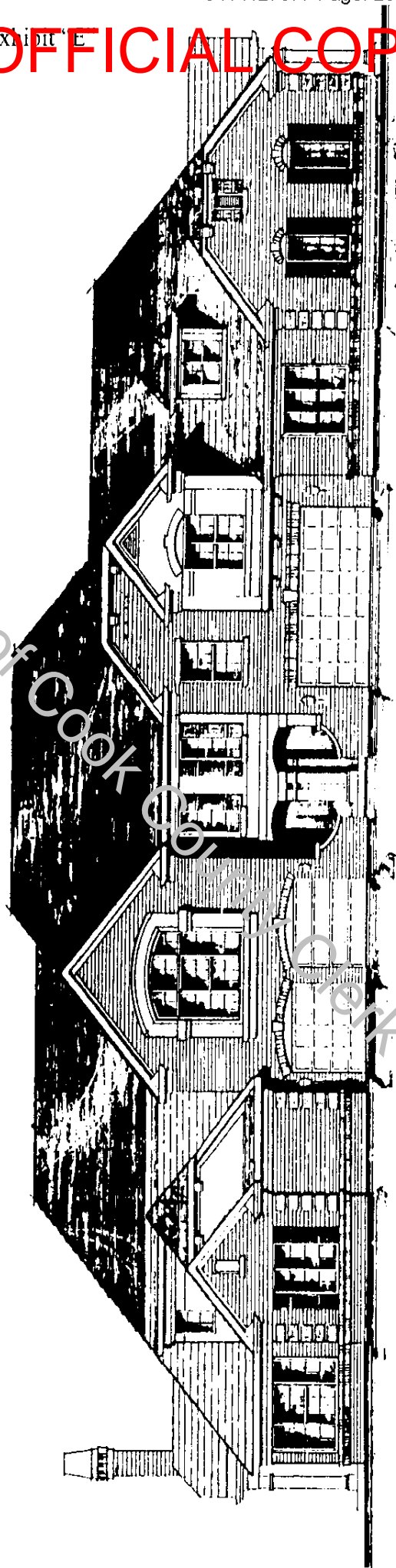
DATE: 3-3-03
DRAWN BY: JAS
DESIGN BY: JAS
CHECKED BY: JAS
SHEET: 2 OF 2

EXHIBIT E
UNOFFICIAL COPY

Ashbury Woods

ATTACHED SINGLE FAMILY HOMES

Property of Cook County



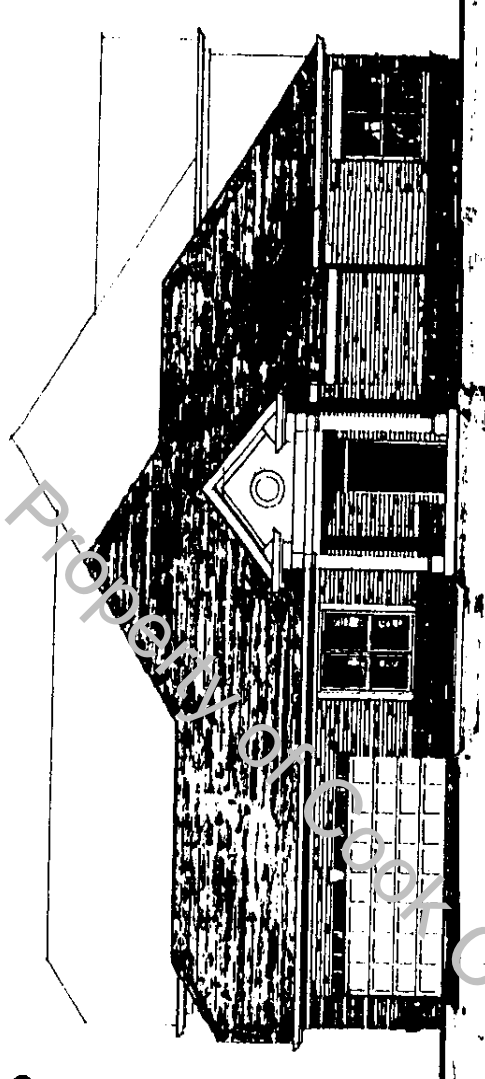
CONSTRUCTION MATERIALS

BRICK: GENERAL BRICK - 1.00 PER YD. 100 LBS.
ROOF: CERTAINTEED - 100 PER YD. 100 LBS.
SIDING: HARDIE - CONCRETE BLOCK
TRIM, EAVES: CEDAR BOARD

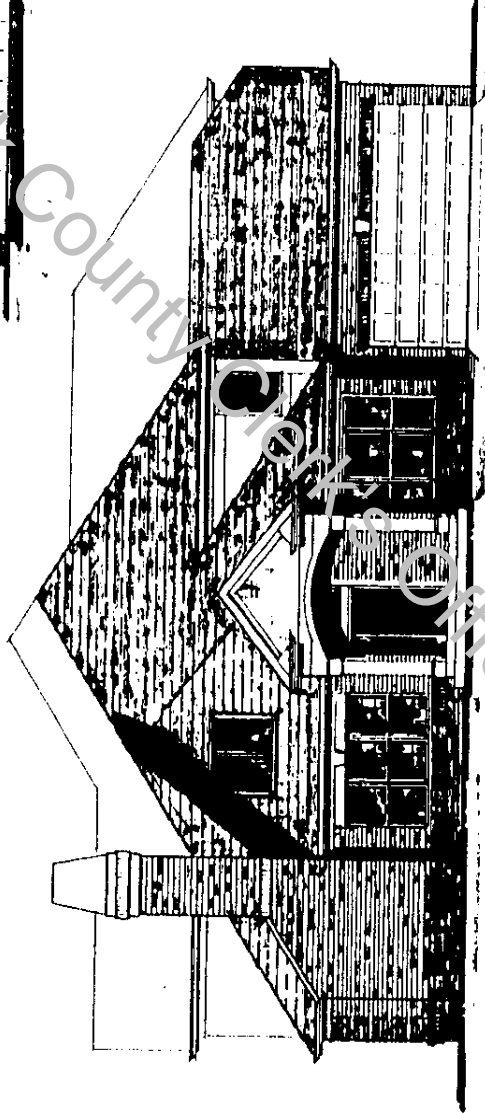
TYPICAL FRONT ELEVATION
DEVELOPER/BUILDER
CONVEN HOMES

UNOFFICIAL COPY

Ashbury Woods
ATTACHED SINGLE FAMILY HOMES



RIGHT ELEVATION



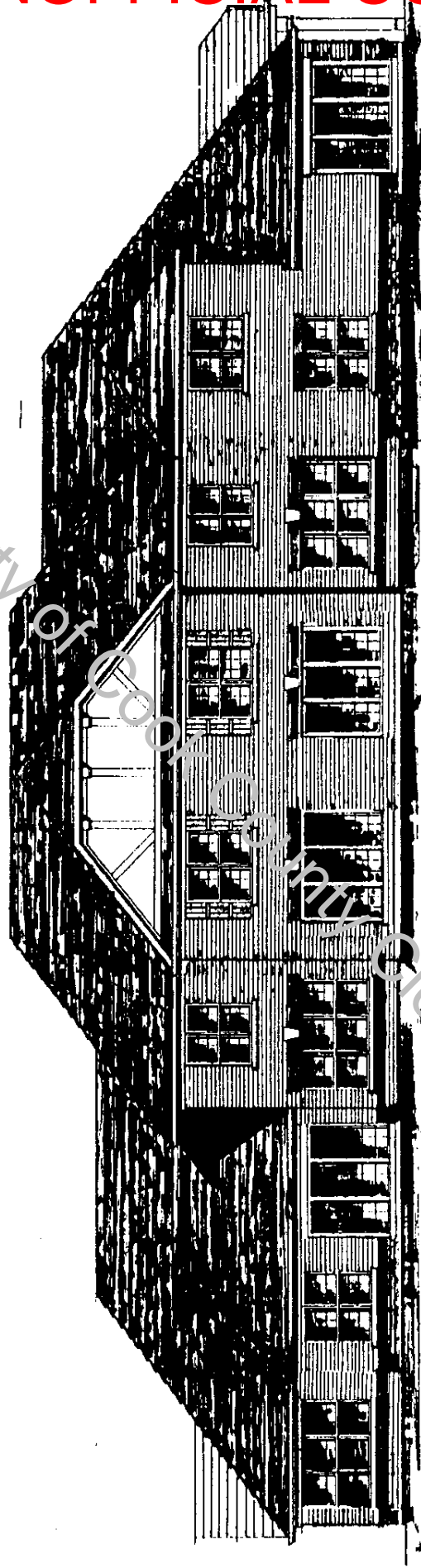
LEFT ELEVATION

DEVELOPER - BUILDER
DOMVEN HOMES

Property of County Clerk's Office

UNOFFICIAL COPY

Ashbury Woods

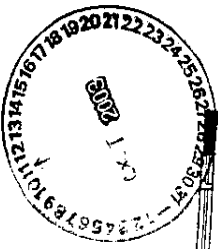


REAR ELEVATION

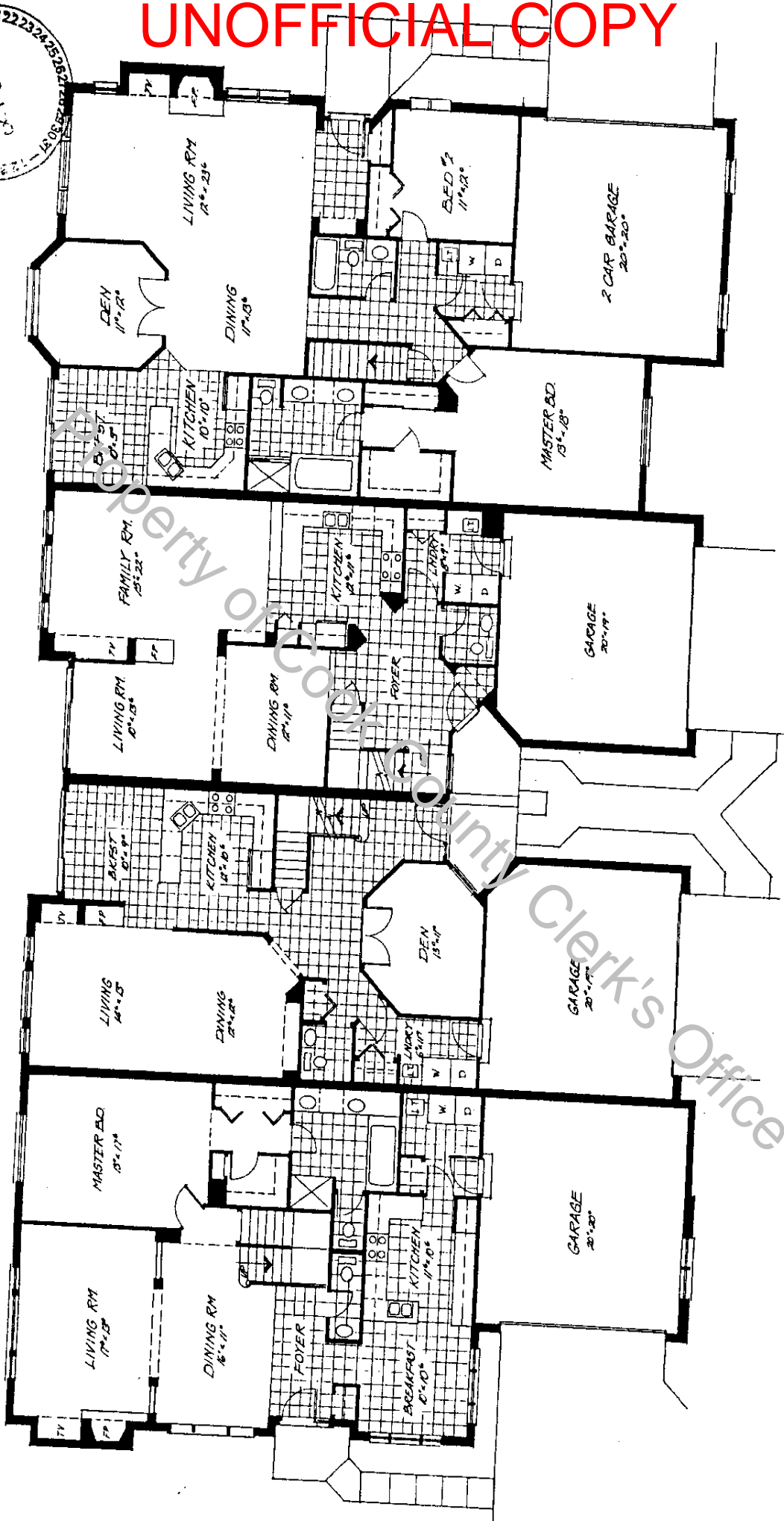
DEVELOPER/BUILDER
DONVENHOMES

Property of Cook County Clerk's Office

UNOFFICIAL COPY



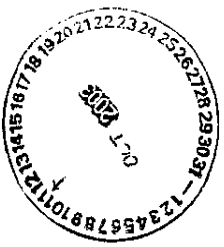
Ashbury Woods



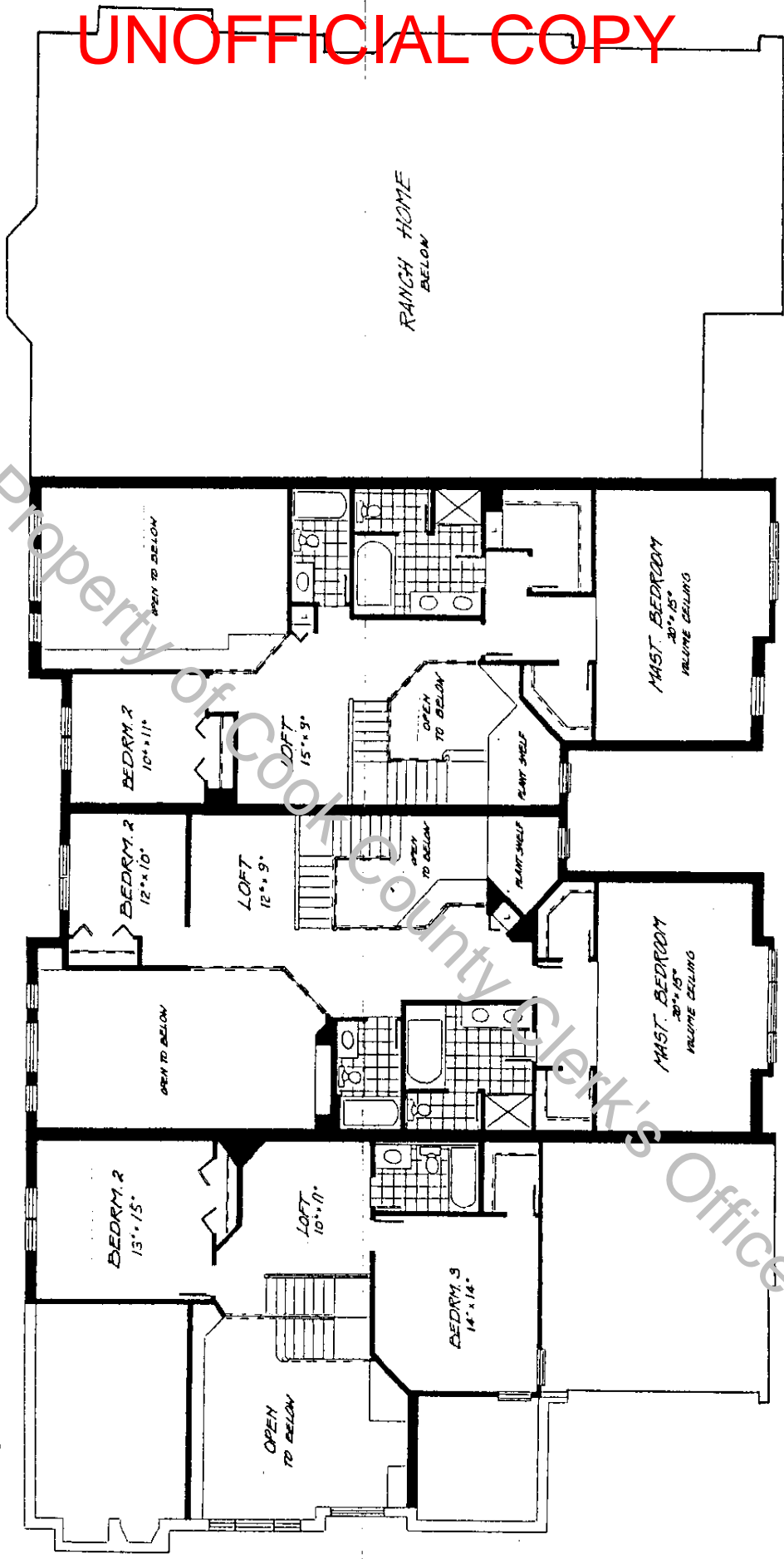
FIRST FLOOR PLAN

Property of County Clerk's Office

UNOFFICIAL COPY



Ashbury Woods



SECOND FLOOR PLAN

RANCH HOME BELOW

OPEN TO BELOW

BEDRM. 2
10' x 11'

LOFT
15' x 9'

MAST. BEDROOM
20' x 15'
VOLUME CEILING

BEDRM. 2
12' x 10'

LOFT
12' x 9'

OPEN TO BELOW

PLANT-SHELF

MAST. BEDROOM
20' x 15'
VOLUME CEILING

OPEN TO BELOW

BEDRM. 2
13' x 15'

LOFT
10' x 7'

BEDRM. 3
14' x 14'

OPEN TO BELOW

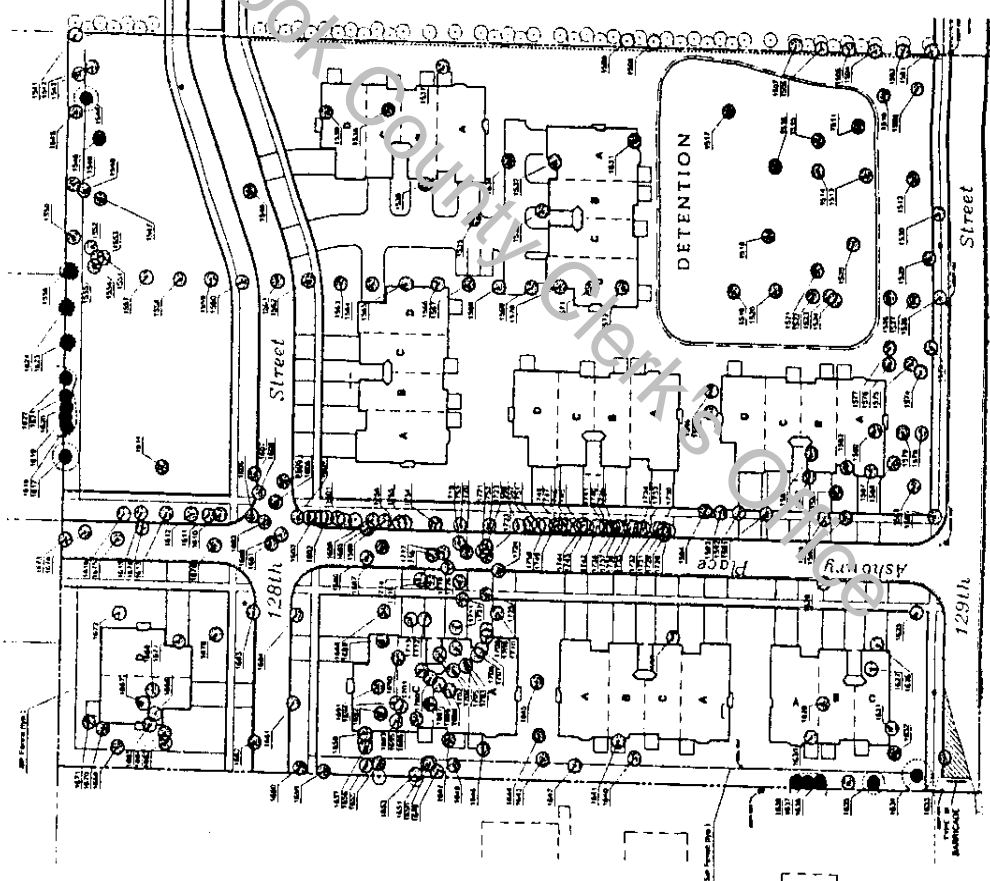
UNOFFICIAL COPY

Exhibit C

TREE PRESERVATION PLAN for:

ASHBURY WOODS ADDITION

A DONVEN HOMES COMMUNITY
LEMONT, ILLINOIS



TREE PRESERVATION:

EXISTING TREES AND OTHER VEGETATION ARE TO BE REMOVED TO MAKE SPACE FOR THE PROPOSED DEVELOPMENT. ALL REMOVAL SHALL BE PROTECTED AGAINST UNNECESSARY CUTTING, BRANCHING, OR DAMAGE TO THE TRUNK, LEAVES, AND BARK. REMOVAL SHALL BE LIMITED TO THE CRITICAL ROOT ZONE, EXCEPT FOR TRIMMING OF BRANCHES WITHIN THE CRITICAL ROOT ZONE.

TREE PRESERVATION AREAS ARE SHOWN TO PRESERVE THE TREES INDICATED. THE AREA IS TO BE SURROUNDED BY 14" X 10" BARRIER FENCE. PRE-ASSEMBLED 5" X 1" HANDWOOD STAKES SPACED APPROXIMATELY 10' ON CENTER SHALL BE INSTALLED TO SUPPORT THE BARRIER FENCE. GROUND COVER SHALL BE MAINTAINED THROUGHOUT THE LIFE OF EACH CALIPER PROTECTED TREE. BRUSHES LARGER THAN 1.5" DIAMETER OR 10' IN HEIGHT SHALL BE REMOVED. NECESSARY CONSTRUCTION OPERATIONS WITHIN THE PROTECTED AREA SHALL BE CONDUCTED WITH CARE TO PREVENT DAMAGE TO THE TREE. NECESSARY CONSTRUCTION OPERATIONS WITHIN THE PROTECTED AREA SHALL BE CONDUCTED WITH CARE TO PREVENT DAMAGE TO THE TREE. NECESSARY CONSTRUCTION OPERATIONS WITHIN THE PROTECTED AREA SHALL BE CONDUCTED WITH CARE TO PREVENT DAMAGE TO THE TREE.

TREE PRESERVATION IS PRELIMINARY AND IS CONTINGENT UPON FINAL ENGINEERING.

OPEN SPACE:

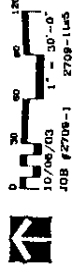
WITHIN THE AREA OF PRESERVED TREES THE FALLEN WOOD DEBRIS IS TO BE REMOVED.

THE AREA SURROUNDING THE TREE GROUPS IS TO BE MOWED TO A HEIGHT OF 2" AND MAINTAINED WITH A LOW MAINTENANCE LAWN MIXTURE DURING THE LANDSCAPE CONTRACTOR INSTALLATION.

THE EXISTING AREA ADJACENT TO THE EAST PROPERTY LINE AND ASSOCIATED WITH THE FALLEN WOODY DEBRIS WILL BE REMOVED AT THE TIME OF CLEARING THE AREA. THE EXISTING AREA ADJACENT TO THE WEST PROPERTY LINE AND ASSOCIATED WITH THE FALLEN WOODY DEBRIS WILL BE REMOVED AT THE TIME OF CLEARING THE AREA. THE EXISTING AREA ADJACENT TO THE WEST PROPERTY LINE AND ASSOCIATED WITH THE FALLEN WOODY DEBRIS WILL BE REMOVED AT THE TIME OF CLEARING THE AREA.

THE EXISTING AREA ADJACENT TO THE WEST PROPERTY LINE AND ASSOCIATED WITH THE FALLEN WOODY DEBRIS WILL BE REMOVED AT THE TIME OF CLEARING THE AREA. THE EXISTING AREA ADJACENT TO THE WEST PROPERTY LINE AND ASSOCIATED WITH THE FALLEN WOODY DEBRIS WILL BE REMOVED AT THE TIME OF CLEARING THE AREA.

- EXISTING TREE TO REMAIN
- ⊙ EXISTING TREE TO BE REMOVED
- TREE NUMBER ON TREE SURVEY
- EXISTING EVERGREENS TO REMAIN
- TREE PROTECTION FENCE



Property of Copyright © 2008 Wenler-Peterson & Associates, Ltd.

UNOFFICIAL COPY

Exhibit "H"

#



Property of Cook County Clerk's Office

DONVEN HOMES INC.
ASHBURY WOODS ADDITION
EXISTING TREE SURVEY

BW CONSULTING
Revised October 8, 2003

UNOFFICIAL COPY

The following report is the result of examining the existing trees of a size 6" caliper (DBH) and larger on the 3 parcels of property to be the addition to the Ashbury Woods Development.

The condition of the trees has been rated on the following scale:

| | |
|---|-------------------|
| 5 | Specimen |
| 4 | Good |
| 3 | Average to Good |
| 2 | Poor to Average |
| 1 | Poor |
| 0 | Dead to Worthless |

In general the majority of the trees are volunteers from seed growing in unmaintained areas. The exceptions are the trees near the three residences.

The majority of plants must be removed due to roads, buildings, and retention areas. Plants to be saved are generally along the property lines.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

| S/R | TAG | COMMON NAME | BOTANICAL NAME | SIZE | CONDITION | COMMENT |
|-----|------|-----------------|------------------------|------|-----------|--------------|
| R | 1501 | Silver Maple | Acer saccharinum | 15" | 4 Good | Grading |
| R | 1502 | Silver Maple | Acer saccharinum | 12" | 4 Good | Grading |
| R | 1503 | Silver Maple | Acer saccharinum | 24" | 5 Spec | |
| R | 1504 | Silver Maple | Acer saccharinum | 12" | 4 Good | Grading |
| R | 1505 | Silver Maple | Acer saccharinum | 12" | 4 Good | Grading |
| R | 1506 | Silver Maple | Acer saccharinum | 12" | 4 Good | Grading |
| R | 1507 | Silver Maple | Acer saccharinum | 13" | 4 Good | Grading |
| S | 1508 | Silver Maple | Acer saccharinum | 16" | 4 Good | |
| S | 1509 | Silver Maple | Acer saccharinum | 19" | 4 Good | |
| R | 1510 | Colorado Spruce | Picea pungens | 14" | 5 Spec | |
| R | 1511 | Colorado Spruce | Picea pungens | 14" | 5 Spec | |
| R | 1512 | American Elm | Ulmus America | 20" | 4 Good | |
| R | 1513 | Silver Maple | Acer saccharinum | 28" | 5 Spec | |
| R | 1514 | Silver Maple | Acer saccharinum | 12" | 4 Spec | |
| R | 1515 | Colorado Spruce | Picea pungens | 15" | 5 Spec | |
| R | 1516 | Silver Maple | Acer saccharinum | 11" | 4 Good | |
| R | 1517 | Silver Maple | Acer saccharinum | 20" | 4 Good | |
| R | 1518 | Silver Maple | Acer saccharinum | 18" | 2 Poor | Cavity |
| R | 1519 | Cottonwood | Populusdeltoides | 22" | 2 Poor | |
| R | 1520 | Mulberry | Morus alba | 10" | 2 Poor | |
| R | 1521 | Silver Maple | Acer saccharinum | 11" | 4 Good | |
| R | 1522 | Hawthorn | Crataegus punctata | 11" | 2 Poor | |
| R | 1523 | Mulberry | Morus alba | 5" | 2 Poor | |
| R | 1524 | Mulberry | Morus alba | 8" | 2 Poor | |
| R | 1525 | Silver Maple | Acer saccharinum | 18" | 5 Spec | |
| R | 1526 | Mulberry | Morus alba | 7" | 2 Poor | |
| R | 1527 | Hawthorn | Crataegus punctata | 8" | 5 Spec | |
| R | 1528 | Mulberry | Morus alba | 5" | 2 Poor | |
| R | 1529 | Silver Mulberry | Acer saccharinum | 14" | 2 Poor | |
| R | 1530 | Silver Maple | Acer saccharinum | 8" | 3 Good | Power Line |
| R | 1531 | Silver Maple | Acer saccharinum | 12" | 4 Good | |
| R | 1532 | Apple Tree | Malus variety | 7" | 2 Poor | Old |
| R | 1533 | Silver Maple | Acer saccharinum | 5" | 2 Poor | |
| R | 1534 | Apple Tree | Malus variety | 14" | 2 Poor | |
| R | 1535 | Cottonwood | Populus deltoids | 18" | 2 Poor | Poor variety |
| R | 1536 | Sycamore | Platanus occidentalis | 18" | 3 Avg | |
| R | 1537 | Apple Tree | Malus variety | 18" | 2 Poor | Old |
| R | 1538 | Apple Tree | Malus variety | 15" | 2 Poor | Old |
| R | 1539 | Apple Tree | Malus variety | 18" | 2 Poor | |
| R | 1540 | Silver Maple | Acer saccharinum | 5" | 1 Poor | |
| R | 1541 | Black Cherry | Prunus virginiana | 12" | 0 Dead | |
| R | 1542 | Hawthorn | Crataegus punctata | 5" | 1 Poor | |
| R | 1543 | Hawthorn | Crataegus punctata | 8" | 4 Good | Thorns |
| S | 1544 | Green Ash | Fraxinus pennsylvanica | 18" | 5 Spec | |
| R | 1545 | Black Cherry | Prunus virginiana | 9" | 0 Dead | |
| R | 1546 | Silver Maple | Acer saccharinum | 5" | 1 Poor | |
| R | 1547 | Black Cherry | Prunus virginiana | 5" | 0 Dead | |
| R | 1548 | Hawthorn | Crataegus punctata | 10" | 1 Poor | Thorns |
| R | 1549 | Black Cherry | Prunus virginiana | 12" | 1 Poor | |
| R | 1550 | Black Cherry | Prunus virginiana | 11" | 0 Dead | |
| R | 1551 | Black Cherry | Prunus virginiana | 12" | 1 Poor | StormSewer |
| R | 1552 | Black Cherry | Prunus virginiana | 7" | 1 Poor | |

UNOFFICIAL COPY

| | | | | | | |
|------------|------------|--------------------|------------------------|-------------|------------------|----------------|
| R | 1601 | Siberian Elm | Ulmus pumila | 8" | 1 Poor | |
| R | 1602 | Siberian Elm | Ulmus pumila | 8" | 1 Poor | |
| R | 1603 | Siberian Elm | Ulmus pumila | 9" | 1 Poor | |
| R | 1604 | Siberian Elm | Ulmus pumila | 12" | 1 Poor | |
| R | 1605 | Scotch Pine | Pinus sylvestris | 9" | 4 Good | |
| R | 1606 | Norway Maple | Acer platanoides | 10" | 5 Spec | |
| R | 1607 | Norway Maple | Acer platanoides | 9" | 5 Spec | |
| R | 1608 | Scotch Pine | Pinus sylvestris | 8" | 1 Poor | |
| R | 1609 | Siberian Elm | Ulmus pumila | 6" | 1 Poor | |
| R | 1610 | Siberian Elm | Ulmus pumila | 11" | 2 Good | |
| R | 1611 | Siberian Elm | Ulmus pumila | 6" | 2 Good | |
| R | 1612 | Siberian Elm | Ulmus pumila | 8" | 3 Good | |
| R | 1613 | Siberian Elm | Ulmus pumila | 8" | 3 Good | |
| R | 1614 | Norway Maple | Acer platanoides | 9" | 5 Spec | Transplant |
| R | 1615 | Siberian Elm | Ulmus pumila | 6" | 1 Poor | |
| R | 1616 | Siberian Elm | Ulmus pumila | 6" | 2 Good | |
| S | 1617 | Silver Maple | Acer saccharinum | 20" | 5 Spec | |
| S | 1618 | Silver Maple | Acer saccharinum | 6" | 1 Poor | |
| S | 1619 | Silver Maple | Acer saccharinum | 5" | 1 Poor | |
| S | 1620 | Silver Maple | Acer saccharinum | 7" | 2 Poor | |
| S | 1621 | Silver Maple | Acer saccharinum | 6" | 1 Poor | |
| S | 1622 | Silver Maple | Acer saccharinum | 12" | 3 Good | |
| S | 1623 | Silver Maple | Acer saccharinum | 12" | 2 Good | |
| S | 1624 | Silver Maple | Acer saccharinum | 10" | 2 Poor | |
| | | | WEST LOT | | | |
| | | | | | | |
| | | | | | | |
| S/R | TAG | COMMON NAME | BOTANICAL NAME | SIZE | CONDITION | COMMENT |
| R | 1625 | American Elm | Ulmus Americana | 30" | 5 Spec | |
| R | 1626 | Silver Maple | Acer saccharinum | 40" | 5 Spec | |
| R | 1627 | Silver Maple | Acer saccharinum | 17" | 4 Spec | |
| R | 1628 | Colorado Spruce | Picea pungens | 6" | 5 Spec 16' ht | Transpl. |
| R | 1629 | White Pine | Pinus strobes | 16" | 5 Spec | |
| R | 1630 | Hawthorn | Crataegus punctata | 16" | 5 Spec | |
| R | 1631 | White Pine | Pinus Strobus | 8" | 1 Poor | |
| R | 1632 | Green Ash | Fraxinus pennsylvanica | 12" | 5 Spec | |
| R | 1633 | Slippery Elm | Ulmus rubra | 10" | 1 Poor | High Line |
| S | 1634 | Silver Maple | Acer saccharinum | 22" | 5 Spec | |
| S | 1635 | Silver Maple | Acer saccharinum | 16" | 4 Good | |
| S | 1636 | Silver Maple | Acer saccharinum | 16" | 5 Spec | |
| S | 1637 | Hawthorn | Crataegus punctata | 9" | 4 Good | |
| S | 1638 | Hawthorn | Crataegus punctata | 9" | 5 Spec | |
| R | 1639 | Mulberry | Morus alba | 24" | 5 Spec | |
| R | 1640 | Hawthorn | Crataegus punctata | 10" | 5 Spec | |
| R | 1641 | Hawthorn | Crataegus punctata | 9" | 5 Spec | |
| R | 1642 | Silver Maple | Acer saccharinum | 20" | 5 Spec | Sewer |
| R | 1643 | Silver Maple | Acer saccharinum | 12" | 4 Good | Sewer |
| R | 1644 | Cottonwood | Populus deltoids | 36" | 4 OK | |
| R | 1645 | Silver Maple | Acer saccharinum | 10" | 3 Good | |
| R | 1646 | Green Ash | Fraxinus pennsylvanica | 11" | 4 Good | |
| R | 1647 | Green Ash | Fraxinus pennsylvanica | 6" | 3 Good | |

UNOFFICIAL COPY

| | | | | | | |
|---|------|----------------|------------------------|-----|--------|--------------|
| R | 1648 | Black Willow | Salix Nigra | 14" | 0 Dead | Transplant |
| R | 1649 | Cottonwood | Populus deltoids | 20" | 2 Poor | |
| R | 1650 | Green Ash | Fraxinus pennsylvanica | 9" | 1 Poor | Grades |
| R | 1651 | Green Ash | Fraxinus pennsylvanica | 6" | 1 Poor | Grades |
| - | 1652 | Cottonwood | Populus deltoides | 12" | 2 Poor | Off property |
| R | 1653 | Cottonwood | Populus deltoides | 15" | 2 Poor | |
| - | 1654 | Cottonwood | Populus deltoides | 12" | 4 Good | Off property |
| R | 1655 | Black Willow | Salix nigra | 10" | 2 Poor | Grades |
| R | 1656 | Black Willow | Salix nigra | 6" | 1 Poor | Grades |
| R | 1657 | Silver Maple | Acer saccharinum | 7" | 2 Poor | |
| R | 1658 | Slippery Elm | Ulmus rubra | 7" | 1 Poor | |
| R | 1659 | Cottonwood | Populus deltoids | 10" | 3 Avg | Species |
| R | 1660 | Black Willow | Salix nigra | 12" | 1 Poor | |
| R | 1661 | Siberian Elm | Ulmus pumila | 15" | 2 Poor | |
| R | 1662 | Green Ash | Fraxinus pennsylvanica | 7" | 3 Good | |
| R | 1663 | Slippery Elm | Ulmus rubra | 6" | 0 Dead | |
| R | 1664 | Slippery Elm | Ulmus rubra | 6" | 0 Dead | |
| R | 1665 | Slippery Elm | Ulmus rubra | 6" | 0 Dead | |
| R | 1666 | Slippery Elm | Ulmus rubra | 6" | 0 Dead | |
| R | 1667 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1668 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1669 | Green Ash | Fraxinus pennsylvanica | 6" | 2 Poor | |
| R | 1670 | Siberian Elm | Ulmus pumila | 7" | 1 Poor | |
| R | 1671 | Silver Maple | Acer saccharinum | 5' | 3 Avg. | |
| R | 1672 | Apple Tree | Malus variety | 8" | 4 | |
| R | 1673 | Flowering Crab | Malus seedling | 7" | 4 | Transplant |
| R | 1674 | Silver Maple | Acer saccharinum | 7" | 5 | |
| R | 1675 | Siberian Elm | Ulmus pumila | 11" | 3 | |
| R | 1676 | Silver Maple | Acer saccharinum | 5" | 3 | |
| R | 1677 | Flowering Crab | Malus seedling | 12" | 5 | |
| R | 1678 | Siberian Elm | Ulmus pumila | 8" | 1 | |
| R | 1679 | Black Cherry | Prunus virginiana | 10" | 0 | |
| R | 1680 | Siberian Elm | Ulmus pumila | 7" | 1 | |
| R | 1681 | Siberian Elm | Ulmus pumila | 7" | 2 | |
| R | 1682 | Hawthorn | Crataegus punctata | 10" | 4 | |
| R | 1683 | Siberian Elm | Ulmus pumila | 6" | 2 | |
| R | 1684 | Black Cherry | Prunus virginiana | 7" | 1 | |
| R | 1685 | Hawthorn | Crataegus punctata | 10" | 4 Good | |
| R | 1686 | Flowering Crab | Malus (seedling) | 7" | 4 Good | Transplant |
| R | 1687 | Green Ash | Fraxinus pennsylvanica | 7" | 4 Good | |
| R | 1688 | Canart Juniper | Juniperus Canarti | 6" | 5 Spec | Transplant |
| R | 1689 | Siberian Elm | Ulmus pumila | 8" | 4 Avg. | |
| R | 1690 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1691 | Slippery Elm | Ulmus rubra | 8" | 0 Dead | |
| R | 1692 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1693 | Green Ash | Fraxinus pennsylvanica | 11" | 4 Good | |
| R | 1694 | Green Ash | Fraxinus pennsylvanica | 6" | 2 Good | Transplant |
| R | 1695 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1696 | Green Ash | Fraxinus pennsylvanica | 13" | 5 Good | |
| R | 1697 | Slippery Elm | Ulmus rubra | 9" | 0 Dead | |
| R | 1698 | Green Ash | Fraxinus pennsylvanica | 9" | 4 Good | |
| R | 1699 | Slippery Elm | Ulmus rubra | 8" | 2 Poor | |
| R | 1700 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |

UNOFFICIAL COPY

| | | | | | | |
|---|------|---------------------|------------------------|-----|--------|------------|
| R | 1701 | Green Ash | Fraxinus pennsylvanica | 7" | 3 Avg. | |
| R | 1702 | Silver Maple | Acer saccharinum | 9" | 2 Poor | |
| R | 1703 | Green Ash | Fraxinus pennsylvanica | 8" | 3 Avg. | |
| R | 1704 | Silver Maple | Acer saccharinum | 8" | 1 Poor | |
| R | 1705 | Cottonwood | Populus deltoides | 24" | 5 Good | |
| R | 1706 | Green Ash | Fraxinus pennsylvanica | 8" | 5 Good | |
| R | 1707 | Green Ash | Fraxinus pennsylvanica | 10" | 5 Good | |
| R | 1708 | Slippery Elm | Ulmus rubra | 7" | 1 Poor | |
| R | 1709 | Silver Maple | Acer saccharinum | 7" | 1 Poor | |
| R | 1710 | Green Ash | Fraxinus pennsylvanica | 8" | 2 Avg. | |
| R | 1711 | Green Ash | Fraxinus pennsylvanica | 6" | 2 Poor | |
| R | 1712 | Slippery Elm | Ulmus rubra | 7" | 2 Poor | |
| R | 1713 | Slippery Elm | Ulmus rubra | 9" | 3 Poor | |
| R | 1714 | Slippery Elm | Ulmus rubra | 9" | 3 Avg. | |
| R | 1715 | Green Ash | Fraxinus pennsylvanica | 6" | 3 Good | |
| R | 1716 | Slippery Elm | Ulmus rubra | 7" | 2 Poor | |
| R | 1717 | Flowering Crab | Malus (seedling) | 6" | 3 Avg. | Transplant |
| R | 1718 | Slippery Elm | Ulmus rubra | 6" | 2 Poor | |
| R | 1719 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1720 | Washington Hawthorn | Crataegus phenopyrum | 8" | 5 Good | |
| R | 1721 | Slippery Elm | Ulmus rubra | 8" | 1 Poor | |
| R | 1722 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1723 | Slippery Elm | Ulmus rubra | 6" | 1 Poor | |
| R | 1724 | Green Ash | Fraxinus pennsylvanica | 7" | 3 Avg. | |
| R | 1725 | Slippery Elm | Ulmus rubra | 8" | 2 Poor | |
| R | 1726 | Slippery Elm | Ulmus rubra | 10" | 3 Poor | |
| R | 1727 | Slippery Elm | Ulmus rubra | 8" | 2 Poor | |
| R | 1728 | Siberian Elm | Ulmus pumila | 8" | 0 Poor | Stump |
| R | 1729 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | Stump |
| R | 1730 | Siberian Elm | Ulmus pumila | 6" | 0 Poor | Topped |
| R | 1731 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | Hedge Row |
| R | 1732 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | Hedge Row |
| R | 1733 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | Hedge Row |
| R | 1734 | Siberian Elm | Ulmus pumila | 7" | 0 Poor | Hedge Row |
| R | 1735 | Siberian Elm | Ulmus pumila | 9" | 0 Poor | Hedge Row |
| R | 1736 | Siberian Elm | Ulmus pumila | 12" | 0 Poor | Hedge Row |
| R | 1737 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | Hedge Row |
| R | 1738 | Siberian Elm | Ulmus pumila | 22" | 2 Poor | Hedge Row |
| R | 1739 | Siberian Elm | Ulmus pumila | 6" | 0 Poor | Hedge Row |
| R | 1740 | Siberian Elm | Ulmus pumila | 8" | 0 Poor | Hedge Row |
| R | 1741 | Siberian Elm | Ulmus pumila | 12" | 0 Poor | Hedge Row |
| R | 1742 | Siberian Elm | Ulmus pumila | 6" | 0 Poor | Hedge Row |
| R | 1743 | Siberian Elm | Ulmus pumila | 8" | 0 Poor | Hedge Row |
| R | 1744 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | Hedge Row |
| R | 1745 | Siberian Elm | Ulmus pumila | 15" | 1 Poor | Crowded |
| R | 1746 | Siberian Elm | Ulmus pumila | 12" | 0 Poor | |
| R | 1747 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | |
| R | 1748 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | |
| R | 1749 | Siberian Elm | Ulmus pumila | 10" | 0 Poor | |
| R | 1750 | Siberian Elm | Ulmus pumila | 8" | 0 Poor | |
| R | 1751 | Siberian Elm | Ulmus pumila | 18" | 0 Poor | |
| R | 1752 | Siberian Elm | Ulmus pumila | 8" | 0 Poor | |
| R | 1753 | Siberian Elm | Ulmus pumila | 7" | 0 Poor | |
| R | | | | 6" | 0 Poor | |

UNOFFICIAL COPY

| | | | | | | |
|---|------|--------------|--------------|----|--------|--|
| R | 1754 | Siberian Elm | Ulmus pumila | 6" | 0 Poor | |
| R | 1755 | Siberian Elm | Ulmus pumila | 6" | 0 Poor | |
| R | 1756 | Siberian Elm | Ulmus pumila | 6" | 0 Poor | |
| | | | | | | |

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit II

10/08/03

ASHBURY WOODS ADDITION
VARIATIONS FOR WOOD DECKS

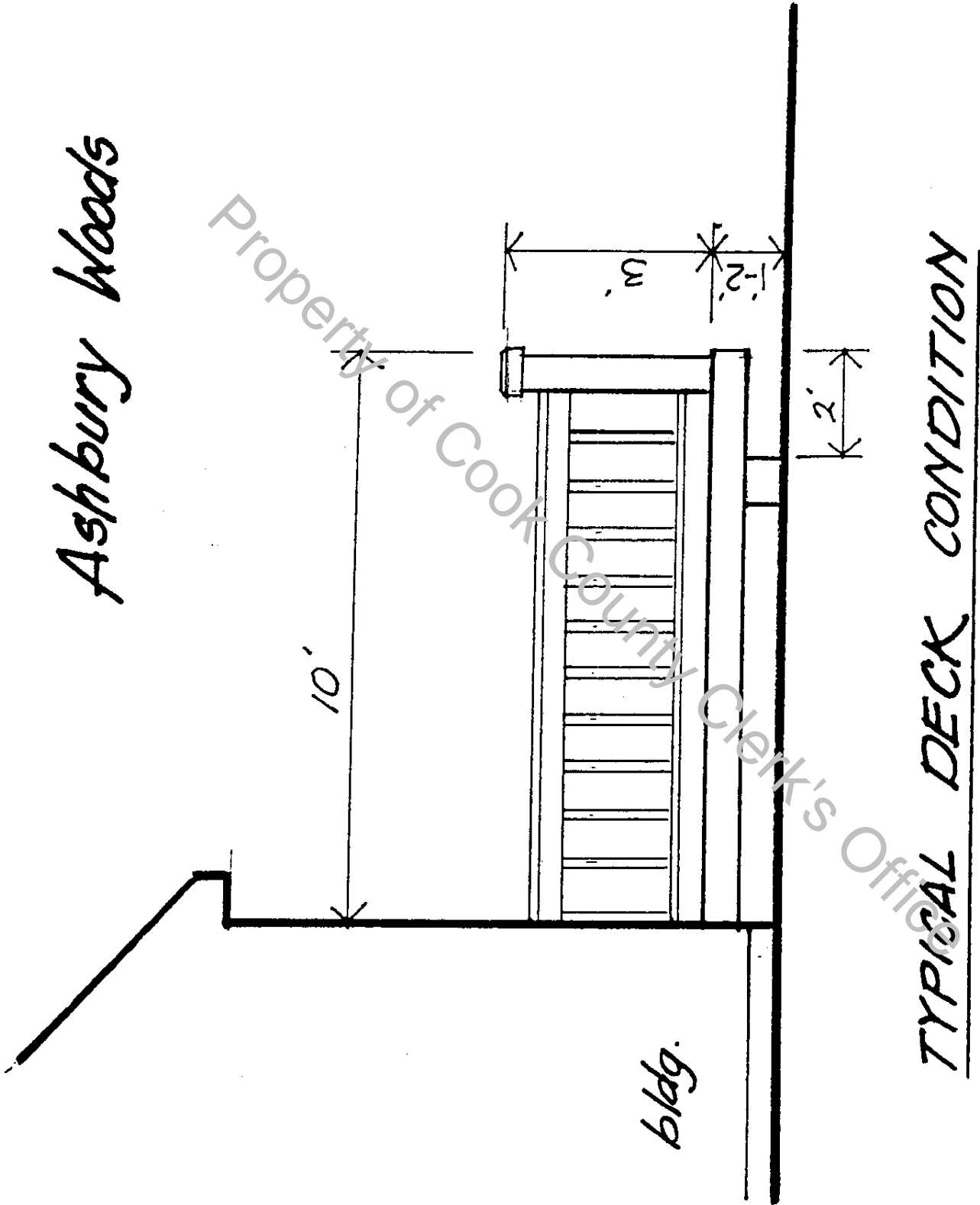
Base on the Preliminary PUD Site Plan for Ashbury Woods Addition revised 10/6/03, the following townhomes will require the variation shown allowing the wood decks to encroach into the rear yard setback.

"ADA" refers to the Americans with Disabilities Act. These townhomes are single level ranch models. "GRADE" refers to anticipated elevation differences between 1st floor and finished grade.

| UNIT NUMBER | VARIATION REQUESTED | REASON FOR VARIATION |
|-------------|---------------------|----------------------|
| 105 | 8' | GRADE |
| 106 | 8' | GRADE |
| 107 | 8' | GRADE |
| 108 | 8' | ADA |
| 109 | 8' | GRADE |
| 110 | 8' | GRADE |
| 111 | 8' | ADA |
| 112 | 8' | ADA |

UNOFFICIAL COPY

Ashbury Woods



bldg.

TYPICAL DECK CONDITION

Exhibit "J"
UNOFFICIAL COPY

JAN 08 2003

DECLARATION
FOR
ASHBURY WOODS
(LEMONT, ILLINOIS)

ASHBURY WOODS DEVELOPMENT, LLC
DEVELOPER

PREPARED BY AND MAIL TO:

Richard J. Skrodzki, Esq.
Thomas P. Russian, Esq.
Goldstine, Skrodzki, Russian,
Nemec and Hoff, Ltd.
835 McClintock Drive
Second Floor
Burr Ridge, IL 60527
Phone: 630-655-6000

UNOFFICIAL COPY

DECLARATION FOR THE ASHBURY WOODS

THIS DECLARATION is made by ASHBURY WOODS DEVELOPMENT, LLC ("Developer").

RECITALS

Developer is either the record title holder of certain real estate or has a contract to purchase certain real estate which is legally described in Exhibit "A" hereto, hereafter referred to as the "Development Area". The Development Area shall be the subject of a phased townhome development called "Ashbury Woods" (the "Development"). The Development shall include, among other things, residential units, streets, parking areas, walkways, driveways, detention areas and green space.

Initially, the Trustee shall subject the real estate which is legally described in Exhibit "B" hereto to the provisions of this Declaration as the Parcel. From time to time, the Trustee may subject additional portions of the Development Area to the provisions of this Declaration as Added Parcel, as more fully described in Article Eight.

In order to provide for the orderly and proper administration and maintenance of the Dwelling Unit Exteriors and for the architectural control of the Dwelling Units, the Developer has formed the Residential Association under the Illinois General Not-For-Profit Corporation Act. The Residential Association shall have the responsibility for administering and maintaining the Dwelling Unit Exteriors and shall set budgets and fix assessments to pay the expenses incurred in connection with such duties. The Residential Association shall at all times be subject to this Declaration and all of the rights and easements provided for the Owners in this Declaration. Each Owner of a Dwelling Unit shall be a member of the Residential Association.

In addition, portions of the Parcel, including, without limitation, walkways, driveways, open areas, detention areas, streets, common drives, entranceway, street islands, including improvements located above and below the ground, shall be designated by the Developer as "Community Area". The Community Area shall be maintained by the Residential Association for the common use and enjoyment of all residents of the Development.

During the construction and marketing of the Development, the Developer shall retain certain rights set forth in this

UNOFFICIAL COPY

Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Nine, the right to come upon the Development Area in connection with Developer's efforts to sell Dwelling Units and other rights reserved in Article Nine.

NOW, THEREFORE, the Developer declares as follows:

ARTICLE ONE

Definitions

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

1.01 BOARD: The Board of Directors of the Residential Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Five.

1.02 BY-LAWS: The By-Laws of the Residential Association as described in Exhibit "C" hereto.

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

1.04 COMMUNITY AREA: All Lot Areas and all portions of the Parcel other than Dwelling Unit Exteriors and the residential units comprising a Dwelling Unit. The Community Area shall generally include, but not be limited to, open space, Unit Driveways, common drives, parking areas, walkways, storm water detention and/or retention areas, storm sewers, entranceway on 127th Street, streets, street islands and green areas (even if located within the boundaries of a Lot). The Community Area shall also include the landscaping of the south side parkway on 127th Street adjacent to the Development and the north side parkway on 129th Street adjacent to the Development. The Community Area shall be administered, maintained, repaired and replaced by the Residential Association. The Community Area may sometimes be referred to as "Common Area" or "Common Elements." The Community Area includes Lots 22, 23, 24, 25 and Outlots A and B in the Parcel.

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

UNOFFICIAL COPY

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

1.07 DEVELOPER: ASHBURY WOODS DEVELOPMENT, LLC, an Illinois limited liability company, its successors and assigns.

1.08 DEVELOPMENT: The residential project comprised of the Dwelling Units.

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

1.10 DWELLING UNIT: At the time that each Lot is made subject to this Declaration as part of the Parcel, the Lot shall be improved with a building consisting of a residential unit. Each residential unit shall share a Party Wall with each of one or more other residential units. A Dwelling Unit shall be a residential unit and may include an attached garage. No Dwelling Unit shall be subdivided or partitioned.

1.11 DWELLING UNIT EXTERIOR: The roof, foundation, steps, footings, outer surface of exterior walls and garage doors of the residential unit and attached garage unit comprising the Dwelling Unit; those portions of water, sewer, electric and other operating or utility systems which serve more than one Dwelling Unit (but not including those portions of such systems which serve only such Dwelling Unit); and decks, patios or balconies, if any, but excluding any Community Area. Although the Dwelling Unit Exterior is not Community Area, it shall be maintained and replaced by the Association. In the event that the damage is caused by neglect or act of an Owner or its invitees, or is covered by Owner's insurance, the Owner shall reimburse the Association for the cost of repairing or replacing same. Notwithstanding the terms of this Paragraph 1.11, Owner shall be responsible for any leaks in foundation walls.

1.12 LOT: A portion of the Parcel conveyed to an Owner comprised of the Dwelling Unit and the Lot Area.

UNOFFICIAL COPY

1.13 LOT AREA: All portions of the Lot which are not improved with a residential unit, including all Unit Driveways and open, landscapable areas. Lot Areas are designated as part of the Community Area to be maintained by the Residential Association.

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

1.15 NON-OWNER: A person other than an Owner or a Resident.

1.16 OWNER: A Record owner, whether one or more Persons, of fee simple title to any Dwelling Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The Developer shall be deemed to be an Owner with respect to each Dwelling Unit owned by the Developer.

1.17 PARCEL: That portion of the Development Area which is described in Exhibit "B" hereto, as Exhibit "B" may be amended from time to time, with all improvements thereon and rights appurtenant thereto. The Developer may make an Added Parcel subject to this Declaration pursuant to Article Eight.

1.18 PARKING AREA: A portion of the Community Area which is improved with outdoor unassigned parking spaces for the parking of motor vehicles by Residents, their guests or invitees; provided, however, the portion of the Lot Area extending perpendicular from a Dwelling Unit's garage to the public street shall be for the exclusive parking of an Owner or invitees.

1.19 PARTY WALL: The wall, floor or ceiling shared by adjoining residential units located on adjacent Lots.

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

1.21 RECORD: To record in the office of the Recorder of Deeds of Cook County, Illinois.

1.22 RESIDENT: An individual who resides in a Dwelling Unit and who is either an Owner, a tenant of the Owner, a contract purchaser of the Dwelling Unit, or a relative of any such Owner, tenant or contract purchaser.

1.23 RESIDENTIAL ASSOCIATION: The Ashbury Woods Residential Association, an Illinois not-for-profit corporation, its successors and assigns.

UNOFFICIAL COPY

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

1.25 TOWNHOME EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair and replacement of the Dwelling Unit Exteriors and Community area; the cost of insurance, water, electricity, telephone and other necessary utility expenses for the Dwelling Unit Exteriors and Community area; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Residential Association in connection with the maintenance of the Dwelling Unit Exteriors and Community area; any expenses designated as Townhome Expenses by this Declaration; and any other expenses lawfully incurred by the Residential Association for the common benefit of all of the Owners.

1.26 TRUSTEE: Any Illinois land trust to which Developer conveys title prior to recordation of this Declaration.

1.27 TURNOVER DATE: The date on which the rights of the Developer to designate the members of the Board are terminated under Section 9.05.

1.28 UNIT DRIVEWAY: A portion of the Lot Area which provide access to a public way or street from a Dwelling Unit.

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

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

ARTICLE TWO

Scope of Declaration

2.01 PROPERTY SUBJECT TO DECLARATION: Developer, as the Owner of fee simple title to the Parcel, expressly intends to, and by Recording this Declaration, does hereby subject the Parcel to the provisions of this Declaration.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All covenants, conditions, restrictions, easements, reservations, liens, charges,

UNOFFICIAL COPY

rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in any part of the Parcel. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

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

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

ARTICLE THREE

Covenants and Restrictions as to Use and Maintenance of the Dwelling Unit Exterior and Dwelling Units

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

3.02 OWNERSHIP: At the time that portions of the Development Area are made subject to this Declaration, they shall consist of Lots or other property which may be conveyed to the Residential Association as Community Area for the benefit of all residents of the Development.

3.03 ACCESS EASEMENT: Each Owner shall have a non-exclusive perpetual easement for ingress to and egress from his Dwelling Unit

UNOFFICIAL COPY

to the private and public streets and roads over and across the Dwelling Unit Exterior, the Lot area and the Community area, which easements shall run with the land, be appurtenant to and pass with the title to every Dwelling Unit. The County, the Village or any municipality or other governmental authority which has jurisdiction over the Development shall have a non-exclusive easement of access over the Development for police, fire, ambulance, waste removal, snow removal and other vehicles for the purpose of furnishing municipal or emergency services to the Parcel. The Residential Association, its employees, agents and contractors, shall have the right of ingress to, egress from and parking on the Dwelling Unit Exterior, and the right to store equipment on the Dwelling Unit Exterior, for the purposes of furnishing any maintenance, repairs or replacements of the Dwelling Unit Exterior, as required or permitted hereunder.

3.04 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Lot Areas. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Dwelling Unit, subject to and governed by the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Residential Association.

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

3.06 RULES AND REGULATIONS: The use and enjoyment of the Dwelling Unit Exteriors shall at all times be subject to reasonable rules and regulations duly adopted by the Residential Association.

3.07 UTILITY EASEMENTS: Ameritech, Commonwealth Edison Company, Northern Illinois Gas Company, and all other public and private utilities serving the Parcel are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Lot Areas and Dwelling Unit Exterior for the purpose of providing utility services to the Parcel or any other portion of the Development Area. In addition, wiring for the fire alarm system may, if necessary, pass through such Dwelling Unit and the Residential Association and governmental agencies shall have the ingress and egress easement for maintenance of same.

UNOFFICIAL COPY

3.08 EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Developer and the Residential Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Dwelling Unit Exterior for such uses and purposes as Developer or the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities and similar and related purposes. Any and all proceeds from leases, easements, licenses or concessions with respect to the Lot Areas and Dwelling Unit Exterior shall be used to pay the Townhome Expenses. The Residential Association shall have the right and power to dedicate any part or all of the roads or parking areas which constitute part of the Dwelling Unit Exterior to the County, the Village or any municipality or other governmental authority which has jurisdiction over the Development. Some Lots may, if necessary, have an exterior room for fire alarm panels affecting more than one (1) Lot and several Lots may have, in addition, a control panel for the irrigation system. The Residential Association and governmental agencies shall have an ingress and egress easement for maintenance of same. In addition, the electricity for said fire alarm panels and irrigation system shall be metered on the Lot where located. As a consequence, the Residential Association, at its sole discretion, shall determine the reasonable cost of the electrical usage and reimburse the Owner for this cost. Each Person, by acceptance of a deed, mortgage, trustee's deed, other evidence of obligation, or other instrument relating to a Lot, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Residential Association and duly Recorded.

3.09 MAINTENANCE, REPAIR AND REPLACEMENT OF THE DWELLING UNIT EXTERIOR:

A. Maintenance, repairs and replacements of the Dwelling Unit Exterior shall be furnished by the Residential Association, and shall include, without limitation, the following:

(i) Normal maintenance, repair and replacement of the roof, outer surface of exterior walls, foundations, steps, footings, driveways, walkways and patios, but excluding the replacement of broken glass, or the repair of damage to garage doors, or matters customarily covered by an Owner's extended coverage hazard insurance as described in Paragraph 4.02;

(ii) Maintenance, repair and replacement of water, sewer, electrical and other systems which serve more than one

UNOFFICIAL COPY

Dwelling Unit (but not including those portions of such systems which serve only one Dwelling Unit, such as a garage door opener, heating and air-conditioning unit, and electrical or plumbing fixtures);

B. The Residential Association may cause alterations, additions or improvements to be made to the Dwelling Unit Exterior, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than ONE HUNDRED & 00/100 (\$100.00) DOLLARS multiplied by the number of Dwelling Units then subject to this Declaration shall be approved in advance at a special meeting of the Owners.

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

3.11 MAINTENANCE, REPAIR AND REPLACEMENT OF DWELLING UNITS: Each Owner shall be responsible for the maintenance and repair of his Dwelling Unit and shall maintain same in a clean, safe and healthful condition. Maintenance, repair and replacement of the Dwelling Unit Exterior shall be provided by the Residential Association. The Residential Association shall also maintain, repair and replace the Lot Area and Unit Driveway as part of the Community Area.

3.12 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE DWELLING UNITS: No additions, alterations or improvements shall be made to any Dwelling Unit Exterior by an Owner without the prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement to a Dwelling Unit Exterior by an Owner upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Residential Association from time to time the additional cost of maintenance of the Dwelling Unit Exterior as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made to a Dwelling Unit Exterior by an Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

UNOFFICIAL COPY

(i) Require the Owner to remove the addition, alteration or improvement and restore the Dwelling Unit Exterior to its original condition, all at the Owner's expense; or

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

(iii) Ratify the action taken by the Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

3.13 NO DEDICATION TO PUBLIC USE: Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Dwelling Unit Exterior to or for any public use or purpose whatsoever.

3.14 USE RESTRICTIONS:

A. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise shall be conducted, maintained or permitted in any dwelling, or accessory building or on any Lot. This Section shall not be construed in such a manner as to prohibit an owner from maintaining his personal and/or professional library therein, keeping his personal business and/or professional records or accounts therein or handling his personal business and/or professional telephone calls or correspondence therefrom. However, an owner shall not meet with clients on the Lot in connection with his or her business;

B. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Dwelling Unit Exterior. The Parcel shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be stored in the Dwelling Unit; and

C. Each Dwelling Unit shall be used only as a residence; provided that no Owner shall be precluded, with respect to his Dwelling Unit, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

3.15 OBSTRUCTIONS: Except as permitted under Section 9.03, no Owner shall obstruct any Dwelling Unit Exterior or Lot Area, and

UNOFFICIAL COPY

nothing shall be stored in the Lot Area without the prior written consent of the Board.

3.16 PETS: No animal of any kind shall be raised, bred or kept in any Dwelling Unit Exterior or Lot Area. The Board may from time to time adopt rules and regulations governing the keeping of pets in the Dwelling Units, which may include prohibiting certain species of pets from being kept in the Dwelling Units. Under any circumstances, however, no more than two (2) dogs and/or cats (total) may be kept on any Lot. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Parcel upon three (3) days written notice from the Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final.

3.17 PROSCRIBED ACTIVITIES:

A. No noxious or offensive activity shall be carried on in the Parcel nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Residents;

B. No awning, canopy, shutter, radio or television antenna or other transmitting or receiving device shall be affixed to or placed upon the exterior of the Dwelling Unit, without the prior written consent of the Board;

C. No Owner shall install a mailbox which has not been made available from the Developer or the design of which has not been approved by the Board; and

D. No boats, trailers, commercial vehicles or recreational vehicles shall be parked overnight in the Unit Driveway or Community Area except as may be permitted by the rules and regulations of the Board. Notwithstanding the terms of this paragraph, pick-up trucks of one (1) ton or less and vans of similar size shall be permitted.

3.18 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to any part of the Parcel which would impair the structural integrity of any building or structure located thereon.

3.19 LEASE OF DWELLING UNIT: THE OWNER OF A DWELLING UNIT MAY NOT LEASE THE UNIT DURING THE FIRST TWELVE (12) MONTHS AFTER PURCHASE. A VIOLATION OF THIS PROVISION SHALL ALLOW THE ASSOCIATION TO COLLECT FROM THE OWNER THE SUM OF TWO HUNDRED AND 00/100 DOLLARS (\$200.00) FOR EACH DAY OF THE VIOLATION AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY PURSUANT TO THE TERMS OF ARTICLE SEVEN. Any Owner shall have the right to lease all (but not less than all) of his Dwelling Unit after twelve (12) months

UNOFFICIAL COPY

provided that no Dwelling Unit shall be leased for transient or hotel purposes, which are hereby defined as being for a period of less than one hundred eighty (180) days or for a period of more than one hundred eighty (180) days where hotel services normally furnished by a hotel (such as room service or maid service) are furnished. Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration. The Board may adopt such rules and regulations applicable to the leasing of Dwelling Units as it deems advisable. Notwithstanding anything contained herein, neither the provisions of this Section nor any rules or regulations adopted pursuant hereto shall apply to the leasing of Dwelling Units owned by Developer or Trustee.

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

ARTICLE FOUR

Insurance

4.01 RESIDENTIAL ASSOCIATION'S RESPONSIBILITY: The Residential Association shall be responsible for procuring and maintaining comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring the Association from liability in connection with the ownership and/or use of the Community Area. The Residential Association shall be further responsible for maintaining such policies of insurance for the Community Area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage vandalism and malicious mischief endorsements as the Residential Association may deem desirable provided that such policies shall (i) provide that such policies may not be canceled or substantially modified without at least ten (10) days' written notice to the Residential Association and all mortgagees of record of the Community Area; (ii) provide that all mortgagees of record of the Community Area shall have the right to pay overdue insurance premiums and to obtain new coverage in the event the existing insurance policy lapses; (iii) provide for coverage in the amount of one hundred (100%) percent of full replacement value; and (iv) contain standard mortgage clause endorsements in favor of the

UNOFFICIAL COPY

mortgagee(s) of the Community Area, as their respective interests may appear. The Residential Association may also obtain such other kinds of insurance as the Residential Association shall from time to time deem prudent.

4.02 OWNER'S RESPONSIBILITY: Each Owner shall procure and maintain in full force at all times insurance covering his Townhouse Unit consisting of, or providing all the protections afforded by, the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief, to one hundred (100%) percent of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than FIVE HUNDRED & 00/100 (\$500.00) DOLLARS and naming the Residential Association as an additional or co-insured on each policy. Such insurance shall be written by companies reasonably acceptable to the Residential Association. A certificate of insurance evidencing such coverage shall be furnished to the Residential Association and new certificates evidencing the renewal of each expiring policy of insurance shall be furnished to the Residential Association in each case at least ten (10) days prior to the expiration date of the expiring insurance. In the event the Townhouse Unit or any portion thereof shall be damaged or destroyed by fire or other casualty, the Owner shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly as possible to at least as good as condition as existed immediately prior to such damage or destruction and in the same architectural style and design as originally constructed by the Developer and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. In the event of the total or substantial destruction of all of the Dwelling Units, the architectural design of the Dwelling Units to be rebuilt and the materials to be used in reconstruction shall be in accordance with the plans approved by the Village.

4.03 OWNER'S FAILURE: Upon the failure of any Owner to procure and maintain the insurance required in Section 4.02 hereof or, in the event the Board, in its discretion, determines that the Dwelling Unit is underinsured, the Board shall have the authority to procure such insurance and/or additional insurance, as the case may be, and the costs thereof shall become a lien upon the Lots in the same manner as provided in Article Six hereof for nonpayment of maintenance assessments.

4.04 REPAIR, RESTORATION OR REBUILDING: All repair, restoration or rebuilding pursuant to the provisions of this Article Four shall be carried out under such supervision and direction as the Board shall deem appropriate in order to assure the expeditious and correct completion of the work concerned, and

UNOFFICIAL COPY

the Owner or Owners of each Dwelling Unit which shall have been damaged or destroyed shall fully cooperate with, and abide by all instructions and directions of, the Residential Association in connection therewith.

4.05 PROCEEDS USED FOR RESTORING: In the event of such damage or destruction of a Dwelling Unit, the holder of the mortgages encumbering said Dwelling Unit shall allow the proceeds of any insurance required pursuant to Section 4.02 hereof to be utilized in restoring the Dwelling Unit to the terms of this Article.

4.06 OWNER'S FAILURE TO REPAIR, RESTORE OR REBUILD: In any case in which the Owner or Owners concerned shall fail to carry out and see to the repair, restoration or rebuilding required by the provisions of this Article Four, the Residential Association shall cause such repairs or rebuilding to be furnished, provided and installed, in the manner as set forth in Section 4.03 hereof provided, however, that to the extent the insurance proceeds referred to in Section 4.02 are insufficient as to any Dwelling Unit, the particular Owner shall be responsible to the Residential Association for such deficiency, and the Residential Association shall have, and is hereby granted, a continuing lien on the Lot for which any such repairs or rebuilding are furnished by the Residential Association in the aggregate amount of (a) the cost thereof, (b) interest at a per annum rate equal to the sum of the prime rate at First National Bank of Chicago plus two (2%) percent from the date of the Residential Association's payment of such costs, and (c) reasonable attorney's fees and any court or other costs incurred by the Residential Association in connection therewith, which lien shall bind such Lot in the hands of such Owner, his heirs, devisees, personal representatives, grantees and assigns. In the event such Owner does not forthwith fully repay the Residential Association therefor, as aforesaid, such lien shall be foreclosed against the Lot by the Residential Association in the same manner as hereinafter provided in connection with unpaid assessments. The Residential Association's lien in this Section 4.06 provided for shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Lot.

4.07 BOARD'S AUTHORITY TO SETTLE: In the event of any damage or destruction to the exterior portion of a Dwelling Unit and the loss is covered by policies of insurance, and the Owner or Owners fail to settle or adjust any such claim within a reasonable time, without reasonable cause, then after due notice to said Owner or Owners, the Board shall have the authority to settle and adjust any claim under such policies without the consent of the respective Owner.

UNOFFICIAL COPY

ARTICLE FIVE

The Residential Association

5.01 IN GENERAL:

A. Powers. Developer has caused the Residential Association to be incorporated as a not-for-profit corporation under Illinois law. The Residential Association shall be the governing body for all of the Owners and shall exercise all powers and duties vested by law or this Declaration necessary to manage the Development, which powers and duties shall include, but not be limited to the following:

1. The administration and operation of the Dwelling Unit Exterior and the Community Area;

2. Furnishing landscaping, snow removal, waste removal (if not individually contracted by the Owner) and other similar services with respect to the Community Area (including, without limitation, those portions of the Community Area which are Lot Areas);

3. Collection of all assessments due or to become due to the Residential Association and prepare checks (which shall be executed by persons designated by the Board) to pay Townhome expenses;

4. Rendering statements specifying all receipts and disbursements;

5. Preparation of an annual budget;

6. Hiring, supervising and discharging all engineers, janitors and other employees who perform work for the Residential Association;

7. Furnishing all necessary decorating, maintenance, repairs and replacements to the property for which the Residential Association is responsible;

8. Purchasing all normal operating supplies and enter into any necessary service contracts on behalf of the Residential Association;

9. Procuring all insurance which the Residential Association is authorized or obligated to obtain under the terms hereof;

10. Preparing and implementing of appropriate rules and regulations; and

UNOFFICIAL COPY

11. Purchasing other goods and services required for the proper administration, operation, maintenance, repair and replacement of the property administered and operated by the Residential Association.

B. Powers Excluded. The Residential Association shall not have any right to pursue individual Owner claims against the Developer. The Residential Association may only pursue the claims relating to the Community Area.

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

5.03 VOTING MEMBERS: Subject to the provisions of Section 9.05, voting rights of the members of the Residential Association shall be vested exclusively in the Voting Members for each Dwelling Unit. One individual shall be designated as the "Voting Member" for each Dwelling Unit. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Dwelling Unit shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Dwelling Unit shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit.

5.04 THE BOARD: Subject to the rights retained by the Developer under Section 9.05, the Board shall consist of five (5) members, each of whom shall be an Owner or Voting Member.

5.05 VOTING RIGHTS: Prior to the Turnover Date, all of the voting rights at each meeting of the Residential Association shall be vested exclusively in the Developer and the Owners shall have no voting rights. From and after the Turnover Date, any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

5.06 DIRECTOR AND OFFICER LIABILITY: Neither the directors or officers of the Residential Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or

UNOFFICIAL COPY

omissions of any nature whatsoever as such directors or officers, except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Residential Association shall indemnify and hold harmless the Trustee, Developer and each of the directors and officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Residential Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director may be involved by virtue of such person being or having been a director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as a director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as a director or officer.

5.07 MANAGING AGENT: Prior to the Turnover Date, the Developer (or an entity controlled by the Developer) may be engaged by the Residential Association to act as the managing agent for the Residential Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Residential Association and the Developer (or an entity controlled by the Developer). Any management agreement entered into by the Residential Association shall have a term of not more than one year and shall be terminable by the Residential Association for cause on thirty (30) days written notice, or without cause or payment of a termination fee by either party on ninety (90) days written notice.

5.08 DISSOLUTION: To the extent permissible under applicable law, in the event of the dissolution of the Residential Association and real property owned by the Residential Association shall be conveyed to the Owners, as tenants-in-common.

5.09 EASEMENT RIGHTS: The Residential Association, its agents and employees shall have the right of ingress and egress over and upon the Lot Areas for any and all purposes in connection with the

UNOFFICIAL COPY

rights and duties of the Residential Association under this Declaration.

ARTICLE SIX

Assessments

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Residential Association shall be exclusively for the purposes of promoting the recreation, health, safety, and welfare of members of the Residential Association, to administer the affairs of the Residential Association, to pay the Townhome Expenses, and to accumulate reserves for any such expenses.

6.02 TOWNHOME ASSESSMENT: Each year on or before December 1, the Board shall adopt subject to the provisions of Subsection B and furnish each Owner with a budget for the ensuing calendar year which shall show the following, with reasonable explanations and itemizations:

- A. The estimated Townhome Expenses;
- B. The estimated amount, if any, to maintain adequate reserves for Townhome Expenses including, without limitation, amounts to maintain the Capital Reserve;
- C. The estimated net available cash receipts, if any, plus estimated excess funds, if any, from the current year's assessments;
- D. The amount of the "Townhome Assessment" payable by the Owners, which is hereby defined as the amount determined in A above, plus the amount determined in B above, minus the amount determined in C above; and
- E. That portion of the Townhome Assessment which shall be payable each month by the Owner of each Dwelling Unit which is subject to assessment hereunder, which shall be equal to one-twelfth (1/12) of the Townhome Assessment divided by the number of Dwelling Units, so that each Owner shall pay equal Townhome Assessments.

Anything in this Section to the contrary notwithstanding, prior to the Turnover Date, the assessment procedure set forth in Section 6.08 shall apply and the budget provided for in this Section need not disclose the information called for in Subsection E above, although the budget shall disclose the portion of each Owner's share of the Townhome Assessment which shall be added to the Capital Reserve.

UNOFFICIAL COPY

6.03 PAYMENT OF TOWNHOME ASSESSMENTS: On or before the first day of January of the ensuing calendar year, and on or before the first day of each and every month thereafter until the effective date of the next annual or revised Townhome Assessment, each Owner of a Dwelling Unit shall pay to the Residential Association, or as the Board may direct, that portion of the Townhome Assessment, which is payable by each Owner of a Dwelling Unit under Section 6.02 E.

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

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

6.06 CAPITAL RESERVE:

A. Maintenance of Capital Reserve by Residential Association. The Residential Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Dwelling Unit Exteriors (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Dwelling Unit Exteriors and the purchase of other property to be used by the Residential Association in

UNOFFICIAL COPY

connection with its duties hereunder. Each budget shall disclose that percentage of the Townhome Assessment which shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Residential Association equal to such percentages multiplied by each installment of the Townhome Assessments paid by such Owner.

B. NO CAPITAL RESERVE TO BE MAINTAINED BY DEVELOPER. THE DEVELOPER SHALL NOT BE OBLIGATED TO COLLECT OR TO FUND CAPITAL RESERVES. BY PURCHASE OR OCCUPATION OF A DWELLING UNIT, RESIDENT HEREBY ACKNOWLEDGES THAT ANY AMOUNTS NECESSARY FOR CAPITAL RESERVES SHALL BE THE SOLE AND EXCLUSIVE OBLIGATION OF THE RESIDENT THROUGH THE RESIDENTIAL ASSOCIATION AND NEITHER THE RESIDENT, RESIDENTIAL ASSOCIATION, THEIR SUCCESSORS AND ASSIGNS SHALL HAVE ANY CAUSE OF ACTION AGAINST THE DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES FOR ANY DEFICIENCY IN CAPITAL RESERVES.

6.07 INITIAL CAPITAL CONTRIBUTION: Upon the closing of the first sale of a Dwelling Unit by the Trustee to a purchaser for value, and every subsequent sale by an Owner, the purchasing Owner shall make a capital contribution to the Residential Association in an amount equal to three (3) months' Townhome Assessment at the rate in effect with respect to the Dwelling Unit as of the closing. Said amount shall be held and used by the Residential Association for its working capital needs.

6.08 ASSESSMENTS PRIOR TO TURNOVER DATE: Anything herein to the contrary notwithstanding, until the Turnover Date, the assessment procedure set forth in this Section shall apply:

A. The Basic Assessment. The basic assessment ("Basic Assessment") shall be established by the Developer prior to the closing of the first Dwelling Unit;

B. Cost of Living Increase. If, as of the first day of any month after this Declaration is Recorded, the level of the most recently published Cost of Living Index - All items (1967=100) as published from time to time by the Bureau of Labor Statistics (the "Index"), is greater than the level of the most recently published Index as of the date of the Recording of this Declaration (the "Index Base Level"), then, at the option of the Board, the Townhome Assessment payable by each Owner (other than Developer) for such month and months thereafter until next adjusted, shall be equal to the Basic Assessment then in effect multiplied by a fraction, the numerator of which shall be the level of the most recently published Index and the denominator of which shall be the Index Base Level. If the Index shall cease being published prior to the Turnover Date, such other standard or index selected by the Developer, in its discretion, as shall most nearly approximate the

UNOFFICIAL COPY

measurements theretofore made by the Index shall be used as the Index hereunder, and the Index Base Level shall be adjusted accordingly;

C. Application of Assessments. Each month each Owner (other than Developer) shall pay as his monthly Townhome Assessment the amount determined under (A) and (B) above. Out of each such payment, the Residential Association shall add that portion of the payment which is designated in the budget as a capital contribution under Section 6.06 to the Capital Reserve. The balance of each such payment shall be used by the Residential Association to pay the Townhome Expenses; and

D. Developer's Obligations. Until the Turnover Date, the Developer shall not be obligated to pay any amounts to the Residential Association as a Townhome Assessment except as provided in this Subsection. The Developer shall pay to the Residential Association the aggregate excess, if any, of the Townhome Expenses incurred and paid prior to the Turnover Date over the aggregate amounts assessed to the Owners (other than Developer) for use by the Residential Association for the payment of Townhome Expenses under Subsection C prior to the Turnover Date. A final accounting shall be made between Developer and the Residential Association within one hundred twenty (120) days after the Turnover Date.

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

ARTICLE SEVEN

Collection of Charges and Remedies for Breach or Violation

7.01 CREATION OF LIEN AND PERSONAL OBLIGATION: The Developer hereby covenant, and each Owner of a Dwelling Unit by acceptance of a deed therefor shall be and is deemed to covenant and hereby agrees to pay to the Residential Association all Charges made with respect to the Owner on the Owner's Dwelling Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. The lien or personal obligation

UNOFFICIAL COPY

created under this Section shall be in favor of and shall be enforceable by the Residential Association.

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

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

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

7.05 SELF-HELP BY BOARD: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, the Board, upon not less than ten (10) days'

UNOFFICIAL COPY

prior written notice to the Owner, shall have the right to enter upon that part of the Parcel where the violation or breach exists to remove or rectify the violation or breach.

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

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

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

ARTICLE EIGHT

Annexing Additional Property

8.01 IN GENERAL: Developer reserves the right at any time and from time to time prior to ten (10) years from the date of Recording of this Declaration to annex, add and subject additional portions of the Development Area to the provisions of this Declaration as additional Parcel by recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Development Area which is subjected to this Declaration by a Supplemental Declaration shall be referred to as "Added Parcel"; and any Dwelling Units contained in the Added Parcel shall be referred to as "Added Dwelling Units". After the

UNOFFICIAL COPY

expiration of said ten (10) year period, Developer may exercise the rights described herein to annex, add and subject additional portions of the Development Area to the provisions of this Declaration, provided that the consent of two-thirds (2/3) (by number) of the Owners of all Dwelling Units then subject to this Declaration is first obtained.

8.02 POWER TO AMEND: Developer hereby retains the right and power to Record a Supplemental Declaration at any time and from time to time as provided in Section 8.01, which amends or supplements Exhibit "B". Exhibit "B" may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit "B" and shall not be amended to reduce or remove any real estate which is described in Exhibit "B" immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Parcel or the rights and obligations of owners or any part or parts of the Added Parcel as the Developer deems necessary or appropriate; provided, that, in the event of conflict between any such additional provisions and the provisions in this Declaration as originally Recorded, then the provisions of this Declaration as originally Recorded shall govern.

8.03 EFFECT OF AMENDMENT: Upon the Recording of a Supplemental Declaration by Developer which annexes and subjects Added Parcel, or added Dwelling Units to this Declaration, as provided in this Article, then:

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

B. Every Owner of an Added Dwelling Unit shall be a member of the Residential Association on the same terms and subject to the same qualifications and limitations as those members who are Owners of Dwelling Units immediately prior to the Recording of such Supplemental Declaration;

C. In all other respects, all of the provisions of this Declaration shall include and apply to the Added Parcel (including the Added Dwelling Units, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, mortgagees,

UNOFFICIAL COPY

and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Parcel were subjected to this Declaration at the time of the Recording hereof;

D. The Recording of each Supplemental Declaration shall not alter the amount of the lien for any Charges made to a Dwelling Unit or its Owner prior to such Recording;

E. Developer shall have and enjoy with respect to the Added Parcel all rights, powers and easements reserved by the Trustee and/or Developer in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

F. Each Owner of an Added Dwelling Unit which is subject to assessment hereunder shall be responsible for the payment of the Townhome Assessment pursuant to Section 6.02 E or Section 6.08, as the case may be, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Dwelling Unit became subject to assessment hereunder.

ARTICLE NINE

Developer's Reserved Rights and Special Provisions Covering Development Period

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

9.02 PROMOTION OF PROJECT: In connection with the promotion, sale or rental of any improvements upon the Development Area: (i) the Developer shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Parcel as the Developer may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Dwelling Units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Developer may deem advisable; and (ii) Developer, its agents, prospective purchasers and tenants, shall have the right of

UNOFFICIAL COPY

ingress, egress and parking in and through, and the right to use and enjoy the Lot Area, at any and all reasonable times without fee or charge. The Developer shall have the right and power to lease any unit owned by it or the Trustee to any person or entity which it deems appropriate in its sole discretion and it need not comply with the provisions of Section 3.19.

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

9.04 GRANT OF EASEMENTS AND DEDICATIONS: Developer shall have the right to dedicate portions of the Parcel to the County, the Village or any municipality or other governmental authority which has jurisdiction over such portions. Developer shall also have the right to reserve or grant easements over the Parcel to any governmental authority, public utility or private utility for the installation and maintenance of electrical and telephone conduit and lines, gas, sewer or water lines, or any other utility services serving any Dwelling Unit, or any other real estate (whether or not a part of the Development Area).

9.05 DEVELOPER CONTROL OF RESIDENTIAL ASSOCIATION: The first Board shall consist solely of three (3) persons from time to time designated by the Developer, which persons may, but need not, be members under Section 5.02. After the Turnover Date, the Board shall consist of five (5) persons. Developer's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Developer no longer holds or controls title to any part of the Development Area; (ii) the giving of written notice by Developer to each Residential Association of Developer's election to terminate such rights, or (iii) seven (7) years from the date of Recording hereof. The date on which the Developer's rights under this Section shall terminate shall be referred to as the "Turnover Date". Prior to the Turnover Date, the Voting Members may elect that number of non-voting Delegates to the Board as the Developer may, in its sole discretion, permit.

UNOFFICIAL COPY

From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Developer and the Delegates shall have no voting rights.

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

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

ARTICLE TEN

Easement for Encroachment

10.01 EASEMENT FOR ENCROACHMENT: In the event that, by reason of the construction, repair, reconstruction, settlement or shifting of a Dwelling Unit, any facilities servicing any such Dwelling Unit, or any Dwelling Unit Exterior shall encroach upon any part of any Dwelling Unit or any Lot Area, then, in any case, there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his agent. Without limiting the foregoing, the Owner of each Dwelling Unit shall have an easement appurtenant to his Dwelling Unit for the continuance, maintenance, repair and replacement of the following improvements, if any, which encroach onto the Lot Area:

- A. The eaves, gutters, downspouts and like appendages which serve the Dwelling Unit;
- B. The chimney which serves the Dwelling Unit;

UNOFFICIAL COPY

C. The air-conditioning system compressor located outside of the residential unit which serves the Dwelling Unit and the pipes and ducts running therefrom to the Dwelling Unit; and

D. The balconies, steps, porches, door entries and patios which serve the Dwelling Unit.

The Person who is responsible for the maintenance of any encroaching improvement for which an easement for continuance, maintenance, repair and replacement thereof is granted under this Section shall continue to be responsible for the maintenance of such encroaching improvement and the Person who is responsible for the maintenance of the real estate upon which such improvement encroaches shall not have the duty to maintain, repair or replace any such encroaching improvement unless otherwise provided in this Declaration.

10.02 DECKS: Decks may encroach onto the Community Area if constructed pursuant to written permission given by the Residential Association and if the encroachment does not violate any local ordinance. However, any such deck shall be for the exclusive use of the Dwelling Unit from which the deck extends.

ARTICLE ELEVEN

Amendment

11.01 SPECIAL AMENDMENT: Anything herein to the contrary notwithstanding, Developer reserves the right and power to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee or otherwise deal with first mortgages covering Dwelling Units, (iii) to correct clerical or typographical errors or omissions in the Declaration or any Exhibit, or (iv) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the

UNOFFICIAL COPY

reservation of, the power to the Developer to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as Developer no longer holds or controls title to a portion of the Development Area.

11.02 AMENDMENT: Subject to Section 11.01 and Article Twelve, the provisions of this Declaration may be amended, abolished, modified, enlarged or otherwise changed in whole or in part by the affirmative vote of at least Seventy-five (75%) Percent of the Voting Members or by an instrument executed by Owners of at least Seventy-five (75%) of the Dwelling Units; except that (i) the provisions of this Section 11.02 may be amended only by an instrument executed by all of the Owners and all Mortgagees, (ii) Article Nine or any other provisions relating to the rights of Developer may be amended only upon the written consent of the Developer, and (iii) no amendment to the Declaration which changes the ratio of assessments against Owners shall become effective without the consent of all Mortgagees. No amendment which removes Parcel from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Dwelling Unit shall no longer have the legal access to a public way from his Dwelling Unit. No amendment shall become effective until properly Recorded.

ARTICLE TWELVE

Mortgagee's Rights

12.01 NOTICE TO MORTGAGEES: Upon the specific, written request of a Mortgagee, a Mortgagee shall receive some or all of the following:

A. Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Residential Association to the Owner of the Dwelling Unit covered by the Mortgagee's mortgage;

B. Any audited or unaudited financial statements of the Residential Association which are prepared for the Residential Association and distributed to the Owners;

C. Copies of notices of meetings of the Owners;

D. Notice of the decision of the Owners to release any part of all of the Parcel from the provisions of this Declaration;

E. Notice of the decision of the Owners to make any material amendment to this Declaration, the By-Laws, or the Articles of Incorporation of the Residential Association;

UNOFFICIAL COPY

F. Notice of the decision of the Residential Association to terminate professional management and assume self-management;

G. Notice of the commencement of any condemnation or eminent domain proceedings with respect to any property owned by the Residential Association;

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

I. The right to examine the books and records of the Residential Association at any reasonable times.

The request of a Mortgagee or other such party shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Residential Association. Failure of the Residential Association to provide any of the foregoing to a Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing.

12.02 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Dwelling Unit Exterior, or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any Dwelling Unit Exterior, any such distribution shall be made to the Owners and their respective Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the Mortgagee of a Dwelling Unit with respect to any such distribution to or with respect to such Dwelling Unit; provided, that, nothing in this Section shall be construed to deny to the Residential Association the right (i) to apply insurance proceeds to repair or replace damaged Dwelling Unit Exterior as provided in Article Four, or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Four.

ARTICLE THIRTEEN

Party Walls

13.01 PARTY WALL: Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Dwelling Units shall constitute and be a "Party Wall", and the Owner of a Dwelling Unit immediately adjacent to a Party Wall shall

UNOFFICIAL COPY

have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.

13.02 RIGHTS IN PARTY WALL: Each Owner of a Dwelling Unit, which is adjacent to a Party Wall, shall have the right to use the Party Wall for support of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

13.03 DAMAGE TO PARTY WALL:

A. If any Party Wall is damaged or destroyed through the act or acts of any Owner of a Dwelling Unit which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Dwelling Unit;

B. Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Dwelling Unit which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Dwelling Units to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of a Dwelling Unit Exterior shall be paid by the Residential Association as a Townhome Expense to the extent not covered by insurance; and

C. In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then, the Board may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Dwelling Unit.

13.04 CHANGE IN PARTY WALL: Any Owner of a Dwelling Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Dwelling Unit in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the

UNOFFICIAL COPY

Owner of the other adjacent Dwelling Unit and the Board, in addition to meeting any other requirements which may apply.

13.05 ARBITRATION: In the event of a disagreement between Owners of Dwelling Units adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding.

ARTICLE FOURTEEN

Sale, Leasing or Other Alternatives

14.01 SALE OR LEASE: Any Owner other than the Developer who wishes to sell or lease his Lot (or any lessee of any Unit wishing to assign or sublease such Unit) shall give to the Board not less than thirty (30) days' prior written notice of the terms of any contemplated sale or lease, together with the name, address and financial and character references of the proposed purchaser or lessee and such other information concerning the proposed purchaser or lessee as the Board may reasonably require. The members of the Board acting on behalf of the other Owners shall at all times have the first right and option to purchase or lease such Unit Ownership upon the same terms, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice. If said option is not exercised by the Board within said thirty (30) days, the Owner (or lessee) may, at the expiration of said thirty (30) day period and at any time within ninety (90) days after the expiration of said period, contract to sell or lease (or sublease or assign) such Unit Ownership to the proposed purchaser or lessee named in such notice upon the terms specified therein. If the Owner (or lessee) fails to close said proposed sale or lease transaction within said ninety (90) days the Unit Ownership shall again become subject to the Board's right of first refusal as herein provided.

14.02 GIFT: Any Owner other than the Developer who wishes to make a gift of his Unit Ownership or any interest therein shall give to the Board not less than sixty (60) days' written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name, address and financial and character references of the intended donee and such other information concerning the intended donee as the Board may reasonably require. The members of the Board acting on behalf of the other Owners, shall at all times have the first right and option to purchase such Unit Ownership or interest therein for cash at fair market value to be determined by arbitration as herein

UNOFFICIAL COPY

provided, which option shall be exercisable until the date of expiration as provided herein. Within fifteen (15) days after receipt of said written notice by the Board, the Board and the Owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten (10) days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within fifteen (15) days after the appointment of said third arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the Lot, or interest therein which the Owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the Owner and the Board. If either party shall fail to select an appraiser, then, the appraiser designated by the other party shall make the appraisal. The Board's option to purchase the Unit Ownership or interest therein shall expire forty-five (45) days after the date of receipt by it of written notice of such determination of fair market value.

14.03 DEVISE: In the event any Owner dies leaving a Will devising his Lot, or any interest therein, and said Will is admitted to probate, the members of the Board acting on behalf of the other Owners, shall have a like option (to be exercised in the manner hereinafter set forth) to purchase said Lot, or interest therein, either from the devisee or devisees thereof named in said Will or from the personal representative acting pursuant to a power of sale, for cash at fair market value which is to be determined by arbitration as herein provided. Within sixty (60) days after the notice of appointment of the appointment of a personal representative for the estate of the deceased Owner, the Board shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative, as the case may be. Within fifteen (15) days thereafter said devisee or devisees, or personal representative, as the case may be, shall appoint a qualified real estate appraiser to act as an arbitrator. Within ten (10) days after the appointment of said arbitrator, the two so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within fifteen (15) days thereafter, the three arbitrators shall determine, by majority vote, the fair market value of the Lot, or interest therein, devised by the deceased Owner, and shall thereupon give written notice of such determination to the Board and said devisee or devisees, or personal representative, as the case may be. If either party shall fail to select an appraiser, then the appraiser designated by the other party shall make the appraisal. The Board's right to purchase the Lot, or interest therein, at the price determined by the three arbitrators shall expire sixty (60) days after the date of receipt by it of such notice. The Board shall be deemed to have exercised its option if

UNOFFICIAL COPY

it tenders the required sum of money to said devisee or devisees or to said personal representative, as the case may be, within the said option periods.

14.04 INVOLUNTARY SALE:

A. In the event any Lot or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale) the person acquiring title through such sale shall, before taking possession of the Unit so sold, give thirty (30) days' written notice to the Board of his intention to do so, whereupon members of the Board acting on behalf of the other Owners shall have an irrevocable option to purchase such Lot or interest therein at the same price for which it was sold at said sale. If said option is not exercised by the Board within said thirty (30) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Board shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said thirty (30) day period.

B. In the event any Owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or trust deed against his Lot, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien therefor against such Unit Ownership, which lien shall have the same force and effect and may be enforced in the same manner as provided for in Article Seven.

14.05 EXERCISE OF OPTION: The Board, by the affirmative vote of at least three-fourths (3/4) of the Board members, and upon not less than ten (10) days' prior written notice thereof to all the Owners, may exercise any option hereinabove set forth to purchase any Lot or interest therein. The Board or its duly authorized representative, acting on behalf of the Owners, by the affirmative vote of at least three-fourths (3/4) of the Board members, and upon not less than ten (10) days' prior written notice thereof to all the Owners, may bid to purchase at any sale of a Lot or interest therein of any Owner living or deceased, which said sale is held pursuant to an order or direction of a court. The written notice to all the Owners shall set forth the terms of the option to be exercised by the Board or it shall set forth a maximum price which the Board or its duly authorized representative is authorized to bid and pay for said Lot or interest therein. If within said ten (10) days the voting members for at least one-fourth (1/4) of the number of Units shall file with the Board a written objection to any such action by the Board, then such option shall be deemed released and shall not be exercised by the Board. The Lot or interest therein which is subject to such option

UNOFFICIAL COPY

may thereupon be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

14.06 RELEASE OR WAIVER OF OPTION: Upon the written consent of at least a majority of the Board members, any of the options contained in this Article Fourteen may be released or waived and the Lot or interest therein which is subject to an option set forth in this Article may be sold, conveyed, leased, given or devised free and clear of the provisions of this Article.

14.07 PROOF OF TERMINATION OF OPTION: A certificate executed and acknowledged by the acting Secretary of the Board stating that the provisions of this Article Fourteen as hereinabove set forth have been met by an Owner, or duly waived by the Board, and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished by any Owner who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived, upon request at a reasonable fee.

14.08 FINANCING OF PURCHASE UNDER OPTION:

A. Acquisition of Lots or any interest therein under the provisions of this Article shall be made from the maintenance fund. If said fund is insufficient, the Board shall levy an assessment against each Owner, which assessment shall become a lien and be enforceable in the same manner as provided in Article Seven hereof.

B. The members of the Board, in their discretion, may borrow money to finance the acquisition of any Lot or interest therein authorized by this Article; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Development Area other than the Lot interest therein to be acquired.

14.09 TITLE TO ACQUIRED INTEREST: Lots or interests therein acquired pursuant to the terms of this Article shall be held of record in the name of the members of the Board of Managers and their successors in office, or such nominee as they shall designate, for the benefit of all the Owners. Said Lots or interests therein shall be sold or leased by the Board in such manner as the Board shall determine without complying with the foregoing provisions relating to the Board's right of first refusal. All proceeds of cash sale/or leasing shall be deposited in the maintenance fund and credited to each Owner in the same proportion in which the Board could levy a special assessment under the terms of Section 14.08(A).

UNOFFICIAL COPY

14.10 EXCEPTIONS TO THE BOARD'S RIGHT OF FIRST REFUSAL:
 The Board's right of first refusal as provided in Section 14.01, 14.02 and 14.03 of this Article shall not apply to any sale, lease, gift, devise or other transfer by the Developer, or between co-Owners of the same Unit, or to the spouse, or any lawful children of the Owner, or any one or more of them, or to any trustee of a trust the sole beneficiary or beneficiaries which are the Owners, the spouse or lawful child of the Owner, or any one or more of them. For purposes of this Article Fourteen, unless otherwise specifically provided herein, the word "Owner" shall include any beneficiary of a trust, shareholder of a corporation or partner of a partnership holding legal title to a Unit.

ARTICLE FIFTEEN

Miscellaneous

15.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent when (i) mailed, postage prepaid, to his or its last known address as it appears on the records of the Residential Association at the time of such mailing, or (ii) when delivered personally to his Dwelling Unit.

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

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

15.04 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the President of the United States at the time this Declaration is Recorded.

15.05 CONFLICT WITH VILLAGE AND OTHER GOVERNMENTAL UNITS:
 In the event there is at any time a conflict between any provision

UNOFFICIAL COPY

of this Declaration and any provisions of any then effective ordinance, rule or regulation of the Village or any other unit of government having jurisdiction over the Development Area, the ordinance, rule or regulation of that unit of government shall prevail, but only to the extent that it is more restrictive than this Declaration.

15.06 TITLE HOLDING LAND TRUST: In the event title to any Dwelling Unit is conveyed to a title holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Dwelling Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Dwelling Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Dwelling Unit.

DATED: December 24, 2002.

DEVELOPER:

ASHBURY WOODS DEVELOPMENT, LLC

BY: Scott A. Stevens
SCOTT A. STEVENS, MANAGER

UNOFFICIAL COPY

EXHIBIT "A"
TO
DECLARATION FOR
ASHBURY WOODS

The Development Area

PARCEL 1:

LOTS 1 THROUGH 25, BOTH INCLUSIVE, OUTLOT A AND OUTLOT B IN ASHBURY WOODS, A PLANNED UNIT DEVELOPMENT, BEING A SUBDIVISION IN PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN AND IN PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

PINS: 22-33-100-001; 22-32-201-014, 020 and 021

Common Address: 15224 West 127th Street
Lemont, Illinois 60439

PARCEL 2:

THE EAST ½ OF THE WEST ½ OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 22-32-201-013

Common Address: 15223 West 129th Street
Lemont, IL 60439

UNOFFICIAL COPY

PARCEL 3:

THE WEST ½ OF THE WEST ½ OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4
OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 22-32-201-012

Common Address: 15237 West 129th Street
Lemont, IL 60439

PARCEL 4:

THE EAST ½ OF THE EAST ½ OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4
OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 22-32-201-017

Common Address: 15309 West 129th Street
Lemont, IL 60439

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B"
TO
DECLARATION FOR
ASHBURY WOODS

The Parcel

LOTS 1 THROUGH 25, BOTH INCLUSIVE, OUTLOT A AND OUTLOT B IN ASHBURY WOODS, A PLANNED UNIT DEVELOPMENT, BEING A SUBDIVISION IN PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN AND IN PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ALL IN COOK COUNTY, ILLINOIS.

PINS: 22-33-100-001; 22-32-201-014, 020 and 021

Common Address: 15224 West 127th Street
Lemont, Illinois 60439

H:\Sjk\Donven\Ashbury Woods\declaration'final.wpd; 12/24/02

UNOFFICIAL COPY

EXHIBIT "C"
TO
DECLARATION
FOR
ASHBURY WOODS

THE BY-LAWS OF
ASHBURY WOODS RESIDENTIAL ASSOCIATION

ARTICLE I

NAME OF CORPORATION

The name of this corporation is ASHBURY WOODS RESIDENTIAL ASSOCIATION.

ARTICLE II

PURPOSE AND POWERS

2.01 PURPOSES: The purposes of this Residential Association are to act on behalf of its members collectively, as their governing body for civic functions and other purposes, with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property and for the promotion of the health, safety and welfare of the members of the Residential Association, all on a not-for-profit basis. These By-Laws are attached as Exhibit "B" to the Declaration for The Ashbury Woods Residential Association ("Declaration"). All terms used herein shall have the meanings set forth in the Declaration.

2.02 POWERS: The Residential Association shall have and exercise all powers as are now or may hereafter be granted by the General Not-For-Profit Corporation Act of the State of Illinois, the Act, the Declaration and these By-Laws.

2.03 PERSONAL APPLICATION: All present or future Owners, tenants, future tenants, and their agents and employees, and any other person that might use the facilities of the Development in any manner, shall be subject to the provisions of the Declaration and these By-Laws. The acquisition or rental of a Dwelling Unit or the act of occupancy of a Dwelling Unit will signify that the Declaration and these By-Laws are accepted, ratified and will be complied with.

UNOFFICIAL COPY

ARTICLE III

OFFICES

3.01 REGISTERED OFFICE: The Residential Association shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Illinois as the Board may from time to time determine.

3.02 PRINCIPAL OFFICE: The Residential Association's principal office shall be maintained on the Development Area or at the office of a managing agent engaged by the Residential Association.

ARTICLE IV

MEETINGS OF MEMBERS

4.01 VOTING RIGHTS: The Residential Association shall have one class of membership. There shall be one individual with respect to each Dwelling Unit who shall be entitled to vote at any meeting of the Owners (the "Voting Member"). If the Owner of a Dwelling Unit is one individual then such individual shall be the Voting Member. If the Record ownership of a Dwelling Unit shall be in more than one individual or if the Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member shall be designated by the Owner or Owners in writing to the Board, and if in the case of multiple individual Owners no designation is given, then the Board may, at its election, recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit. Any or all Owners may be present at any meeting of the Owners, but the voting rights shall be vested exclusively in the Voting Members; provided, however, that a Voting Member may vote either in person or by proxy executed in writing by the Voting Member or his duly authorized attorney-in-fact and filed with the secretary before the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. Each Voting Member shall have one vote.

4.02 PLACE OF MEETING; QUORUM: Meetings of the Owners shall be held on the Development or at such other place in the County in which the Development is located and convenient to the Owners as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in Roberts Rules of Order, as from time to time published. Voting Members holding thirty (30%) percent of the votes, represented in

UNOFFICIAL COPY

person or by proxy, shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the Voting Members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the Voting Members, unless a greater proportion is required by the Declaration or these By-Laws. The affirmative vote of 75% of the votes entitled to be cast shall be required for the following action: (a) merger or consolidation of the Residential Association; and (b) sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the property and assets of the Residential Association. The affirmative vote of 75% of the votes entitled to be cast shall be required for the purchase or sale of land or of Dwelling Units on behalf of all Owners.

4.03 ANNUAL MEETINGS: The initial meeting of the Owners shall be held upon not less than twenty-one (21) days' written notice given by the Developer. If not called earlier by the Developer, the initial meeting of the Owners shall be held not more than thirty (30) days after the Turnover Date. Thereafter there shall be an annual meeting of the Owners within thirty (30) days from the anniversary date of the initial annual meeting at such time and on such date designated by the Board.

4.04 SPECIAL MEETINGS: Special meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Voting Members or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by the President, a majority of the Board or by Voting Members representing at least twenty (20%) percent of the votes.

4.04 NOTICE OF MEMBERSHIP MEETINGS: Written notice of any membership meeting shall be mailed or personally delivered and posted conspicuously on the Development, giving Owners not less than ten (10) nor more than thirty (30) days notice of the time, place and purpose of the meeting.

ARTICLE V

BOARD OF DIRECTORS

5.01 IN GENERAL: The affairs of the Residential Association and the direction and administration of the Development shall be vested in the Board, which (after the Turnover Date) shall consist of five (5) persons or such other number of persons as shall be fixed from time to time by the affirmative vote of 50% of the Voting Members ("Directors"). The Board shall have all of the

UNOFFICIAL COPY

powers granted to it under the Declaration, these By-Laws and the General Not-For-Profit Corporation Act of the State of Illinois.

5.02 DEVELOPER DESIGNATED BOARDS: Anything herein to the contrary notwithstanding, until the first meeting of the Owners after the Turnover Date, the Board shall consist of three (3) individuals from time to time designated by the Developer. Such individuals may, but need not, be Owners and shall serve at the discretion of the Developer.

5.03 BOARDS AFTER TURNOVER DATE: At the first meeting of the Owners (which shall be held no later than thirty (30) days after the Turnover Date) the Voting Members shall elect the initial Board in the manner hereinafter provided to replace the Developer designated Board established under Section 5.02. From and after such meeting, each member of the Board shall be an Owner or a Voting Member, or both. Within sixty (60) days after the election of a majority of the Board other than those designated by the Developer, the Developer shall deliver to the Board the following documents:

A. Original copies of the Declaration, these By-Laws, the Residential Association's Articles of Incorporation and the Residential Association's minute book.

B. An accounting of all receipts and expenditures made or received on behalf of the Residential Association by the Developer designated Boards.

C. All Residential Association funds and bank accounts.

D. A schedule of all personal property, equipment and fixtures belonging to the Residential Association including documents transferring the property to the Residential Association.

5.04 ELECTION: At the initial meeting of the Owners, the Voting Members shall elect a full Board of Directors. The three (3) Directors receiving the highest number of votes shall each serve a term of two (2) years and the remaining Directors shall each serve a term of one (1) year. Thereafter each Director shall serve a term of two (2) years. Each Director shall hold office until his term expires or until his successor shall have been elected and qualified. Directors may succeed themselves in office. In all elections for members of the Board, the Voting Member for each Dwelling Unit shall be entitled to the number of votes equal to the number of Directors to be elected (cumulative voting shall not be permitted). The candidates receiving the highest number of votes with respect to the number of offices to be filled shall be

UNOFFICIAL COPY

deemed to be elected.

5.05 ANNUAL MEETINGS: The Board shall hold an annual meeting within ten (10) days after the annual meeting of the Owners at such place as shall be fixed by the Directors at the annual meeting of the Owners.

5.06 REGULAR MEETINGS: Regular meetings of the Board shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the Directors, provided that from and after the Turnover Date, not less than four such meetings shall be held during each fiscal year.

5.07 SPECIAL MEETINGS: Special meetings of the Board may be called by the President or by at least one-third (1/3) of the Directors then serving.

5.08 NOTICE OF BOARD MEETINGS: Notice of each meeting of the Board shall be mailed or personally delivered to each Director at least forty-eight (48) hours prior to the meeting. Notice of any meeting of the Board concerning the adoption of the proposed annual budget or any increase or establishment of an assessment shall be given to each Owner in the same manner as provided in Section 4.04 of these By-Laws, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. Notice of each meeting of the Board shall also be conspicuously posted on the Development at least forty-eight (48) hours prior to the meeting.

5.09 OPEN MEETINGS: The regular meetings of the Board of Directors shall not be open to the Owners unless required by law, or unless a majority of the Directors designate the meeting to be open to Owners. In the event the meetings of the Board are required by law to be open to any Owner, a notice of such meeting shall be mailed or personally delivered to each owner and posted conspicuously upon the Development at least forty eight (48) hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened. The Board may adopt reasonable rules governing the conduct of Owners who attend such meetings and Owners who do not comply with such rules may be removed from the meeting.

5.10 QUORUM: A majority of the Directors serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present.

UNOFFICIAL COPY

5.11 COMPENSATION/REIMBURSEMENT FOR EXPENSES: No Director shall be compensated by the Residential Association for services rendered to the Residential Association, except as expressly provided in a resolution duly adopted by the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Director shall be reimbursed by the Residential Association for reasonable out-of-pocket expenses incurred in the course of the performance of his duties as a Director.

5.12 REMOVAL OR RESIGNATION OF DIRECTOR: Any Director may be removed from office, with or without cause, by action of the Voting Members at any annual meeting or at a special meeting called for such purpose. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Any Director may resign at any time by submitting his written resignation to the Board. If a Director ceases to be an Owner or a Voting Member, he shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Director who resigns or is removed may be appointed by a majority of the remaining Directors at any regular meeting or at any special meeting called for such purpose and any successor so appointed shall serve the balance of his predecessor's term.

5.13 POWERS AND DUTIES OF THE BOARD: The Board shall have all of the powers and duties granted to it or imposed upon it by the Declaration, these By-Laws, and the Illinois General Not-For-Profit Corporation Act, including, without limitation, the following powers and duties:

- A. To procure insurance as provided for in the Declaration.
- B. To engage the services of a manager or managing agent to assist the Residential Association in performing and providing such services as the Residential Association is required to provide to its members under the Declaration.
- C. To provide for the designation, hiring and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper for the effective administration of the Residential Association.
- D. To provide for any maintenance, repair, alteration, addition, improvement or replacement of the Community Area for which the Residential Association is responsible under the Declaration and these By-Laws.
- E. To estimate and provide each Owner with an annual budget

UNOFFICIAL COPY

showing as provided for in the Declaration.

F. To set, give notice of, and collect assessments from the Owners as provided in the Declaration.

G. To pay the Townhome Expenses.

H. To adopt rules and regulations as provided in the Declaration.

I. To delegate the exercise of its power to committees appointed pursuant to Section 7.01 of these By-Laws.

J. To own, convey, encumber, lease, or otherwise deal with Dwelling Units or other real property conveyed to or purchased by the Residential Association.

K. To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Development.

ARTICLE VI

OFFICERS

6.01 OFFICERS: The officers of the Residential Association shall be a President, one or more Vice Presidents, a Secretary, a Treasurer and such assistants to such officers as the Board may deem appropriate. All officers shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board. Officers may succeed themselves in office. The President, Secretary and Treasurer shall be Directors and all other officers may, but need not be, Directors.

6.02 VACANCY OR OFFICE: Any officer may be removed at any meeting of the Board by the affirmative vote of the majority of the Directors in office, either with or without cause, and any vacancy in any office may be filled by the Board at any meeting thereof.

6.03 POWERS OF OFFICERS: The respective officers of the Residential Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers of an Illinois Not-For-Profit Corporation including, without limitation, the following:

A. The President shall be the Chief Executive Officer of the Residential Association and shall preside at all meetings of the Owners and at all meetings of the Board and shall execute amendments to the Declaration and these By-Laws.

UNOFFICIAL COPY

B. The Vice President shall, in the absence or the disability of the President, perform the duties and exercise the powers of such office and other duties assigned by the Board. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to act in the capacity of President on an interim basis.

C. The Secretary shall keep minutes of all meetings of the Owners and of the Board and shall have custody of the Residential Association Seal and have charge of such other books, papers and documents as the Board may prescribe, and shall be responsible for giving and receiving all notices to be given to or by the Residential Association under the Declaration or these By-Laws.

D. The Treasurer shall be responsible for Residential Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Residential Association books of accounts kept for such purpose. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Residential Association in such depositories as may from time to time be designated by the Board.

6.04 OFFICERS' COMPENSATION: The officers shall receive no compensation for their services except as expressly provided by a resolution duly adopted by the Voting Members.

ARTICLE VII

COMMITTEES DESIGNATED BY BOARD

7.01 BOARD COMMITTEES: The Board, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two or more Directors, which committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Residential Association; but the designation of such committees and delegation thereof of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.

7.02 SPECIAL COMMITTEES: Other committees not having and exercising the authority of the Board in the management of the Residential Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Owners and the

UNOFFICIAL COPY

President of the Association shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interests of the Residential Association shall be served by such removal.

7.03 TERM: Each member of a committee shall continue as such until the next annual meeting of the Board and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member shall be removed from such committee, or unless such member shall cease to qualify as a member thereof.

7.04 CHAIRMAN: One member of each committee shall be appointed chairman.

7.05 VACANCIES: Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

7.06 QUORUM: Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

7.07 RULES: Each committee may adopt rules for its own government not inconsistent with the Declaration, these By-Laws or with rules adopted by the Board.

ARTICLE VIII

INSTRUMENTS, CHECKS, DEPOSITS AND FUNDS

8.01 EXECUTION OF INSTRUMENTS: The Board may authorize any officer or officers, agent or agents of the Residential Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument (including amendments to the Declaration or these By-Laws which must be executed by the Residential Association) in the name of and on behalf of the Residential Association and such authority may be general or confined to specific instances: In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President or a Vice President and attested to by the Secretary or an Assistant Secretary of the Residential Association.

8.02 PAYMENTS: All checks, drafts, vouchers or other orders

UNOFFICIAL COPY

for the payment of money, notes or other evidences of indebtedness issued in the name of the Residential Association shall be signed by such officer or officers, agent or agents of the Residential Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Residential Association.

8.03 BANK ACCOUNTS: All funds of the Residential Association not otherwise employed shall be deposited from time to time to the credit of the Residential Association in such banks, trust companies or other depositaries as the Board shall elect.

8.04 SPECIAL RECEIPTS: The Board may accept on behalf of the Residential Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Residential Association.

ARTICLE IX

FISCAL MANAGEMENT

9.01 FISCAL YEAR: The fiscal year of the Residential Association shall be determined by the Board and may be changed from time to time as the Board deems advisable.

9.02 ANNUAL STATEMENT: Within a reasonable time after the close of each fiscal year, the Board shall furnish each Owner with an itemized accounting of the Townhome Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the Annual Assessment budget, and showing the net excess or deficit of income over expenditures plus reserves.

9.03 ASSESSMENT PROCEDURE: Annual assessments and special assessments shall be made and collected as provided in Article Six of the Declaration, and the provisions of Article Six are incorporated herein by reference.

ARTICLE X

BOOKS AND RECORDS

The Residential Association shall keep correct and complete books and records of account and shall also keep minutes of the

UNOFFICIAL COPY

proceedings of its members, the Board, and committees having any of the authority of the Board, and shall keep at the registered or principal office of the Residential Association a record giving the names and addresses of the members. All books and records of the Association may be inspected by any Owner, or his agent, mortgagee or attorney, for any proper purpose at any reasonable time.

ARTICLE XI

SEAL

The Board may provide for a corporate seal which shall be in the form of a circle and shall have inscribed thereon the names of the Residential Association and the words "Corporate Seal, Illinois."

ARTICLE XII

AMENDMENTS

These By-Laws may be amended or modified at any time, or from time to time in the same manner as provided in Section 11.02 of the Declaration; provided, that no provision of these By-Law may be amended or modified so as to conflict with the provisions of the Declaration or the Act. These By-Laws may also be amended by the Developer for the purposes and by the procedure set forth in Section 12.01 of the Declaration. No amendment to these By-Laws shall become effective until Recorded.

H:\sjk\Donven\Ashbury Woods\bylaws.final.wpd:12/24/02

UNOFFICIAL COPY

DOCUMENT

WITH THIS EXHIBIT

EXHIBIT

ATTACHED TO

DOCUMENT

WITH THIS EXHIBIT

DOCUMENT

SEE PLAT INDEX

Property of Cook County Clerk's Office