

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED  
BY AND SHOULD BE RETURNED  
TO:

M/I Homes of Chicago, LLC  
400 E. Diehl Road, Suite 230  
Naperville, IL 60563  
Attn: Debbie Lenius  
PINs: See Exhibit B



Doc#: 1512818013 Fee: \$104.00  
RHSP Fee:\$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 05/08/2015 08:51 AM Pg: 1 of 34

ABOVE SPACE FOR RECORDER'S USE ONLY

## DECLARATION FOR KETTERING

### TABLE OF CONTENTS

ARTICLE ONE	Definitions .....	4
1.01	ASSOCIATION .....	5
1.02	CHARGES .....	5
1.03	COMMUNITY AREA .....	5
1.04	COMMUNITY ASSESSMENT .....	5
1.05	COMMUNITY EXPENSES .....	5
1.06	COUNTY .....	5
1.07	DECLARANT .....	5
1.08	DECLARATION .....	5
1.09	DESIGNATED BUILDER .....	5
1.10	DEVELOPMENT AREA .....	5
1.11	FIRST MORTGAGEE .....	6
1.12	HOME .....	6
1.13	LOT .....	6
1.14	MANAGERS .....	6
1.15	MUNICIPALITY .....	6
1.16	OPERATING AGREEMENT .....	6
1.17	OWNER .....	6
1.18	PERSON .....	6
1.19	PREMISES .....	6
1.20	RECORD .....	6
1.21	RESIDENT .....	6
1.22	TURNOVER DATE .....	6
1.23	VOTING MEMBER .....	6
ARTICLE TWO	Scope of Declaration .....	7
2.01	PROPERTY SUBJECT TO DECLARATION .....	7
2.02	CONVEYANCES SUBJECT TO DECLARATION .....	7
2.03	DURATION .....	7
2.04	LOT CONVEYANCE .....	7
2.05	ACCESS EASEMENT .....	7
2.06	RIGHT OF ENJOYMENT .....	7
2.07	DELEGATION OF USE .....	8
2.08	RULES AND REGULATIONS .....	8
2.09	UTILITY EASEMENTS .....	8
2.10	EASEMENTS, LEASES, LICENSES AND CONCESSIONS .....	8

# UNOFFICIAL COPY

2.11 ASSOCIATION'S ACCESS .....	8
2.12 NO DEDICATION TO PUBLIC USE.....	8
2.13 OWNERSHIP OF COMMUNITY AREA.....	8
2.14 REAL ESTATE TAXES FOR COMMUNITY AREA .....	9
<b>ARTICLE THREE Maintenance</b> .....	<b>9</b>
3.01 IN GENERAL.....	9
3.02 MAINTENANCE, REPAIR AND REPLACEMENT BY ASSOCIATION .....	9
3.03 MAINTENANCE BY OWNER.....	10
3.04 CERTAIN UTILITY COSTS.....	10
3.05 DAMAGE BY RESIDENT.....	10
3.06 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA .....	10
3.07 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO LOTS.....	10
<b>ARTICLE FOUR Insurance/Condemnation</b> .....	<b>11</b>
4.01 COMMUNITY AREA .....	11
4.02 CONDEMNATION.....	12
<b>ARTICLE FIVE The Association</b> .....	<b>12</b>
5.01 IN GENERAL.....	12
5.02 MEMBERSHIP .....	12
5.03 VOTING MEMBERS .....	12
5.04 MANAGERS .....	12
5.05 VOTING RIGHTS .....	12
5.06 DIRECTOR AND OFFICER LIABILITY .....	13
5.07 MANAGING AGENT .....	13
5.08 DISSOLUTION .....	13
5.09 LITIGATION.....	14
<b>ARTICLE SIX Assessments</b> .....	<b>14</b>
6.01 PURPOSE OF ASSESSMENTS.....	14
6.02 COMMUNITY ASSESSMENT .....	14
6.03 PAYMENT OF COMMUNITY ASSESSMENT .....	15
6.04 REVISED ASSESSMENT.....	15
6.05 SPECIAL ASSESSMENT .....	15
6.06 CAPITAL RESERVE .....	16
6.07 INITIAL CAPITAL CONTRIBUTION.....	16
6.08 PAYMENT OF ASSESSMENTS.....	16
<b>ARTICLE SEVEN Collection of Charges and Remedies for Breach or Violation</b> .....	<b>17</b>
7.01 CREATION OF LIEN AND PERSONAL OBLIGATION.....	17
7.02 COLLECTION OF CHARGES .....	17
7.03 NON-PAYMENT OF CHARGES .....	17
7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES.....	17
7.05 SELF-HELP BY MANAGERS .....	17
7.06 OTHER REMEDIES OF THE MANAGERS.....	18
7.07 COSTS AND EXPENSES .....	18
7.08 ENFORCEMENT BY OWNERS .....	18
7.09 ENFORCEMENT BY DECLARANT.....	18
7.10 ENFORCEMENT BY MUNICIPALITY .....	19
7.11 BACKUP SPECIAL SERVICE AREA .....	19
<b>ARTICLE EIGHT Use Restrictions</b> .....	<b>19</b>
8.01 INDUSTRY/SIGNS .....	19
8.02 UNSIGHTLY USES .....	19
8.03 SATELLITE DISHES/ANTENNAE .....	20
8.04 RESIDENTIAL USE ONLY .....	20

# UNOFFICIAL COPY

8.05 PARKING .....	20
8.06 OBSTRUCTIONS.....	20
8.07 PETS .....	20
8.08 NO NUISANCE .....	20
8.09 HAZARDOUS ACTIONS OR MATERIALS .....	20
8.10 WATERING.....	21
8.11 RULES AND REGULATIONS.....	21
8.12 CONSTRUCTION STANDARDS AND RESTRICTIONS .....	21
<b>ARTICLE NINE</b> Declarant's Reserved Rights and Special Provisions Covering Development Period .....	21
9.01 IN GENERAL .....	21
9.02 PROMOTION OF PROJECT .....	22
9.03 CONSTRUCTION ON PREMISES .....	22
9.04 GRANT OF EASEMENTS AND DEDICATIONS .....	22
9.05 DECLARANT CONTROL OF ASSOCIATION .....	22
9.06 OTHER RIGHTS .....	23
9.07 ASSIGNMENT BY DECLARANT.....	23
9.08 MATTERS AFFECTING COMMUNITY AREA.....	23
9.09 ARCHITECTURAL CONTROLS.....	23
<b>ARTICLE TEN</b> Amendment .....	24
10.01 SPECIAL AMENDMENTS.....	24
10.02 AMENDMENT .....	24
<b>ARTICLE ELEVEN</b> First Mortgagees Rights.....	24
11.01 NOTICE TO FIRST MORTGAGEES .....	24
11.02 CONSENT OF FIRST MORTGAGEES .....	25
11.03 INSURANCE PROCEEDS/CONDEMNATION AWARDS .....	26
<b>ARTICLE TWELVE</b> Annexing Additional Property .....	26
12.01 IN GENERAL .....	26
12.02 POWER TO AMEND.....	26
12.03 EFFECT OF SUPPLEMENTAL DECLARATION .....	27
<b>ARTICLE THIRTEEN</b> Miscellaneous .....	27
13.01 NOTICES .....	27
13.02 CAPTIONS .....	28
13.03 SEVERABILITY .....	28
13.04 PERPETUITIES AND OTHER INVALIDITY .....	28
13.05 TITLE HOLDING LAND TRUST .....	28
13.06 DESIGNATED BUILDERS .....	28
13.07 WAIVER OF IMPLIED WARRANTY OF HABITABILITY AND OTHER WARRANTIES .....	29

# UNOFFICIAL COPY

## DECLARATION FOR KETTERING

This Declaration is made by M/I HOMES OF CHICAGO, LLC, a Delaware limited liability company ("Declarant").

### RECITALS

Declarant is the record title holder of a portion of the Development Area which is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased single family home development called "Kettering" (the "Development"). The Development shall include dwelling units and certain common areas.

Initially, the Declarant shall subject the real estate which is legally described in Exhibit B hereto to the provisions of this Declaration as the Premises. From time to time the Declarant may subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as more fully described in Article Twelve. Nothing in this Declaration shall be construed to require the Declarant to subject additional portions of the Development Area to the provisions of this Declaration. Those portions of the Development Area which are not made subject to the provisions of this Declaration as Premises may be used for any purposes not prohibited by law.

Certain portions of the Premises are designated as Lots and other portions are designated as Community Area. The Declarant has formed (or will form) the Association under the Illinois Limited Liability Company Act. The Association shall have the responsibility for administering and maintaining the Community Area and shall set budgets and fix assessments to pay the expenses incurred in connection with such responsibility. Each Owner of a Lot shall be a member of the Association and shall be responsible for paying assessments with respect to the Lot owned by such Owner. It is not intended that the Association shall be a "common interest community association" as defined in Section 1-5 of the Common Interest Community Association Act (735 ILCS 160/1-5) or 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 Declaration, which rights shall include, without limitation, the right, prior to the Turnover Date, to manage the affairs of the Association or to designate the Managers of the Association and the right to come upon the Premises in connection with Declarant's efforts to sell Lots and other rights reserved in Article Nine and in the Operating Agreement.

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 Declaration are defined as follows:

# UNOFFICIAL COPY

1.01 ASSOCIATION: The Kettering Homeowners Association, LLC, an Illinois limited liability company, its successors and assigns.

1.02 CHARGES: The Community Assessment, any special assessment levied by the Association and/or any other charges or payments which an Owner is required to pay or for which an Owner is liable under this Declaration or the Operating Agreement.

1.03 COMMUNITY AREA: Those portions of the Premises which are described and designated as "Community Area" in Part II of Exhibit B hereto, together with all improvements located above and below the ground and rights appurtenant thereto. The Community Area shall generally include open space, landscaped areas, a detention area and shall not include any Lots.

1.04 COMMUNITY ASSESSMENT: The amounts which the 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.

1.05 COMMUNITY EXPENSES: The expenses of administration (including management and professional services), operation, maintenance, repair, replacement and landscaping and improvements located on the Community Area as more fully provided in Section 3.02; premiums for insurance policies maintained by the Association hereunder; the cost of, and the expenses incurred for, the maintenance, repair and replacement of personal property acquired and used by the Association in connection with the maintenance of the Community Area; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners. Notwithstanding the foregoing, Community Expenses shall not include (a) any payments made out of Capital Reserves, or (b) assessments due from Owners hereunder which are not paid when due and which are subsequently determined to be uncollectible and are written off as "bad debts".

1.06 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 Declaration.

1.07 DECLARANT: M/I Homes of Chicago, LLC, a Delaware limited liability company, its successors and assigns.

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

1.09 DESIGNATED BUILDER: Any legal entity which is designated, from time to time, by the Declarant as a "Designated Builder" in a Supplemental Declaration, as more fully provided in Section 13.06 hereof.

1.10 DEVELOPMENT AREA: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto, as Exhibit A may be amended as provided in Section 10.01. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of

# UNOFFICIAL COPY

the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this Declaration as part of the Premises. Any portions of the Development Area which are not made subject to the provisions of this 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.

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

1.12 HOME: That portion of a Lot which is improved with a single family home.

1.13 LOT: Each subdivided lot designated as a "Lot" in Part I of Exhibit B hereto, together with all improvements thereon and thereto.

1.14 MANAGERS: The manager or managers from time to time as appointed or elected as provided in this Declaration or the Operating Agreement.

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

1.16 OPERATING AGREEMENT: The Operating Agreement of the Association.

1.17 OWNER: A Record owner, whether one or more persons, of fee simple title to a Lot, including 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 Lot owned by the Declarant.

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

1.19 PREMISES: The real estate which is legally described in Exhibit B hereto, as amended or supplemented from time to time, with all improvements thereon and rights appurtenant thereto.

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

1.21 RESIDENT: An individual who resides in a Home.

1.22 TURNOVER DATE: The date on which the right of the Declarant to manage the affairs of the Association is terminated under Section 9.05.

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



# UNOFFICIAL COPY

## ARTICLE TWO Scope of Declaration

2.01 PROPERTY SUBJECT TO DECLARATION: Declarant, as the owner of fee simple title to the Premises, expressly intends to and by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration. Declarant reserves the right from time to time to add additional portions of the Development Area to the terms of this Declaration as more fully provided in Article Twelve hereof. Nothing in this Declaration shall be construed to obligate the Declarant to subject to this Declaration as Premises any portion of the Development Area other than those portions which are described in Exhibit B hereto or which are added to Exhibit B by Supplemental Declarations Recorded by Declarant pursuant to Article Twelve.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in 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 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 Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part as provided in Section 10.02.

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

2.05 ACCESS EASEMENT: Each Owner of a Lot shall have a non-exclusive perpetual easement for ingress to and egress from his Lot to public ways over and across the roads, driveways and walkways located on the Community Area, if any, which easement shall run with the land, be appurtenant to and pass with title to every Lot. The Municipality or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over roads, driveways and walkways located on the Community Area, if any, for police, fire, ambulance, waste removal, or for the purpose of furnishing municipal or emergency services to the Premises. The 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 to portions of the Premises provided for herein.

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 Lot. Such rights and easements shall run with the land, be appurtenant to and pass

# UNOFFICIAL COPY

with title to every Lot, and shall be subject to and governed by the provisions of this Declaration, the Operating Agreement, and the reasonable rules and regulations from time to time adopted by the Association.

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

**2.08 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 Managers from time to time.

**2.09 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 or other services to the Premises or any other portion of the Development Area.

**2.10 EASEMENTS, LEASES, LICENSES AND CONCESSIONS:** The 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 Managers deem 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 Managers deem 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 Association shall have the right and power to dedicate any part or all of the roads or parking areas located on the Community Area, if any, to the Municipality. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Lot, shall be deemed to grant a power coupled with an interest to the Managers, as attorney-in-fact, to grant, dedicate, 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 Association and duly Recorded.

**2.11 ASSOCIATION'S ACCESS:** The Association shall have the right and power to come onto any Lot for the purpose of furnishing the services required to be furnished hereunder, or enforcing its rights and powers hereunder.

**2.12 NO DEDICATION TO PUBLIC USE:** Except for easements granted or dedications made as permitted in Section 2.10, nothing contained in this Declaration 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.

**2.13 OWNERSHIP OF COMMUNITY AREA:** The Community Area shall be conveyed to the Association by Declarant free and clear of any mortgage or trust deed



# UNOFFICIAL COPY

whatsoever on or before the Turnover Date; provided, that, if any Community Area is made subject to this Declaration after the Turnover Date, such Community Area shall be conveyed to the Association free and clear of any mortgage or trust deed whatsoever simultaneously with such Community Area being made subject to this Declaration.

2.14 REAL ESTATE TAXES FOR COMMUNITY AREA: If a tax bill is issued with respect to Community Area which is made subject to this 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 1<sup>st</sup> of the tax year to the date that such Community Area is made subject to this Declaration, and the Association shall be responsible for the balance of the tax bill for such year, and any tax bills for subsequent years.

## 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 AND REPLACEMENT BY ASSOCIATION:

(a) Maintenance, repairs and replacement of the Community Area shall be furnished by the Association, and shall include, without limitation, the following:

(i) grass cutting, added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Community Area; and

(ii) maintenance, repair and replacement of improvements located on the Community Area.

(b) To the extent not maintained by the Municipality, the Association shall be responsible for maintenance, repairs and replacements of landscaped areas in the public right of way, if any.

(c) The Association shall maintain the grass, shrubs, trees, and flowers, if any, installed by the Declarant on the Community Area ("Initial Plantings") in accordance with generally accepted landscape maintenance standards, including mowing, trimming, fertilization, pruning, re-mulching, applications of insect and disease control, as needed, and any other maintenance which will promote the health of the Initial Plantings. If the Association fails to maintain the Initial Plantings in accordance with generally acceptable landscape maintenance standards and Initial Plantings die or decline as a result of this failure, then, the Association shall be responsible for the replacement of the declining or dead Initial Plantings, including, but not limited to replacements required by the Municipality in connection with the Municipality's acceptance of the Initial Plantings. All expenses incurred under this subsection shall be Community Expenses.

(d) The cost of any maintenance, repairs and replacements furnished by the Association pursuant to this Section shall be Community Expenses.

# UNOFFICIAL COPY

3.03 MAINTENANCE BY OWNER: Each Owner of a Lot shall cause the Lot and any improvements constructed or installed thereon, including, without limitation, the Home constructed thereon and any landscaping installed by the Declarant (if any), to be maintained so that the Lot, including improvements located thereon, remains substantially similar to its appearance when first conveyed to the Owner, or as modified as permitted pursuant to Section 3.07, ordinary, unavoidable wear and tear excepted.

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 Association. If the cost for any such utility is metered and charged to individual Homes rather than being separately metered and charged to the Association, then the following shall apply:

(a) If in the opinion of the Managers, 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 Managers, an Owner is being charged disproportionately for costs allocable to the Community Area, then the Association shall pay, or reimburse such Owner, an amount equal to the portion of the costs which in the reasonable determination of the Managers is properly allocable to the Community Area and the amount thereof shall be a Community Expense.

Any determinations or allocations made hereunder by the Managers 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 Home, or of a household pet or guest or other authorized occupant or invitee of the Owner, damage shall be caused to the Community Area and maintenance, repairs or replacements shall be required thereby, which would otherwise be a Community Expense, then the Owner of the Lot shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Managers, to the extent not covered by insurance carried by the Association.

3.06 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 without the prior approval of the Managers and if required, under applicable Municipal ordinances, the approval of the Municipality. The Association may cause alterations, additions or improvements to be made to the Community Area and the cost thereof may be paid from a special assessment, as more fully described in Section 6.05.

3.07 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO LOTS : No additions, alterations or improvements shall be made to any Lot or any part of the Home which is visible from outside the Home by an Owner without the prior written consent of the Managers and, until the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant. Notwithstanding the foregoing, there shall be no sheds or

# UNOFFICIAL COPY

above ground swimming pools permitted on any portion of the Premises. If an addition, alteration or improvement which requires the consent of the Managers and/or Declarant hereunder is made to a Lot by an Owner without the prior written consent of the Managers or Declarant, or both, as applicable, then (i) the Managers may, in its or their discretion, take either of the following actions; and (ii) until such time as the Declarant no longer owns or controls title to any portion of the Development Area, the Declarant may, in its discretion take either of the following actions:

- (a) Require the Owner to remove the addition, alteration or improvement and restore the Lot to its original condition, all at the Owner's expense; or
- (b) If the Owner refuses or fails to properly perform the work required under (a), may cause such work to be done and may charge the Owner for the cost thereof as determined by the Managers or the Declarant, as applicable.
- (c) Ratify the action taken by the Owner, and the Managers may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

## ARTICLE FOUR Insurance/Condemnation

### 4.01 COMMUNITY AREA INSURANCE:

- (a) The 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 Association (based on current replacement cost for the full insurable replacement value) of such improvements.
- (b) The 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 Association, its Managers, 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. The Managers may, in its or their discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the Managers 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 Association, the Managers and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling funds of the Association may be obtained by the Association in such amounts as the Managers may deem desirable.
- (d) The premiums for any insurance obtained under this Section shall be Community Expenses.

# UNOFFICIAL COPY

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

## ARTICLE FIVE The Association

5.01 IN GENERAL: Declarant has caused the Association to be organized as a limited liability company under Illinois law. The 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 as provided herein.

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

5.03 VOTING MEMBERS: Subject to the provisions of Section 9.05, voting rights of the members of the Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Lot. 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 Lot 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 Lot shall be designated by such Owner or Owners in writing to the Managers and if in the case of multiple individual Owners no designation is given, then the Managers at its or their election may recognize an individual Owner of the Lot as the Voting Member for such Lot.

5.04 MANAGERS: Prior to the Turnover Date, the Managers shall be the Declarant, or one or more entities or persons designated by the Declarant from time to time, who need not be Owners or Voting Members. After the Turnover Date, the Managers shall consist of that number of individuals provided for in the Operating Agreement, 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 Association shall be vested exclusively in the Declarant and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Association shall be vested in the Voting Members and each Voting Member

# UNOFFICIAL COPY

shall have one vote for each Lot 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 Operating Agreement) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the Operating Agreement.

5.06 MANAGERS' LIABILITY: The Managers of the Association shall not be personally liable to the Association or the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Managers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant, Declarant and each of the Managers, and his or their, executors or administrators, against all contractual and other liabilities to the Association, the Owners or others arising out of contracts made by or other acts of the Managers on behalf of the Owners or the Association or arising out of their status as Managers 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 Managers may be involved by virtue of such person being or having been such a Manager; 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 Manager, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Managers, 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 Manager.

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

5.08 DISSOLUTION. Although it is currently anticipated that the Association will own and maintain the Community Area, it is possible that a governmental agency may accept a dedication or conveyance of all of the Community Area and accept responsibility for maintenance of the Community Area. If that occurs and the Association has no maintenance responsibilities, then at the option of the Declarant (which may be exercised at any time prior to the Turnover Date) or at the option of the members of the Association (which may be exercised by action of the members after the Turnover Date), the Association shall be dissolved and liquidated and thereafter the provisions of this Declaration which deal with the powers and duties of the Association shall be null and void and of no further force and effect. Any distribution of assets of the Association shall be made to the Owners of Lots in equal amounts for each Lot owned.



# UNOFFICIAL COPY

5.09 LITIGATION: No judicial or administrative proceedings shall be commenced or prosecuted by the 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 Lots to the commencement and prosecution of the proposed action. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration, the Operating Agreement or rules and regulations adopted by the Managers (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Association in proceedings instituted against it.

## ARTICLE SIX Assessments

6.01 PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be limited to the purposes of maintaining the Community Area, administering the affairs of the Association, paying the Community Expenses, and accumulating reserves for any such expenses.

6.02 COMMUNITY ASSESSMENT: Each year on or before December 1, the Managers 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 including, without limitation, amounts to maintain the Capital Reserve;
- (c) The estimated net available cash receipts from the operation and use of the Community Area, plus estimated excess funds, if any, from the current year's assessments;
- (d) The amount of the "Community Assessment" payable by the Owners, which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus the amount determined in (c) above;
- (e) That portion of the Community Assessment which shall be payable with respect to the ensuing calendar year by the Owner of each Lot which is subject to assessment hereunder, which shall be equal to the Community Assessment, divided by the number of Lots, so that each Owner shall pay equal Community Assessments for each Lot owned. The Community Assessment shall be paid in periodic installments as determined by the Managers from time to time, but no less frequently than once each calendar year.

Anything herein to the contrary notwithstanding the provisions of this paragraph shall apply with respect to the period prior to the Turnover Date. Any budget prepared by the Managers prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's then current plan for the

# UNOFFICIAL COPY

Development ("Declarant's Development Plan") and (ii) all proposed Lots have been sold and all proposed Homes are occupied. The Declarant's Development Plan shall be kept on file with the Association and may be modified from time to time by Declarant. Prior to the Turnover Date, each Owner of a Lot (other than the Declarant) will pay, with respect to each Lot owned, a monthly Community Assessment equal to what such Owner would be paying with respect to the Owner's Lot if the Development were fully constructed pursuant to the Declarant's Development Plan and all proposed Homes have been built and are occupied. Declarant shall not be obligated to pay any Community Assessments to the 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 and working capital contributions under Section 6.07 payable by Owners (other than Declarant) less the portions thereof which are to be added to Reserves is less than the Community Expenses actually incurred with respect to such period, then the Declarant shall pay the difference to the Association. From time to time prior to the Turnover Date, the Declarant may (but shall not be obligated) advance to the Association funds to be used by the Association to pay its expenses ("Advanced Funds"). A final accounting and settlement of the amount, if any, owed by Declarant to the Association shall be made as soon as practicable after the Turnover Date. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, are less than the amount owed by the Declarant to the Association pursuant to this Section, the Declarant shall pay the difference to the Association. If, and to the extent that, the final accounting determines that the Advanced Funds, if any, exceed the amount owed by the Declarant to the Association pursuant to this Section, then the Association shall pay such excess to the Declarant.

**6.03 PAYMENT OF COMMUNITY ASSESSMENT:** On or before the 1st day of January of the ensuing calendar year, and on the first day of each month thereafter until the effective date of the next annual or revised Community Assessment, each Owner of a Lot which is subject to assessment shall pay to the Association, or as the Managers may direct, that portion of the Community Assessment which is payable by each Owner of a Lot under Section 6.02(e). For purposes hereof, a Lot shall only be subject to assessment hereunder from and after such time as an occupancy certificate has been issued with respect to the Home constructed thereon.

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

**6.05 SPECIAL ASSESSMENT:** After the Turnover Date, the Managers 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 Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Community Area, or any other property owned by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all Lots using the procedure provided for in Section 6.02. No special assessment shall be adopted without the affirmative vote of Voting Members representing at

# UNOFFICIAL COPY

least two-thirds (2/3) of the votes cast on the question. The Managers shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Manager. 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 Association shall segregate and maintain special reserve accounts to be used solely for making capital expenditures in connection with the Community Area (the "Capital Reserve"). The Managers shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Area which are required to be maintained by the 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 Association in connection with its duties hereunder. The Capital Reserve may be built up by 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 Association as agent and trustee for the Owners with respect to which the Capital Reserve is held and such accounts shall be deemed to have been funded by capital contributions to the Association by the Owners. The budgets which will be adopted from time to time by the Managers prior to the Turnover Date shall include reserve buildups which the Managers deem to be appropriate based on information available to the Managers. Managers elected by the Owners after the Turnover Date may use different approaches for the buildup of reserves from those used by Declarant, as the Managers prior to the Turnover Date. If the Managers chooses not to provide for the buildup of reserves for a particular anticipated expenditure or if the buildup of reserves that the Managers 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 Managers nor any of its past or present members shall be liable to the Association or the Owners for failing to provide for sufficient reserves and (ii) the Managers shall have the right and power to either levy a 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 or special assessments.

**6.07 INITIAL CAPITAL CONTRIBUTION:** Upon the closing of the sale of each Lot by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to six (6) monthly installments of the then current Community Assessment for the Lot, which amount shall be held and used by the Association for its working capital needs (and not as an advance payment of the Community Assessment).

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

# UNOFFICIAL COPY

## 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 Lot 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 Association all Charges made with respect to the Owner or the Owner's Lot. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Lot against which such Charge is made and also shall be the personal obligation of the Owner of the Lot 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 Association.

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

**7.03 NON-PAYMENT OF CHARGES:** Any Charge which is not paid to the 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 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 Managers 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 Lot.

**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 Lot 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 Lot. Where title to a Lot 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 Lot shall be personally liable for his share of the Charges with respect to which a lien against his Lot 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 Lot, as provided in this Article.

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



# UNOFFICIAL COPY

prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Home, judicial proceedings must be instituted before any items of construction can be altered or demolished.

**7.06 OTHER REMEDIES OF THE MANAGERS:** In addition to or in conjunction with the remedies set forth above, to enforce any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Managers may levy a fine or the Managers may bring an action at law or in equity by the 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 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 Managers in connection with any action, proceedings or self-help in connection with exercise of its or their 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 Association shall have a lien for all the same, upon his Lot as provided in Section 7.01.

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

**7.09 ENFORCEMENT BY DECLARANT:** The Declarant is hereby granted the right, but shall not be obligated, to enforce covenants and obligations of the Association or the Owners hereunder. If the Association or one or more Owners fail to comply with any covenants and obligations hereunder, the Declarant shall have the right (but shall not be obligated) to give notice to the Association or the offending Owner or Owners of its, his or their failure to perform its, his or their obligations. If such notice is given and the Association or the offending Owner or Owners do not perform as provided hereunder within thirty (30) days after the giving of such notice, then the Declarant may (but shall not be obligated to) enter upon the Premises and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Declarant. The Association or the offending Owner or Owners shall, upon demand, reimburse the Declarant for the reasonable cost of such work, plus interest, at the rate of two percent (2%) above the "prime rate" of interest as published from time to time in the Wall Street Journal, from the date incurred and paid by the Declarant through the date the Declarant is reimbursed for such cost, and if payment is not made within thirty (30) days after demand, then the amount due, plus reasonable costs of collection, including reasonable attorneys' fees, shall become a lien on the property of the offending Owner or Owners or, in the case of the Association, the property of the Association, effective as of the date on which such work was completed; provided,



# UNOFFICIAL COPY

however, that such lien shall be subordinate to the lien of any first mortgage on a Lot Recorded prior to the date on which any such cost becomes a lien against the Lot as provided above. Any amount payable by the Association to the Declarant pursuant to this Section 7.09 may, at the Declarant's sole option, be subtracted from any amount payable by the Declarant to the Association under Section 6.02.

**7.10 ENFORCEMENT BY MUNICIPALITY:** The Municipality is hereby granted the right, but shall not be obligated, to enforce covenants and obligations of the Association or the Owners hereunder. If the Association or one or more Owners fail to comply with any covenants and obligations hereunder, the Municipality shall have the right (but shall not be obligated) to give notice to the Association or the offending Owner or Owners of its, his or their failure to perform its, his or their obligations. If such notice is given and the Association or the offending Owner or Owners do not perform to the satisfaction of the Municipality within thirty (30) days after the giving of such notice, then the Municipality may (but shall not be obligated to) enter upon the Premises and perform any and all work which it deems necessary and appropriate, either directly or through contractors engaged by the Municipality. The Association or the offending Owner or Owners shall, upon demand, reimburse the Municipality for the reasonable cost of such work, plus interest, at the rate of two percent (2%) above the "prime rate" of interest as published from time to time in the Wall Street Journal, from the date incurred and paid by the Municipality through the date the Municipality is reimbursed for such cost, and if payment is not made within thirty (30) days after demand, then the amount due, plus reasonable costs of collection, including reasonable attorneys' fees, shall become a lien on the property of the offending Owner or Owners or, in the case of the Association, the property of the Association, effective as of the date on which such work was completed; provided, however, that such lien shall be subordinate to the lien of any first mortgage on a Lot Recorded prior to the date on which any such cost becomes a lien against the Lot as provided above.

**7.11 BACKUP SPECIAL SERVICE AREA:** The Municipality may establish one or more backup special service areas to give the Municipality the power to levy taxes to pay the cost of maintaining the Community Area if the Association fails to do so and the Municipality chooses to furnish such services.

## ARTICLE EIGHT Use Restrictions

**8.01 INDUSTRY/SIGNS:** No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any Lot or any part of the Community Area, nor shall any "For Sale" or "For Rent" signs or any other advertising be maintained or permitted on any Lot or any part of the Community Area, except as permitted by the Managers or as permitted under Article Nine.

**8.02 UNSIGHTLY USES:** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of a Lot or the Community Area. The Premises shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish and refuse shall be deposited in such areas and in such receptacles as shall be designated from time to time by the Managers or the Municipality.

# UNOFFICIAL COPY

**8.03 SATELLITE DISHES/ANTENNAE:** Subject to applicable federal, state or local laws, ordinances or regulations, or policies adopted by the Managers from time to time, the operation of "ham" or other amateur radio stations or the erection of any communication antenna, receiving dish or similar devices (other than a simple mast antenna or a satellite dish which is not visible from the front of the Home) shall not be allowed on the Premises.

**8.04 RESIDENTIAL USE ONLY:**

(a) Except as provided in Article Nine or in subsections (b) and (c) of this Section, each Home shall be used only as a residence and no industrial business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises.

(b) No Resident shall be precluded with respect to his Home, from (i) maintaining a personal professional library, (ii) keeping his personal business records or accounts therein, or (iii) handling his personal business or professional calls or correspondence therefrom.

(c) To the extent permitted under applicable laws and ordinances, a Resident may conduct an in-home business in a Home.

**8.05 PARKING:** No boats, trailers, trucks (which have "D" or equivalent plates, more than two (2) axles, more than four (4) tires and/or a gross weight when fully loaded in excess of 8,000 pounds), recreational vehicles or similar vehicles shall be stored or parked overnight on any portion of the Premises (other than inside a garage with the garage door closed) except as permitted under rules and regulations adopted by the Managers and applicable ordinances of the Municipality. Except for emergencies, no repair or body work to a vehicle shall be performed except within the confines of a garage.

**8.06 OBSTRUCTIONS:** 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 or without the prior written consent of the Managers.

**8.07 PETS:** No animal of any kind shall be raised, bred or kept in the Community Area. The Managers may from time to time adopt rules and regulations governing the (a) keeping of pets in the Home, which may include prohibiting certain species of pets from being kept in the Home and (b) use of the Community Area by pets, including, without limitation, rules and regulations which require an Owner to clean up after his pet. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Premises upon three (3) days written notice from the Managers to the Owner of the Home containing such pet and the decision of the Managers shall be final.

**8.08 NO NUISANCE:** No noxious or offensive activity shall be carried on in the Premises nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Residents.

**8.09 HAZARDOUS ACTIONS OR MATERIALS:** Nothing shall be done or kept on any Lot or in or on any portion of the Premises that is unlawful or hazardous, or that might

# UNOFFICIAL COPY

reasonably be expected to increase the cost of casualty or public liability insurance carried by the Association.

8.10 WATERING: The Managers may adopt rules and regulations governing the watering of grass, shrubs, trees and other foliage on the Community Area. Without limiting the foregoing, the Managers may require the Owner of a particular Lot to be responsible for watering specific portions of the Community Area as designated from time to time by the Managers.

8.11 RULES AND REGULATIONS: The use, occupancy and enjoyment of the Community Area shall at all times be subject to reasonable rules and regulations adopted from time to time by the Managers.

8.12 CONSTRUCTION STANDARDS AND RESTRICTIONS: Without limiting the rights and powers provided for in Section 3.07 and Section 9.09, the following construction standards shall apply to Lots:

(a) No structure commonly known as an "above ground swimming pool" shall be constructed on any Lot; provided, that, this restriction shall not apply to a structure commonly known as a "hot tub" or "jacuzzi" which is built into a deck and is not visible from the front of the home or from homes located on adjacent Lots, provided, that any such structure is approved, in advance, by the holders of rights under Section 3.07 and Section 9.09.

(b) No temporary or permanent outbuilding, accessory building or other structure, including, without limitation, a storage shed, greenhouse, non-wood play set, fountain, or trailer shall be constructed, installed or maintained on a Lot; provided, that, a deck, gazebo, wood play set or fence (which is specifically permitted under subparagraph (c) below) may be constructed on a Lot with the approval, in advance, of the holders of rights under Section 3.07 and Section 9.09.

(c) A Lot may be improved with fence on that portion of the Lot which is between the rear lot line (but no more than six (6) inches from the rear lot line) and the back of the Home provided that the fence conforms to the "Fence Specifications" attached hereto as Exhibit E, and that any such fence is approved, in advance, by the holders of rights under Section 3.07 and Section 9.09.

## 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 Declaration or the Operating Agreement, the Declarant shall have the rights and powers set forth in this Article. Anything in this Declaration or the Operating Agreement to the contrary notwithstanding, the provisions set forth in this Article shall govern. . Except as otherwise provided in this Article, the rights of Declarant under this Article shall terminate at such time as the Declarant no longer holds or controls title to any portion of the Development Area.

# UNOFFICIAL COPY

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, 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 Homes 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 Association. Declarant and 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.

9.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises, the Declarant and 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 on the Lot or the Community 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. In connection with the rights provided in the preceding sentence, the Declarant and its agents and contractors, shall have the right of ingress, egress and parking on the Premises and the right to store dirt, 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 Community Area to the County, the Municipality or other governmental authority which has jurisdiction over such portions. Declarant shall also have the right to reserve or grant easements over the Community Area to any governmental authority, public utility or private utility for the installation and maintenance of cable TV, electrical and telephone conduit and lines, gas, sewer or water lines, cable television or any other utility services serving any Lot.

9.05 DECLARANT CONTROL OF ASSOCIATION: Prior to the Turnover Date, the Managers shall be the Declarant, or one or more entities or persons designated by the Declarant from time to time who need not be Owners or Voting Members. Initially the Declarant shall be the sole Manager. The rights and powers of the Declarant to manage the affairs of the Association, or designate the Managers of the Association shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any portion of the Development Area, (ii) the giving of written notice by Declarant to the Association of Declarant's election to terminate such rights, or (iii) ten (10) 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 Managers shall be constituted and elected as provided in the Operating Agreement. 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.

# UNOFFICIAL COPY

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 Declaration.

9.07 ASSIGNMENT BY DECLARANT: Any and all rights which are specified in this 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.

9.08 MATTERS AFFECTING COMMUNITY AREA: During the Declarant Rights Period, the Association shall not cause or permit a lien or encumbrance to be placed or imposed on any portion of any of Lot which is legally described in Section II of Exhibit B hereto (each a "Community Area Lot") without the prior written consent of the Declarant. Any such lien or encumbrance placed or imposed on any portion of a Community Area Lots without Declarant's consent shall be null and void. In order to reflect or conform to a change in the Declarant's plan for the development, any time prior to the end of the Declarant Rights Period, the Declarant shall have the right and power to (i) Record a Special Amendment pursuant to Section 10.01(vi) to withdraw and remove any portion or portions of the Community Area Lot from the Community Area, and (ii) require the Association to convey such portion or portions of the Community Area Lot which are so withdrawn and removed from the Community Area to Declarant or its nominee, free and clear of any liens or encumbrances other than those created by or consented to by the Declarant pursuant to this Section.

9.09 ARCHITECTURAL CONTROLS: Prior to such time as the Declarant no longer holds or controls title to any portion of the Development Area, no additions, alterations or improvements (including, without limitation, construction of a Home, changes in the exterior color of a Home or construction or installation of a shed, outbuilding, deck, patio, terrace, antennae, satellite dish or similar changes) shall be made to any Lot or any part of the Home which is visible from outside the Home without the prior written consent of the Declarant. If an addition, alteration or improvement which requires Declarant approval hereunder is made to a Lot without the prior written consent of the Declarant, then the Declarant may seek injunctive relief to cause the Owner to cease construction of and/or remove the addition, alteration or improvement. Declarant's decision to approve or disapprove an alteration, addition or improvement in one instance shall not in any way create or establish a precedent for how the Declarant must respond to a request for an alteration, addition or improvement subsequently made, it being understood that circumstances, situations and standards may change and the Declarant reserves the right and power to grant or deny requests as Declarant believes are appropriate in Declarant's sole and absolute discretion.



# UNOFFICIAL COPY

## 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 Declaration at any time and from time to time which amends this 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 Lots, (iii) to correct errors, omissions, ambiguities or inconsistencies in the Declaration or any Exhibit, (iv) to amend Exhibit A to include additional real estate, (v) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations, or (vi) to amend Exhibit B to remove real estate from the Premises and the terms of this Declaration so that the portion or portions so removed shall no longer be Premises. 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 Lot 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 of the Declarant to Record a Special Amendment hereunder shall terminate five (5) years after such time as Declarant no longer holds or controls title to a portion of the Development Area.

10.02 AMENDMENT: Subject to Section 10.01 and Article Eleven, the provisions of this 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 consented to, in writing, executed by Owners of at least Seventy-Five Percent (75%) of the Lots; 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, (ii) until such time as the rights and powers of the Declarant under Article Nine terminate, the provisions of Article Nine or any provisions of this Declaration relating to the rights and powers of the Declarant may only be amended with the written consent of the Declarant, and (iii) the provisions relating to the rights of a Designated Builder may be amended pursuant to this Section 10.02 only upon the written consent of the Designated Builder. . No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Lot shall no longer have the legal access to a public way from his Lot. No amendment shall become effective until properly Recorded.

## 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:

# UNOFFICIAL COPY

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

(b) Any audited or unaudited financial statements of the Association which are prepared for the 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 Association shall permit such party to have an audited statement for the preceding fiscal year of the Association prepared at such party's expense;

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

(d) In the case of a First Mortgagee, the right to be listed on the records of the Association as an "Eligible First Mortgagee" for purpose of Section 11.02 below;

(e) Notice of any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees;

(f) Notice of any substantial damage to any part of the Community Area or the Lot subject to the First Mortgagee's mortgage;

(g) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Community Area or the Lot subject to the First Mortgagee's mortgage;

(h) Notice of any default by the Owner of the Lot which is subject to the Mortgagee's mortgage under this Declaration, the Operating Agreement or the rules and regulations of the Association which is not cured within 30 days of the date of the default;

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

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

## 11.02 CONSENT OF FIRST MORTGAGEES:

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of First Mortgagees holding, in the aggregate, the first mortgages on at least two-thirds (2/3) of the Lots (by number) which are subject to first mortgages held by First Mortgagees which specifically request to be treated as "Eligible First Mortgagees" under Section 11.01(d) above will be required for the Association to do or permit to be done any of the following:

# UNOFFICIAL COPY

(i) Adoption of an amendment to this Declaration which (i) changes Article Six or otherwise changes the method of determining the Community Assessments or other Charges which may be levied against an Owner; (ii) changes Section 7.04 or Article Ten, (iii) changes this Article Eleven, or any other provision of this Declaration or by Operating Agreement which specifically grants rights to First Mortgagees, (iv) materially changes insurance and fidelity bond requirements, (v) changes voting rights, or (vi) imposes a right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot;

(ii) The withdrawal of the Premises from the provisions of this Declaration;

(b) Whenever required, the consent of an Eligible First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary, in writing, by the Eligible First Mortgagee within sixty (60) days after making the request for consent.

11.03 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 Lot with respect to any such distribution to or with respect to such Lot; provided, that, nothing in this Section shall be construed to deny to the 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 ten (10) years from the date of Recording of this Declaration to annex, add and subject additional portions of the Development Area to the provisions of this Declaration as additional Premises by recording a supplement to this Declaration (a "Supplemental Declaration"), as hereinafter provided. Any portion of the Development Area which is subjected to this Declaration by a Supplemental Declaration shall be referred to as "Added Premises"; any portion of any Added Premises which is made part of the Community Area shall be referred to as "Added Community Area"; and any Lots contained in the Added Premises shall be referred to as "Added Lots". After the expiration of said ten (10) year period, Declarant may exercise the rights described herein to annex, add and subject additional portions of the Development Area to the provisions of this Declaration, provided that the consent the Owners (by number) of two-thirds (2/3) of all Lots then subject to this Declaration is first obtained.

12.02 POWER TO AMEND: Declarant hereby retains 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 and shall not be

# UNOFFICIAL COPY

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, or Added Lots to this Declaration, as provided in this Article, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added 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 Declaration applies to the Premises, and Persons having an interest or estate in the Premises, subjected to this Declaration prior to the date of the Recording of the Supplemental Declaration;

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

(c) In all other respects, all of the provisions of this Declaration shall include and apply to the Added Premises (including the Added Community Area or the Added Lots, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, First 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 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 Lot 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 Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and

(f) Each Owner of an Added Lot 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 Lot 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 Declaration or the Operating Agreement 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

# UNOFFICIAL COPY

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 Association at the time of such transmittal, or (iii) when personally delivered to his or its Lot. 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 Declaration. In the event of any conflict between statements made in recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions in the body of this Declaration shall govern.

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 in no way affect any other provisions of this 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 Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the President of the United States at the time this Declaration is Recorded.

13.05 TITLE HOLDING LAND TRUST: In the event title to any Lot is held by a title holding trust, under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all Charges and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. 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 Lot and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.

### 13.06 DESIGNATED BUILDERS:

(a) The Declarant shall have the right and power to designate, in a Supplemental Declaration, a "Designated Builder" and to grant to the Designated Builder some or all of the rights of the Declarant hereunder, including, without limitation, one or more of the following rights:

- (i) The right to construct homes and to temporarily store construction equipment and materials on the Development Area;
- (ii) The right to construct and maintain model units, sales or leasing offices,



# UNOFFICIAL COPY

parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Designated Builder may deem advisable and to use such model units (including model units which are sold by and leased back to the Designated Builder), sales or leasing offices or other facilities for the purpose of selling or leasing Homes on the Premises or at other properties in the general location of the Premises which are being offered for sale by the Designated Builder or any its affiliates, without the payment of any fee or charge whatsoever to the Association.

(iii) 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;

(iv) The right and power to lease any Homes owned by it to any person or entity which it deems appropriate in its sole discretion.

(v) The right not to pay assessments under Section 6.02 hereof with respect to Lots owned by the Designated Builder during the period prior to the Turnover Date, subject to the obligation to share in the shortfall payments, if any, required to be made by the Declarant;

(vi) The right not to pay the initial capital contribution provided in Section 6.07 upon the closing of the sale of a Lot by Declarant to the Designated Builder; provided, however, that, in such case, the amounts payable under Section 6.07 shall be paid upon the closing of the Lot by the Designated Builder to a third party purchaser;

(vii) The right to be treated as the Declarant under Section 13.07 hereof with respect to the waiver of implied warranty of habitability provided for therein.

(b) Any rights granted by the Declarant to a Designated Builder pursuant to this Section may be subject to such restrictions and limitations as the Declarant deems appropriate. Unless otherwise limited by the Declarant, any rights granted by the Declarant to a Designated Builder pursuant to this Section shall continue until such time as the Designated Builder is no longer vested with, or controls title to, any portion of the Development Area, regardless of whether the rights of the Declarant hereunder have terminated or expired.

**13.07 WAIVER OF IMPLIED WARRANTY OF HABITABILITY AND OTHER WARRANTIES:** 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 Home 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 particular

# UNOFFICIAL COPY

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

*[Signature page follows]*

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT A TO DECLARATION FOR KETTERING

### The Development Area

#### PARCEL 1:

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 AND THE EAST 5 ACRES OF THE SOUTH QUARTER OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER THEREOF; THENCE SOUTH, 10.02-1/2 CHAINS; THENCE WEST, 6.43 CHAINS, MORE OR LESS TO AN OLD ROAD; THENCE NORTH 17 DEGREES, 30 MINUTES EAST, 10.57 CHAINS; THENCE EAST, 3.28 CHAINS, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOT 1 AND THE EAST 1/2 OF LOTS 8 AND 7 IN COUNTY CLERK'S DIVISION OF THE SOUTH 1/2 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT 5 ACRES OF LAND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF SAID SECTION 34; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 425.0 FEET TO A POINT FOR A POINT OF BEGINNING; THENCE WESTERLY AND PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 633.14 FEET; THENCE SOUTHERLY AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 344.0 FEET; THENCE EASTERLY AND PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 633.14 FEET TO A POINT IN THE EAST LINE OF SAID SOUTHEAST 1/4; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 344.0 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

THAT PART OF LOTS 1 AND 6 IN COUNTY CLERK'S DIVISION OF THE SOUTH 1/2 OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF SAID SECTION 34; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 425.0 FEET TO A POINT FOR THE POINT OF BEGINNING; THENCE WESTERLY AND PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 633.14 FEET; THENCE SOUTHERLY AND PARALLEL TO THE EAST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 344.0 FEET; THENCE EASTERLY AND PARALLEL TO THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 633.14 FEET TO A POINT IN THE EAST LINE OF SAID SOUTHEAST 1/4; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 344.0 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

## EXHIBIT B TO DECLARATION FOR KETTERING

### The Premises

#### I. Lots:

- A. Lots 9 through 23, both inclusive, 25 through 35, both inclusive, 147 through 160, both inclusive and Lots 165 through 179, both inclusive, in Kettering P.U.D. Unit One, being a subdivision in the East Half of the Southeast Quarter of Section 34, Township 37 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the plat thereof recorded in Cook County, Illinois as Document No. 1423023019 ("Kettering P.U.D. Unit One").
- B. Lots 1 through 8, both inclusive, 24, 36 through 41, both inclusive, 48 through 74, both inclusive, in Kettering P.U.D. Unit Two, being a subdivision in the East Half of the Southeast Quarter of Section 34, Township 37 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois, pursuant to the plat thereof recorded in Cook County, Illinois as Document No. 1433515039 ("Kettering P.U.D. Unit Two").

#### II. Community Area:

- A. Lots 242 through 246, both inclusive, in Kettering P.U.D. Unit One.
- B. Lots 250 through 252, both inclusive, in Kettering P.U.D. Unit Two.

ADDRESSES: Vacant lots south and west of the intersection of 131<sup>st</sup> Street and Parker Road, all in Lemont, Illinois

#### PINs:

22-34-400-010-0000  
22-34-400-013-0000  
22-34-400-014-0000  
22-34-401-001-0000



# UNOFFICIAL COPY

## EXHIBIT C TO DECLARATION FOR KETTERING

### Fence Specifications

1. Black aluminum.
2. Height to comply with municipal codes, but not exceeding five (5) feet in height from the finished grade of the lot as approved by the Municipality.
3. Style as set forth in the depiction below.

