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10/25/05

COMMUNITY DECLARATION FOR BROOKMERE

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COMMUNITY DECLARATION FOR BROOKMERE

This Community Declaration is made by Lord & Essex Matteson, LLC, an Illinois limited liability company, ("Declarant").

RECITALS

The Development Area is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called "Brookmere" (the "Development"). The Development shall include dwelling units and certain common areas.

Upon the Recording hereof, the Declarant shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Community Declaration as the Premises and shall designate portions of the Premises as either Dwelling Units or Community Area. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Community Declaration as Added Premises, as more fully described in Article Twelve, and shall designate portions of the Added Premises as either Dwelling Units or Community Area. Each portion of the Premises will be made subject to this Community Declaration and another declaration and each Owner of a Dwelling Unit shall be a member of both the Community Association and the association which administers the property which is subject to the other declaration. Nothing in this Community Declaration shall be construed as delegating the Community Association or authorizing the Community Association to exercise any rights or powers on behalf of any such association. It is not intended that the Community Association shall be a "master association" as defined in Section 18.5(a) of the Act (765 ILCS 605/18.5(a)). Nothing in this Community Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Community Declaration. Those portions of the Development Area which are not made subject to the provisions of this Community Declaration as Premises may be used for any purposes not prohibited by law.

The Declarant has formed, or will form, the Community Association under the Illinois General Not-For-Profit Corporation Act. The Community Association shall be responsible for administering and maintaining the Community Area, off-site Detention Areas and certain portions of dedicated right of ways and shall set budgets and fix assessments to pay the expenses incurred in connection therewith. Each Owner of a Dwelling Unit shall be a member of the Community Association and shall be responsible for paying assessments with respect to each Dwelling Unit owned by such Owner. It is not intended that the Community Association shall be a "common interest community association" as defined in Section 9-102(a)(8) of the Code of Civil Procedure (735 ILCS 5/9-102(a)(8)).

During the construction and marketing of the Development, the Declarant shall retain certain rights set forth in this Community Declaration, which rights shall include, without limitation, the right to come upon the Premises in connection with Declarant's efforts to sell portions of the Premises, the right, prior to the Turnover Date, to appoint all members of the Board, as more fully described in Article Nine, and other rights reserved in Article Nine.

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NOW, THEREFORE, the Declarant hereby declares as follows:

ARTICLE ONE

Definitions

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

1.01 ASSOCIATION MAINTAINED PUBLIC GREEN AREA: Those landscaped areas located on dedicated rights of way which serve the Development, and improvements thereon, if any (other than public roads), which are specifically designated in Part V of Exhibit B hereto as Association Maintained Public Green Area, as Exhibit B may be amended from time to time.

1.02 BOARD: The board of directors of the Community Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Five.

1.03 BY-LAWS: The By-Laws of the Community Association.

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

1.05 COMMERCIAL PROPERTY OWNER: The Commercial Property Owner as defined in the Cross Easement and Cost Sharing Agreement.

1.06 COMMUNITY AREA: Those portions of the Premises which are legally described in Part IV of Exhibit B hereto, as Exhibit B may be supplemented or amended from time to time. The Community Area will generally consist of and include detention or retention basins, entry monuments and related landscaping, a clubhouse, parks, walking paths, common green space and other facilities and improvements which serve the Development.

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

1.08 COMMUNITY ASSOCIATION: The Brookmere Community Association, an Illinois not-for-profit corporation, its successors and assigns.

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

1.10 COMMUNITY EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping on the Community Area, Detention Areas and Association Maintained Public Green

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Area (which may include maintenance of an irrigation system which may be installed on portions of the Association Maintained Public Green Area); the cost of maintenance, repair and replacement of improvements located on the Community Area, Detention Areas and Association Maintained Public Green Area; the cost of insurance for the Community Area; the cost of general and special real estate taxes, if any, levied or assessed against the Community Area owned by the Community Association; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Community Association in connection with the maintenance of the Community Area, Detention Areas and Association Maintained Public Green Area; and any expenses designated as Community Expenses by this Community Declaration. Notwithstanding the foregoing, Community Expenses shall not include any payments made out of the Capital Reserve.

1.11 CONDOMINIUM UNIT: A residential unit which is designated in Part III of Exhibit B as a "Condominium Unit".

1.12 CROSS EASEMENT AND COST SHARING AGREEMENT: That certain Cross Easement and Cost Sharing Agreement Recorded on _____ as Document No. _____.

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

1.14 DECLARANT: Lord & Essex Matteson, LLC, an Illinois limited liability company, its successors and assigns.

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

1.16 DETACHED HOME: A single family detached home which is designated in Part III of Exhibit B hereto as a "Detached Home".

1.17 DETENTION AREAS: As defined in the Cross Easement and Cost Sharing Agreement.

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

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1.19 DWELLING UNIT: A portion of the Premises which is improved with a single family residential unit for which a temporary, conditional or final certificate of occupancy has been issued by the Municipality. A Dwelling Unit may be a subdivided lot which is improved with a Detached Home, a subdivided lot (or a portion thereof) which is improved with a Townhome, or a Condominium Unit.

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

1.21 LOT: A subdivided lot which is designated in Part II of Exhibit B hereto as either a Detached Home Lot or a Townhome Lot.

1.22 MUNICIPALITY: The Village of Matteson, Illinois or any political entity which may from time to time be empowered to perform the functions or exercise the powers vested in the Municipality as of the Recording of this Community Declaration.

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

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

1.25 PLAT: That certain Final Plat of Subdivision of Brookmere Subdivision, recorded in Cook County on August 28, 2003, as Document No. 03240190912.

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

1.27 RECORD: To record in the office of the Recorder of Deeds for the County.

1.28 RESIDENT: An individual who legally resides in a Dwelling Unit.

1.29 TOWNHOME: A single family attached home which is designated in Part III of Exhibit B hereto as a "Townhome".

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

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

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ARTICLE TWO

Scope of Community Declaration

2.01 PROPERTY SUBJECT TO COMMUNITY DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to, and by Recording this Community Declaration, does hereby subject the Premises to the provisions of this Community Declaration. Declarant reserves the right and power to add real estate to the terms of this Community Declaration, as more fully provided in Article Twelve.

2.02 CONVEYANCES SUBJECT TO COMMUNITY DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Community Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the premises, and their respective heirs, successors, personal representatives or assigns, regardless of whether the deed or other instrument which creates or conveys the interest makes reference to this Community Declaration.

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

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

2.05 ACCESS EASEMENT: Each Owner of a Dwelling Unit shall have a non-exclusive perpetual easement for ingress to and egress from his Dwelling Unit to public streets and roads, over and across the roads, driveways and walkways located on the Community Area, which easement shall run with the land, be appurtenant to and pass with title to every Dwelling Unit. The Municipality or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over roads and driveways located on the Community Area for police, fire, ambulance, waste removal, snow removal, or for the purpose of furnishing municipal or emergency services to the Premises. The Community Association, its employees, agents and contractors, shall have the right of ingress to, egress from, and parking on the Community Area, and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements of the Community Area, Detention Areas or Association Maintained Public Green Area, as required or permitted hereunder.

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2.06 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area and the exclusive right to use and enjoy the Owner's Dwelling Unit. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Dwelling Unit and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Community Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Community Association, including the right of the Community Association to come upon any portion of the Premises to furnish services hereunder.

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

2.08 UTILITY EASEMENTS: The Municipality and all public and private utilities (including cable companies) serving the Premises are hereby granted the right to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment, into and through the Community Area for the purpose of providing utility services to the Premises or any other portion of the Development Area.

2.09 EASEMENTS, LEASES, LICENSES AND CONCESSIONS: The Community Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Community Area for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners. Any and all proceeds from leases, easements, licenses or concessions with respect to the Community Area shall be used to pay the Community Expenses. Also, the Community Association shall have the right and power to dedicate any part or all of the roads or parking areas located on the Community Area to the Municipality, but only with the Municipality's approval. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Dwelling Unit, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Community Association and duly Recorded.

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

2.11 NO DEDICATION TO PUBLIC USE: Except for easements granted or dedications made as permitted in Section 2.09, nothing contained in this Community Declaration

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

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

2.13 REAL ESTATE TAXES FOR COMMUNITY AREA: If a tax bill is issued with respect to Community Area which is made subject to this Community Declaration in the middle of a tax year (regardless of when it is conveyed to the Association), then the tax bill shall be prorated so that the Declarant shall be responsible for the payment of that portion of the tax bill from January 1st of the tax year to the date that such Community Area is made subject to this Community Declaration, and the Association shall be responsible for the balance of the tax bill.

2.14 STORM WATER DRAINAGE: The Community Association, for itself and on behalf of its members, shall have the right to deposit storm water runoff in the Detention Areas, subject to reasonable rules and regulation adopted from time to time by the Municipality or the Board. The Community Association shall maintain and administer the Detention Areas pursuant to the terms set forth in the Cross Easement and Cost Sharing Agreement.

ARTICLE THREE

Maintenance

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

3.02 MAINTENANCE/ REPAIR/ REPLACEMENT BY ASSOCIATION:

(a) The following maintenance, repairs and replacements shall be furnished by the Community Association as a Community Expense:

(i) Added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Community Area, Detention Areas and Association Maintained Public Green Area;

(ii) Maintenance, repair and replacement of all recreational facilities, monument signs and other improvements from time to time located on the Community Area;

(iii) Maintenance, repair and replacement of improvements, including, but not limited to an irrigation system, if any, on the Association Maintained Public Green Area and those improvements which are specifically designated in Part V of Exhibit B hereto as being the responsibility of the Community Association to maintain; and

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(iv) Maintenance, repair and replacement of Detention Areas, as more fully provided in the Cross Easement and Cost Sharing Agreement.

(b) The cost of any maintenance repair and replacement furnished by the Association pursuant to this Section shall be Community Expenses; provided, however that the Community Association shall pay a share of certain costs and the Commercial Property Owner shall pay a share of certain costs to maintain and repair the Detention Areas and maintain, repair and replace any improvements appurtenant thereto as provided in the Cross Easement and Cost Sharing Agreement.

3.03 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA: Subject to the provisions of Article Nine, no alterations, additions or improvements shall be made to the Community Area or Association Maintained Public Green Area without the prior approval of the Board and, if required under applicable Municipality ordinances, the approval of the Municipality. The Community Association may cause alterations, additions or improvements to be made to the Community Area or Association Maintained Public Green Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05; except, that, any such alteration, addition or improvement which shall cost more than six (6) months assessments then in effect under the then current budget shall be approved in advance at a special meeting of the Owners.

3.04 CERTAIN UTILITY COSTS: Certain utility costs incurred in connection with the use, operation and maintenance of the Community Area may not be separately metered and billed to the Community Association. If the cost for any such utility is metered and charged to individual Dwelling Units rather than being separately metered and charged to the Community Association, then the following shall apply:

(a) If in the opinion of the Board, each Owner is sharing in a fair and equitable manner the cost for such service, then no adjustment shall be made and each Owner shall pay his own bill; or

(b) If in the opinion of the Board, the Owner is being charged disproportionately for costs allocable to the Community Area, then the Community Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Board is properly allocable to the Community Area and Association Maintained Public Green Area and the amount thereof shall be Community Expenses hereunder.

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

3.05 DAMAGE BY RESIDENT: If, due to the act or omission of a Resident of a Dwelling Unit, or of a household pet or guest or other authorized occupant or invitee of the Owner of a Dwelling Unit, damage shall be caused to the Community Area or Association Maintained Public Green Area and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Community Expense, then the Owner of the Dwelling Unit

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shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance carried by the Community Association.

ARTICLE FOUR Insurance/Condemnation

4.01 COMMUNITY AREA INSURANCE:

(a) The Community Association shall have the authority to and shall obtain fire and all risk coverage insurance covering the improvements, if any, to the Community Area and other improvements required to be maintained by the Community Association, including, without limitation, those improvements on real estate which is owned by or dedicated to the Municipality which the Community Association is responsible for maintaining (based on current replacement cost for the full insurable replacement value of such improvements).

(b) The Community Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workers compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Community Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with, the Community Area or Association Maintained Public Green Area. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(c) Fidelity bonds indemnifying the Community Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Community Association or of any other person handling funds of the Community Association may be obtained by the Community Association in such amounts as the Board may deem desirable.

(d) The premiums for any insurance obtained under this Section shall be Community Expenses.

4.02 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Community Area, the proceeds awarded in such condemnation shall be paid to the Community Association and such proceeds, together with any Community Area Capital Reserve being held for such part of the Community Area, shall, in the discretion of the Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Community Area under this Community Declaration. Any acquisition by the Community Association pursuant to this Section of real estate which shall become Community Area

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hereunder shall not become effective unless and until a supplement to this Community Declaration, which refers to this Section and legally describes the real estate affected, is executed by the President of the Community Association and Recorded.

ARTICLE FIVE The Community Association

5.01 IN GENERAL: Declarant has caused the Community Association to be incorporated as a not-for-profit corporation under Illinois law. The Community Association shall be the governing body for all of the Owners for the limited purposes of the administration, operation, maintenance, repair and replacement of the Community Area, Detention Areas and Association Maintained Public Green Area, as provided herein.

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

5.03 VOTING MEMBERS: Subject to the provisions of Section 5.05, voting rights of the members of the Community Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Dwelling Unit. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Dwelling Unit shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Dwelling Unit shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given then the Board at its election may recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit.

5.04 BOARD: Subject to the rights retained by the Declarant under Section 9.05, the Board shall consist of that number of members provided for in the By-Laws, each of whom shall be an Owner or Voting Member.

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

5.06 DIRECTOR AND OFFICER LIABILITY: Neither the directors nor the officers of the Community Association shall be personally liable to the Owners or the Community

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

5.07 MANAGING AGENT: An independent managing agent may be engaged by the Community Association to act as the managing agent for the Community Association and as managing agent shall be paid a reasonable fee for its services as fixed by a written agreement between the Community Association and managing agent. Any management agreement entered into by the Community Association prior to the Turnover Date shall have a term of not more than two years and shall be terminable by the Community Association without payment of a termination fee on ninety (90) days written notice.

5.08 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the Community Association without first holding a special meeting of the members and obtaining the affirmative vote of Voting Members representing at least seventy-five percent (75%) of the total votes to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Community Association to enforce the provisions of this Community Declaration, the By-Laws or rules and regulations adopted by the Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Community Association in proceedings instituted against it.

ARTICLE SIX Assessments

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Community Association shall be for the purpose of promoting the recreation, health, safety, and welfare of the Community Association, to administer the affairs of the Community Association, to pay the Community Expenses and accumulating reserves for any such expenses.

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

- (a) The estimated Community Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Community Expenses;
- (c) The estimated net available cash receipts from the operation and use of the Community Area, plus amounts received pursuant to the Cross Easement and Cost Sharing Agreement;
- (d) The amount of the "Community Assessment" payable by the Owners of Dwelling Units, which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above; and
- (e) That portion of the Community Assessment which shall be payable by the Owner of each Dwelling Unit which is subject to assessment hereunder each month until the next Community Assessment or revised Community Assessment becomes effective, which monthly amount shall be equal to the Community Assessment, divided by the number of Dwelling Units as shown on the Declarant's Development Plan, divided by 12, so that each Owner shall pay equal Community Assessments for each Dwelling Unit owned.

Anything herein to the contrary notwithstanding the following provisions shall apply with respect to the period prior to the Turnover Date. Any budget ("Stabilized Budget") prepared by the Board prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's Development Plan and (ii) all proposed Dwelling Units have been sold and are occupied. The Declarant's Development Plan shall be kept on file with the Community Association and may be modified from time to time by Declarant. Declarant shall not be obligated to pay any Community Assessments to the Community Association prior to the Turnover Date. However, if with respect to the period commencing on the date of the Recording of this Declaration and ending on the Turnover Date, the amount of Community Assessments payable by Owners (other than Declarant) less the portions thereof which are to be added to Reserves, plus the amount of working capital contributions made by Owners pursuant to Section 6.07 hereof, is less than the Community Expenses which are actually incurred with respect to such period for such purpose, then the Declarant shall pay the difference to the Community Association. From time to time prior to the Turnover Date, the Declarant may deposit with the Community Association amounts which reasonably approximate Declarant's obligation hereunder as estimated by the Declarant. A final accounting and settlement of the amount, if any, owed by Declarant to the Community Association, or vice versa, shall be made as soon as practicable after the Turnover Date.

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6.03 PAYMENT OF COMMUNITY ASSESSMENT:

(a) Each Owner of a Dwelling Unit which is subject to assessment shall pay to the Community Association, or as the Board may direct, that portion of the Community Assessment which is payable by each Owner of a Dwelling Unit under Section 6.02, at such times as the Board shall determine from time to time. For purposes hereof, a Dwelling Unit shall be subject to assessment hereunder from and after such time as an occupancy certificate has been issued by the Municipality with respect to the Dwelling Unit.

(b) At the request of the Community Association, an Association ("Sub-Association") which administers property which contains Dwelling Units hereunder ("Sub-Association Dwelling Units") shall invoice the Owners of Sub-Association Dwelling Units for Community Assessments payable by such Owners based on information furnished to the Sub-Association by the Community Association. If the Sub-Association sends such invoices and receives payment from an Owner, the Sub-Association shall remit the amount received to the Community Association. If an Owner pays a portion of the full amount invoiced to the Owner for the Community Assessments and other amounts owed to the Sub-Association, without designating how the payment is to be applied, then the payment shall be applied first to current amounts owed to the Sub-Association, then to current amounts owed to the Community Association (which were invoiced by the Sub-Association), then to delinquent amounts owed to the Sub-Association, then to delinquent amounts owed to the Community Association (which were invoiced by the Sub-Association). The Sub-Association may charge the Community Association a fee for its services under this Section which fee shall reasonably approximate the additional costs incurred by the Sub-Association to furnish such services.

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

6.05 SPECIAL ASSESSMENT: The Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Community Expenses incurred (or to be incurred) by the Community Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Community Area, Detention Areas, Association Maintained Public Green Area or any other property owned or maintained by the Community Association; or (ii) to cover an unanticipated deficit under the prior year's budget (but only for periods after the Turnover Date). Any special assessment shall be levied against all of Dwelling Units in using the procedure provided for in Section 6.02. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in

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such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.06 CAPITAL RESERVE: The Community Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Community Area, Detention Areas and Association Maintained Public Green Area (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Area, Detention Areas and Association Maintained Public Green Area which are required to be maintained by the Community Association hereunder and periodic projections of the cost of anticipated major repairs or replacements to such property and the purchase of other property to be used by the Community Association in connection with its duties hereunder. The Capital Reserve may be built up by separate or special assessments or out of the Community Assessment as provided in the budget. Special accounts set up for portions of the Capital Reserve to be used to make capital expenditures with respect to the Community Areas shall be held by the Community Association as agent and trustee for the Owners of Dwelling Units with respect to which the Capital Reserve is held and such accounts shall be deemed to have been funded by capital contributions to the Community Association by the Owners. The budgets which will be adopted from time to time by the Boards appointed by the Declarant prior to the Turnover Date shall include reserve buildups which the Board deems to be appropriate based on information available to the Board. Boards elected by the Owners after the Turnover Date may use different approaches from those used by Boards appointed by the Declarant for the buildup of reserves or may choose not to provide for the buildup of reserves for certain capital expenditures or deferred maintenance for repairs or replacements of the Community Areas. If the Board chooses not to provide for the buildup of reserves for a particular anticipated expenditure or if the buildup of reserves that the Board does provide for in its budgets does not result in sufficient funds to pay for the expenditure when the expenditure must be made, then (i) neither the Board nor any of its past or present members shall be liable to the Community Association or the Owners for failing to provide for sufficient reserves and (ii) the Board shall have the right and power to either levy a separate or special assessment to raise the funds to pay the expenditure or to borrow funds to pay the expenditure and repay the borrowed funds out of future Community Assessments, separate assessments or special assessments.

6.07 INITIAL CONTRIBUTION/ADVANCE PAYMENT OF ASSESSMENT: Upon the closing of the first sale of a Dwelling Unit by the Declarant, the purchasing Owner shall pay to the Community Association an amount equal to (i) two (2) months of the annual Community Assessment at the rate which shall become effective with respect to the Dwelling Unit as of the closing, which amount shall be held and used by the Community Association for its working capital needs, plus (ii) one hundred dollars (\$100.00), which shall be added to the Capital Reserve.

6.08 PAYMENT OF ASSESSMENTS: Assessments levied by the Community Association shall be collected from each Owner by the Community Association and shall be a

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lien on the Owner's Dwelling Unit and also shall be a personal obligation of the Owner in favor of the Community Association, all as more fully set forth in Article Seven.

ARTICLE SEVEN

Collection of Charges and Remedies for Breach or Violation

7.01 CREATION OF LIEN AND PERSONAL OBLIGATION: The Declarant hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance), shall be and is deemed to covenant and hereby agrees to pay to the Community Association all Charges made with respect to the Owner on the Owner's Dwelling Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Community Association.

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

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

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

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7.05 SELF-HELP BY BOARD: In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Community Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach.

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

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

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

ARTICLE EIGHT

Restrictions Relating to the Community Area

8.01 USE RESTRICTIONS: No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Community Area.

8.02 SIGNS: Subject to the provisions of Article Nine, no sign of any kind shall be maintained or permitted on any part of the Community Area, except as permitted by the Board.

8.03 OBSTRUCTIONS AND REFUSE: Except as permitted under Article Nine, there shall be no obstruction of the Community Area. No Owner shall store any items or materials in the Community Area without the prior written consent of the Board. The Community Area shall

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be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon.

8.04 PETS: No animal of any kind shall be raised, bred or kept in any part of the Community Area. The Board may from time to time adopt rules and regulations governing the use of the Community Area by pets. Any pet causing or creating a nuisance or unreasonable disturbance to an Owner shall be permanently removed from the Premises upon three (3) days written notice from the Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final.

8.05 PROSCRIBED ACTIVITIES: No noxious or offensive activity shall be carried on in the Community Area nor shall anything be done therein, either willfully or negligently, which may be or become an unreasonable annoyance or nuisance to the Residents. There shall be no swimming, fishing, boating, ice skating or use of personal flotation devices in or on any lake or detention area on the Community Area, it being intended that such areas shall be aesthetic amenities only and shall not be used for active recreational purposes.

8.06 PROHIBITED USES AND STRUCTURES: Unless permitted by the Board, no clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Community Area. Except as permitted under Section 9.03 there shall be no obstruction of the Community Area and nothing shall be stored in the Community Area without the prior written consent of the Board.

8.07 PARKING: No boats, trailers, trucks (other than a pick up truck), recreational vehicles or similar vehicles shall be stored or parked overnight on any portion of the Community Area except as permitted under rules and regulations adopted by the Board.

8.08 RULES AND REGULATIONS: The use and enjoyment of the Community Area shall at all times be subject to reasonable rules and regulations duly adopted by the Community Association from time to time.

ARTICLE NINE

Declarant's Reserved Rights and Special Provisions Covering Development Period

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

9.02 PROMOTION OF PROJECT: The Declarant shall have the right and power, within its sole discretion, to (i) construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Declarant may, from time to time,

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determine to be necessary or advisable, (ii) construct and maintain model homes, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable and to use such model homes (including model homes which are sold and leased back to the Declarant), sales or leasing offices or other facilities for the purpose of selling or leasing Dwelling Units on the Premises or at other properties in the general location of the Premises which are being offered for sale by the Declarant or any of its affiliates, without the payment of any fee or charge whatsoever to the Community Association. Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Community Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any Home owned by it to any person or entity which it deems appropriate in its sole discretion.

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

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

9.05 DECLARANT CONTROL OF COMMUNITY ASSOCIATION: The first and all subsequent Boards shall consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not, be members under Section 5.02. Declarant's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any part of the Development Area, (ii) the giving of written notice by Declarant to the Community Association of Declarant's election to terminate such rights, or (iii) fifteen (15) years from the date of Recording hereof. The date on which the Declarant's rights under this Section shall terminate shall be referred to as the "Turnover Date". From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Declarant and the Owners shall have no voting rights.

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

ARTICLE TEN Amendment

10.01 SPECIAL AMENDMENTS: Anything herein to the contrary notwithstanding, Declarant reserves the right and power to Record a special amendment ("Special Amendment") to this Community Declaration at any time and from time to time which amends this Community Declaration (i) to comply with requirements of Fannie Mae, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Dwelling Units, (iii) to correct errors, omissions, ambiguities or inconsistencies in the Community Declaration or any Exhibit, (iv) to bring the Community Declaration into compliance with applicable laws, ordinances or governmental regulations, (v) to amend Exhibit A to include additional real estate or (vi) to amend Exhibit B to add newly created Condominium Units to Section III of Exhibit B to reflect the recording of a condominium declaration or a supplement to a condominium declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as (i) the Development has been fully developed and improved per Declarant's Development Plan, and (ii) Declarant no longer holds or controls title to any portion of the Development Area.

10.02 AMENDMENT: Subject to Section 10.01 and Article Twelve, the provisions of this Community Declaration may be amended, abolished, modified, enlarged, or otherwise changed in whole or in part by the affirmative vote of Voting Members representing at least seventy-five percent of the total votes or by an instrument executed by Owners of at least seventy-five Percent (75%) of the Dwelling Units; except, that (i) the provisions of this Section 10.02 may be amended only by an instrument executed by all of the Owners and all First Mortgagees, and (ii) Article Nine, and any other provisions relating to the rights of Declarant may be amended only with the written consent of the Declarant. No amendment which removes Premises from the provisions of this Community Declaration shall be effective if as a result of such removal, an Owner of a Dwelling Unit shall no longer have the legal access to a public way from his Dwelling Unit. No amendment which affects the rights of the Municipality shall be effective unless the Municipality has given its prior written consent thereto. No amendment shall become effective until properly Recorded.

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ARTICLE ELEVEN First Mortgagees Rights

11.01 NOTICE TO FIRST MORTGAGEES: Upon the specific, written request of First Mortgagee or the insurer or guarantor of a First Mortgagee's mortgage, such party shall receive some or all of the following:

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Community Declaration by the Community Association to the Owner of the Dwelling Unit covered by the First Mortgagee's mortgage;

(b) Any audited or unaudited financial statements of the Community Association which are prepared for the Community Association and distributed to the Owners; provided, that, if an audited statement is not available, then upon the written request of the holder, insurer or guarantor of a Mortgage, the Community Association shall permit such party to have an audited statement for the preceding fiscal year of the Community Association prepared at such party's expense;

(c) Copies of notices of meetings of the Owners;

(d) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Community Area.

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

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

(g) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Community Association.

The request of any such party shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Community Association.

11.02 INSURANCE PROCEEDS/CONDEMNATION AWARDS: In the event of (i) any distribution of any insurance proceeds hereunder as a result of damage to, or destruction of, any part of the Community Area or (ii) any distribution of the proceeds of any award or settlement as a result of condemnation or eminent domain proceedings with respect to any part of the Community Area, any such distribution shall be made to the Owners and their respective First Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the First Mortgagee of a Dwelling Unit with respect to any such distribution to or

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with respect to such Dwelling Unit; provided, that, nothing in this Section shall be construed to deny to the Community Association the right (i) to apply insurance proceeds to repair or replace damaged Community Area or (ii) to apply proceeds of any award or settlement as a result of eminent domain proceedings as provided in Article Four.

ARTICLE TWELVE Annexing Additional Property

12.01 IN GENERAL: Declarant reserves the right at any time and from time to time prior to fifteen (15) years from the date of Recording of this Community Declaration to annex, add and subject additional portions of the Development Area to the provisions of this Community Declaration as additional Premises by recording a supplement to this Community Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Premises which is subjected to this Community Declaration by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Community Area shall be referred to as "Added Community Area"; any Dwelling Units contained in the Added Premises shall be referred to as "Added Dwelling Units". After the expiration of said fifteen (15) year period, Declarant may exercise the rights described herein to annex, add and subject additional portions of the Premises to the provisions of this Community Declaration, provided that the consent of the Owners (by number) of two-thirds (2/3) of all Dwelling Units then subject to this Community Declaration is first obtained.

12.02 POWER TO AMEND: Declarant hereby reserves the right and power to Record a Supplemental Declaration, at any time and from time to time as provided in Section 12.01, which amends or supplements Exhibit B. Exhibit B may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit B, identify Added Dwelling Units and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Premises or the rights and obligations of owners of any part or parts of the Added Premises as the Declarant deems necessary or appropriate.

12.03 EFFECT OF SUPPLEMENTAL DECLARATION: Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects Added Premises, Added Community Area, Added Dwelling Units to this Community Declaration, as provided in this Article, then:

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

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

(c) In all other respects, all of the provisions of this Community Declaration shall include and apply to the Added Premises made subject to this Community Declaration by any such Supplemental Declaration and the Owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect and the same as if such Added Premises were subjected to this Community Declaration at the time of the Recording hereof;

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

(e) The Declarant shall have and enjoy with respect to the Added Premises all rights, powers and easements reserved by the Declarant in this Community Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(f) Each Owner of an Added Dwelling Unit which is subject to assessment hereunder shall be responsible for the payment of the Community Assessment pursuant to Section 6.02, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Dwelling Unit became subject to assessment hereunder.

ARTICLE THIRTEEN

Miscellaneous

13.01 NOTICES: Any notice required to be sent to any Owner under the provisions of this Community Declaration or the By-Laws shall be deemed to have been properly sent if (i) mailed, postage prepared, to his or its last known address as it appears on the records of the Community Association at the time of such mailing, (ii) transmitted by facsimile or e-mail to his or its facsimile number or e-mail address as either appears on the records of the Community Association at the time of such transmittal, or (iii) when personally delivered to his or its Dwelling Unit. The date of mailing, or the date of transmission if the notice is sent by facsimile or e-mail, shall be deemed the date of service.

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

13.03 SEVERABILITY: Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment or court order shall

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in no way affect any other provisions of this Community Declaration which shall, and all other provisions, remain in full force and effect.

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

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

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

13.07 WAIVER OF IMPLIED WARRANTY OF HABITABILITY: Illinois courts have held that every contract for the construction of a new home in Illinois carries with it a warranty that when completed, the home will be free of defects and will be fit for its intended use as a home. The courts have also held that this "Implied Warranty of Habitability" does not have to be in writing to be a part of the contract and that it covers not only structural and mechanical defects such as may be found in the foundation, roof, masonry, heating, electrical and plumbing, but it also covers any defect in workmanship which may not easily be seen by the buyer. However, the courts have also held that a seller-builder and buyer may agree in writing that the Implied Warranty of Habitability is not included as a part of their particular contract. Each buyer of a Dwelling Unit from Declarant agreed in the purchase contract that the Declarant has excluded and disclaimed the Implied Warranty of Habitability and all other implied warranties, whether created judicially, statutorily or by common law, including the implied warranty of fitness for a

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particular purpose. Such exclusion and disclaimer shall apply to and bind any subsequent Owner of a Dwelling Unit and, accordingly, no Owner of a Dwelling Unit shall be able to assert a claim against Declarant for a breach of the Implied Warranty of Habitability or any other implied warranty.

Dated: October 25, 2005

DECLARANT:

LORD & ESSEX MATTESON, LLC, an Illinois
limited liability company

By: _____

John J. Popp, Jr., Managing Member

STATE OF ILLINOIS)

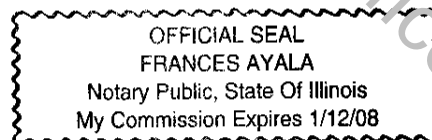
) SS

COUNTY OF Kane)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John J. Popp, Jr., as Managing Member of Lord & Essex Matteson, LLC, an Illinois limited liability company (the "Company") personally known to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act, and as the free and voluntary act of the Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 25 day of October, 2005.

Frances Ayala
Notary Public



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JOINDER TO COMMUNITY DECLARATION FOR BROOKMERE

The undersigned, Estates at Brookmere, LLC, an Illinois limited liability company, as the legal title holder of the Dwelling Units listed in Section III(A) of Exhibit B hereto (Estates Dwelling Units"), hereby joins in the Declaration to which this Joinder is attached for the sole purpose of making the Estates Dwelling Units subject to the Declaration as part of the Premises.

Dated: October 25, 2005.

ESTATES AT BROOKMERE, LLC, an Illinois
limited liability company

By:

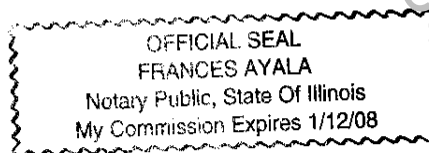
John J. Popp, Jr., its Managing Member

STATE OF ILLINOIS)
) SS
COUNTY OF Yone

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John J. Popp, Jr., as the Managing Member of Estates at Brookmere, LLC, an Illinois limited liability company (the "Company") personally known to be the same person whose name is subscribed to the foregoing instrument as such, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 25 day of October, 2005.

Frances Ayala
Notary Public



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CONSENT OF MORTGAGEE

Geneva Leasing Associates, Inc., an Illinois corporation, as holder of a mortgage dated September 21, 2004, and Recorded in the office of the Recorder of Deeds of Cook County, Illinois, on November 9, 2004, as Document No. 0431418065, with respect to the Parcel, hereby consents to the Recording of this Declaration to which this Consent is attached and agrees that its mortgage shall be subject to the terms of this Declaration.

Dated Oct 26, 2005

ATTEST:

By: Ellen Straebel
Ellen Straebel
Vice President

By: Scott Fedyski
Its: LOAN ADMINISTRATOR

STATE OF ILLINOIS)
) SS.
COUNTY OF DuPage

The undersigned, a Notary Public in and for said County and State, do hereby certify that Ellen Straebel and Scott Fedyski, the Vice President and Loan Administrator, respectively, of Geneva Leasing Associates, Inc., an Illinois corporation (the "Mortgagee"), appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Mortgagee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 26th day of October, 2005.

Deneen L. Funk
Notary Public

My Commission Expires: 01/30/09



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EXHIBIT A TO COMMUNITY DECLARATION FOR BROOKMERE

The Development Area

All Lots and Outlots in Brookmere Subdivision, being a resubdivision of Matteson Commons Subdivision in the East Half of Section 16, Township 35 North, Range 13 East of the Third Principal Meridian, in the Village of Matteson, pursuant to the plat thereof recorded in Cook County, Illinois, on August 28, 2003, as Document No. 0324019012.

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EXHIBIT B TO COMMUNITY DECLARATION FOR BROOKMERE

The Premises

I. THE PREMISES

- A. Lots 1 through 146 in First Resubdivision of Lot 4 in Brookmere, being a subdivision of Lot 4 in Brookmere Subdivision in the East Half of Section 16, Township 35 North, Range 13 East of the Third Principal Meridian in the Village of Matteson, pursuant to the plat thereof recorded August 4, 2004, as Document No. 0421744046 ("First Resubdivision of Lot 4").
- B. Lots C2-A, C2-B, C2-C, C2-D, C2-E and C2-F in Brookmere Subdivision, being a Resubdivision of Part of Matteson Commons Subdivision in the East Half of Section 16, Township 35 North, Range 13 East of the Third Principal Meridian, in the Village of Matteson, Cook County, Illinois, according to the plat thereof recorded August 28, 2003 as Document no. 0324019012 ("Brookmere Subdivision").

II. LOTS

A. DETACHED HOME LOT

Lots 1 through 146 in First Resubdivision of Lot 4.

B. TOWNHOME LOT

None at this time

III. DWELLING UNITS

A. DETACHED HOMES

Lots 1 through 145 in First Resubdivision of Lot 4.

B. TOWNHOMES

None at this time.

C. CONDOMINIUM UNITS

None at this time.

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IV. COMMUNITY AREA

- A. Lots C2-A, C2-B, C2-C, C2-D, C2-E and C2-F in Brookmere Subdivision

V. ASSOCIATION MAINTAINED PUBLIC GREEN AREA

- A. All landscaping and improvements, including streetlights, located on cul de sac islands and boulevards in Brookmere Subdivision, pursuant to the plat thereof recorded in Cook County, Illinois, as Document No. 0324019012, to the extent not maintained by the Municipality.

- B. Outlots F through I in First Resubdivision of Lot 4.

ADDRESSES: Various addresses on Bowman Street, Gibson Street, Halloway Street, Henson Court, Lawrence Lane and Stephens Street, all in Matteson, Illinois.