

AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR COLONY LAKES PROPERTY OWNERS ASSOCIATION

This instrument is recorded for the purpose of replacing, in its entirety, the Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association (hereinafter referred to as the "Original Declaration"), recorded on July 23, 1990 as Document No. R90-091309 in the Office of the Recorder of Deeds, DuPage County, Illinois, and the By-Laws of Colony Lakes Property Owners Association (hereinafter referred to as the "Original By-Laws"), and all prior amendments to these documents.

This Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association is adopted pursuant to the provisions of Article IX, Sections 1 and 2 of the Original Declaration. This Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, the text of which is set forth below, must be approved at a meeting of the Members by a majority of the Voting Members voting at such meeting, in person or by proxy, provided that at least thirty percent (30%) of the total Members in the Association shall be required to vote for approval. This Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association shall become effective upon its Recording in the Office of the Recorder of Deeds, DuPage County, Illinois.

The Amended and Restated By-Laws of Colony Lakes Property Owners Association, attached hereto as Exhibit "B", are adopted pursuant to the provisions of

Article XIII of the Original By-Laws, which provide that amendments to the Original By-Laws may be made at any regular or special meeting of the Board by a majority of the Board. The Amended and Restated By-Laws of Colony Lakes Property Owners Association, attached hereto as Exhibit "B", shall become effective upon Recording in the Office of the Recorder of Deeds, DuPage County, Illinois.

PREAMBLE

WHEREAS, the Colony Lakes Property Owners Association (hereinafter referred to as the "Association"), through its Board of Directors, administers the property legally described in Exhibit "A", which is attached hereto and made a part hereof (hereinafter referred to as the "Property");

WHEREAS, the Original Declaration was recorded on July 23, 1990 as Document No. R90-091309 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Original Declaration was amended by Supplement No. 1 and Amendment No. 1 to the Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, which was recorded on March 13, 1992 as Document No. R92-044187 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Original Declaration was further amended by Supplement No. 2 and Amendment No. 2 to the Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, which was recorded on March 10, 1993 as Document No. R93-046140 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Original Declaration was further amended by the Third Amendment to the Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, which was recorded on December 5, 2003 as Document No. R2003-461901 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Original Declaration was further amended by the Fourth Amendment to the Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, which was recorded on October 5, 2004 as Document No. R2004-257929 in the Office of the Recorder of Deeds, DuPage County, Illinois;

WHEREAS, the Board and the Owners of the Association desire to amend and restate the Original Declaration, replacing it, in its entirety, with this Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association;

WHEREAS, the Board and the Owners of the Association desire to amend and restate the Original By-Laws, replacing it, in its entirety, with the Amended and Restated By-Laws of Colony Lakes Property Owners Association, attached hereto as Exhibit "B";

WHEREAS, this Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association is adopted pursuant to the provisions of Article IX, Sections 1 and 2 of the Original Declaration, having been approved at a meeting of the Members by a majority of the Voting Members voting at such meeting, in person or by proxy, with such number of Members voting to approve being at least thirty percent (30%) of the total Members in the Association;

WHEREAS, this Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association contains a certification by the Secretary of the Association as to both the approval of this document by the Owners and the mailing of notice to all lien holders of records of the meeting of the Owners first called for the purpose of voting on this;

WHEREAS, the Amended and Restated By-Laws of Colony Lakes Property Owners Association, attached hereto as Exhibit "B", are adopted pursuant to the provisions of Article XIII of the Original By-Laws, having been approved at a regular or special meeting of the Board by a majority of the Board;

WHEREAS, this Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association and the Amended and Restated By-Laws of Colony Lakes Property Owners Association, attached hereto as Exhibit "B", shall become effective upon recordation in the Offices of the Recorder of Deeds of DuPage County, Illinois.

NOW THEREFORE, the Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association is hereby amended and restated as follows:

ARTICLE I

DEFINITIONS

The following terms, when used in this Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, shall have the following meanings, unless otherwise noted:

Section 1.01: "**Association**" shall mean and refer to Colony Lakes Property Owners Association, an Illinois not-for-profit corporation, its successors and assigns.

Section 1.02: "**Board**" shall mean and refer to the Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provisions of this Declaration and the By-Laws.

Section 1.03: "**By-Laws**" shall mean and refer to the Amended and Restated By-

Laws of Colony Lakes Property Owners Association, a copy of which is attached hereto as Exhibit "B" and by this reference made a part hereof.

Section 1.04: **"Charge or Charges"** shall mean the annual assessment, any special assessment levied by the Association and/or any other charges, expenses or payments which an Owner is required to pay or for which an Owner is liable under this Declaration, the By-Laws or any rules and regulations of the Association.

Section 1.05: **"Common Area"** shall mean all real property owned and/or maintained by the Association for the common use and enjoyment of the Owners, including, but not limited to: lots 85 and 258.

Section 1.06: **"Common Expenses"** shall mean and refer to the expenses of the administration (including management and professional services) of the Association; the expenses of the operation, maintenance, repair and replacement of the Common Area; any other expenses which are designated as Common Expenses hereunder; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

Section 1.07: **"Declaration"** shall mean and refer to this Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association, as amended from time to time.

Section 1.08: **"Dwelling"** shall mean and refer to a building intended for the shelter, use and occupancy as a single-family residence, constructed on a Lot or a portion of a Lot and which may be detached or attached to another Dwelling by a shared Party Wall.

Section 1.09: **"Lot"** shall mean and refer to a portion of a platted lot on the Property upon which one Dwelling, or two (2) adjacent Dwellings attached by a shared Party Wall, is constructed or is to be constructed

Section 1.10: **"Member" or "Membership"** shall mean and refer to every person or entity holding Membership in the Association as provided in Article II hereof.

Section 1.11: **"Municipality"** shall mean the City of Aurora in the State of Illinois.

Section 1.12: **"Occupant"** shall mean any person or persons other than the Owner in lawful possession of a Dwelling.

Section 1.13: **"Owner" or "Ownership"** shall mean and refer to the record

holder, whether one (1) or more Persons, of fee simple title to any Dwelling and Lot, or portion of a Lot, on the Property, including contract sellers, but excluding those persons or entities having any interest merely as security for the performance of an obligation.

Section 1.14: **“Party Wall” or “Party Walls”** shall mean and refer to every wall which is built as part of the original construction of the attached Dwellings (also known as duplex homes) and placed on the boundary line between separate attached Dwellings.

Section 1.15: **“Person”** shall mean and refer to a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

Section 1.16: **“Property”** means all the land, property and space comprising the Association, all improvements and structures erected, constructed or contained therein or thereon, including Common Area, Lots, Dwellings and other buildings, all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to this Declaration and as legally described in Exhibit “A” attached hereto.

Section 1.17: **“Record”** shall mean to record in the office of the Recorder of Deeds of DuPage County, Illinois.

Section 1.18: **“Subdivision Plat”** shall mean the final plats of subdivision for the Property as Recorded in the Office of the Recorder of Deeds of DuPage County, Illinois, for the various lots in the Property, as the same may be amended or modified from time to time including, but not necessarily limited to, the Final Plat of Subdivision for The Colony of Fox Valley Unit 1 recorded on June 15, 1990 as Document number R90-073847, the Final Plat of Subdivision for The Colony of Fox Valley Unit 2 recorded on February 19, 1993 as Document number R93-033817, the Final Plat of Subdivision for The Colony of Fox Valley Unit 3 recorded on December 6, 1991 as Document number R91-164025, and the Final Plat of Subdivision for The Colony of Fox Valley Unit 4 recorded on June 15, 1990 as Document number R90-073848.

Section 1.19: **“Voting Member”** shall mean and refer to the individual for each Dwelling who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in the Declaration and By-Laws.

ARTICLE II

MEMBERSHIP

Every Owner of a Dwelling shall automatically, upon becoming an Owner and without any further act, be a Member of the Association, subject to the rights and obligations provided herein, in the Articles of Incorporation and the By-Laws, and shall remain a Member of the Association until such time as his or her Ownership ceases for any reason, at which time his or her Membership in the Association shall automatically cease. Each Owner, by acceptance of a deed or other conveyance of a Dwelling, thereby becomes a Member, whether or not the Declaration or such membership is made a part of, incorporated by reference or expressed in said deed or conveyance. Ownership of a Dwelling shall be the sole qualification for Membership in the Association. There shall be one (1) Membership per Dwelling. If the record ownership of a Dwelling shall be in more than one (1) Person, or if an Owner of a Dwelling is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the voting Membership attributable thereto (the "Voting Member" as more fully set forth herein and in the By-Laws) shall be designated by such Owner or Owners in writing to the Association. The Association shall be given written notice of any change of ownership of a Dwelling by the new Owner within ten (10) days after such change. The foregoing is not intended to include persons or entities that hold an interest merely for the performance of an obligation. Membership shall be appurtenant to and may not be separated from Ownership of any Dwelling. No Owner shall have any right or power to disclaim, terminate, or withdraw from his, her or its Membership in the Association or from any of his, her or its obligations as such Member by abandonment of a Dwelling or Lot or for any other reason. There shall be only one (1) class of Membership.

ARTICLE III

THE ASSOCIATION

Section 3.01: In General

The Association shall be the governing body for all of the Owners for the administration and operation of the Property and for the maintenance, repair and replacement of the Common Area and other items as specified in this Declaration or the By-Laws. The Association shall act and operate as a not-for-profit corporation under the provisions of the Illinois General Not-For-Profit Corporation Act (805 ILCS 105/101.01 et. seq.), as from time to time amended.

Section 3.02: Voting Members

The voting rights of the Members of the Association shall be vested exclusively in the Voting Members. One (1) individual shall be designated as the "Voting

Member” for each Dwelling. The Voting Member or his or her proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Ownership of a Dwelling shall be in more than one (1) Person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Dwelling shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Dwelling as the Voting Member for such Dwelling. Provided, that, in the event only one (1) of the Owners for a Dwelling is present at a meeting of the Owners, such individual shall be considered the Voting Member for the Dwelling for that meeting.

Section 3.03: **Board**

The Board shall consist of that number of directors provided for in the By-Laws, each of whom shall be an Owner; provided however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or agent or employee of a beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a director on the Board.

Section 3.04: **Voting Rights**

All of the voting rights at any meeting of the Association shall be vested in the Voting Members, and each Voting Member shall have one (1) vote for each Dwelling that the Voting Member represents. Any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon the affirmative vote of a majority of the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws. The Association shall have the right to suspend the voting rights of any Member for any period during which an assessment or other Charge levied by the Association against such Member’s Dwelling remains unpaid.

Section 3.05: **Director and Officer Liability**

- (a) Neither the directors nor the officers of the Association, nor the members of any committee thereof, shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the directors, officers, and committee members, their heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors, officers and/or committee members on behalf of the Owners or the Association or arising out of their status as

directors, officers and/or committee members unless any such contract or act shall have been made criminally, fraudulently or with gross negligence.

- (b) It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorney's fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, actions, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such director or officer.

Section 3.06: Representation

The Association shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Area or more than one (1) Dwelling or Lot on behalf of the Owners as their interests may appear.

Section 3.07: Dissolution

To the extent permissible under applicable law, in the event of the dissolution of the Association, any Common Area owned by the Association shall be conveyed to the Owners as tenants in common and the Owners agree that all provisions contained herein with respect to the Property shall still apply and shall be in full force and effect. Prior to any dissolution of the Association, provisions shall be made as to how the responsibilities and obligations of the Association shall be handled by the Owners.

Section 3.08: Security

The Association may, from time to time, provide measures of security on the Property; however, the Association is not a provider of security and shall have no duty or obligation to provide any security on the Property. The obligation to provide security lies solely with each Owner individually. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

ARTICLE IV

EASEMENTS AND PROPERTY RIGHTS

Section 4.01: **Property Subject to Declaration**

By the Recording of this Declaration, the Property is hereby made subject to the provisions of this Declaration.

Section 4.02: **Conveyances Subject to Declaration**

All covenants, conditions, restrictions, easements, 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 any part of the Property for a period of twenty (20) years from the date this Declaration is Recorded, after which time said provisions shall be automatically extended for successive periods of ten (10) years, subject to amendment as provided herein. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document, regardless of whether a specific reference is made in such instrument to this Declaration.

Section 4.03: **Owners' Easements of Enjoyment**

Every Owner and his/her respective guests, invitees and employees shall have the non-exclusive right and easement to use and enjoy the Common Area. Such rights and easements granted to each Owner shall run with the land, be appurtenant to and pass with title to every Dwelling, shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws and shall be subject to the reasonable rules and regulations from time to time adopted by the Association, including, but not limited, to:

- a. The right of the Association to pass reasonable rules and regulations pertaining to the use and enjoyment of the Common Area;
- b. The right of the Association to suspend an Owner's right to use or enjoy such easement for any period, not to exceed thirty (30) days, during which such Owner may be in violation of this Declaration, the By-Laws or any rules and regulations of the Association;
- c. The right of the Association to suspend an Owner's right to use or enjoy

- such easement for any period during which an assessment or other Charge remains unpaid for the Owner's Dwelling;
- d. The right of the Association to levy assessments as herein provided; and
 - e. The rights of the Association reserved under this Declaration and the By-Laws.

Section 4.04: Association Easement

The Association, and its duly authorized agents, employees and hired contractors, shall have the right and power to come onto the Common Area and any Lot to the extent necessary for the purpose of maintaining, repairing and replacing the Common Area and any improvements in, on, under, or upon the Common Area as herein provided or any portion of the Property which they, or any of them, pursuant to easement or license agreement, are permitted or required to maintain or for performing any of their respective rights or obligations herein provided. In any such case, the Association, and its duly authorized agents, employees and hired contractors shall not be guilty of any trespass.

Section 4.05: Easements over Common Area

The right is reserved to the Association to grant easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, operation and inspection of utility services over, under, across and through the Common Area as the Board deems necessary or desirable in order to effectuate the intent of this Declaration and for such purpose, the right to dedicate or transfer fee simple ownership to all or any part of the Common Area to an appropriate governmental authority or public or private utility company is hereby reserved.

Section 4.06: Title to Common Area

Title to the Common Area shall be held by the Association.

Section 4.07: Damage, Destruction or Condemnation

In the event any portion of the Common Area is taken by eminent domain proceedings or conveyed in lieu thereof or in the event any of the improvements located on the Common Area or any portion thereof shall suffer damage or destruction from any cause including condemnation, the proceeds of any policy or policies insuring against any such loss or damage and payable by reason thereof, or any condemnation award received shall be applied in the following order:

- (a) in accordance with the terms and conditions of any instrument or agreement constituting a lien or other security interest in the Common Area or any improvements located thereon;

- (b) if the balance of such insurance proceeds or award is sufficient to do so, then so much of the balance then remaining of such proceedings or award as is necessary shall be applied, as reasonably practicable in the Board's discretion, to repair, restoration or reconstruction of such improvements in order to restore the improvements and the integrity of the parcel of land comprising the Common Area to substantially the same condition existing prior to the damage, destruction, or taking; and
- (c) any funds then remaining shall be used to pay Common Expenses or may be distributed to the Members in equal shares amongst all Dwellings, as the Board may determine in its sole discretion.

Section 4.08: **Mechanic's Liens**

The Association through the Board may cause to be discharged any mechanic's lien or other encumbrances which in the opinion of the Board may constitute a lien against the Common Area. Where less than all of the Owners are responsible for the existence of said lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all costs and expenses including attorneys' fees and court costs incurred by reason of the lien.

ARTICLE V

MAINTENANCE OF PROPERTY

Section 5.01: **Maintenance by the Association**

- (a) The Association shall be responsible for maintenance, repair and replacement of the Common Area as a Common Expense.
- (b) The Association shall also be responsible for the maintenance, repair and replacement of the following specific items on the Property:
 - (i) all entrance monuments and accompanying landscaping and grass (with said entrance monuments and landscaping being located within landscape easements);
 - (ii) any street median strips or cul-de-sac islands;
 - (iii) any property owned or leased by the Association;
 - (iv) all vegetation, landscaping, berms, and fences on the Common Area and landscape easements and sidewalks on the Common Areas;
 - (v) all vegetation, landscaping, berms, fencing, sidewalks and storm water facilities on the storm water retention ponds; and
 - (vi) all vegetation in landscape islands planted by either the original developer of the Property or by the Association.

- (c) For the purpose of performing the maintenance, repairs and replacements required or authorized by this Article or elsewhere in this Declaration, the Association and its duly authorized agents and employees shall have the right to enter upon any Lot at reasonable hours on any day.
- (d) Owners of Lots containing landscape easements may not prune, remove or otherwise alter the vegetation or grass planted within the landscape easements. No signs of any type whatsoever, including "For Sale" signs, shall be permitted in the landscape easements. The Association shall not pay for the cost of replacing or repairing any sidewalks in rights-of-way adjacent to landscape easements if the Owners of the Lots adjacent thereto are assessed for the replacement or repair by the appropriate governmental agencies.

Section 5.02: Maintenance by Owners

Each Owner shall be responsible, at his or her sole cost, for the maintenance, repair and replacement of his or her Dwelling and Lot and for the parkways adjoining his or her Lot, and shall be responsible for keeping the same in good condition.

Section 5.03: Owner Failure to Maintain

If, in the judgment of the Board, an Owner fails to maintain the Owner's Dwelling and/or Lot, or any portion thereof, in good condition and repair or the appearance of same is not of the quality of that of other Dwellings and Lots in the Property or in compliance with rules and regulations adopted by the Board from time to time, then the Board may, in its discretion, take the following action:

- (i) Advise the Owner of the work that must be done and allow the Owner at least twenty (20) days (or less in the case of an emergency) to cause the work to be done; and
- (ii) If the work is not done to the satisfaction of the Board, in its sole judgment, then the Board may seek injunctive relief, levy a fine and/or enter upon such Owner's Lot to cause such work to be done, at the Owner's sole expense, and the cost thereof shall be a Charge payable by the Owner to the Association upon demand in the same manner as unpaid

Section 5.04: Willful and Negligent Damage

If, due to the act or omission of an Owner, his or her family, tenants, servants, pets, guests or invitees or other authorized Occupant of the Owner's Dwelling, damage is caused to the Common Area or another Lot and maintenance, repairs

or replacements shall be required thereby, which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as determined by the Board, and the cost of such maintenance, repairs or replacements, and any damage, shall be added to and become a part of the assessment to which such Owner's Dwelling and Lot is subject and the Association shall have a lien upon said Dwelling and Lot enforceable in the manner and to the extent herein set forth in this Declaration and the failure of such Owner to pay such costs shall carry with it the same consequences as the failure to pay any assessments levied hereunder when due, as herein provided.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 6.01: **Creation of Lien and Personal Obligation**

Each Owner of a Dwelling by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Dwelling owned by such Owner, all assessments and other Charges levied pursuant to this Declaration. Such assessments and other Charges, together with such interest, late fees, costs, property manager fees, charges and/or expenses, and reasonable attorney's fees incurred in the collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Dwelling and Lot against which such assessment or other Charge is made. Each such assessment or other Charge, together with such interest, late fees, costs, property manager fees, charges and/or expenses, and reasonable attorneys' fees incurred in the collection thereof, shall also be the continuing personal obligation of the Person who was the Owner of such Dwelling at the time when the assessment or Charge fell due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

Section 6.02: **Purpose of Assessments**

The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, and welfare of the residents of the Property and in particular for the improvement and maintenance of the Property, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area. Such uses shall include, without limitation, the cost of all general real estate taxes, insurance, repair, replacement and maintenance and other charges required or permitted by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation, the establishment and maintenance of a Contingency and Replacement Reserve.

Section 6.03: **Assessment Procedure-Annual Assessments**

- (a) Each year, the Board will estimate the total amount of expenses necessary to pay the cost of all Common Expenses during the ensuing fiscal year, together with a reasonable amount considered by the Board to be necessary to fund the Contingency and Replacement Reserve, and shall, on or before December 1 of each year, notify each Owner in writing of the amount of such estimated annual budget. The budget shall set forth all such amounts with reasonable explanations and itemizations. The budget shall also set forth each Owner's proposed annual assessment for the ensuing fiscal year. The Board shall also establish the date or dates on which the annual assessments, or installments thereof, shall become due, however in the event the Board fails to do so, the annual assessments shall be due in full on February 1st of each year.
- (b) The failure or delay of the Board to prepare or serve the proposed annual or adjusted budget on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay assessments, as provided in this Declaration, whenever the same shall be determined, and in the absence of any annual estimated assessment amount, the Owner shall continue to pay his or her assessment when due at the then existing rate established for the previous period until the next assessment, or installment thereof, which is due at least ten (10) days after such new annual budget shall have been mailed or delivered.

Section 6.04: **Contingency and Replacement Reserve**

The Board shall build up and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvements and expenditures which may become necessary during the year, and which are not accounted for within the annual budget, may be charged against the Contingency and Replacement Reserve.

Section 6.05: **Itemized Accounting**

On or before April 1 of each calendar year, the Board shall provide all Owners with a reasonably detailed summary of the receipts, Common Expenses, and reserves for the preceding budget year. Additionally, the Board shall either: (a) make available to all Owners an itemized accounting of the Common Expenses for the preceding fiscal year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves; or (b) provide a consolidated annual independent

audit report of the financial status of all fund accounts within the Association.

Section 6.06: Revised Assessment

If the annual assessment proves inadequate for any reason (including non-payment of any Owner's assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the assessment payable under Section 6.03 of this Article by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner at least ten (10) days prior to the adoption of said revised assessment by the Board, and such revised assessment shall take effect upon adoption by the Board or any date thereafter specified by the Board.

Section 6.07: Special Assessments

Special assessments may be levied by the Board to defray the expense, in whole or in part, of the cost of any taxes, construction, reconstruction, repair or replacement of a capital improvement on the Common Area or any unforeseen or unexpected expenses not set forth in the annual budget as provided in this Declaration, or if the Contingency and Replacement Reserve proves inadequate for any reason. The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of any such notice of assessment, provided that any special assessment .

Section 6.08: Proof of Payment

Upon written request of an Owner and after payment of a reasonable fee, if any, set by the Board, the Association shall, within ten (10) business days of such written request, furnish such Owner a written certificate signed by an officer of the Association or an authorized agent of the Association setting forth the status of the Owner's account and whether there are any then unpaid annual or special assessments or other Charges levied against such Owner's Dwelling and, if so, the amount thereof. Such certificate shall be conclusive evidence of payment of any annual or special assessments or other Charges not stated therein as unpaid.

Section 6.09: Uniform Assessment

Both annual and special assessments shall be fixed at a uniform rate for all Dwellings, unless otherwise provided in this Declaration.

Section 6.10: Association rights upon non-payment of assessments

Any assessments (or installments thereof), other Charges or expenses,

including, but not limited to, annual assessments, special assessments and duly imposed fines, which an Owner is required to make or is liable for hereunder which are not paid when due shall be deemed delinquent and the Board shall have the right to assess a late fee for the delinquent payment. Additionally, if an assessment, Charge or expense is not paid within thirty (30) days after the due date, the Board shall have those rights and remedies to enforce such collection as shall be provided or permitted by law and equity including, but not limited to, bringing suit for and on behalf of the Association to enforce collection of the amount due, the costs of said suit, and other fees and expenses together with interest, including, but not limited to, reasonable attorneys' fees and managing agent fees associated with collection of unpaid assessments. Without limiting the foregoing, if any Owners shall fail to pay any assessments, charges or expenses required to be paid, the Board shall have such rights and remedies:

- (a) The right to enforce the collection of such defaulting Owner's assessments, charges or payments, together with interest thereon, and all fees and costs including attorneys' fees, managing agent fees, and court costs, incurred in the collection thereof;
- (b) The right to foreclose the lien created in favor of the Association for unpaid assessments and other charges, together with interest, costs, attorneys' fees, managing agent fees and other expenses associated with the cost of collecting same provided for in Section 6.01 of this Article. The Board, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his or her interest at such foreclosure sale; and
- (c) The right to take possession of such defaulting Owner's interest in their Dwelling and Lot, to maintain for the benefit of all the Owners an action for possession in the matter prescribed in the Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. seq.), as amended, and to execute leases of such defaulting Owner's interest in their Dwelling and Lot and apply rents derived therefrom against such unpaid assessments, Charges or expenses.

Section 6.11: No Waiver of Liability

No Owner may waive or otherwise escape liability for assessments or other Charges provided for in this Declaration for any reason. Without limiting the foregoing, no Owner may waive or otherwise escape liability for assessments or other Charges provided for in this Declaration by non-use of the Common Area, or non-use or abandonment of his or her Dwelling or Lot, or undertaking or performing the maintenance and other responsibilities of the Association as provided in this Declaration with respect to such Owner's Lot or Dwelling. The

obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for the inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, the Declaration or with any order or directive of any municipality, other governmental authority or the Association.

Section 6.12: Subordination of Lien to Mortgages

The lien for assessments and other Charges provided for herein shall be subordinate to the lien of any mortgage placed on a Dwelling prior to the assessment or other Charge becoming due. In the event of the issuance of a deed pursuant to foreclosure of such prior mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for assessment authorized by this Declaration to the extent required by law and only as to any such lien arising prior to the recording of such deed. No sale or transfer shall relieve the Dwelling from liability for any assessments or installments or other Charges thereafter becoming due. Further, the transferee of the Dwelling shall be personally liable for his or her share of the assessments or other Charges with respect to which a lien against his or her Dwelling has been extinguished where such assessments or other Charges are reallocated among all the Owners pursuant to a subsequently adopted annual assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Dwelling, as provided in this Article.

Section 6.13: Receipt of Payments

All funds collected hereunder shall be held and expended for the purposes designated herein, and are hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select. The Association shall have the right to apply payments made by an Owner to any portion of the assessments or other Charges (including, but not limited to, late fees, fines, attorney's fees, and/or court costs) then currently due and owing by such Owner and/or such Owner's Dwelling as the Board deems appropriate. Such application of payments by the Association shall not be subject to or bound by any notation or restrictive endorsement contained upon the form of payment which attempts to restrict or designate for which portion(s) of the Charges such payment is intended.

ARTICLE VII

USE RESTRICTIONS

Section 7.01: **Minimum Square Footage of Dwellings**

All Dwellings constructed on the Property shall provide at a minimum the following area of finished living quarters:

(a) All single family detached Dwellings: 1,150 square feet.

 All duplex Dwellings: 1,200 square feet.

(b) Porches must be fully enclosed to be included in the minimum finished living quarters square footage requirement. Basements and garages are specifically excluded.

Section 7.02: **Signs**

All signs of any kind shall be erected in accordance with the ordinances of the Municipality.

Section 7.03: **Condition of Property**

No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any residential Lot, and no refuse pile or unsightly object shall be allowed to be placed or maintained on any of the Lots. Trash, garbage, or other waste shall not be kept except in sanitary containers which must be properly maintained. No trash, garbage, or other waste containers shall be stored, kept, or maintained anywhere except within the Dwellings or the garages on each of the Lots, except when such trash, garbage, or other waste material is placed outside for collection and removal during such times permitted by the Municipality and the rules and regulations adopted by the Board.

Section 7.04: **Residential Driveways**

Residential driveways shall not be located within landscape easements.

Section 7.05: **Application of Government Regulations**

All structures to be erected shall comply with all government regulations, including zoning and building codes. For Dwellings adjoining the perimeter landscape easements along 87th Street and Eola Road, the location of adjoining fences shall be governed as set forth in Exhibit "C" attached hereto and made a part hereof.

Section 7.06: **No Noxious or Offensive Activity**

No unlawful, noxious or offensive activity shall be carried on, in or upon or conducted anywhere on the Property, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or Occupants.

Section 7.07: **Pets/Animals**

No animals, livestock, horses or other domestic farm animals, fowl or poultry of any kind shall be raised, bred, or kept on the Property, except that dogs, cats, or other common domestic household pets (as defined by the Municipality) may be kept in Dwellings, subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any commercial purposes. In no event shall any pet be allowed to run free away from its Owner's Dwelling without a leash or so as to create a nuisance. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Board to the Owner of the Dwelling containing such pet and the decision of the Board shall be final. The Board may from time to time adopt rules and regulations governing the keeping of pets in the Dwellings and use of the Common Area by pets, including, without limitation, rules and regulations which require an Owner to clean up after his or her pet and establish a fine for failure to do so.

Section 7.08: **No Impact on Insurance**

No Owner shall cause or permit anything to be done or kept on or in his or her Dwelling, Lot or in the Common Area which will increase the rate charged for, or cause the cancellation of, insurance carried by the Association or which would be in violation of any law or do or allow to be done anything which may cause increased risk or liability.

Section 7.09: **Leasing of Dwellings**

- (a) Each Owner shall occupy and use his/her Dwelling as a private dwelling. Rental or leasing of the Dwellings is prohibited, except as hereafter provided in this Section. Rentals or leasing to a member of the Owner's immediate family members, including, children, grandchildren, siblings or parents shall not be prohibited or restricted by the Association.

- (b) In the event that an Owner, due to medical or health reasons or other justifiable cause constituting a hardship, in the sole discretion of the Board, shall be unable to occupy the Dwelling for a period in excess of four (4) months and based on said hardship desires to lease said Dwelling, the Owner shall make application to the Board which may, by majority vote and review of the application, grant to the Owner an

exception to the above leasing restrictions, upon such conditions as the Board may establish and uniformly apply.

- (c) The Association and the Board on behalf of the Association shall be exempt from any lease restrictions provided in this Section.
- (d) Each Unit Owner leasing his/her Unit under such "hardship" exception shall deliver a copy of the signed lease to the Board, or if the lease is oral, a memorandum of lease, no later than the date of occupancy or ten (10) days after the lease is signed, whichever comes first. In the event that the Owner fails to comply with such leasing requirements set forth in this Declaration, the Association may seek to evict a tenant from the Dwelling pursuant to Article IX of the Illinois Code of Civil Procedure and to recover all attorneys' fees, court costs and fines levied against the offending Owner's account as a result of their default and breach of the restrictions upon leasing set forth in this Declaration. Furthermore, all provisions of the Declaration, Bylaws and Rules and Regulations shall be applicable to any person leasing a Declaration and shall be deemed to be incorporated in any lease executed or renewed. The Board may proceed directly against a tenant, at law or in equity under the provisions of Article IX of the Code of Civil Procedure, for any other breach by tenant of any of covenants, rules, regulations or bylaws. Additionally, the leasing of a Dwelling under this Section shall not release an Owner from any of his or her obligations under the Declaration, By-Laws or rules and regulations including, but not limited to, such Owner's obligation to pay assessments to the Association. The Board may also from time to time adopt rules and regulations pertaining to the leasing of Dwellings, including policies and procedures to further the goals and objectives of this Section.

Section 7.10: Installment Contracts for Deed

- (a) Any arrangement for ownership or occupancy of a Dwelling or between the seller and purchaser of a Dwelling that does not vest title of the Dwelling in the Person occupying the Dwelling, including, but not limited to, an articles of agreement for deed or installment contract for deed as provided for in the Illinois Dwelling Unit Installment Contract Act (765 ILCS 75/1 et. seq.), shall be subject to review by, and the prior written approval of, the Board for compliance with the terms of this Declaration, the By-Laws and the rules and regulations of the Association including, but not limited to, compliance with the prohibition on leasing and renting of Dwellings contained in Section 7.09 of this Declaration. The terms of any such proposed agreement or contract, including, but not limited to, any and all documentation regarding same, shall be delivered to the Board at least thirty (30) days prior to the date such agreement or contract is scheduled to take effect. The Board may further specify within the rules and regulations certain requirements that such agreements or contracts

must contain as well as accompanying documentation that must be provided by the Owner desiring to enter into such agreement or contract. The Board shall have the authority to reject any such proposed agreement or contract that, in the Board's sole discretion, does not comply with the terms of this Declaration, the By-Laws or the rules and regulations of the Association.

- (b) All costs and expenses incurred by the Association in connection with the review of any documents or other items produced in accordance with paragraph (a) of this Section, including, but not limited to, reasonable attorneys' fees and costs, shall be charged to and assessed against the Owner submitting said documents or other items, and the Association shall have a lien for same upon said Owner's Dwelling as provided in Article VI, Section 6.01 of this Declaration.
- (c) The failure of an Owner to timely comply with the provisions and requirements of this Section shall subject such Owner to all rights and remedies of the Association contained in this Declaration, the By-Laws, rules and regulations or granted in law or equity, including, but not limited to, the right to initiate a suit against said Owner for possession of said Owner's Dwelling pursuant to the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. seq.). Consistent with Article X, Section 10.01 of the Declaration, all costs and expenses incurred by the Association in connection with any action or proceedings to enforce the terms of this Section, including all court costs and reasonable attorneys' fees, shall be charged to and assessed against the Owner in violation, and the Association shall have a lien for same upon said Owner's Dwelling as provided in Article VI, Section 6.01 of this Declaration.

Section 7.11: Rules and Regulations

The use and enjoyment of the Property, including the Common Area, Dwellings and Lots shall at all times be subject to reasonable rules and regulations duly adopted by the Board from time to time.

ARTICLE VIII

ARCHITECTURAL CONTROLS

Section 8.01: Common Area

No alterations, additions or improvements shall be made to the Common Area without the prior written approval of the Board. This provision, however, shall not prohibit the Association, at the direction of the Board, from making alterations, additions or improvements to the Common Area.

Section 8.02: **Dwellings and Lots**

No additions, alterations or improvements (including, without limitation, buildings, fences, walls, patios, decks, balconies, or other structures or improvements, landscaping or plant materials, or painting or other decorating of the exterior of a Dwelling) shall be commenced, erected, placed, altered or otherwise made to any Lot, exterior of a Dwelling or any part of the Dwelling that is visible from outside the Dwelling by an Owner without the prior written approval of the Board and compliance with all applicable governmental ordinances and permit requirements. Any Owner desiring to make such an addition, alteration or improvement shall submit plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost for same to the Board for its review. The Board shall review such proposed addition, alteration or improvement as to the harmony of external design and location in relation to surrounding Dwellings and other improvements on the Property and may withhold its approval to a proposed addition, alteration or improvement for any reason which the Board, in its absolute discretion, deems appropriate including, but not limited to, aesthetic judgments. The Board shall have the right to adopt reasonable rules and regulations governing such alterations, additions or improvements and the application for same. The Board may, but shall not be required to, condition its approval to the making of an addition, alteration or improvement to a Lot or Dwelling that requires the approval of the Board upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) if the addition, alteration or improvement is required to be maintained hereunder by the Association as part of the Common Expenses, to pay to the Association from time to time the additional cost of maintenance as a result of the addition, alteration or improvement. If an addition, alteration or improvement that requires Board approval hereunder is made to a Dwelling or Lot by an Owner without the prior written approval of the Board, then the Board may, in its discretion and in addition to all other rights of enforcement provided to the Association as set forth in the Declaration, By-Laws, rules and regulations or as provided at law or in equity, take any of the following actions:

- (a) Require the Owner to remove the addition, alteration or improvement and restore the Dwelling and 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 subsection (a) hereof, the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or
- (c) Ratify the action taken by the Owner, and the Board may, but shall not be required to, condition such ratification upon the same conditions that it may impose upon the giving of its prior approval under this Section.

Section 8.03: **Dwelling Interiors**

Except as otherwise provided in this Declaration, and the provisions of Section 8.02 notwithstanding, any Owner may make additions, alterations or improvements within his or her Dwelling (except for those portions of the Dwelling that are visible from outside of the Dwelling) without the prior written approval of the Board. Provided, however, that such Owner shall be responsible for any damage to other Dwelling, Lots and/or the Common Area occurring as a result of such additions, alterations or improvements.

Section 8.04: **Satellite Dishes and Antennas**

No radio or television antennas or satellite dishes shall be affixed or placed upon or on any portion of the Common Area without the prior written approval of the Board. The placement, installation and use of antennas and satellite dishes on or upon the Dwellings and Lots by Owners shall be subject to all applicable provisions of the rules and regulations adopted by the Board. Notwithstanding anything contained herein to the contrary, the installation of any satellite dish or antenna shall be at the Owner's sole risk and sole cost and expense and, in the event the installation of any satellite dish or antenna causes any damage or destruction to any Dwelling or other improvement on any Lot or the Common Area or voids or impairs any warranty which runs for the benefit of the Association or any Owner, the Owner installing and owning the satellite dish or antenna shall be liable and responsible for and shall pay for any and all costs, expenses, fees and damages and repair any and all damage or destruction created thereby, including reasonable attorneys' fees and court costs. This provision, however, is not intended to interfere with the Owners' rights to adequate reception under the 1996 Telecommunications Act or other present, or future, federal or Illinois statutes.

Section 8.05: **Disclaimer**

No approval of an Owner's submitted plans and specifications for additions, alterations or improvements to the Owner's Dwelling and/or Lot granted by the Board under this Article or other provisions of this Declaration shall be construed as representing or implying that such plans and specifications shall, if followed, result in properly designed Improvements. Such approvals shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith shall be built in a good and workmanlike manner. Neither the Association nor the Board shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article, any loss or damages to any Person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans or specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

ARTICLE IX

INSURANCE

Section 9.01: **Comprehensive Liability Insurance**

The Association shall be responsible for procuring and maintaining comprehensive general liability insurance, including liability for injuries to and death of persons in an amount not less than one million dollars (\$1,000,000.00) per occurrence, and property damage, in such limits as the Board shall deem desirable, and other liability insurance as the Board may deem desirable insuring the Association from liability in connection with the ownership and/or use of the Common Area. The Owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The costs of such insurance shall be a Common Expense.

Section 9.02: **Hazard Insurance**

The Association shall be responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in a customary fire and extended coverage, vandalism and malicious mischief endorsements for an amount not less than one hundred percent (100%) of the full insurable replacement cost of the Common Area and the improvements thereon, if any. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of any such policy shall be payable to the Association. All such policies of insurance shall provide that the insurance, as to the interests of the Board, shall not be invalidated by any act or neglect of any Owner. The full insurable replacement cost of the Common Area shall be determined from time to time by the Board, and the Board may, but is not required to, retain a professional appraiser for purposes of establishing this full insurable replacement cost amount.

Section 9.03: **Fidelity Bond**

- (a) The Association shall obtain and maintain fidelity insurance covering all Persons, including any professional property manager and his or her employees, who control or disburse funds of the Association, for the maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody or control of the Association.
- (b) All management companies that are responsible for the funds held or administered by the Association must be covered by fidelity insurance for the maximum amount of coverage that is commercially available or

reasonably required to protect funds in the custody of the management company at any time.

Section 9.04: Directors and Officers Liability Coverage

The Association shall obtain as a Common Expense directors' and officers' liability coverage at a level deemed reasonable by the Board. Directors' and officers' liability coverage shall extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the Illinois General Not For Profit Corporation Act of 1986 (805 ILCS 105/101 et. seq.) or the Declaration and By-Laws.

Section 9.05: Other Types of Insurance

The Association shall have the right, but not the obligation, to obtain as a Common Expense any other insurance including, but not limited to, workers compensation, employment practices, and environmental hazards insurance, that the Board considers appropriate to protect the Association, the Owners, the officers, the directors, or the agents of the Association.

Section 9.06: Owner Insurance

- (a) Each Owner shall procure and maintain in full force at all times insurance covering his or her Dwelling consisting of, or providing all the protections afforded by, the insurance now generally described in an "all risk" policy to one hundred percent (100%) of the full replacement value thereof. Each Owner shall also be responsible for insuring the contents of his or her Dwelling and furnishings and personal property therein or stored elsewhere on the Property, as well as his or her personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as provided in this Declaration.
- (b) Each Owner shall deliver to the Association a certificate of insurance annually certifying that policies of insurance, as required under this Section, are in effect.

Section 9.07: Owner's Failure to Obtain Insurance

Whenever the Association shall be satisfied that any insurance to be maintained by any Owner pursuant to this Declaration is not in force, or if the same is about to expire and will not be renewed prior to expiration, the Association shall have the right, but not the obligation, following a twenty (20) day written notice to the Owner failing to maintain such insurance, to proceed to obtain that insurance or lesser coverage, as the Board may deem advisable, and the costs thereof shall be charged back to said Owner and become a lien upon the Owner's Dwelling in

the same manner as provided in this Declaration for non-payment of assessments and other Charges.

Section 9.08: Release of Claims

Each Owner hereby waives and releases any and all claims which he or she may have against the Association, its officers, members of the Board, the Managing Agent of the Association, if any, and their respective employees and agents for damage to the Property, the Common Area, the Dwellings, Lots, or to any personal property located therein caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance and to the extent such waiver is legally authorized by the insurance carrier.

Section 9.09: Rebuilding

In the event of damage to, or destruction of, any Dwelling and/or other building on a Lot by fire or other casualty, the Owner thereof shall, within three hundred and sixty (360) days or some other reasonable time (as determined in the sole discretion of the Board) after such damage or destruction, repair or rebuild the same in a substantial and workmanlike manner and in conformity in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. The Dwellings and buildings, when rebuilt, shall be of substantially similar architectural design, materials and exterior colors as the Dwellings and buildings prior to such damage or destruction and in harmony as practically as possible with all other existing Dwellings and buildings. The repair and/or rebuilding of any Dwelling and building shall be subject to all architectural and prior approval requirements contained in this Declaration.

Section 9.10: Association Right to Rebuild

In the event that any Owner shall fail, within three hundred and sixty (360) days or other reasonable time (as determined in the sole discretion of the Board) after the occurrence of damage to, or destruction of, any Dwelling and/or building by fire or other casualty, to perform the necessary repair or rebuilding as provided in Section 9.09 of this Article, then the Association may, but shall have no obligation to, cause such repairs or rebuilding to be furnished, provided and installed for such Dwelling and/or building. In such case, the Association shall have, and is hereby given, a continuing lien on such Dwelling in the aggregate amount of (a) the cost of such repair or rebuilding, and (b) reasonable attorneys' fees, managing agent fees, administrative costs and any court or other costs incurred by the Association in connection therewith. The lien upon the Dwelling shall be a claim against the Owner, his or her heirs, devisees, personal representatives, grantees and assigns. In the event such Owner does not forthwith fully pay the Association, as aforesaid, the lien may be foreclosed by the Association against the Dwelling and/or the Association may pursue all legal and equitable remedies available to it in the same manner as hereinafter provided in connection with

unpaid assessments and other Charges.

ARTICLE X

REMEDIES

Section 10.01: Enforcement

In addition to all other rights herein granted to the Association, the Association or any Owner, their successors or assigns, shall have the right to enforce the provisions of this Declaration, the By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any such provisions, and further the Association shall have the right to levy a fine against such Person or Persons. All rights and remedies may be exercised at any time and from time to time, cumulatively, or otherwise, and failure of the Association or any Owner to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including, but not limited to reasonable attorneys' fees, court costs and managing agent fees, shall be assessed against any Owner violating any such provisions and shall be a Charge and constitute a lien on his or her Dwelling and be enforceable in the same manner as unpaid assessments as provided in this Declaration and recoverable by the Association as part of any such proceedings.

Section 10.02: Managing Agent Fees

Any and all managing agent fees and costs associated with the collection of delinquent assessments and/or curing an Owner's or Occupant's breach or violation of the Declaration, the By-Laws and/or rules and regulations shall be assessed back to the defaulting Owner's account and become an additional obligation and Charge of such delinquent Owner. To assist the Association in collecting delinquent assessments and/or curing violations of the Declaration, By-Laws and/or rules and regulations from the Owners, the managing agent may perform the following duties: prepare and issue delinquency notices, prepare and issue statutory and other demand letters, order an ownership (tract) search to verify current ownership of the delinquent Dwelling, prepare and record a lien against the delinquent Dwelling for unpaid assessments or other Charges and any such other services performed in an effort to assist the Association in the collection of delinquent assessments or other Charges or curing breaches or violations of the Declaration, By-Laws and rules and regulations. The managing agent is entitled to receive a reasonable fee for such services performed, as more fully outlined in the management agreement entered into between the managing agent and the Association.

Section 10.03: Fees Associated with Mortgage Foreclosure

All expenses and fees, including, but not limited to, managing agent fees, attorney's fees and court costs, incurred by the Association as a result of the Association being included as a defendant in a mortgage foreclosure action shall be assessed back to the Owner sued in such foreclosure action and become an additional obligation and Charge of such delinquent Owner and a part of that Owner's assessment account.

Section 10.04: Board Self Help

In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of this Declaration, the By-Laws, or rules or regulations of the Association, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days prior written notice to the Owner, shall have the right to enter upon that part of the Property, including, but not limited to, any Lot and/or Dwelling exterior, where the violation or breach exists to remove or rectify the violation or breach at the expense of the Owner in violation or breach, and the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass.

ARTICLE XI

PARTY WALLS

Each Owner of a Dwelling that is attached by a Party Wall to another Dwelling shall be subject to the following limitations and restrictions with respect to Party Walls constructed within the Property as follows:

Section 11.01: General Rules Apply

Party Walls shall have the meaning given to them in Article I of this Declaration, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 11.02: Damage to Party Wall

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

- (b) If any Party Wall is damaged or destroyed by fire or other casualty or is in need of reasonable repair or maintenance and the provisions of paragraph (a) of this Section do not apply, then such Party Wall shall be rebuilt, repaired or maintained by the Owners of the adjacent Dwellings to as good a condition as such Party Wall existed prior to such fire, casualty, or need for repair or maintenance. It is expressly provided that the costs of any such repair or maintenance to a Party Wall shall be borne by the Owners of the Dwellings contiguous thereto at the joint and equal expense of such Owners and as promptly as is reasonably possible and as may otherwise be required by this Declaration.

Section 11.03: Alteration to Party Wall

Any Owner who proposes to modify, rebuild, repair or make additions to his or her own Dwelling or any structure in any manner that requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Dwelling(s) and the Board, in addition to meeting the other requirements that may apply, including, without limitation, the provisions of this Declaration, the By-Laws, and any rules and regulations passed by the Board as well as any requirements of the local municipality.

Section 11.04: Contribution

Should any Owner incur expenses in connection with the reconstruction, repair or maintenance provided for in this Article, which expenses should, by the terms of this Article or any general rule of law pertaining to Party Walls, be borne by the Owner of the other Dwelling contiguous to such Party Wall, in whole or in part, the Owner incurring such expenses shall have a right of contribution from such other Owner, which right shall be appurtenant to the land and pass to such Owner's successor in title.

Section 11.05: Unenforceability of Private Agreements

No private agreement of any adjoining Owners shall modify or abrogate any of the provisions contained in this Article, which shall be binding upon the heirs, administrators, successors and assigns of the Owners; but no Person shall be liable for any act or omission respecting such provisions, except such as took place while such Person was an Owner.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01: **Amendment**

The provisions of this Declaration may be amended, abolished, modified, enlarged or otherwise changed in whole or in part by a written instrument approved at a meeting of the Owners by a majority of the Voting Members present, in person or by proxy, at said meeting, provided that such amendment, change, modification or rescission of this Declaration must be approved by Voting Members representing not less than thirty percent (30%) of the total Dwellings in the Association, and provided further that any amendment, change, modification or rescission concerning the maintenance, repair and replacement of grass and vegetation in landscape easements must also be approved by seventy-five percent of the Owners of Dwellings on which such landscape easements exist. No such amendment, change, modification or rescission shall be effective unless and until properly Recorded.

Section 12.02: **Notices**

Unless otherwise specifically provided in this Declaration or in the By-Laws or required by law, any notice required to be sent to any Owner under the provisions of this Declaration or the By-Laws shall be deemed to have been properly sent if:

- a) Mailed to the Owner's last known address as provided by such Owner to the Association, or if no such address has been provided then mailed to such Owner's Dwelling;
- b) Personally delivered to such Owner;
- c) Posted in an Association publication that is routinely mailed to all Owners; or
- d) Transmitted to an Owner via electronic mail (e-mail), facsimile (fax) or other electronic means to an e-mail address, fax number or other specified electronic delivery method provided to the Association by such Owner; provided, however, that prior to the sending of such a notice via e-mail, fax and/or other electronic method an Owner must consent, in writing, to receive notices via e-mail, fax and/or other electronic method.

The date of mailing or delivery, or the date of transmission if the notice is sent by fax, e-mail or other electronic method, shall be deemed the date of service.

Section 12.03: **Duration**

The covenants, restrictions, easements, Charges, and liens as delineated in this Declaration shall run with and bind the land so as to insure the Owners of

Dwellings and beneficiaries of trusts holding title to Dwellings full enjoyment and benefit of their Dwellings. They shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is Recorded, after which time these covenants, restrictions, easements, Charges, and liens shall be automatically extended for successive periods of ten (10) years unless amended pursuant to Section 12.01 of this Declaration.

Section 12.04: **Binding Effect**

Each Owner covenants to abide by each and every covenant and restriction set forth herein and agrees that all conveyances shall be subject to this Declaration as though each and every provision herein was set forth in each and every document affecting title to any Dwelling and Lot. All impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall inure to the benefit of such Person in like manner as if he or she had been the original grantee under the deed of conveyance or any mortgage or trust deed or other evidence of obligation, to the rights described in this Declaration, and shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of such Owners as fully and completely as though such rights were recited fully and set forth in their entirety in such documents.

Section 12.05: **Liberal Construction**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a residential community of the highest quality and character.

Section 12.06: **Title Holding Land Trust**

In the event title to any Dwelling is conveyed to a title-holding trust, under the terms of which all powers of management, operation and control of the Dwelling remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Dwelling; provided, however, that upon demand of the Association, the trustee shall furnish the Association with a certified copy of the trust agreement so that the Association shall be advised of the beneficiaries of such trust. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a Charge or lien upon the Dwelling and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Dwelling.

Section 12.07: **No Waiver**

No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration or the By-Laws shall be deemed to be abrogated or waived by reason of any failure to enforce same irrespective of the number of violations or breaches which may have occurred.

Section 12.08: **Severability**

If by legislation, judgment or court order, any portion of the covenants, restrictions, easements, conditions, reservations, liens and charges imposed by this Declaration shall be deemed unconstitutional, invalid, or unenforceable, then such determination shall in no way affect any other provisions of this Declaration and all provisions of this Declaration not so affected shall remain in full force and effect.

Section 12.09: **Headings/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. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders and the singular shall include the plural, and vice versa.

Section 12.10: **Rule Against Perpetuities**

The covenants, restrictions, conditions, reservations, easements, charges, liens and other provisions as delineated in this Declaration shall run with and bind the land so as to insure the Owners full enjoyment and benefit of their Dwellings and Lots. If, and to the extent that, any of the covenants, restrictions, conditions, reservations, easements, charges, liens or other provisions contained in this Declaration would otherwise be unlawful or void for violation of:

- (a) The rule against perpetuities;
- (b) The rule restricting restraints on alienation; or
- (c) Any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only after the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Tom Hanks, professional actor and star of such films as

Sleepless in Seattle, Apollo 13 and Saving Private Ryan, living at the date this Declaration is Recorded.

Section 12.11: Conflicts

In the case of any conflict between the Articles of Incorporation of the Association, this Declaration, the By-Laws and the rules and regulations, the Articles of Incorporation shall control over the Declaration, the By-Laws and the rules and regulations, the Declaration shall control over the By-Laws and the rules and regulations, and the By-Laws shall control over the rules and regulations.

Section 12.12: Dwelling Conveyance

All conveyances or transfers of Ownership of a Dwelling shall be of the entire Dwelling and there shall be no conveyance or transfer of only a portion of a Dwelling.

END OF TEXT OF DECLARATION

This instrument was prepared by, and upon recording return to:

KEAY & COSTELLO, P.C.
128 South County Farm Road
Wheaton, Illinois 60187
(630) 690-6446

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

The undersigned is Secretary of the Board of Directors of Colony Lakes Property Owners Association and by my signature below, do hereby execute the foregoing Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association and the Amended and Restated By-Laws of Colony Lakes Property Owners Association, attached hereto as Exhibit "B", on behalf of the Board and certify that said Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association has been approved at a meeting of the Members by a majority of the Voting Members voting at such meeting, in person or by proxy, with such number of Members voting to approve being at least thirty percent (30%) of the total Members in the Association, and that said Amended and Restated By-Laws of Colony Lakes Property Owners Association were adopted at a meeting of the Board by a majority of the Board.

EXECUTED this _____ day of _____, 20__.

Being the Secretary of Colony Lakes Property
Owners Association

I, _____, a Notary Public, hereby certify that on the above date, the above member of the Board of Directors of Colony Lakes Property Owners Association, which Board member is personally known to me, appeared before me and acknowledged that, as such Board member, he/she signed this instrument as his/her free and voluntary act of said Board for the uses and purposes therein set forth.

BY: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

The undersigned is Secretary of the Board of Directors of Colony Lakes Property Owners Association and by my signature below, do hereby certify that notice of the original meeting of Members called for purposes of voting on the foregoing Amended and Restated Declaration of Covenants and Restrictions for Colony Lakes Property Owners Association was provided to all lien holders of record prior to the date of said meeting.

EXECUTED this _____ day of _____, 20____.

Being the Secretary of Colony Lakes Property
Owners Association

I, _____, a Notary Public, hereby certify that on the above date, the above member of the Board of Directors of Colony Lakes Property Owners Association, which Board member is personally known to me, appeared before me and acknowledged that, as such Board member, he/she signed this instrument as his/her free and voluntary act of said Board for the uses and purposes therein set forth.

BY: _____

List of Exhibits

Exhibit "A" – Legal Description of Property Subject to Declaration

Exhibit "B" – By-Laws

Exhibit "C" – Permitted Location of Fences Adjacent to the Landscape Planting Easements

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 85 in the Colony of Fox Valley Unit 1 a subdivision of part of Section 31, Township 38 North, Range 9 east of the Third Principal Meridian according to the plat thereof recorded June 15, 1990 as Document number R90-73847, in DuPage County, Illinois.

Lots 87 and 203-258 in the Colony of Fox Valley Unit 4 a subdivision of part of Sections 31 and 32, Township 38 North, Range 9 east of the Third Principal Meridian according to the plat thereof recorded June 15, 1990 as Document number R90-73848 in DuPage County, Illinois.

Lots 36, 101 through 108 and 131 through 202 in the Colony of Fox Valley Unit 3 a subdivision of part of Sections 31 and 32, Township 38 North, Range 9 east of the Third Principal Meridian according to the plat thereof recorded December 6, 1991 as Document number R91-164025 in DuPage County, Illinois.

Lots 86 through 100 and 109-130 in the Colony of Fox Valley Unit 2 a subdivision of part of Sections 31 and 32, Township 38 North, Range 9 east of the Third Principal Meridian according to the plat thereof recorded February 19, 1993 as Document number R93-033817 in DuPage County, Illinois.

EXHIBIT "C"

PERMITTED LOCATION OF FENCES ADJACENT TO THE LANDSCAPE PLANTING EASEMENTS

For Units 1, 3 and 4 of The Colony of Fox Valley, being subdivisions of part of Section 31 and 32, Township 38 North, Range 9 East of the Third Principal Meridian according to the plats thereof recorded June 15, 1990 as Document No. R90-73847, and on December 6, 1991 as Document No. R91-164025, and on June 15, 1990 as Document No. R90-73848, respectively in DuPage County, Illinois, Single Family and duplex, a fence shall be permitted across each lot along the inside border of the planting easement as shown below: