

UNOFFICIAL COPY



Doc#: 0419545015  
Eugene "Gene" Moore Fee: \$184.00  
Cook County Recorder of Deeds  
Date: 07/13/2004 08:40 AM Pg: 1 of 81

F	184	A
P		P
T		V
I	JF	

RECORDING FEE 184  
DATE 7-13-04 COPIES 6  
OK BY J. Freelon

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
ASBURY PLACE SUBDIVISION

Property of Cook County Clerk's Office

ASBURY PLACE VENTURE, DEVELOPER

General Office: 2550 Waukegan Road #220, Glenview, IL 60025  
Telephone: (847) 724-0200

# UNOFFICIAL COPY

**INDEX TO DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS OF  
ASBURY PLACE SUBDIVISION**

ARTICLE I	Definitions	Page	2
ARTICLE II	Association and Board of Directors	Page	6
ARTICLE III	Maintenance Fund and Assessments	Page	9
ARTICLE IV	Taxes	Page	16
ARTICLE V	Party Walls and Roofs	Page	16
ARTICLE VI	Easements	Page	20
ARTICLE VII	Fire Damage	Page	24
ARTICLE VIII	Maintenance, Alterations and Additions	Page	25
ARTICLE IX	Use of Lots and Common Property	Page	29
ARTICLE X	Landscaping, Lawn Maintenance and Snow Removal	Page	35
ARTICLE XI	Ingress and Egress	Page	37
ARTICLE XII	Miscellaneous Provisions	Page	38

# UNOFFICIAL COPY

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
ASBURY PLACE SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by ASBURY PLACE VENTURE, a Joint Venture of ODESIGN, INC., an Illinois corporation, and ASBURY PLACE PARTNERS, LLC., an Illinois limited liability company, hereinafter referred to as "Developer" or "Declarant";

W I T N E S S E T H:

WHEREAS, ASBURY PLACE VENTURE, is a Joint Venture, doing business in the County of Cook and the State of Illinois for the purpose of developing a residential community on the Real Estate, situated in the Village of Bartlett, County of Cook, and State of Illinois, in the area northwest of the intersection of Devon Avenue and Prospect Avenue. The Real Estate is bounded on the north by the Metra Railroad right of way, on the east by Prospect Avenue, on the south by Devon Avenue and on the west by property zoned for light industrial use and presently occupied by Senior Flexonics, Inc., which Real Estate is legally described in Exhibit "A" hereto. A detention pond of approximately three (3) acres to be dedicated to the Village of Bartlett, Illinois will be constructed on the north end of the Real Estate and south of the Metra Railroad right of way; and

WHEREAS, the title to the Real Estate to be developed is held by ASBURY PLACE VENTURE, and the development area will be known as ASBURY PLACE SUBDIVISION; and

# UNOFFICIAL COPY

WHEREAS, Declarant intends to subdivide, develop and improve the Real Estate for single family attached residential homes with attached garages as further defined hereafter; and

WHEREAS, in order to preserve and enhance the values of the Real Estate, including certain Common Property and the Lots subject to this Declaration, Declarant has formed an Illinois not-for-profit corporation known as **ASBURY PLACE HOMEOWNERS ASSOCIATION** which will own and have the responsibility for the maintenance and administration of the Common Property and enforcement of the covenants, conditions, easements and restrictions as herein provided; and

WHEREAS, the Declarant is desirous of establishing for the benefit of all future Owners or Occupants of all, or any part, of the Units and Lots in **ASBURY PLACE SUBDIVISION**, certain easements and rights, in, over, under, and to the said Common Property, and certain restrictions with respect to the use, maintenance, upkeep and repairs to both the Common Property and the Units, and fix the obligations and duties of each Owner or Occupant and the reciprocal obligations and duties of each Owner or Occupant of the Units to the other.

## ARTICLE I

### DEFINITIONS

The recitals set forth above are incorporated herein as if fully set forth below. For the purposes of brevity and clarity,

# UNOFFICIAL COPY

certain words and terms used in this Declaration are defined as follows:

1) **ASSOCIATION:** **ASBURY PLACE HOMEOWNERS ASSOCIATION**, an Illinois not-for-profit corporation, established to own, administer and maintain the Common Property and enforce the covenants, conditions, easements and restrictions for **ASBURY PLACE SUBDIVISION** as provided by this Declaration, the By-Laws and the Rules and Regulations.

2) **BOARD:** Board of Directors of **ASBURY PLACE HOMEOWNERS ASSOCIATION**, an Illinois not-for-profit corporation.

3) **BUILDING:** The structure housing Townhouses, and Rowhouses in the Project containing four (4) to seven (7) Units per structure.

4) **COMMON PROPERTY:** Those areas of land, including Lots 22 through 25, excepting any Lots or parcels dedicated and accepted by the Village of Bartlett, Illinois, together with any and all improvements that are now or may hereafter be constructed thereon, designated as "Common Property", "Out Lots" or "Common Areas" on any recorded plat of subdivision of the Real Estate to be devoted to the common use and enjoyment of the Members of the Association and to be conveyed to the Association by the Declarant, its successors and assigns, and which area shall be maintained by **ASBURY PLACE HOMEOWNERS ASSOCIATION** as provided below unless

# UNOFFICIAL COPY

subsequently provided otherwise by Declarant. Such designation shall not be construed as a public dedication.

5) **DEVELOPER:** ASBURY PLACE VENTURE, a Joint Venture of ODESIGN, INC., an Illinois corporation, and ASBURY PLACE PARTNERS, LLC., an Illinois limited liability company, its successors, assigns and licensees. The Developer may be referred to herein as the "Declarant" where applicable.

6) **DEVELOPMENT:** The Real Estate, including the Project consisting of approximately sixteen and one-half (16.5) acres north and west of the intersection of Devon Avenue and Prospect Avenue in Bartlett, Illinois, which shall consist of attached single family homes (rowhouses, and townhouses).

7) **LOT:** The area or portion thereof shown on the Plat designated by a number and/or letter, excepting Lots 22 through 25, being that portion of the subdivision conveyed to an Owner including the front, rear and side yard, if any, on which is or is to be constructed a dwelling unit designed and intended for use and occupancy as a residence for a single family.

8) **MANAGING AGENT:** Any person, company, corporation or other entity appointed or employed by the Developer or Association to perform management services.

9) **MEMBER:** Every person, individual or entity holding membership in the Association by virtue of ownership of any Unit as herein defined.

# UNOFFICIAL COPY

10) **OCCUPANT:** Person or persons, other than an Owner, in possession of a Unit.

11) **OWNER:** The record owner, whether one or more persons, individuals or entities, of title to any Single Family Attached ("SFA") Unit and Lot which is a part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Where title to a Unit is conveyed to more than one person, or there is more than one beneficiary of a land trust holding title to a Unit, such persons are collectively known as "Owner".

12) **PARTY WALL:** A common wall located on a lot line which separates one Unit from an adjacent Unit.

13) **PLAT:** Plat of Subdivision for **ASBURY PLACE SUBDIVISION** recorded or to be recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

14) **PROJECT:** The entire Real Estate and improvements described as **ASBURY PLACE SUBDIVISION** and the one hundred twenty-six (126) Units to be constructed thereon as set forth in the Plat.

15) **REAL ESTATE:** The real property comprising **ASBURY PLACE SUBDIVISION** legally described in Exhibit "A" hereto.

16) **UNIT:** A Single Family Attached residential Unit with an attached garage in one of the Buildings, constructed in the Project on any of the Lots in the Project. When applicable the word "Unit" shall be used interchangeably with the word "Lot" and vice versa.

# UNOFFICIAL COPY

NOW, THEREFORE, Declarant hereby declares that all of the Common Property and the Lots comprising the Real Estate as herein defined, shall be subject to this Declaration of Covenants, Conditions, Easements and Restrictions, and any Covenants, Conditions, Easements and Restrictions which may appear on the Plat of Subdivision, recorded in the office of the Cook County Recorder of Deeds which Covenants, Conditions, Easements and Restrictions are for the purpose of enhancing and protecting the value, desirability and beauty of the Common Property and the Lots. These Covenants, Conditions, Easements and Restrictions shall run with the land and shall be binding on all parties who become members of ASBURY PLACE HOMEOWNERS ASSOCIATION, and their successors, assigns and grantees.

## ARTICLE II

### ASSOCIATION AND BOARD OF DIRECTORS

1) Prior to the sale of any one of the Units in ASBURY PLACE SUBDIVISION, there shall be incorporated under the laws of the State of Illinois a not-for-profit corporation to be called "ASBURY PLACE HOMEOWNERS ASSOCIATION".

2) Every Owner of a Lot shall be a Member of the Association without the right of withdrawal. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

# UNOFFICIAL COPY

3) The Association shall have two classes of voting membership:

- A) Class A Members shall be all Owners with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If more than one (1) vote is cast for a Lot and the votes cast are inconsistent the vote is nullified.
- B) The Class B Member shall be the Developer, and shall be entitled to three hundred seventy-eight (378) votes less three votes for each Lot sold, provided that Class B membership shall cease and be converted to Class A membership on or before December 31, 2008.

4) The powers of the Association shall be vested in a Board consisting initially of three (3) directors appointed by the Developer. Said directors (or their successors who may also be appointed by the Developer) shall serve until such time as they are replaced by directors elected by the Members pursuant hereto. At the first annual meeting of the Members of the Association as provided in the By-Laws of the Association five (5) directors shall be elected by the Members comprising the Association. The Developer shall transfer control of the Association to the Members no later than December 31, 2008, or within one hundred twenty (120) days after seventy-five (75%) percent of the Units in the Project have been conveyed, whichever first occurs.

# UNOFFICIAL COPY

5) Vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board as provided by the By-Laws, a copy of which is attached hereto as Exhibit "B". Said Articles and By-Laws may provide for the Directors to be elected for terms of more than one (1) year and for such terms to be staggered so that in any year the terms of (1) one or any number less than all of the Directors may expire. The Association shall have such officers as shall be determined by the Board from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board.

6) The Board shall exercise all of the powers and privileges and perform all of the duties and obligations of the Association as required by this Declaration, as it may be amended from time to time, and shall provide for, collect and shall pay for its obligations out of the assessments collected from Members as is herein provided.

7) The Association shall adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation, repair and beautification of the Project, and for the health, comfort, safety and general welfare of the Owners and Occupants of the Project. The entire Project shall at all times be maintained subject to such rules and regulations and amendments thereto as are from time to time enacted by the Board.

# UNOFFICIAL COPY

8) The Board shall represent the Owners in any negotiation or other proceeding relating to termination of the Project, or condemnation or damage to the Common Property, and shall equitably and reasonably allocate to the Owners or apply to its accounts or reserves any awards or settlements it receives.

9) The Board may appoint an Architectural Control Committee and Landscape Committee to assist and advise the Board in order to assure the maintenance of the Project and improvements therein in substantially the same style, manner and quality as created by the Developer. The Board may appoint such additional committees as it may deem necessary to advise and assist it.

## ARTICLE III

### MAINTENANCE FUND AND ASSESSMENTS

1) The Association shall maintain a fund to be known as the "Maintenance Fund". This fund shall be held in a federally insured bank account bearing the Association's name. The Board shall prepare an annual budget setting forth the estimated cost of all maintenance, taxes, and operation charges payable by the Owners in accordance with this Declaration in its present form, or as it may from time to time be amended. Each Unit Owner shall receive a monthly notice of Assessment, which shall include the Management Fee allocated equally among the Units in the development and the Association Fee allocated pursuant to the percentages set forth in Exhibit "C" hereto.

# UNOFFICIAL COPY

Prior to the time all Units in the subdivision have been completed, the proration shall be only among those Units for which a certificate of occupancy has been issued by the Village of Bartlett, Illinois, and the annual budget shall include the real estate taxes, if any, attributable to those portions of the Common Property, shown on the Plat.

2) Each Owner of a Unit by acceptance of a deed, whether from the Declarant or any Owner, and whether or not it shall be so expressed in any such deed or other conveyance for each such Unit owned by each Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association:

- A) Annual assessments or charges to be paid in monthly installments due on the first day of each month of the year hereinafter called "monthly payment dates" or in such other installments as the Board shall elect; and
- B) Special assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with the interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with the interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of the Unit at the time when the assessment fell due.

# UNOFFICIAL COPY

3) The assessments levied by the Association and retained in the Maintenance Fund shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Project and directly related to the ownership, use and enjoyment of the Common Property, including, but not limited to, maintenance, repair and replacement of off street parking, private alleyways, the open space area in the center of the Project and related improvements; landscaping as set forth in Article X hereof; snow removal, if any; real estate taxes and any other liability, and insurance in connection with the Common Property; the maintenance, repair and replacement of fences constructed on or about the Common Property by the Developer or the Association which the Association is obligated to maintain; the maintenance, repair, replacement and additions thereto including Subdivision entry gates and entry walls, streetlights and other structures, signage and landscaping located in Common Property or Outlots owned or leased by the Association; for paying the costs of all labor, equipment (including the expenses of leasing any equipment) and materials required for the management, supervision and operation of the Common Property; and for otherwise performing the duties and obligations of the Board as stated herein and in its Articles of Incorporation and By-Laws.

4) The Developer shall pay no assessment on an unsold Unit but shall pay the prorata share of landscape maintenance and snow

# UNOFFICIAL COPY

removal expenses, if any, incurred during the period in which a Unit receives such services and is not sold.

5) A contribution to the Association for start-up costs and the operating reserves of the Association, in an amount equal to three (3) times the first monthly assessment for the Unit, shall be collected from the purchaser at the initial sale of each Unit by the Developer, and the purchaser shall pay the prorata share of the monthly assessment beginning on the closing date and thereafter.

6) In addition to the annual assessments, the Board may levy, in any assessment year, a special assessment applicable to that year for common operating expenses, or for capital improvements agreed to by a two-thirds (2/3rds) majority of the voting Members of the Association. Such special assessment shall be allocated based upon a Unit's percentage interest as set forth on Exhibit "C" hereto.

7) The annual assessments for the first Owner of a Unit, as provided for herein, shall commence on the date of conveyance of the Unit by the Developer to the Owner. The due date or dates of any special assessments shall be fixed in the resolution authorizing such assessment.

8) The duties of the Board of Directors with respect to assessments shall be as follows:

- A) The Board shall fix the amount of the annual assessment against each Unit for each annual assessment period at least thirty (30) days in advance of such date or period and shall, at that

# UNOFFICIAL COPY

time, prepare a roster of the Units and assessments applicable thereto, which shall be kept in the office of the Association and be open to inspection by any Owner.

- B) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto showing the amount or amounts and the due date or dates if the assessment is to be paid in installments.
- C) The Board shall, upon written demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.
- D) If the Board fails to fix the amount of an assessment as provided in (A) above, each Owner shall be responsible for the payment of an amount equal to the assessment for the previous year until the assessment for the current year is fixed.

9) If any assessment or part thereof is not paid within thirty (30) days after the due date, the total unpaid amount of all installments of such assessment shall immediately become due and payable and shall bear interest from the date of delinquency at two (2) points over the prime rate of interest charged by the Bank One in Chicago, Illinois or its successor on the date the payment was due, or the highest legal rate if the rate of prime plus two (2) points is usurious. The total unpaid amount of all such installments and interest thereon shall constitute a lien on the interest of the Unit of the Owner personally obligated to pay the same and upon the recording of notice thereof by the Board shall be a lien

# UNOFFICIAL COPY

upon such Owner's interest in the Unit. The Association may, at its election, bring an action at law for eviction or other remedy or in equity against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the Lot and Unit subject thereto and there shall be added to the amount of such assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorneys' fees, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or their Unit. Notwithstanding the foregoing, the first mortgage encumbrance owned or held by a bank, insurance company, or savings and loan association, or other person or entity engaged in the business of making real estate loans, recorded against the interest of such Owner prior to the date such notice is recorded, which by law would be a lien thereon prior to subsequently recorded encumbrances, shall have priority, except as to the amount of assessments which become due and payable from and after the date on which the said mortgage owner or holder either takes up possession of the Unit, accepts a conveyance of any interest therein (other than as security) or files a suit to foreclose its mortgage.

# UNOFFICIAL COPY

10) The sale or transfer of any Unit shall not discharge the assessment lien which shall remain in force and effect until paid in full.

11) The following real estate subject to this Declaration shall be exempt from the assessments created herein:

- A) All of the real estate dedicated to and accepted by a local public authority.
- B) The Common Property.
- C) All of the real estate owned by Declarant or Developer, except as stated above in this Article III, Section 4.

12) In the event the Directors of the Association consider the funds on deposit in ASBURY PLACE HOMEOWNERS ASSOCIATION accounts sufficient to fulfill the purposes of the Association, they may from time to time forebear the collection of the assessments provided for in this Article III for any one or more monthly or quarterly period; however, any such forbearance shall not be a waiver of the right to collect future assessments. In the event that an assessment is not sufficient to cover the necessary expenditures as provided herein, the Board may from time to time increase that assessment to cover such expenditures.

13) The Board shall not expend in excess of \$25,000.00 over and above the annual budget in any calendar year without the approval at a special meeting of a majority of the Units represented at said meeting.

# UNOFFICIAL COPY

## ARTICLE IV

### TAXES

- 1) Each Owner shall be assessed, and shall pay, the real estate taxes allocated to his Unit.
- 2) All taxes, if any, on the Common Property shall be paid by the Association from the Maintenance Fund in accordance with Article III of this Declaration.

## ARTICLE V

### PARTY WALLS AND ROOFS

- 1) Each Party Wall shall be used as a dividing wall between the respective Units it separates, and shall be used by the Owner of each adjacent Unit equally for all purposes as an exterior wall, the ownership or equity of each adjacent Owner in said wall being subject to a cross-easement in favor of the other party. However, the surface of each Party Wall shall be used exclusively by the Unit in which said surface is located.
- 2) In the event it shall become necessary to repair or rebuild any portion of any Party Wall, the expense of such repairing or rebuilding shall be borne equally by the Owners of the Units adjacent to each Party Wall, unless the damage to said Party Wall was caused by an act, intentional or otherwise, by one of the adjacent Owners, in which event the cost shall be borne solely by the Owner at fault; also, if damage to said Party Wall shall affect

# UNOFFICIAL COPY

only one side, then the cost of repair shall be borne by the Owner on whose side the damage has occurred.

3) The easements or cross-easements hereby created shall not terminate in the event any Party Wall has been destroyed by fire or other cause and either Owner adjacent to the wall shall have the right to rebuild it if the other will not cooperate in such rebuilding, in which event the Owner of the Unit adjacent to such wall who shall have rebuilt the wall shall be entitled to receive from the Owner of the other adjacent Unit, and the non-cooperating Owner of the adjacent Unit shall be liable to pay upon demand to the Owner who shall have rebuilt the wall, an amount equal to one-half (1/2) of the cost of such rebuilding, including the costs of foundations and supports necessarily installed, except as provided in paragraph 2 of this Article IV when the damage is caused by only one (1) of the Owners.

4) Whenever any Party Wall, or portion thereof, shall be repaired or rebuilt, it shall be erected on the same line and be of the same size and the same or similar materials and of like quality as the wall being repaired or rebuilt, and it shall in all respects conform to the applicable laws and ordinances regulating the construction of buildings in force at the time.

5) In the event it shall become necessary to repair, replace or rebuild any portion of any roof, such repairs shall be performed in compliance with the schedule and specifications set forth by the

# UNOFFICIAL COPY

Association. The expense of such repair, replacement or rebuilding shall be borne by the Unit Owner and determined as follows:

- A) If roof repairs are required as a result of leaks, fire, or other casualty, the Owner or Owners of the affected roof shall arrange for the repair of the roof. Each Owner shall pay a share of the roof repairs as determined by the contractor's calculation of the cost of roof repairs above each Owner's Unit. In the event the contractor fails to determine each Unit Owner's share, and the Unit Owners fail to agree on such share, the Association shall determine the share of such cost to be paid by each Unit Owner.
- B) In the event of damage to the interior of a Unit as a result of roof leak, fire, storm damage or other casualty, the cost of interior repairs to each Unit, (including but not limited to insulation, drywall, interior decorating, upgrades and improvements and repair or replacement of personal property) shall be borne by the Owner of the Unit.
- C) In the event the Association, in its sole discretion, determines that any damage to a roof was caused by the act, intentional or otherwise, of one of the Unit Owners in the Building, the cost of the repairs shall be borne solely by the Owner who caused the damage.
- D) In the event the Association, in its sole discretion, determines that it is necessary to replace the roof on any Building because of normal wear and tear or the expiration of the roof's useful life, the Association shall notify each Unit Owner of the Association's determination and submit a schedule including proposed cost and date of work to each Unit Owner for the work to be performed on their Building and Unit. The Association will then cause the entire Building roof to be replaced and the cost of the replacement shall be paid by the Unit Owners in the Building as determined by the Association.

# UNOFFICIAL COPY

- E) The Association may permit the Unit Owners to cause the roof to be replaced by a qualified roofing contractor if the Owners comply with the following requirements:
- (i) The Unit Owners in a Building unanimously agree to cause the roof to be replaced.
  - (ii) The Unit Owners abide by the schedule and specifications set forth by the Association.
  - (iii) The Unit Owners submit copies of proposals, including specifications from qualified contractors for review and approval by the Association.
  - (iv) The Unit Owners obtain the written approval of the Association to complete the repair or replacement of the roof on their own.
- F) The Association may, at its sole discretion, cause a roof to be repaired or replaced without a Unit Owner's consent if the Association deems it necessary to protect and preserve the Building. The Association shall pay for the repairs from the general or reserve funds or may borrow funds for this purpose and shall assess the individual Unit Owner(s) for the cost to complete said repairs including interest, if any, and use all means available under the law (at law or in equity) and the provisions of this Declaration and the By-Laws to collect from the Unit Owner(s).
- G) Any contract for the repair or replacement of a roof shall provide that the roofers' warranty for such repair or replacement shall run to the Unit Owner(s) and the Association and shall be enforceable by either of them.
- H) In allocating the cost of any repairs or replacement the Association shall consider the proportions set forth in Paragraphs 6A and 6B below.

# UNOFFICIAL COPY

6) The costs of regular and periodic roof maintenance, shall be paid by the Unit Owners in the Building being maintained or treated in proportion to the area of the roof allocated to the Unit as follows:

- A) If the Building contains Rowhomes, each Unit Owner shall share equally in the cost of maintenance or replacement, regardless of which unit type is constructed.
- B) If the Building is a Townhome with four (4) Units, the end Units shall bear a total of sixty-six percent (66%) of the total cost (thirty-three percent (33%) each), and the interior Unit shall bear seventeen percent (17%) each of the total cost of maintenance or replacement.
- C) If the Building is a townhome with six (6) Units the end Units shall bear a total of fifty (50%) percent of the total cost (twenty-five (25%) percent each) and the interior Units shall bear twelve and one-half (12.5%) percent each of the total cost of maintenance or replacement.
- D) If the Building is a townhome with seven (7) Units the end Units shall bear a total of forty-four (44%) percent of the total cost (twenty-two (22%) each) and the interior Units shall bear eleven and one-fifth (11.2%) percent each of the total cost of maintenance or replacement.

## ARTICLE VI EASEMENTS

1) Every Member shall have a right and easement of use and enjoyment and a right of access for ingress and egress to their Unit, including driveways, on, over, across, in, upon, and to the Common Property, including but not limited to Common Areas Lots 22, 23, 24 & 25 and such areas shown as streets, roadways and access easements upon the Plat for **ASBURY PLACE SUBDIVISION**, and such

# UNOFFICIAL COPY

right and easement shall be appurtenant to and shall pass with the title to every Unit subject to the following provisions:

- A) The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Property; and
  - B) The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members and subject to the acceptance of the dedication by such public agency, authority, or utility. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Members entitled to cast two-thirds (2/3rds) of the votes of the combined Class A and Class B membership has been recorded.
- 2) Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Property and facilities, to the Members of his family, his tenants or contract purchasers who reside in his Unit.
- 3) The Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Common Property to the Association on or before December 31, 2008.
- 4) The Declarant reserves the right at its sole discretion to grant to telephone, gas, power, cable television and all other public and quasi public utilities serving the Project, easements, in addition to those appearing on any recorded plat of subdivision of the Project, to lay, construct, renew, operate and maintain pipes, conduits, cables, wires, transformers, switching apparatus

# UNOFFICIAL COPY

and other equipment over, under and across the Common Property and Lots for the purpose of providing utility services to the Project.

5) An easement is hereby granted to the Developer, without charge, for the purpose of erecting, maintaining, repairing and replacing temporary ground signs, banners and exterior lighting and other advertising and promotional displays over and across the Common Property and the exterior of any structure or any Lot and Unit being used as a model for so long as the Developer, its successors, assigns and licensees, are engaged in the construction, sale or leasing of Units on any portion of the Project.

6) In the event that following the initial recordation of any Plat or site plan, the Declarant, or its successors or assigns, determines that inaccuracies exist or additional utility easements are required in the Plat or site plan, Declarant hereby reserves to itself, its successors and assigns, the right to re-record the Plat or site plan for the purpose of correcting any such inaccuracies and/or additions.

7) A nonexclusive easement has been declared, reserved and granted in perpetuity over the Common Property and Lots for the benefit of duly authorized agents and employees of any governmental unit exercising jurisdiction over the subject premises for ingress and egress to and from the public right-of-way to and over any portion of the Common Property and Lots for the purpose of provid-

# UNOFFICIAL COPY

ing municipal services to all portions of the Common Property and Lots.

8) The Common Property shall be subject to a perpetual easement in gross to the Board and the Association for the purpose of enabling and permitting the Board and the Association to properly perform their duties and responsibilities. The Board and the Association further have a perpetual easement in gross to enter upon a Lot where reasonably necessary in the judgment of the Board and the Association for the purpose of properly performing or executing a duty or responsibility of the Board and the Association in respect of other Owners, or of the Owners generally, or of the Common Property. Developer also has an easement in gross for the purpose of enabling and permitting Developer properly to perform and complete its duties and responsibilities as Developer. Developer further has an easement in gross to enter upon a Lot where reasonably necessary, in the judgment of Developer, for the purpose of properly performing or executing a duty or responsibility of Developer in respect of other Owners, or of the Owners generally, or of the Common Property.

9) In the event a Unit is constructed on a Lot in such a manner that a common wall or structure encroaches and/or overhangs (above, beneath, and/or at grade level) an adjoining Lot or the Common Area, the Owners of each Lot or Common Area hereby take title subject to a perpetual easement for any such overhang and/or

# UNOFFICIAL COPY

encroachment, which easement is hereby reserved for Declarant and all Owners, and shall include the reasonable right of access there-to for inspection, maintenance, repair and/or replacement of all or a portion thereof. In the event of a fire or other casualty that results in a total or partial destruction of a building, the building shall be repaired or rebuilt in such a manner to permit such overhangs or encroachments to be re-established.

## ARTICLE VII

### FIRE DAMAGE

1) In the event of damage to a Unit or Units by fire or other casualty, said Unit or Units shall be restored by the Owner or Owners thereof to substantially the same specifications, conditions and design as the original construction by the Developer, with the same type of materials as previously used, and with such Unit and the Common Areas having the same vertical and horizontal boundaries as before the casualty. Such restoration or rebuilding shall be completed as soon after the damage as is reasonably possible. If the Owners fail to do so, the Association may make the repairs or restoration, and if the cost thereof is not paid by the Owners or the Owners' insurance company such amount shall be assessed against the Owner or Owners involved, and enforced by all the remedies allowed hereunder and available in law or equity.

2) It shall be mandatory for the Owner of each Unit or beneficiary to insure each Unit so owned or held in an amount

# UNOFFICIAL COPY

equivalent to One Hundred (100%) Percent of the replacement value of such Unit to the Developer's as built plans and specifications, and the certificates for such fire and extended coverage insurance shall be deposited with the Management Agent of the Project, or with the Association. If an Owner fails to purchase such insurance and provide evidence of such insurance to the Association, the Association shall have the right, but shall not be obligated, to purchase the insurance and assess the Owner of the Unit for the cost of same.

3) The renewal date of all fire and extended coverage insurance policies shall be June 30, of each year, or such other time acceptable to the Association.

## ARTICLE VIII

### MAINTENANCE, ALTERATIONS AND ADDITIONS

1) The exteriors of the Units in the Project shall be painted or stained in such colors and at such times as the Developer or the Association shall determine, and the cost thereof shall be part of the cost of maintenance and shall be assessed against the Owners in accordance with Article III hereof.

2) The exterior masonry shall be cleaned and tuckpointed at such times as the Association shall determine. The cost of such work shall be part of the cost of maintenance and shall be assessed against the Owners in accordance with Article III hereof.

# UNOFFICIAL COPY

3) No Owner shall make any exterior color or architectural changes, changes in load bearing walls, or additions to any Unit or Lot, except as may be authorized in writing by the Developer or the Association.

4) Except for fences originally installed by the Developer, no Owner or Occupant shall construct or erect a fence of any kind, except as may be authorized by the Association, however, until the last Unit is sold the Association shall not approve a fence without the prior written approval of the Developer. Except for fences constructed by the Developer, no fence shall be authorized by the Developer or Association unless constructed from wrought iron, or simulated aluminum wrought iron, and no fence shall extend beyond the front of a Building toward the front property line. Except for fences originally installed by the Developer, no fence shall exceed three (3') feet in height. The eight (8') foot high wood fence constructed by the Developer along the westerly property line of the Real Estate shall be maintained, repaired and replaced by the Association. Maintenance of the six (6') foot high wood privacy fences constructed by the Developer which separate the patios of the rowhomes shall be the responsibility of the Owner or Owners of the Units utilizing the fence. If the Owners of the affected Units are unable to agree on the scope of any required repair or maintenance with respect to such fence or the allocation of the cost of such maintenance or repair, the Board of Directors of the

# UNOFFICIAL COPY

Association shall determine the scope of repairs and the allocation of the costs between the abutting Owners, and its determination shall be final.

5) No Owner or occupant shall install exterior storm sashes, canopies or awnings on any Unit, nor build enclosures for the front or rear entrances nor expand existing decks, patios or construct new decks or patios, except as authorized in writing by the Developer or the Association.

6) No Owner or Occupant shall be permitted to erect a permanent porch on a Unit except as authorized by the Association in writing. However, until the last Unit is sold the Association shall not approve a porch without the prior written approval of the Developer.

7) Except as set forth herein, no permanent attachments or other structure of any kind or character whatsoever shall be made, erected, permitted or maintained upon the exterior or roof of any Unit except when such attachments shall have been first submitted to and approved in writing by the Association.

8) All costs or maintenance charges in connection with the Project not specifically allocated by this instrument to the Association shall be the responsibility of the Owner of the Unit or Units affected. If the Owners of the affected Units are unable to agree on the allocation of such costs the Association shall make such allocation, and its determination shall be final.

# UNOFFICIAL COPY

9) Repairs or replacement of sewer, water, gas, electric, telephone and other utility lines in the Project which are not completed and paid for by the applicable utility company or governmental unit shall be made by the Association, and the cost thereof shall be prorated equally among all Owners except that repair or replacement of such sewer, water, gas, electric, telephone and other utility lines in an individual Lot or Unit shall be paid by the Owner of that Lot or Unit. In the event a private sewer service is shared by two or more Units, the cost of repairs shall be shared equally by the Unit Owners.

10) No grade modification in a Lot which shall adversely affect drainage in the Project, and no modifications, changes or additions to Buildings, structures, fences or walls shall be initiated without, in each instance, the written approval of the Developer or the Association.

11) The Association shall be responsible for the repair and maintenance of the entry monuments, alleys, offstreet parking areas, street signs and benches located in the Project.

12) The Association shall be responsible for snow removal in the alleys and off street parking areas.

13) Any maintenance, alteration or addition to any Unit must comply with all applicable Village ordinances, codes and regulations.

# UNOFFICIAL COPY

## ARTICLE IX

### USE OF LOTS AND COMMON PROPERTY

1) No animals of any kind, except dogs, cats or common household pets, (pigs, livestock, poultry and reptiles shall not be considered common household pets) shall be kept, raised or maintained, on any part of a Unit or Lot or the Common Property. The Association reserves the right to adopt reasonable rules and regulations governing the keeping within any Unit of domestic dogs, cats and other household pets to prevent pets from becoming a nuisance to the Owners or Occupants of **ASBURY PLACE SUBDIVISION**. Owners shall comply with all Village of Bartlett laws and ordinances relating to the maintenance of pets and animals.

2) No clothes, sheets, blankets, or other articles of laundry shall be hung or exposed on any part of any Unit or Lot.

3) The Owners or Occupants of Units shall keep their premises free and clear of rubbish, trash, garbage debris or other unsightly materials, or waste. Any such materials or waste must be kept in covered sanitary containers hidden from public view until removed from the premises.

4) There shall be no playing, lounging, parking of baby carriages, playpens, swingsets, bicycles, wagons, toys, vehicles, and the like or placing of benches or chairs on any of the Common Property, except for passive recreation activities as authorized or

# UNOFFICIAL COPY

designated by the Association. Such activity shall not interfere with the peaceful enjoyment of the Common Property by others.

5) If any Owner or Occupant fails to maintain the Unit owned or occupied by him as herein provided, then the Association may, after fourteen (14) days' prior written notice to such defaulting Owner or Occupant, have such work done as may in the opinion of the Board, be necessary to keep such Unit in a condition conforming to the general quality of upkeep of the other Units in the Project, and the amount paid plus interest therefor shall be a charge against the Owner of the Unit on which said work was performed, and a lien of the Association against the Unit until paid in full.

6) Each Unit shall be used exclusively for private single family residential purposes.

7) There shall be no alteration of the Common Property and nothing shall be kept, stored, constructed, planted on, or removed therefrom, without the written consent of the Board, consistent with the preservation of the Project as a distinguished and superior residential community as represented by the Developer to the Village of Bartlett, in order to preserve the unique environmental character of ASBURY PLACE SUBDIVISION .

8) No Owner or Occupant shall permit anything to be done or kept in his Unit or on his Lot or in the Common Property which will result in injury or damage to the trees, bushes, or other planted

# UNOFFICIAL COPY

vegetation on the Common Property or other Lots or which will result in an increase in the rate charged or in the cancellation of any insurance carried by the Association or which would be in violation of any law.

9) No sign of any kind shall be displayed to the public view on or from any part of the Project, without the prior written consent of the Board, except by Developer, as hereinbefore provided in Article VI provided that the Board's consent shall not be unreasonably withheld as to "For Sale" signs by Owners on their own Lot relating to the sale of their Unit.

10) No activity which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners or Occupants or may interfere with the use and enjoyment of the other Owners and Occupants or their Units on the Common Property, shall be allowed on any Lot subject to the Declaration, provided, however, the provisions of this Section shall not be applicable to the Developer when Developer is acting in accordance with its rights hereunder.

11) All Owners, Occupants and guests shall abide by the By-Laws of **ASBURY PLACE HOMEOWNERS ASSOCIATION** and any rules and regulations adopted by the Board. If any Owner (either by his own conduct or by the conduct of any occupant or guest), shall violate any of the covenants, restrictions or provisions of this

# UNOFFICIAL COPY

Declaration or any rules or regulations adopted by the Board, and such violation shall continue after written notice or request to cure such violation from the Board, then the Board may pursue any available remedy at law or in equity to eliminate such violation.

12) No truck, van, trailer, airplane, snowmobile, commercial vehicle, recreational vehicle, boat or other similar vehicle or water-borne vehicle may be maintained, stored or kept in the Project unless enclosed within a garage. Conventional passenger vehicles of the Owners and their guests may be parked on the Owner's driveway head-on facing the garage, (provided the vehicle may not protrude into the alley), however, there shall be no diagonal or parallel parking on any driveway, driveway apron or in the alley, and street parking will be governed by applicable Village of Bartlett ordinances, including the prohibition of overnight parking. Guest parking and overnight parking will be available in off-street parking areas. The term "commercial vehicle" shall include any vehicle which has a commercial message printed or otherwise displayed on it, or can otherwise be identified as used for commercial purposes.

13) No trailer, basement of an uncompleted building, tent, shack, garage, barn, and no temporary building or structure of any kind shall be used at any time for a residence either temporary or permanent nor shall any of the above be parked or placed on a

# UNOFFICIAL COPY

Lot except by Developer during construction. Trailers, temporary buildings or structures may be located in the Project by the Developer and used during construction but shall be removed upon the completion thereof.

14) No Unit shall be leased by a Unit Owner for a period more or less than one (1) year without the prior written approval of the Association. Any lease must be in writing and a signed copy delivered to the Association within seven (7) days after its execution and prior to occupancy of the Unit. No Owner shall be permitted to lease his Unit to a second or subsequent lessee prior to the expiration of the one (1) year term of the previous lease unless a written request is submitted to and approved by the Board, setting forth a hardship to the Owner. In the event a hardship is granted, the Board may grant an extension of lease rights within its discretion. Any lessee of a Unit leased in accordance with this Declaration shall comply with the Declaration and the rules and regulations of the Association. No Unit shall be leased by an Owner for hotel or transient purposes and no portion of a Unit which is less than the entire Unit shall be leased. This Declaration, the By-Laws and rules and regulations that relate to the use of the individual Unit or the Common Property shall be applicable to any person leasing a Unit and shall be deemed to be incorporated in any lease executed in connection with a Unit. The Association may prohibit a tenant from occupying a Unit until the

# UNOFFICIAL COPY

Owner complies with the leasing requirements prescribed by this Article.

15) Except for television satellite dishes not exceeding twenty-four (24") inches in diameter which may be placed at locations approved in writing by the Association, no other exterior radio or television antennae, poles, rods, wires or other devices for reception of television, radio or other electrical transmissions or signals may be installed in the Project, unless installed inside of a Unit.

16. There shall be no burning of refuse, leaves or other materials on the Project, nor shall unsightly plants or underbrush or plants breeding infectious plant diseases or noxious insects be allowed to remain on the Project.

17) There shall be no wading, swimming or boating of any kind permitted in any lake, retention pond or waterway within the Project.

18) There shall be no athletic or playground equipment permitted in the front yard of a Lot or where it is clearly visible from the street and all such equipment must be stored inside between November 1st and April 1st. All basketball hoops must be portable and must be stored in the garage overnight.

19) Nothing in the provisions of this Declaration shall require the removal or limit the use by the Developer of any structure existing on the Project on the date hereof.

# UNOFFICIAL COPY

## ARTICLE X

### LANDSCAPING, LAWN MAINTENANCE AND SNOW REMOVAL

1) Except as set forth below, all landscaping, lawn, tree and shrubbery maintenance in the Project shall be performed by the Association as provided herein and no changes nor alterations shall be made therein except by approval of the Association. Maintenance of any landscaping or plantings within fenced or designated private areas of a Unit, such as enclosed gardens or patios, shall be provided by the Owner of the Unit at his or her sole expense. All other areas including the front, rear and side yards, if any, shall be landscaped and planted initially by the Developer and thereafter maintenance, including shrubbery trimming and lawn mowing, shall be performed by the Association. Irrespective of the date of closing or receipt of possession of a Unit by the initial Owner, the Owner shall be responsible for the removal and replacement of trees and shrubbery planted on the individual Lot by the Developer's landscape contractor after the expiration of the landscape contractor's warranty of one (1) year from date of planting. All costs of installation of additional landscaping, trees or shrubbery approved by the Association for installation by an individual Owner on that Owner's Lot, shall be the sole responsibility of the Owner, however, unless expressly stated otherwise by the Board, such landscaping, trees or shrubbery shall be maintained by the Association.

# UNOFFICIAL COPY

The cost of removal and replacement of such additional trees and shrubbery planted by the Owner on his or her Lot, with the approval of the Association, shall be the responsibility of the Owner of the Lot. In the event an Owner fails to remove and replace such trees or shrubbery when necessary, the Association may, after thirty (30) days prior written notice, cause the appropriate removal and/or replacement to be performed and assess the cost thereof to the Owner.

2) Nothing contained in this Declaration shall obviate the Developer's obligations with respect to planting, replacing and maintaining trees, shrubs and other landscape plantings required under the Village's Ordinances, except as modified by the Development Agreement by and between the Village of Bartlett and ASBURY PLACE VENTURE dated September 16, 2003.

3) The Owner or Occupant of each Unit shall, at their own expense, cause the lawn, trees and shrubbery on their Lot to be sprinkled as necessary. Failure of such Owner or Occupant to do so shall give the Association the right to attend to such sprinkling and the cost thereof shall be assessed against the Owner or Occupant.

4) The Association, through a private contract or otherwise, shall provide for cultivating, trimming and feeding evergreens, trees and shrubs; re-seeding, fertilizing, weed-control programs,

# UNOFFICIAL COPY

spraying, feeding and trimming of trees, and planting of vegetation on the Common Property. In the event that any trees in the Common Property must be removed or replaced, such work shall be performed by the Association.

5) The responsibility of the Association for landscape maintenance, and snow removal services, if provided, shall commence upon the closing on the Unit. The Developer or Association may enter into an agreement with a third party to provide landscape maintenance, and snow removal if provided, for all Units and the Developer shall pay the prorata share of such expenses for the then completed but unsold Units receiving such services.

6) If an Owner fails to pay any cost assessed by the Association pursuant to this Article X, the Association may proceed against the Owner as prescribed in Article III Section 9 hereof and shall have all remedies against the Owner as set forth therein.

7) The Association may provide for snow removal for walks, driveways, or both as determined by its Board from time to time.

## ARTICLE XI

### INGRESS AND EGRESS

The right of ingress and egress over and along the sidewalks and paths, and all areas designated on the Plat as the Common Property, is hereby declared a perpetual easement for the benefit of all Owners and Occupants of Units in **ASBURY PLACE SUBDIVISION**

# UNOFFICIAL COPY

and for the benefit of their invitees. Said right shall not terminate in the event any portion of said sidewalks and paths are destroyed or damaged.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

1) Each Unit and Lot shall be used exclusively as a single family residence of the Owner or Occupant and for no other purpose. 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 on any part of the Project, nor shall window displays or advertising be maintained or permitted on any part of the Project or any Unit or Lot therein, nor shall any structure be erected on any portion of the Project by any Owner or Occupant.

2) Any violation of the rules and regulations adopted by the Association shall be deemed a violation of this Declaration and may be enforced or enjoined as provided in the Rules and Regulations, By-Laws or applicable provisions of this Declaration, or other applicable laws or ordinances.

3) The rights, privileges and powers herein granted to or retained by the Declarant shall be assignable to, and inure to the benefit of, any successor Declarant, or the Association.

# UNOFFICIAL COPY

4) Each Lot, in addition to any other lien granted herein, may be subject to a lien under the Mechanics Lien Law, made and provided by the statutes of the State of Illinois, for services rendered or materials furnished by the Association in connection with improvements or repairs on such Lot.

5) In the event title to any Unit shall be conveyed to a titleholding land trust, under which all powers of management, operation and control of the premises remain vested in the trust beneficiary or beneficiaries, then the trust estate under such trust, and the beneficiaries thereunder from time to time, shall be liable for payment of any obligation, lien or indebtedness chargeable or created under this Declaration against such Unit. No claim shall be made against any such titleholding trustee personally for payment of any claim, lien or obligation hereby created, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof shall continue to be a charge or lien upon the Lot and proceeds of sale of the Lot notwithstanding any transfers of beneficial interest or in the title to such Lot. The Trustee of any Trust owning a Unit shall, upon written request from the Association, supply the Association with the name or names of the beneficiary of the Trust.

6) The Association shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions,

# UNOFFICIAL COPY

covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7) Invalidation of any one of these covenants, conditions, easements or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

8) Each grantee of the Declarant by the acceptance of a deed of conveyance, and each Purchaser under articles of agreement for deed, accept the same subject to all restrictions, conditions, covenants, reservations, easements, and the jurisdiction, rights and powers of the Declarant, and the Association, created by this Declaration or by the Plat or deed restrictions hereto recorded; and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after

# UNOFFICIAL COPY

which time said covenants shall be automatically extended for successive periods of ten (10) years, henceforth.

At any time and from time to time while these covenants, conditions, restrictions, reservations, equitable servitudes, grants, easements and set back lines are in effect, this Declaration may be amended or revoked by the recording in the Office of the Recorder of Deeds of Cook County, Illinois, of any instrument declaring such amendment or revocation, which instrument shall be signed by the undersigned or its successors and assigns or by the then Owners of not less than two-thirds (2/3) of the Lots in the Project, which Declaration shall set forth such amendment or revocation and shall be effective from and after the date of its recording; provided, however, that if the Developer or its successors and assigns shall hold legal title to any Lot or Lots in the Project, then an amendment or revocation signed by not less than two-thirds (2/3) of the Owners of such Lots must also be signed by the undersigned, its successors or assigns and if not so signed such amendment or revocation shall not be valid. A certificate signed and acknowledged by the Office of the Recorder of Deeds of Cook County, Illinois or by an abstract or title company doing business in Cook County, Illinois that such instrument or amendment or revocation has been signed by the then Owners of not less than two-third (2/3rds) of such Lots shall be deemed prima facie evidence that such instrument has been signed by the Owners of the

# UNOFFICIAL COPY

required number of Lots. A certificate confirming such amendment or revocation signed by the Board or the undersigned Declarant or its successors or assigns shall likewise be prima facie evidence that the amendment revocation has been signed by the Owners of the required number of Lots. In the voting provided for herein and in making amendments and revocations to this Declaration, each of said originally platted Lots shall be deemed a Unit and the Owner or Owners thereof shall be entitled to one (1) vote and shall count as one Owner in determining the number of votes and Owners. This Section is subject to the provisions of Article II, Sections 3A and 3B hereof. Prior to the sale of all Units in the Project, Developer reserves the right to authorize such amendments as are not materially detrimental to the Unit Owners, and such amendments shall be effective when recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

9) Developer hereby reserves for itself, successors, assigns and licensees, the right to engage in the construction of Units and sale of Lots which are or shall become the subject matter of this Declaration and shall be entitled to erect model Units, sales and production offices, including all appurtenant structures and lighting which, in the sole discretion of the Developer, shall assist it in the conduct of its business.

10) Until the first Board shall have been elected and qualified, all of the rights powers and obligations which by this

# UNOFFICIAL COPY

Declaration are to be vested in the Association and its Board shall be deemed vested in and possessed by Developer. Until Developer's transfer and assignment of its rights, powers and obligations to the Association, all of the lien rights and other rights herein provided for in favor of the Association and its Board shall be possessed by the Developer as fully and effectively in every respect, without diminution of any kind, as said lien rights are to be possessed by the Association and its Board. All rights of the Developer shall be exercised without the consent of the Owners or the Association.

11) The Board shall have the authority and shall obtain a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants), incident to the operation of the Association, in an amount not less than \$1,000,000.00 for any one occurrence alleging bodily injury or property damage. The Board shall also provide statutory workers' compensation insurance, fidelity bond, if appropriate, and errors and omissions insurance for directors and officers, which policy or policies shall contain an endorsement providing that the rights of the named insureds shall not be prejudiced with respect to actions against other named insureds.

12) If any of the options, privileges, covenants or rights created by this Declaration or By-Laws would otherwise violate (a) the rule against perpetuities or some analogous statutory pro-

# UNOFFICIAL COPY

vision, or (b) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Governor of the State of Illinois on the date of execution hereof.

13) Neither the Developer/Declarant, nor the Joint Venturers, nor their respective partners, representatives or designees, shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities reserved, granted or delegated to it by, or pursuant to, this Declaration, or in the Declarant's (or the Joint Venturers or their respective partners, representative's or designee's) capacity as Developer, contractor, Owner, manager or Seller of the Property, whether or not such claim (a) shall be asserted by any Owner, Occupant, the Board, the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) shall arise out of a contract, either express or implied. Without limitation to the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Buildings or improvements in the Project or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or failure to act of any Owner, Occupant, the Board, the Association, and their respective agents,

# UNOFFICIAL COPY

employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the Project, or by reason of the failure to function, or the disrepair of, any utility service (heat, air conditioning, electricity, gas, water, cable television, sewage, etc.)

14) Notwithstanding any other provision herein, the Board may engage the services of a Managing Agent to manage the Project to the extent deemed advisable by the Board; provided, however, that it is expressly understood and agreed that the Declarant or the beneficiaries of the Declarant expressly reserve the right to designate an initial Managing Agent for a period not to exceed two (2) years from the date of the closing of the sale of the last Unit in the Project. The rights of the Board to designate a different Managing Agent shall be in all respects subject to any and all contractual rights resulting from such initial designation of Managing Agent by the Declarant.

15) The Board shall promulgate Rules and Regulations, including architectural and landscape controls from time to time, and the Owners agree to be bound and observe such rules and regulations, as well as the Articles of Incorporation and By-Laws of the Association.

16) Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit shall be given a copy of any and all notices permitted or required by this

# UNOFFICIAL COPY

Declaration to be given to the Owner or Owners whose ownership is subject to such mortgage or trust deed. Upon receipt by the Association of written request from the mortgagee of any Unit revealing the mortgagee's interest in such Unit, and requesting notice of any condemnation or casualty loss which affects either a material portion of the Project or the Unit securing its mortgage, delinquent in excess of sixty (60) days in the payment of assessments or charges owed by the Owner of any Unit on which it holds a mortgage, a lapse, cancellation, or material modification of the Association's insurance; or proposed actions that require the consent of specified percentages of Unit Owners, the Association will provide notice thereof in a timely manner to said mortgagee. A financial statement will also be provided upon written request from such mortgagee.

17) The maximum number of Units which may be constructed in the Project is one hundred twenty-six (126) unless additional Units are approved by the Village of Bartlett.

18) The members of the Board and the officers thereof or of the Association and the Managing Agent shall not be liable to the Owners for any mistake of judgment or any acts or omissions made in good faith as such members or officers or Managing Agent. Such members or officers and the Managing Agent shall have no personal liability with respect to any contract made by them in good faith on behalf of the Association.

# UNOFFICIAL COPY

19) This Declaration shall be liberally construed as to facilitate and promote its objectives hereinabove set forth.

Narrow, technical and literal construction of this instrument, inconsistent with the objectives of the Declarant, the Board and Owners shall be avoided.

20) The headings contained in this Declaration are for reference only and shall not in any way affect the meaning or interpretation of this Declaration.

21) Any notice required or desired to be given under the provisions of this Declaration to any Member, Owner or any other persons entitled to use the Common Property or any part thereof shall be deemed to have been properly served when mailed by certified or registered mail, return receipt requested, when deposited in the United States mail, postage prepaid, directed to the last known address for such person, all as shown on the books and records of the Association at the time such notice is given.

22) In the event there is at any time a conflict between any provision of this Declaration and any provision of any then effective ordinance, rule or regulation of the Village of Bartlett, Illinois, the ordinance, rule or regulation of the Village of Bartlett then in effect shall prevail, but only to the extent it is more restrictive than this Declaration. The Developer shall comply with the provisions of the Bartlett Subdivision Ordinance applicable to the Project.

# UNOFFICIAL COPY

23) The Declarant/Developer reserves the right, prior to the date the initial meeting of Owners is held, to amend this Declaration so that it will comply with the legal requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration or a similar agency or their respective successors and assigns.

24) Closing on the Purchase of a Unit shall be deemed consent by the Owner(s), or beneficial Owner, of the Unit for the Association to publish his/her/their name, address and telephone number in the Directory of Unit Owners published by the Association.

THIS DECLARATION is executed this 2nd day of July, 2004, by the Declarant, ASBURY PLACE VENTURE, a Joint Venture, as aforesaid, as the Owner of the Real Estate.

ASBURY PLACE VENTURE, an Illinois General Partnership of ODESIGN, INC., an Illinois Corporation and ASBURY PLACE PARTNERS, LLC., an Illinois Limited Liability Company, Declarant

By: ODESIGN, INC.

By:   
ALLAN C. SUTHERLAND Vice President

By: ASBURY PLACE PARTNERS, LLC.

By:   
WARREN A. JAMES, Vice President  
 E-ASBURY CORP., an Illinois Corporation, Manager of  
 ASBURY PLACE PARTNERS, LLC.

js\e:\asbury\sing-att.doc

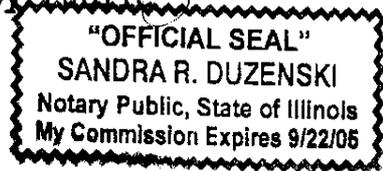
# UNOFFICIAL COPY

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 Vice President of ODESIGN, INC., an Illinois corporation and Joint Venturer in the ASBURY PLACE VENTURE, Declarant, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of July, 2004.

[Signature]  
Notary Public



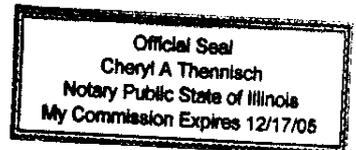
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above named Vice President of E-ASBURY CORP., an Illinois corporation, Manager of ASBURY PLACE PARTNERS, LLC., an Illinois limited liability company, a Joint Venturer in the ASBURY PLACE VENTURE, Declarant, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of July, 2004.

[Signature]  
Notary Public

This Document Was Prepared By And After Recording Mail To:  
John H. Jackson, Attorney at Law  
c/o Morgan, Lanoff, Denniston & Jackson, Ltd.  
33 North LaSalle Street, Suite 2030  
Chicago, Illinois 60602  
(312) 346-3055



# UNOFFICIAL COPY

**EXHIBIT "A" TO THE DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR ASBURY PLACE SUBDIVISION**

ASBURY PLACE BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

PIN: 06-35-319-002-0000

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

**EXHIBIT "B" TO THE DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR ASBURY PLACE SUBDIVISION**

**BY-LAWS**

**OF**

**ASBURY PLACE SUBDIVISION**

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## INDEX TO BY LAWS

Article I	Purposes	Page 1
Article II	Offices	Page 1
Article III	Members	Page 1
Article IV	Meetings of Members	Page 2
Article V	Board of Directors	Page 4
Article VI	Officers	Page 7
Article VII	Committees	Page 11
Article VIII	Contracts, Checks, Deposits and Funds	Page 13
Article IX	Books and Records	Page 14
Article X	Fiscal Year	Page 14
Article XI	Assessments	Page 14
Article XII	Seal	Page 17
Article XIII	Waiver of Notice	Page 17
Article XIV	Amendments	Page 17
Article XV	Indemnification	Page 18

# UNOFFICIAL COPY

BY LAWS

OF

ASBURY PLACE

HOMEOWNERS ASSOCIATION

ARTICLE I

PURPOSES

The purpose of the ASBURY PLACE HOMEOWNERS ASSOCIATION, an Illinois not-for-profit Corporation, (hereinafter referred to as the "Association"), shall be to maintain, operate and manage a residential area with Single Family Attached Units, improvements and common property known as ASBURY PLACE SUBDIVISION located in Bartlett, Illinois. The definitions of terms herein shall be consistent with the definitions of such terms set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for ASBURY PLACE SUBDIVISION.

ARTICLE II

OFFICES

The Corporation shall maintain in the State of Illinois a registered office and a registered agent at such office and may have other offices within or without the state.

ARTICLE III

MEMBERS

1) **MEMBERSHIP:** Every Owner of a Lot or dwelling unit shall be a member of the Association without the right of withdrawal. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

# UNOFFICIAL COPY

2) **VOTING RIGHTS:** The Association shall have two classes of voting membership:

A. **CLASS A.** Class A Members shall be all Owners with the exception of the Developer. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If conflicting votes are cast for a Lot the votes shall not be counted.

B. **CLASS B.** The Class B Member shall be the Developer, and shall be entitled to 516 votes less three (3) votes for each Lot sold, provided that Class B membership shall cease and be converted to Class A membership no later than December 31, 2008.

3) **TERMINATION OF MEMBERSHIP:** Upon the sale or transfer of a Lot, or the termination of a beneficial interest in any trust holding title to a Unit, membership in the Association is terminated.

4) **TRANSFER OF MEMBERSHIP:** Membership in this Association is not transferable or assignable to non Lot Owners.

## ARTICLE IV

### MEETINGS OF MEMBERS

**SECTION 1. ANNUAL MEETING:** An annual meeting of the Members of the Association shall be held on or before June 15th of each year, beginning with the year 2008 or sooner as determined by the Board for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

**SECTION 2. SPECIAL MEETING:** Special meetings of the Members may be called either by the president, the Board of Directors, or not less than one-tenth of the Members having voting rights.

# UNOFFICIAL COPY

**SECTION 3. PLACE OF MEETING:** The Board of Directors may designate any place within the reasonable proximity of **ASBURY PLACE SUBDIVISION** as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the Corporation in the State of Illinois.

**SECTION 4. NOTICE OF MEETINGS:** Written notice stating the place, date and time of the meeting shall be delivered not less than five nor more than forty days before the date of such meeting. In case of a special meeting or when required by statute or by these By-Laws, the purpose for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Corporation, with postage thereon prepaid.

**SECTION 5. INFORMAL ACTION BY MEMBERS:** Any action required to be taken at a meeting of the Members of the Association, or any other action which may be taken at a meeting of Members, may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

**SECTION 6. QUORUM:** The Members holding one-fourth of the votes which may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of Members, a majority of the Members present may adjourn the meeting

# UNOFFICIAL COPY

at any time without further notice. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting, withdrawal of Members from any meeting shall not cause failure of a duly constituted quorum at that meeting.

**SECTION 7. PROXIES.** Each Member entitled to vote at a meeting or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after eleven months from its date, unless the proxy provided for a longer period.

## ARTICLE V

### BOARD OF DIRECTORS

**SECTION 1. GENERAL POWERS:** The affairs of the Association shall be managed by its Board of Directors.

**SECTION 2. NUMBER, TENURE AND QUALIFICATIONS:** Prior to the first annual meeting the number of Directors shall be three and shall be appointed by the Developer. At the first annual meeting of the Members of the Association five Directors shall be elected (the two with the most votes for two-year terms and the other three for one-year terms) and thereafter terms shall be for two years. Each Director shall hold office until his term expires and until his successors shall have been elected and qualified. Directors need not be residents of Illinois or Members of the Association. By amendment of this Section, the number of Directors may be increased to any number from time to time but shall not be

# UNOFFICIAL COPY

decreased to less than five after the first annual meeting. The terms of office may be increased to up to three years by amendment hereof.

**SECTION 3. REGULAR MEETINGS:** A regular annual meeting of the Board of Directors shall be held without other notice than these by-laws, immediately after, and at the same place as, the annual meeting of Members. The Board of Directors may provide by resolution the time and place, for the holding of additional regular meetings of the Board without other notice than such resolution.

**SECTION 4. SPECIAL MEETINGS:** Special meetings of the Board of Directors may be called by or at the request of the president or any two Directors. The person or persons authorized to call special meetings of the Board may fix any place within a reasonable proximity of ASBURY PLACE SUBDIVISION as the place for holding any special meeting of the Board so called.

**SECTION 5. NOTICE:** Notice of any special meeting of the Board of Directors shall be given at least five days previously thereto by written notice to each Director at his address as shown by the records of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Notice of any special meeting of the Board of Directors may be waived in writing signed by the person or persons entitled to the

# UNOFFICIAL COPY

notice either before or after the time of the meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-Laws.

**SECTION 6. QUORUM:** A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, provided that if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting to another time without further notice.

**SECTION 7. MANNER OF ACTING:** The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by statute, these By-Laws, or the Articles of Incorporation.

**SECTION 8. VACANCIES:** Any vacancy occurring in the Board of Directors shall be filled by the Board of Directors unless the Articles of Incorporation, a statute, or these By-Laws provide that a vacancy or a directorship so created shall be filled in some other manner, in which case such provision shall control. A Director elected to fill a vacancy shall be elected for the

# UNOFFICIAL COPY

unexpired term of his predecessor in office.

**SECTION 9. COMPENSATION:** Directors shall not receive any salaries for their services, but by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for each regular or special meeting of the Board, provided that nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving reasonable compensation therefor.

## ARTICLE VI

### OFFICERS

**SECTION 1. OFFICERS:** The officers of the Association shall be president, one or more vice presidents (the number thereof to be determined by the Board of Directors), a treasurer, a secretary, and such assistant treasurers, assistant secretaries or other officers as may be elected by the Board of Directors. Officers whose authority and duties are not prescribed in these By-Laws shall have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

**SECTION 2. ELECTION AND TERM OF OFFICE:** The officers of the Association shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. Vacancies may be filled or new offices created and filled at any meeting of

# UNOFFICIAL COPY

the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

**SECTION 3. REMOVAL:** Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

**SECTION 4. PRESIDENT:** The president shall be the principal executive officer of the Association. Subject to the direction and control of the Board of Directors, he shall be in charge of the business and affairs of the Association, he shall see that the resolutions and directives of the Board of Directors are carried into effect except in those instances in which the responsibility is assigned to some other person by the Board of Directors, and, in general, he shall discharge all duties incident to the office of the president and such other duties as may be prescribed by the Board of Directors. He shall preside at all meetings of the Members and of the Board of Directors. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Association or a different mode of execution is expressly prescribed by the Board of Directors or these By-Laws, he may execute for the Association any contracts, deeds, mortgages, bonds, or other instruments which the Board of Directors has authorized to be executed, and he may accomplish such execution

# UNOFFICIAL COPY

either under or without the seal of the Association and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument. He may vote all proxies and securities which the Association is entitled to vote except to the extent such authority shall be vested in a different officer or agent of the Association by the Board of Directors.

**SECTION 5. VICE-PRESIDENT:** The vice-president (or in the event there be more than one vice-president, each of the vice-presidents) shall assist the president in the discharge of his or her duties as the president may direct and shall perform such other duties as from time to time may be assigned by the president or by the Board of Directors. In the absence of the president or in the event of the inability or refusal of the president to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated by the Board of Directors, or by the president if the Board of Directors has not made such a designation, or in the absence of any designation, then in the order of their seniority of tenure) shall perform the duties of the president and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Association or a different mode of execution is expressly prescribed by the Board of Directors or these By-Laws, the vice-president (or any of them if

# UNOFFICIAL COPY

there are more than one) may execute for the Association any contracts, deeds, mortgages, bonds or other instruments which the Board of Directors has authorized to be executed, and may accomplish such execution either under or without the seal of the Association and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board of Directors according to the requirements of the form of the instrument.

**SECTION 6. TREASURER:** The treasurer shall be the principal accounting and financial officer of the Association. The Treasurer shall: (a) have charge of and be responsible for the maintenance of adequate books of account for the Association; (b) have charge and custody of all funds and securities of the Association, and be responsible therefor, and for the receipt and disbursement thereof; and (c) perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or by the Board of Directors. If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

**SECTION 7. SECRETARY:** The secretary shall record the minutes of the meetings of the Members and of the Board of Directors in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law, be custodian of the corporate records and of the seal of the Association, if any, keep a register of the post office

# UNOFFICIAL COPY

address of each Member which shall be furnished to the secretary by such Member, and perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or by the Board of Directors.

## SECTION 8. ASSISTANT TREASURERS AND ASSISTANT SECRETARIES:

The assistant treasurers and assistant secretaries shall perform such duties as shall be assigned to them by the treasurer or the secretary, respectively, or by the president or the Board of Directors. If required by the Board of Directors, the assistant treasurers shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

## ARTICLE VII

### COMMITTEES

SECTION 1. COMMITTEES OF DIRECTORS: The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, including an Architectural Control Committee and Landscape Committee, each of which shall consist of two or more members, which committees, to the extent not restricted by law, shall have and exercise the authority granted by the Board of Directors. The designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law.

SECTION 2. OTHER COMMITTEES: Other committees may also be designated by a resolution adopted by a majority of the Directors

# UNOFFICIAL COPY

present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, Members of each such committee shall be Members of the Association and the Board of Directors of the Corporation shall appoint the Members thereof. Any Member thereof may be removed by the Board of Directors whenever in its judgment the best interests of the Association shall be served by such removal.

**SECTION 3. TERM OF OFFICE:** Each member of a committee shall continue as such until the next annual meeting of the Members of the Association and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

**SECTION 4. CHAIRMAN:** One member of each committee shall be appointed chairman.

**SECTION 5. 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.

**SECTION 6. QUORUM:** Unless otherwise provided in the resolution of the Board of Directors 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.

**SECTION 7. RULES:** Each committee may adopt rules for its own proceedings not inconsistent with these By-Laws or with rules adopted by the Board of Directors.

# UNOFFICIAL COPY

## ARTICLE VIII

### CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

SECTION 1. **CONTRACTS:** The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

SECTION 2. **CHECKS, DRAFTS, ETC:** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors. such instrument shall be signed by the treasurer or an assistant treasurer and countersigned by the president or a vice-president of the Association.

SECTION 3. **DEPOSITS:** All funds of the Association shall be deposited from time to time to the credit of the Association in such federally insured banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 4. **GIFTS:** The Board of Directors may accept on behalf of the Association any contribution, gift, bequest or, devise for the general purposes or for any special purpose of the Association.

# UNOFFICIAL COPY

## ARTICLE IX

### BOOKS AND RECORDS

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Members entitled to vote. All books and records of the Association may be inspected by any Member, or his agent or attorney for any proper purpose at any reasonable time.

## ARTICLE X

### FISCAL YEAR

The fiscal year of the Association shall be the calendar year.

## ARTICLE XI

### ASSESSMENTS

#### SECTION 1.

(a) The Board of Directors of the Association shall fix the amount of the annual assessment, against each Lot for each annual assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto showing the

# UNOFFICIAL COPY

amount or amounts and the due date or dates if the assessment is to be paid in installments.

(c) The Board of Directors shall, upon written demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

(d) If the Board fails to fix the amount of an assessment as provided in (a) above, each Owner shall be responsible for the payment of an amount equal to the assessment for the previous year.

**SECTION 2. RESERVES:** The annual assessment shall include the collection of adequate funds to establish a reserve for the replacement of improvements to the Common Areas and other areas which the Association is obligated to maintain.

**SECTION 3. DUTIES:** The Board shall exercise all the power and privileges and perform all of the duties and obligations of the Association, and shall provide for, collect and make payments from the assessment funds as is necessary.

**SECTION 4. EFFECT OF NON-PAYMENT OF ASSESSMENT; THE PERSONAL OBLIGATION OF THE OWNER; THE LIEN; REMEDIES OF ASSOCIATION:**

If any assessment or part thereof is not paid within thirty (30) days after the due date, the total unpaid amount of all installments of such assessment shall immediately become due and

# UNOFFICIAL COPY

payable and shall bear interest from the date of delinquency at two (2) points over the prime rate of interest charged by Bank One in Chicago, Illinois or the highest legal rate if the rate of prime plus two (2) points is usurious. The total unpaid amount of all such installments and interest thereon shall constitute a lien on the interest in the Lot and Unit of the Owner personally obligated to pay the same and upon the recording of notice thereof by the Board of Directors of the Association shall be a lien upon such Owner's interest in the Lot and Unit. The Association may, at its election, bring an action under applicable Illinois law, at law or in equity against the Owner personally obligated to pay the same in order to enforce payment and/or foreclose the lien against the Lot and Unit subject thereto and there shall be added to the amount of such assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or of his Lot and Unit. Notwithstanding the foregoing, the first mortgage encumbrance owned or held by a bank, insurance company, or savings and loan association, or other person or entity engaged in the business of making real estate loans, recorded against the interest of such Owner prior to the date such notice is recorded, which by law would be a lien thereon prior to subsequently recorded

# UNOFFICIAL COPY

encumbrances, shall have priority, except as to the amount of assessments which become due and payable from and after the date on which the said mortgage owner or holder either takes up possession of the Lot and Unit, accepts a conveyance of any interest therein (other than as security) or files a suit to foreclose its mortgage.

## ARTICLE XII

### SEAL

The corporate seal, if any, shall have inscribed thereon the name of the Corporation and the words "Corporate Seal, Illinois".

## ARTICLE XIII

### WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the General Not-for-Profit Corporation Act of Illinois or under the provisions of the Articles or Incorporation or the By-Laws of the Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## ARTICLE XIV

### AMENDMENTS

The power to alter, amend, or repeal the By-Laws or adopt new By-Laws shall be vested in the Board of Directors unless otherwise provided in the Articles of Incorporation or the By-Laws. Such action may be taken at regular or special meeting for which written notice of the purpose shall be given. The By-Laws may contain any provisions for the regulation and management of the affairs of the

# UNOFFICIAL COPY

Corporation not inconsistent with law or the Articles of Incorporation.

## ARTICLE XV

### INDEMNIFICATION

The Association shall indemnify any Officer or Director who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a Director, Officer, employee or agent of the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suite or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association or, with respect to any criminal action or proceeding, that the person had reasonable cause to believe that he or her conduct was unlawful.

# UNOFFICIAL COPY

The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that such person is or was a Director, Officer, employee or agent of the Association, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, provided that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Association, unless, and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

To the extent that a Director, Officer, employee or agent of the Association has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to herein above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

# UNOFFICIAL COPY

The Association is authorized to pay expenses incurred in defending a civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the Director, Officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association.

The indemnification provided hereby shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of Members or disinterested Directors, or otherwise, both as to action in his or her official capacity or as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, Officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Association against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions hereof.

# UNOFFICIAL COPY

**EXHIBIT "C" TO THE DECLARATION OF  
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR ASBURY PLACE SUBDIVISION**

**ASSESSMENT ALLOCATION FOR UNITS IN  
ASBURY PLACE SUBDIVISION**

**\*ASSESSMENTS ALLOCATED TO UNITS IN  
ASBURY PLACE SUBDIVISION**

**\*NOTE**

Declarant reserves the right to amend this Exhibit "C" in the event the percentages are determined to be incorrect prior to transferring the Association to the Homeowners.

Property of Cook County Clerk's Office

\*NOTE

Declarant reserves the right to amend this Exhibit "C" in the event the percentages are determined to be incorrect prior to transferring the Association to the Homeowners.

BUILDING NUMBER	UNIT NUMBER	STREET NAME	ADDRESS	Percentage Dues
Building 401	001	Prospect Avenue	398	0.8538%
	002	Prospect Avenue	394	0.7576%
	003	Prospect Avenue	390	0.7784%
	004	Prospect Avenue	386	0.7586%
	005	Prospect Avenue	382	0.7576%
	006	Prospect Avenue	378	0.8164%
Building 402	007	Prospect Avenue	374	0.8164%
	008	Prospect Avenue	370	0.7576%
	009	Prospect Avenue	366	0.7586%
	010	Prospect Avenue	362	0.7784%
	011	Prospect Avenue	358	0.7576%
	012	Prospect Avenue	354	0.8164%
Building 403	013	Prospect Avenue	350	0.8164%
	014	Prospect Avenue	346	0.7576%
	015	Prospect Avenue	342	0.7784%
	016	Prospect Avenue	338	0.7586%
	017	Prospect Avenue	334	0.7576%
	018	Prospect Avenue	330	0.8164%
Building 404	019	Prospect Avenue	326	0.8164%
	020	Prospect Avenue	322	0.7576%
	021	Prospect Avenue	318	0.7586%
	022	Prospect Avenue	314	0.7784%
	023	Prospect Avenue	310	0.7576%
	024	Prospect Avenue	306	0.8538%
Building 405	025	E. Railroad Avenue	491	0.8538%
	026	E. Railroad Avenue	489	0.7576%
	027	E. Railroad Avenue	487	0.7586%
	028	E. Railroad Avenue	485	0.7784%
	029	E. Railroad Avenue	483	0.7576%
	030	E. Railroad Avenue	481	0.8538%
Building 406	031	Bradbury Lane	305	0.8538%
	032	Bradbury Lane	309	0.7576%
	033	Bradbury Lane	313	0.7784%
	034	Bradbury Lane	317	0.7586%
	035	Bradbury Lane	321	0.7576%
	036	Bradbury Lane	325	0.8164%

## UNOFFICIAL COPY

Building 407	037	Bradbury Lane	329	0.8164%
	038	Bradbury Lane	333	0.7576%
	039	Bradbury Lane	337	0.7586%
	040	Bradbury Lane	341	0.7784%
	041	Bradbury Lane	345	0.7576%
	042	Bradbury Lane	349	0.8164%
Building 408	043	Bradbury Lane	353	0.8164%
	044	Bradbury Lane	357	0.7576%
	045	Bradbury Lane	361	0.7784%
	046	Bradbury Lane	365	0.7586%
	047	Bradbury Lane	369	0.7576%
	048	Bradbury Lane	373	0.8164%
Building 409	049	Bradbury Lane	377	0.8164%
	050	Bradbury Lane	381	0.7576%
	051	Bradbury Lane	385	0.7586%
	052	Bradbury Lane	389	0.7784%
	053	Bradbury Lane	393	0.7576%
	054	Bradbury Lane	397	0.8538%
Building 310	055	Bradbury Lane	396	0.8486%
	056	Bradbury Lane	392	0.7739%
	057	Bradbury Lane	388	0.7780%
	058	Bradbury Lane	384	0.7776%
	059	Bradbury Lane	380	0.7776%
	060	Bradbury Lane	376	0.7739%
	061	Bradbury Lane	372	0.8486%
Building 311	062	Bradbury Lane	450	0.8486%
	063	Bradbury Lane	448	0.7739%
	064	Bradbury Lane	446	0.7776%
	065	Bradbury Lane	444	0.7776%
	066	Bradbury Lane	442	0.7739%
	067	Bradbury Lane	440	0.8486%

## UNOFFICIAL COPY

Building 312	068	Broadmoor Lane	371	0.8486%
	069	Broadmoor Lane	375	0.7739%
	070	Broadmoor Lane	379	0.7776%
	071	Broadmoor Lane	383	0.7776%
	072	Broadmoor Lane	387	0.7780%
	073	Broadmoor Lane	391	0.7739%
	074	Broadmoor Lane	395	0.8486%
Building 313	075	Broadmoor Lane	468	0.8486%
	076	Broadmoor Lane	470	0.7739%
	077	Broadmoor Lane	472	0.7776%
	078	Broadmoor Lane	474	0.7776%
	079	Broadmoor Lane	476	0.7739%
	080	Broadmoor Lane	478	0.8486%
Building 314	081	E. Railroad Avenue	479	0.8486%
	082	E. Railroad Avenue	477	0.7739%
	083	E. Railroad Avenue	475	0.7776%
	084	E. Railroad Avenue	473	0.7776%
	085	E. Railroad Avenue	471	0.7739%
	086	E. Railroad Avenue	469	0.8486%
Building 315	087	Broadmoor Lane	394	0.8486%
	088	Broadmoor Lane	390	0.7739%
	089	Broadmoor Lane	386	0.7776%
	090	Broadmoor Lane	382	0.7776%
	091	Broadmoor Lane	378	0.7739%
	092	Broadmoor Lane	374	0.8486%
Building 316	093	Broadmoor Lane	370	0.8486%
	094	Broadmoor Lane	366	0.7739%
	095	Broadmoor Lane	362	0.7776%
	096	Broadmoor Lane	358	0.7776%
	097	Broadmoor Lane	354	0.7739%
	098	Broadmoor Lane	350	0.8486%

# UNOFFICIAL COPY

Building 317	099	Broadmoor Lane	346	0.8486%
	100	Broadmoor Lane	342	0.7739%
	101	Broadmoor Lane	338	0.7776%
	102	Broadmoor Lane	334	0.7776%
	103	Broadmoor Lane	330	0.7739%
	104	Broadmoor Lane	326	0.8486%
Building 318	105	Broadmoor Lane	322	0.8486%
	106	Broadmoor Lane	318	0.7739%
	107	Broadmoor Lane	314	0.7776%
	108	Broadmoor Lane	310	0.7776%
	109	Broadmoor Lane	306	0.7739%
	110	Broadmoor Lane	302	0.8486%
Building 319	111	Broadmoor Lane	298	0.8486%
	112	Broadmoor Lane	294	0.7739%
	113	Broadmoor Lane	290	0.7776%
	114	Broadmoor Lane	286	0.7776%
	115	Broadmoor Lane	282	0.7739%
	116	Broadmoor Lane	278	0.8486%
Building 320	117	Broadmoor Lane	274	0.8486%
	118	Broadmoor Lane	270	0.7739%
	119	Broadmoor Lane	266	0.7776%
	120	Broadmoor Lane	262	0.7776%
	121	Broadmoor Lane	258	0.7739%
	122	Broadmoor Lane	254	0.8486%
Building 321	123	E. Railroad Avenue	437	0.8486%
	124	E. Railroad Avenue	435	0.7776%
	125	E. Railroad Avenue	433	0.7776%
	126	E. Railroad Avenue	431	0.8486%
TOTAL				100%

**\*NOTE**

Declarant reserves the right to amend this Exhibit "C" in the event the percentages are determined to be incorrect prior to transferring the Association to the Homeowners.

**UNOFFICIAL COPY**CONSENT

Illinois Tool Works, Inc., a Delaware corporation, mortgagee, hereby consents to the recording of the proceeding Declaration of Covenants, Conditions, Easements and Restrictions for ASBURY PLACE SUBDIVISION and the Plat of Subdivision for ASBURY PLACE previously recorded with the Cook County Recorder of Deeds on Jan. 27, 2004 as Document No. 0402719063.

Dated: July 9, 2004.

ILLINOIS TOOL WORKS, INC.,  
a Delaware Corporation

By: Mrs. Keech  
Its: DIRECTOR CORP. R.E.

js\w:\asbury\itw-consr.rec