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## DECLARATION FOR OGDEN FALLS

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## DECLARATION FOR OGDEN FALLS

This Declaration is made by Lord & Essex, Inc. ("Declarant").

### RECITALS

The Development Area is legally described in Exhibit A hereto. Some or all of the Development Area shall be the subject of a phased development called Ogden Falls (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 shall be designated as Community Area, Association Maintained Public Green Areas, Townhome Exteriors or Landscape Maintenance Areas. In order to provide for the orderly and proper maintenance of such property, the Declarant has formed (or will form) the Association under the Illinois General Not-For-Profit Corporation Act, and the Association shall adopt budgets and fix assessments to pay the expenses incurred in connection with such duties. Each Owner of a Parcel shall be a member of the Association and shall be responsible for paying assessments with respect to the Parcel owned by such Owner.

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 appoint all members of the Board, as more fully described in Article Nine, the right to come upon the Premises in connection with Declarant's efforts to sell Homes and other rights reserved in Article Nine.

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:

1.01 ASSOCIATION: The Ogden Falls Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

1.02 ASSOCIATION MAINTAINED PUBLIC GREEN AREAS: Those landscaped portions of (i) dedicated rights of way and (ii) portions of the Development Area which are owned by the Village, a park district or any other governmental entity and which are delineated on the Site Plan and designated as being "Association Maintained Public Green Areas".

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

1.04 BY-LAWS: The By-Laws of the Association.

1.05 CHARGES: The Townhome Assessment, 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 By-Laws.

1.06 COMMUNITY AREA: Those portions of the Premises which are designated on Exhibit B as Community Area.

1.07 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.

1.08 COMMUNITY EXPENSES: The expenses of the administration (including management and professional services) of the Association; the expenses of the operation, maintenance, repair and replacement of the Community Area and Association Maintained Public Green Areas; the expenses of the maintenance (including street cleaning and snow removal) of the private roads located on the Community Area; any other expenses which are designated as Community Expenses hereunder; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners; provided, however, Community Expenses shall not include any Townhome Expenses or any costs of furnishing landscape maintenance services to the Landscape Maintenance Areas.

1.09 CONDOMINIUM UNIT: A Dwelling Unit which is a condominium unit in a portion of the Premises which has been made subject to the Illinois Condominium Property Act.

1.10 COUNTY: Kendall 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.

1.11 DECLARANT: Lord & Essex, Inc., an Illinois corporation, its successors and assigns.

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

1.13 **DETACHED HOME**: A detached Home on a subdivided lot which does not share an exterior wall with another Home.

1.14 **DEVELOPMENT AREA**: The real estate described in Exhibit A hereto with all improvements thereon and rights appurtenant thereto. Exhibit A is attached hereto for informational purposes only and no covenants, conditions, restrictions, easements, liens or changes shall attach to any part of the real estate described therein, except to the extent that portions thereof are described in Exhibit B and expressly made subject to the provisions of this 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.

1.15 **DWELLING UNIT**: A portion of the Premises which is improved with a single family residential unit for which a temporary, conditional or final certificate of occupancy has been issued by the municipality. A Dwelling Unit may be a subdivided lot which is improved with a Detached Home, a subdivided lot (or a portion thereof) which is improved with a Townhome, a condominium unit or a rental unit in a multi unit building of four (4) or more units.

1.16 **HOME**: That portion of a Parcel which is improved with a residential unit (either a Detached Home or a Townhome) and any decks and steps which serve the unit. A Condominium Unit or a rental unit in a multi-unit building of four (4) or more units shall not be a Home hereunder.

1.17 **MORTGAGEE**: The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Parcel.

1.18 **MUNICIPALITY**: The Village of Oswego, Illinois or its successors, 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.

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

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

1.21 **PARCEL**: A lot upon which a Detached Home is constructed or a lot or a portion of a lot upon which a Townhome is constructed and which is conveyed to the first purchaser thereof by the Declarant.



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

1.23 PREMISES: Those portions of the Development Area which are legally described in Exhibit B hereto, with all improvements thereon and rights appurtenant thereto. Declarant shall have the right, but not the obligation, to make additional portions of the Development Area subject to this Declaration as part of the Premises as more fully provided in Article Twelve.

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

1.25 RESIDENT: An individual who legally resides in a Home.

1.26 SITE PLAN: The Site Plan which is attached hereto as Exhibit C, as Exhibit C may be amended or supplemented from time to time as more fully provided in Article Twelve.

1.27 TOWNHOME: A non-condominium single family attached home.

1.28 TOWNHOME COMMITTEE: A committee which shall consist of three (3) individuals, each of which shall be a Voting Member who represents a Townhome. The Townhome Committee shall be elected at each annual meeting of the Association, as more fully provided in the By-Laws.

1.29 TOWNHOME EXPENSES. The expenses of the maintenance, repair and replacement of the Townhome Exteriors; the expenses of the maintenance (including snow removal), repair and replacement of driveways which serve the Townhome Units; any expense which is designated as a Townhome Expense in this Declaration; and any expense incurred by the Association which, pursuant to generally accepted accounting principles, are reasonably allocable to the maintenance, repair or replacement of Townhome Exteriors. Townhome Expenses shall not be Community Expenses. In the event that certain expenses are incurred by the Association in connection with the Community Area, Association Maintained Public Green Areas and Townhome Exteriors, the allocation of such expenses between Community Expenses and Townhome Expenses shall be made by the Board based on generally accepted accounting principles, and any such allocation shall be final and binding..

1.30 TOWNHOME EXTERIOR: The roof, foundation, steps, footings, decks, outer surface of exterior walls of a Townhome.

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

1.32 UNADDED AREA: Those portions of the Development Area which from time to time have not been made subject to this Declaration as part of the Premises.

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

**ARTICLE TWO**  
**Scope of Declaration/Certain Easements**

**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 shall have the right from time to time to subject additional portions of the Development Area to the provisions of this Declaration as Added Premises, as 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 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 Premises. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the covenants, conditions, restrictions, easements, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

**2.03 DURATION:** Except as otherwise specifically provided herein the covenants, conditions, restrictions, easements, reservations, liens, and charges, which are granted, 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 by a Recorded instrument executed by the Owner of not less than three-fourths (3/4) of the Dwelling Units then subject to the Declaration.

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

**2.05 ACCESS EASEMENT:** Each Owner of a Dwelling Unit shall have a non-exclusive perpetual easement for ingress to and egress from his Parcel to public streets and roads over and across the private roads, driveways and walkways located on the Community Areas, which easement shall run with the land, be appurtenant to and pass with title to every Dwelling Unit. The Municipality or any other governmental authority which has jurisdiction over the Premises shall have a non-exclusive easement of access over roads and driveways located on the Community Area for police, fire, ambulance, waste removal, snow removal, or for the purpose of

furnishing municipal or emergency services to the Premises. The Association, its employees, agents and contractors, shall have the right of ingress to, egress from, and parking on the Community Area, and the right to store equipment on the Community Area, for the purpose of furnishing any maintenance, repairs or replacements of the Community Area, Association Maintained Public Green Areas and Townhome Exteriors, as required or permitted hereunder. The Owner from time to time of Unadded Area shall have a non-exclusive perpetual easement of access over private roads from time to time located on the Community Area.

**2.06 RIGHT OF ENJOYMENT:** Each Owner shall have the non-exclusive right and easement to use and enjoy the Community Area (other than certain parking areas as more fully described in Section 8.04) and the exclusive right to use and enjoy the Owner's Dwelling Unit. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Dwelling Unit, and shall be subject to and governed by the laws, ordinances and statutes of jurisdiction, the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, including the right of the Association to come upon a Parcel to furnish services hereunder.

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

**2.08 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 Association 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 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 Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities or any other purpose which the Board deems to be in the best interests of the Owners. Any and all proceeds from leases, easements, licenses or concessions with respect to the Community Area shall be used to pay the Community Expenses. Also, the Association shall have the right and power to dedicate any part or all of the roads or parking areas located on the Community Area to the Municipality, but only with the Municipality's approval. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Home, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant,

cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be executed by the President and attested to by the Secretary of the Association and duly Recorded.

**2.11 ASSOCIATION'S ACCESS:** The Association shall have the right and power to come onto any Parcel 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 EASEMENT FOR ENCROACHMENT:** In the event that by reason of the construction, repair, reconstruction, settlement or shifting of an improvement to a Parcel or common elements of a condominium, any improvement which is intended to service and/or be part of the Parcel or the common elements of a condominium shall encroach upon any part of any other Parcel or any common elements of a condominium or upon the Community Area or any improvement to the Community Area shall encroach upon any part of a Parcel or any common elements of a condominium, then there shall be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof; provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner (other than Declarant), if such encroachment occurred due to the intentional, willful, or negligent conduct of such Owner or his agent. Without limiting the foregoing, the Owner of each Parcel shall have an easement appurtenant to his Parcel for the continuance, maintenance, repair and replacement of the following improvements, if any, which encroach onto another Parcel or the Community Area:

- (a) the eaves, gutters, downspouts, fascia, flashings, and like appendages which serve the Home on the Parcel;
- (b) the chimney which serves the Home on the Parcel;
- (c) the air conditioning equipment which serves the Home on the Parcel; or
- (d) balconies, steps, porches, door entries and patios which serve the Home on the Parcel.

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

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

### 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 OF COMMUNITY AREA AND ASSOCIATION MAINTAINED PUBLIC GREEN AREAS:

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

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

(2) maintenance, repair and replacement of all improvements located on the Community Area including, without limitation private roads, alleys, fences and monument signs;

(3) maintenance of portions of the Community Area, if any, which are designated as "wetlands" by the U.S. Army Corps of Engineers, which maintenance shall follow guidelines, if any, and the terms and conditions of any permits from time to time issued by the U.S. Army Corps of Engineers or any other governmental authority which has jurisdiction over maintenance of wetlands;

(4) maintenance of those improvements located on Association Maintained Public Green Areas which are delineated and designated on the Site Plan as being the responsibility of the Association to maintain, including, without limitation fences, if any, installed by the Declarant or the Association on Association Maintained Public Green Areas. Anything herein to the contrary notwithstanding, unless specifically agreed to, in writing, by the Association, as provided in (b) below, the Association shall have no responsibility for maintaining, repairing or replacing any roads or bicycle paths located on dedicated right of way which serve the Development or on real estate within the Development which is owned by the Municipality, the park district or any other governmental entity; and

(5) snow removal from all private roads and alleys located on the Community Area;

(b) The Association may from time to time enter into agreements with the Municipality or any other entity which owns or is responsible for maintaining property which is part of or adjacent to the Development Area under which (i) the Association assumes responsibility for maintenance of areas which it is not specifically required to maintain hereunder or under applicable Municipality ordinances and (ii) the cost of such maintenance is shared between the Association and such other entity as provided in the agreement. Any costs which are the responsibility of the Association under any such agreement shall be a Community Expense hereunder.

### 3.03 MAINTENANCE OF HOMES:

(a) Except as otherwise specifically provided for in this Declaration (i) each Owner of a Parcel shall be responsible for the maintenance, repair and replacement of the Parcel and the Home thereon, and (ii) each condominium association shall be responsible for the maintenance of the common elements of each condominium on the Premises, and each owner of a condominium unit shall be responsible for maintenance of his or her unit.

(b) The Association shall furnish all maintenance, repairs and replacements to all Townhome Exteriors (other than exterior lighting fixtures, which shall be maintained by the Owner of the Townhome to which any such fixture is attached) and shall furnish maintenance (including snow removal), repairs and replacement of driveways which serve Townhome Units. Subject to the provisions of Subsection (d) below and Sections 3.05 and 3.07 below, the cost of furnishing maintenance, repairs and replacements to Townhome Exteriors and maintenance, repairs and replacements of driveways which serve Townhome Units shall be Townhome Expenses.

(c) The Association shall furnish grass cutting to the Premises, including, without limitation, grass located on the Community Area, condominium parcels, or Parcels improved with Townhomes and Detached Homes, and the cost thereof shall be a Community Expense. However, if a portion of a Parcel is obstructed with temporary or permanent improvements or personal property such that it is difficult or impractical for the Association's contractor to cut the grass on a portion of the Parcel, the Association shall not be responsible for cutting the grass on such portion; instead, the Owner of the Parcel shall be responsible for cutting the grass on such portion so that the appearance of the grass in such portion is similar to the grass on those portions of the Premises which are cut by the Association.

(d) Each Owner of a Parcel and the Condominium Association, with respect to the common elements of a condominium on the Premises, shall be responsible for maintenance of landscaping (other than grass cutting) on the Owner's Parcel or the common elements of the condominium, as the case may be.

(e) If, in the judgment of the Board, an Owner fails to maintain those portions of the Owner's Parcel which the Owner is responsible for maintaining hereunder in good condition and repair or the appearance of such portions is not of the quality of that of other Parcels in the Development 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 which 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 cause such work to be done and the cost thereof shall be a Charge payable by the Owner to the Association upon demand.

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

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

(b) If in the opinion of the Board, the Owner is being charged disproportionately for costs allocable to the Community Area and Townhome Exteriors, 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 Board is properly allocable to the Community Area, Association Maintained Public Green Areas and Townhome Exteriors and the amount thereof shall be Townhome Expenses or Community Expenses hereunder.

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

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

**3.06 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO THE COMMUNITY AREA:**

(a) No alterations, additions or improvements shall be made to the Community Area without the prior approval of the Board and compliance with applicable Municipality ordinances.

(b) The Association may cause alterations, additions or improvements to be made to the Community Area, and the cost thereof shall be paid from a special assessment, as more fully described in Section 6.05.

**3.07 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO TOWNHOME EXTERIORS:** No additions, alterations or improvements (including, without limitation, changes in the exterior color) shall be made to any Townhome Exterior by an Owner without the prior written consent of the Townhome Committee and compliance with applicable Municipality ordinances. The Townhome Committee may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement to a Townhome Exterior which requires the consent of the Townhome Committee 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 Townhome Committee 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 Townhome 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 which requires Townhome Committee consent hereunder is made to a Townhome Exterior by an Owner without the prior written consent of the Townhome Committee, then the Townhome Committee may, in its discretion, take any of the following actions:

(a) Require the Owner to remove the addition, alteration or improvement and restore the Townhome Exterior 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), the Townhome Committee may cause such work to be done and may charge the Owner for the cost thereof as determined by the Townhome Committee; or

(c) Ratify the action taken by the Owner, and the Townhome Committee 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 ASSOCIATION INSURANCE:**

(a) 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 workmen's compensation insurance and other



liability insurance as it may deem desirable, insuring each Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, as their interests may appear, from liability resulting from an occurrence on or in connection with, the Community Area, Association Maintained Public Green Areas or Townhome Exteriors. The Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 5.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(b) Fidelity bonds indemnifying the Association, the Board 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 Board may deem desirable.

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

#### 4.02 HOME INSURANCE:

(a) Each Owner of a Home shall be responsible for and shall procure fire and all risk coverage insurance upon such Owner's Home for not less than the full insurable replacement value thereof under a policy or policies of insurance with such company or companies, in such form, and for such premiums and periods as he may determine to be appropriate. Any such policy shall contain waivers of subrogation with respect to the Association and its directors, officers, employees and agents (including the managing agent), occupants of the Home, the Declarant or shall name such parties as additional insured parties, as their interests may appear. Each Owner shall also be responsible for his own insurance on the contents of his Home and furnishings and personal property therein.

(b) Each Owner shall deliver to the Board a certificate of insurance certifying that a policy of insurance covering such Owner's Home, as required under this Section, is in effect, and that said policy shall not be cancelled or materially changed except upon ten (10) days' prior written notice thereof to the Board. In the event an Owner fails to procure or keep in effect a policy of insurance, as required under this Section and provide proof thereof to the Board, then the Board may on behalf of and as agent for such Owner procure such insurance on the Owner's Home with a company, in a form, for a premium and period as determined by the Board to be appropriate and the cost thereof shall be a Charge hereunder payable by the Owner to the Association upon demand.

(c) No Owner shall cause or permit anything to be done or kept on the Premises which will result in the cancellation of insurance on such Owner's Home, any other Home, or the Community Area.

#### **4.03 REBUILDING OF DAMAGED HOME:**

(a) In the event of damage to or destruction of any Home by fire or other casualty for which the Owner is required to carry insurance hereunder, the Owner thereof shall, within a reasonable time after such damage or destruction, repair or rebuild the Home in substantial and workmanlike manner with materials comparable to those used in the original structure, 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. When rebuilt, the Townhome Exterior shall be substantially similar to, and its architectural design and landscaping shall be in conformity with, the surrounding Homes which are not so damaged or destroyed. The Owner shall not be relieved of his obligation to repair or rebuild his Home under this Subsection (a) by his failure to carry sufficient insurance or the fact that proceeds received by the Owner from his insurer are not sufficient to cover the cost thereof.

(b) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in Subsection (a), to perform the necessary repair or rebuilding, then, the Board may cause such repairs or rebuilding to be performed in the manner as provided in Subsection (a) and the cost thereof shall be a Charge hereunder payable by the Owner to the Association upon demand.

**4.04 OWNER RESPONSIBILITY:** In addition to the coverage described in Section 4.02 above with respect to his Home, each Owner shall obtain his own personal liability insurance to the extent not covered by the liability insurance for all of the Owners obtained as part of the Community Expenses as above provided, and the Board shall have no obligation whatsoever to obtain any such individual insurance coverage on behalf of the Owners.

**4.05 WAIVER OF SUBROGATION:** The Association and each Owner hereby waives and releases any and all claims which it or he may have against any Owner, including relatives of an Owner, the Association, its directors and officers, Declarant, the managing agent, if any, and their respective employees and agents, for damage to the Dwelling Units, the Community Area, or to any personal property located in the Dwelling Units or the Community Area caused by fire or other casualty, to the extent that such damage is covered by fire or other forms of casualty insurance, and to the extent this release is allowed by policies for such insurance. To the extent possible, all policies secured by the Board under Sections 4.01(a) and (b) and by each Owner under Section 4.02 or each condominium association shall contain waivers of the insurer's rights to subrogation against any Owner, relatives of an Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents.

**4.06 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 Board, either (i) be applied to pay the Community Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as

Community Area under this 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 or shall cause the Association to be incorporated as a not-for-profit corporation under Illinois law. The Association shall be the governing body for all of the Owners for the administration and operation of the Community Area and to the maintenance repair and replacement of the Community Area Association Maintained Public Green Areas, Townhome Exteriors and Landscape Maintenance Areas as provided herein.

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

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

5.04 BOARD/TOWNHOME COMMITTEE: Subject to the rights retained by the Declarant under Section 9.05, (a) the Board shall consist of seven (7) members, each of whom shall be an Owner or Voting Member and (b) the Townhome Committee shall consist of three (3) members, each of whom shall be an Owner or Voting Member who represents a Townhome.

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 shall have one vote for each Dwelling Unit which the Voting Member represents. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the

Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

**5.06 DIRECTOR AND OFFICER LIABILITY:** None of the directors, the Townhome Committee members or the officers of the Association 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 and 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 Declarant, Declarant's beneficiary and each of the directors, the Townhome Committee members and officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other in which any such director may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer or Townhome Committee member.

**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 ninety (90) days written notice.

**5.08 REPRESENTATION:** The Association shall have the power and right to represent the interests of all of the Owners in connection with claims and disputes affecting the Community Area, Association Maintained Public Green Areas and Townhome Exteriors. Without limiting the foregoing, the Association shall have the power after the Turnover Date to settle warranty disputes or other disputes between the Association, the Owners, and the Declarant affecting the construction, use or enjoyment of the Community Area and Townhome Exteriors and any such settlement shall be final and shall bind all of the Owners.

**5.09 DISSOLUTION:** To the extent permissible under applicable law, in the event of the dissolution of the Association, any Community Area owned by the Association shall be

conveyed to the Owners as tenants in common; provided, that the Association shall not voluntarily dissolve without the written consent of the Municipality.

5.10 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 Dwelling Units 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 By-Laws or rules and regulations adopted by the Board (including, without limitation, an action to recover Charges or to foreclose a lien for unpaid Charges) or (b) counterclaims brought by the Association in proceedings instituted against it.

## ARTICLE SIX

### Assessments

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

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

- (a) The estimated Townhome Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Townhome Expenses;
- (c) The amount of the Townhome Assessment payable by the Owners of Townhomes, which shall be equal to the amount determined in (a) above plus the amount determined in (b) above;
- (d) That portion of the Townhome Assessment which shall be payable by the Owner of each Townhome until the next annual Townhome Assessment or revised Townhome Assessment becomes effective, which monthly amount shall be equal to the Townhome Assessment divided by the number of Townhomes, divided by 12, so that each Owner shall pay equal Townhome Assessments for each Townhome owned;
- (e) The estimated Community Expenses;
- (f) The estimated amount, if any, to maintain adequate reserves for Community Expenses;

(g) The amount of the "Community Assessment" payable by the Owners of Dwelling Units, which is hereby defined as the amount determined in (e) above, plus the amount determined in (f) above;

(h) That portion of the Community Assessment which shall be payable by the Owner of each Dwelling Unit each month until the next Community Assessment or revised Community Assessment becomes effective, which monthly amount shall be equal to the Community Assessment, divided by the number of Dwelling Units, divided by 12, so that each Owner shall pay equal Community Assessments for each Dwelling Unit owned.

The Townhome Committee shall prepare and approve that portion of the budget provided for in (a), (b), (c) and (d) above.

Anything herein to the contrary notwithstanding the following provisions shall apply with respect to the period prior to the Turnover Date. Any budget prepared by the Board prior to the Turnover Date shall be based on the assumptions that (i) the Development has been fully constructed as shown on Declarant's then current plan for the Development and (ii) all proposed Dwelling Units have been sold and are occupied. The current plan for the Development shall be kept on file with the Association and may be modified from time to time by Declarant. Declarant shall not be obligated to pay any Townhome Assessments or 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 Townhome Assessments or Community Assessments payable by Owners (other than Declarant) less the portions thereof which are to be added to Reserves is less than the Townhome Expenses or 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 shall deposit with the Association amounts which reasonably approximate Declarant's obligation hereunder as estimated by the Declarant. A final accounting and settlement of the amount, if any, owed by Declarant to the Association shall be made as soon as practicable after the Turnover Date. If the Declarant fails to pay to the Association any amounts due to the Association under this paragraph, the Association shall have a lien against the Dwelling Units then owned by the Declarant for the amount unpaid, provided, however, that any such lien shall be subordinate to the lien of a first mortgage or first trust deed with respect to any such Dwelling Unit.

**6.03 PAYMENT OF 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 Townhome Assessment or Community Assessment, each Owner of a Dwelling Unit which is subject to assessment shall pay to the Association, or as the Board may direct, that portion of the Townhome Assessment, if any, and Community Assessment which is payable by each Owner of a Dwelling Unit under Section 6.02(d) and (h).

**6.04 REVISED ASSESSMENT:** If the Townhome Assessment or Community Assessment proves inadequate for any reason (including nonpayment of any Owner's

assessment) or proves to exceed funds reasonably needed, then the Board (or in the case of the Townhome Assessment, the Townhome Committee) may increase or decrease the assessment payable under Section 6.02(d) and (h) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment.

6.05 SPECIAL ASSESSMENT: The Board may levy a special assessment as provided in this Section (i) to pay (or build up reserves to pay) expenses other than Townhome Expenses and 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 or maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any special assessment shall be levied against all of Dwelling Units in equal shares; except, that a special assessment with respect to Townhome Exteriors or to cover a deficit under the prior year's budget for Townhome Expenses shall be levied only against the Owners of Townhomes and only by action of the Townhome Committee. No special assessment shall be adopted without the affirmative vote of Voting Members representing at least two-thirds (2/3) of the votes cast on the question and only those Owners of Dwelling Units against which the proposed special assessment shall be levied may vote on the question. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the 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, Association Maintained Public Green Areas and Townhome Exteriors (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Community Area, Association Maintained Public Green Areas, the Townhome Exteriors and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Community Area, Association Maintained Public Green Areas the Townhome Exteriors and the purchase of other property to be used by the Association in connection with its duties hereunder, provided, that the Townhome Committee shall make such determinations with respect to the Townhome Exteriors. Each budget shall disclose that percentage of the Townhome Assessment or Community Assessment, as applicable, which shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Association equal to such percentages multiplied by each installment of the Townhome Assessment or Community Assessment, as applicable, paid by such Owner.

6.07 INITIAL CAPITAL CONTRIBUTION: Upon the closing of the first sale of a Dwelling Unit by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to two (2) months' Townhome Assessment and Community Assessment, as applicable, at the rate which shall be effective with

respect to the Dwelling Unit as of the closing plus One Hundred Dollars (\$100.00). Said amount shall be held and used by the Association for its working capital needs.

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

## **ARTICLE SEVEN**

### **Collection of Charges and Remedies for Breach or Violation**

**7.01 CREATION OF LIEN AND PERSONAL OBLIGATION:** The Declarant hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner or the Owner's Dwelling Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the 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 Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Community Area or by abandonment or transfer of his Dwelling Unit.

**7.04 LIEN FOR CHARGES SUBORDINATED TO MORTGAGES:** The lien for Charges, provided for in Section 7.01, shall be subordinate to the Mortgagee's mortgage on the Dwelling Unit which was Recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 7.01, shall not be affected by any sale or transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of



the Dwelling Unit shall be personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Townhome Assessment or Community Assessment or special assessment, and non-payment thereof shall result in a lien against the transferee's Dwelling Unit, as provided in this Article.

**7.05 SELF-HELP BY BOARD:** In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of the Declaration, the By-Laws, or rules or regulations of the Board, where such violation or breach may be cured or abated by affirmative action, then the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Premises where the violation or breach exists to remove or rectify the violation or breach; provided, that, if the violation or breach exists within a Dwelling Unit, judicial proceedings must be instituted before any items of construction can be altered or demolished.

**7.06 OTHER REMEDIES OF THE BOARD:** In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Declaration or any rules and regulations adopted hereunder the Board may levy a fine or the Board may bring an action at law or in equity in the name of 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 (including fines) or to recover damages, and against the Dwelling Unit to enforce any lien created hereunder; and failure by the Association to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

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

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

## **ARTICLE EIGHT**

### **Use Restrictions**

**8.01 INDUSTRY/SIGNS:** No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on 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 part of the Community Area, except as permitted by the Board 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 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.

8.03 ANTENNAE: No television antenna, radio receiver or transmitter, satellite dish or other similar device shall be attached to or installed on any portion of any Townhome Exterior or the Community Area without the approval of the Board. Without limiting the foregoing, the provisions of this paragraph shall not apply to the Association with respect to the installation of equipment necessary for a master antenna system, cable television system or other similar systems within the Premises.

8.04 PARKING: The parking of vehicles on the Community Area shall at all times comply with applicable ordinances of the Municipality and rules and regulations of the Board.

8.05 OBSTRUCTIONS/REFUSE: Except as permitted under Section 9.03 there shall be no obstruction of the Community Area, and nothing shall be stored in the Community Area without the prior written consent of the Board. All rubbish and refuse shall be deposited in such areas and in such receptacles as shall be designated from time to time by the Board or the Municipality.

8.06 PETS: No animal of any kind shall be raised, bred or kept in the Community Area. The Board may from time to time adopt rules and regulations governing the 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 Board to the Owner of the Dwelling Unit containing such pet and the decision of the Board shall be final.

8.07 FENCES: Except for fences constructed or installed by the Declarant, no fence shall be constructed on the Premises without the prior written consent of the Declarant.

8.08 MAILBOXES: Mailboxes on the Premises shall be what are commonly referred to as "gangbox" type mailboxes which shall be maintained by the Association as a Community Expense at such locations designated from time to time by the Board. No individual mailbox shall be installed or maintained on the Premises without the prior written consent of the Declarant.

8.09 DECKS/PATIOS: No deck or patio may be constructed on a Parcel by an Owner other than Declarant without compliance with the requirements of Section 9.08, if any, and any such deck or patio shall be no greater than 140 square feet in area.

8.10 NO NUISANCE: No noxious, offensive or illegal 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.

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 By-Laws, the Declarant shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern.

9.02 PROMOTION OF PROJECT: In connection with the promotion, sale or rental of any improvements upon the Development Area: (i) the Declarant shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements, or to do such acts or other things in, on, or to the Premises as the Declarant may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Dwelling Units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Declarant may deem advisable; and (ii) Declarant, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Community Area, at any and all reasonable times without fee or charge. The Declarant shall have the right and power to lease any unit owned by it or the Declarant to any person or entity which it deems appropriate in its sole discretion.

9.03 CONSTRUCTION ON PREMISES: In connection with the construction of improvements to any part of the Premises, the Declarant, its agents and contractors, shall have the right, at the Declarant's own expense, (but shall not be obligated) to make such alterations, additions or improvements to any part of the Premises including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any structure which shall contain Dwelling Units 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, 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 Municipality or, with the Municipality's approval, to any 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 electrical and telephone conduit and lines, gas, sewer or water lines, or any other utility services serving any Dwelling Unit.

**9.05 DEVELOPER CONTROL OF ASSOCIATION:** The first and all subsequent Boards shall consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not, be members under Section 5.02. Declarant's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Declarant no longer holds or controls title to any part of the Premises, (ii) the giving of written notice by Declarant to the Association of Declarant's election to terminate such rights, or (iii) seven (7) 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". During the period commencing six (6) months after the Recording hereof and ending on the Turnover Date, the Declarant shall appoint at least two (2) Owners (other than representatives of the Declarant) from time to time to be and act as non-voting counselors to the Board; provided, that, if a petition executed by at least ten (10) Owners requests that a specific Owner be appointed as a non-voting counselor to the Board, then the Declarant shall appoint such person as one of the two (2) non-voting counselors. From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Declarant and the Owners shall have no voting rights.

**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:** 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 ARCHITECTURAL CONTROLS:**

(a) The Declarant shall have the right and power from time to time to adopt reasonable rules and regulations governing the design and exterior finish of all improvements or landscaping from time to time constructed, installed or proposed to be constructed, installed or modified on the Premises. Without limiting the foregoing, no earthmoving, filling, dredging, grading, excavating, installation of landscaping, alteration of landscaping, construction of a building, driveway, walkway, fence, signs or other advertising or promotional devices or any other temporary or permanent improvement to any portion of the Premises or any modification,

alteration, renovation, addition or removal of any of the foregoing ("Regulated Work") shall be commenced or maintained with respect to any portion of the Premises without the prior written consent of the Declarant which may be granted or withheld in Declarant's sole and absolute discretion. The Declarant reserves the right and power to promulgate and amend from time to time standards, policies, procedures and guidelines in order to implement the foregoing. If any Regulated Work which requires Declarant approval as provided above is commenced without obtaining the required written consent of the Declarant, then the Declarant may seek any remedy or take any action provided for herein or permitted at law or in equity in order to enforce the provisions hereof, including injunctive relief to stop work and/or restore the portion of the Premises to its condition prior to the commencement of the work.

(b) The Declarant shall have the right and power from time to time to adopt rules and regulations governing the maintenance and upkeep of portions of the Premises, including without limitation, improvements thereto, signs, advertising and landscaping thereon. Without limiting the foregoing, those portions of the Premises on which construction of improvements has not yet commenced shall at all times be maintained in a neat and clean condition and all weeds shall be periodically cut. If in the sole judgement of the Declarant a portion of the Premises is not being maintained in good condition and repair or the appearance of any such portion of the Premises is not of the character and quality of that of other portions of the Premises or is not in compliance with rules and regulations adopted from time to time by the Declarant, then without limiting any rights or remedies available to the Declarant hereunder, at law or in equity, Declarant shall have the right to enter upon any such portion of the Premises and perform any maintenance or repair work which it deems necessary or appropriate. The cost of any such work shall be charged to the Owner or party responsible for maintenance of such portion of the Premises if different from the Owner, and shall be payable to the Declarant upon demand. In the event that the party charged for such work fails to make prompt payment of any such amount within thirty (30) days after demand, such amount shall become and continue to be a lien upon the portion of the Premises owned by such party until such time as payment is made in full; provided, that any such lien shall be subordinate to the lien of any Mortgagee on a Dwelling Unit Recorded prior to the date on which any such amount becomes a lien against a Dwelling Unit as provided above.

(c) Any one or more of the rights and powers of the Declarant under this Section may be delegated to one or more individuals or entities designated from time to time by the Declarant.

(d) Subject as hereinafter provided, from time to time, the Declarant may enter into an agreement ("Transfer Agreement") with the Association whereby the Declarant assigns and transfers to the Association some or all of its rights and powers under Subsections (a) and (b). Any Transfer Agreement shall be executed by both the Declarant and the Association and shall be recorded; provided, that the execution of the Transfer Agreement by the Association shall be approved in advance by action of the Voting Members at an annual meeting or special meeting of the Voting Members. A Transfer Agreement may include such terms as are agreed upon between the Declarant and the Association. From and after the recording of a Transfer Agreement, the rights and powers of the Declarant under Subsections (a) and (b) which are transferred to the Association pursuant to the Transfer Agreement, shall be administered as provided in the Transfer Agreement. Any rights and powers of the Declarant under Subsections

(a) and (b) which are not transferred to the Association pursuant to a Transfer Agreement shall expire and terminate at such time as the Declarant no longer holds or controls title to any portion of the Development Area.

## 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 the Federal National Mortgage Association, 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 Parcels, (iii) to correct errors or inconsistencies in the Declaration or any Exhibit, (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations or (v) to amend the Site Plan to reflect a change in the development plan for the Development. 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 Parcel and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and Record Special Amendments. The right and power to make Special Amendments hereunder shall terminate at such time as 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 executed by Owners of at least Seventy-Five Percent (75%) of the Parcels; 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 Mortgagees, and (ii) Article Nine, Article Twelve or any other provisions relating to the rights of Declarant may be amended only with the written consent of the Declarant. No amendment which removes Premises from the provisions of this Declaration shall be effective if as a result of such removal, an Owner of a Parcel shall no longer have the legal access to a public way from his Parcel. No amendment shall become effective until properly Recorded.

## ARTICLE ELEVEN Mortgagees Rights

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

(a) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Association to the Owner of the Dwelling Unit covered by the 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) Notice of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees;

(e) Notice of any substantial damage to any part of the Community Area or the Home on the Dwelling Unit subject to the Mortgagee's mortgage;

(f) Notice of the commencement of any condemnation or eminent domain proceedings with respect to any part of the Community Area or the Dwelling Unit subject to the Mortgagee's mortgage.

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

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

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

(a) In addition to any requirements or prerequisites provided for elsewhere in this Declaration, the consent of Mortgagees holding, in the aggregate, the first mortgages on at least

two-thirds (2/3) of the Dwelling Units (by number) which are subject to first mortgages held by Mortgagees which specifically request to be treated as "Eligible Mortgagees" under Section 11.01(i) above will be required for the Association to do or permit to be done any of the following:

(1) 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, Article Twelve or any other provision of this Declaration or by By-Laws which specifically grants rights to 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 Dwelling Unit;

(2) The withdrawal of the Premises from the provisions of this Declaration; provided, that, such consent of Eligible Mortgagees will not be required with respect to any action under (1) and (2) above which occurs as a result of any action taken pursuant to Article Twelve.

(b) Whenever required, the consent of an Eligible Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary, in writing, by the Eligible Mortgagee within thirty (30) 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 Mortgagees, as their interests may appear, and no Owner or other party shall be entitled to priority over the Mortgagee of a Dwelling Unit with respect to any such distribution to or with respect to such Dwelling Unit; provided, that, nothing in this Section shall be construed to deny to the 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 seven (7) 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 Dwelling Units contained in the Added Premises shall be referred to as "Added Dwelling Units". 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 Dwelling Units 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 and Exhibit C. Exhibit B may only be amended or supplemented pursuant to this Article to add portions of the Development Area to Exhibit B and shall not be amended to reduce or remove any real estate which is described in Exhibit B immediately prior to the Recording of such Supplemental Declaration. Exhibit C may be amended to designate those portions of the Added Premises which shall be Community Area hereunder or to reflect the addition of Association Maintained Public Green Areas. 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 Dwelling Units to this Declaration, as provided in this Article, then:

(a) The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added 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 Dwelling Unit 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 Dwelling Units immediately prior to the Recording of such Supplemental Declaration;

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

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

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

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

### ARTICLE THIRTEEN

#### Party Walls

**13.01 PARTY WALL:** Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Townhomes shall constitute and be a "Party Wall", and the Owner of a Townhome immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.

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

#### **13.03 DAMAGE TO PARTY WALL:**

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

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Townhome which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Townhomes to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of a Townhome Exterior with respect to which the Association is responsible for furnishing

maintenance, repairs or replacements hereunder shall be paid by the Association as a Townhome Expense to the extent not covered by insurance.

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

**13.04 CHANGE IN PARTY WALL:** Any Owner of a Townhome who proposes to modify, rebuild, repair or make additions to any structure upon his Townhome in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Townhome and the Board, in addition to meeting any other requirements which may apply including, without limitation, those of the Municipality. In the event that a Party Wall is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Development concerning the structural integrity of the Party Wall or either of the Townhome adjacent to the Party Wall shall be null and void and the Owner who alters the Party Wall shall be responsible for any and all damage caused to either of the adjacent Townhomes or improvements thereto.

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

## **ARTICLE FOURTEEN**

### **Miscellaneous**

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

**14.02 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.

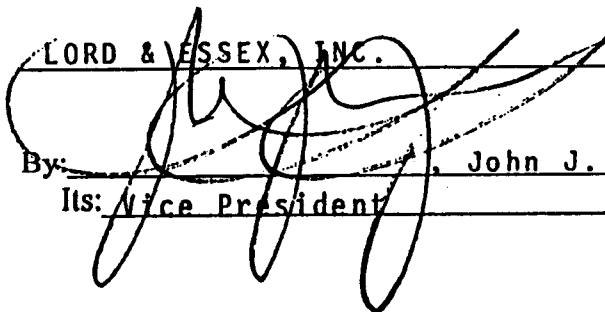
**14.03 SEVERABILITY:** Invalidation of all or any portion of any of the easements, restrictions, covenants, conditions, or reservations, by legislation, judgment or court order shall in no way affect any other provisions of this Declaration which shall, and all other provisions, remain in full force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

14.04 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.

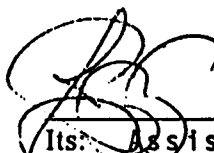
14.05 TITLE HOLDING LAND TRUST: In the event title to any Dwelling Unit is held by a title holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time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

Dated: October 21, 1997

**DECLARANT:**

LORD & ESSEX, INC.  
By:  John J. Popp, Jr.  
Its: Vice President

**ATTEST:**

 Joseph J. Popp  
Its: Assistant Secretary

(SEAL)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF Kane )

I, Diana K. Rodgers, a Notary Public in and for said County and State, do hereby certify that John J. Popp, Jr. and Joseph J. Popp, Vice President and Assistant Secretary, respectively, of Lord & Essex, Inc. (the "Declarant") and, as such Vice President and as such Assistant Secretary of the Declarant appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Declarant for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21st day of October, 19 97.

Diana K. Rodgers  
Notary Public



**EXHIBIT A TO  
DECLARATION FOR OGDEN FALLS**

**The Development Area**

**1. Homes**

---

LOTS 1 THRU 19 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 20 THRU 50 and 52 THRU 54 IN OGDEN FALLS UNIT 1, PHASE 3 and LOTS 55 THRU 62 and LOTS 64 THRU 73 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 74 THRU 86 IN OGDEN FALLS UNIT 1, PHASE 3 and LOTS 87 THRU 100 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 101 THRU 107 IN OGDEN FALLS UNIT 1, PHASE 3 and LOTS 108 THRU 116, LOTS 118 THRU 127, LOTS 129 THRU 155, LOTS 157 THRU 162 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

**2. Condominiums**

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LOT 51 IN OGDEN FALLS UNIT 1, PHASE 3, LOT 63 IN OGDEN FALLS UNIT 1, PHASE 4, and LOTS 117, 128 AND 156 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

**3. Townhomes**

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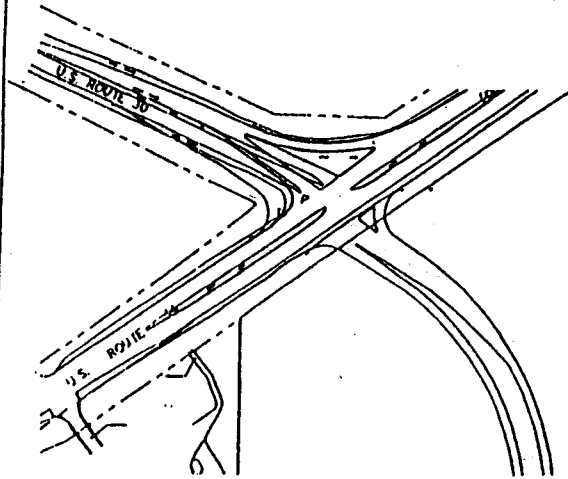
TO BE ADDED UPON RECORDATION OF FINAL PLATS

**4. Community Area**

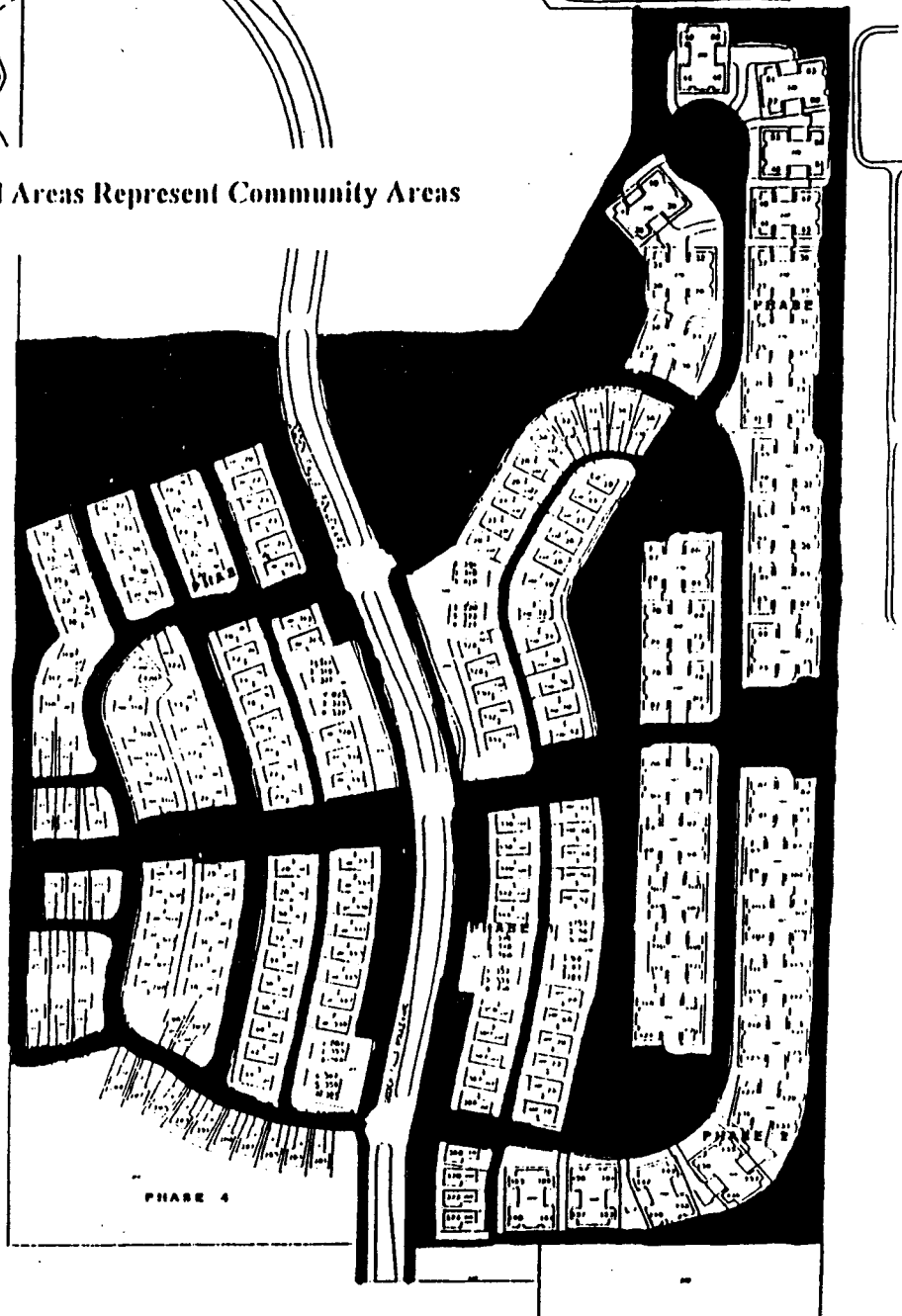
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LOTS 218, 225, 226, 227, 228, 229, 230, 231, 232, 233 AND 234 IN OGDEN FALLS UNIT 1, PHASE 3 and LOTS 215, 216, 217, 219, 220, 221, 222, 223 AND 224 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 199, 200, 201, 202, 203, 205, 207, 208, 209, 210, 211, 212, AND 213 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

# EXHIBIT C Community Area



Shaded Areas Represent Community Areas



PREPARED FOR  
LORD & ESSEX HOMES  
1135 MITCHELL ROAD  
AURORA, ILL. 60504  
(830) 806-5825

570000  
100' ALTERNATE NORTH  
100' ALTERNATE SOUTH



DESIGNED BY  
**CEMCON, Ltd.**

Consulting Engineers, Land Surveyors & Planners  
10111 GARDEN LANE 2ND  
MONTREAL, QUEBEC H3T 1G6  
(514) 353-1030

DATE: 10-1-80 FILE: 100-1-10000  
DRAWN BY: J. H. 100-1-10000  
CHECKED BY: J. H. 100-1-10000  
COMPILED DATE: 10-10-80 JOB NO: 100-1-10000  
BY: 10-11-80/100-1-10000

THE BY-LAWS OF  
THE OGDEN FALLS HOMEOWNERS ASSOCIATION  
AN ILLINOIS NOT-FOR-PROFIT CORPORATION

ARTICLE I  
NAME OF CORPORATION

The name of this corporation is Ogden Falls Homeowners Association.

ARTICLE II  
PURPOSE AND POWERS

COPY

2.01 PURPOSES: The purposes of this Association are to act on behalf of its members collectively, as their governing body, with respect to the preservation, care, maintenance, replacement, improvement, enhancement, operation and administration of both real and personal property and for the promotion of the health, safety and welfare and the common use and enjoyment thereof by members of the Association, all on a not-for-profit basis. These By-Laws are subject to the provisions of the Declaration for Ogden Falls ("Declaration") recorded with the Office of the Recorder of Deeds for Kendall County, Illinois on October 21, 1997, as Document No. 9710665. All terms used herein shall have the meanings set forth in the Declaration.

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

ARTICLE III  
OFFICES

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

3.02 PRINCIPAL OFFICE: The Association's principal office shall be maintained on the Development Area.

ARTICLE IV  
MEETINGS OF MEMBERS

4.01 VOTING RIGHTS: Any or all members may be present at any meeting of the members, but the voting rights shall be vested exclusively in the Voting Members; provided, that, prior to the Turnover Date, the voting rights shall be vested exclusively in the Declarant and the Voting Members shall have no voting rights. From and after the Turnover Date, each Voting



Member shall be entitled to one vote for each Dwelling Unit or Unbuilt Dwelling Unit which the Voting Member represents. The Voting Members may vote in person or by proxy. All proxies shall be in writing, revocable, valid only for eleven (11) months from the date of execution and filed with the Secretary.

4.02 PLACE OF MEETING; QUORUM: Meetings of the members shall be held at the principal office of this Association or at such other place in Lake County, Illinois as may be designated in any notice of a meeting. All meetings shall be conducted in accordance with the rules and provisions set forth in Roberts Rules of Order as from time to time published. Twenty percent (20%) of the Voting Members shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Owners at which a quorum is present upon the affirmative vote of a majority of the members present at such meeting.

4.03 ANNUAL MEETINGS: The initial meeting of the members shall be held upon not less than twenty-one (21) days' written notice given by the Declarant. If not called earlier by the Declarant, the initial meeting of the Owners shall be held no later than thirty (30) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Owners on the anniversary thereof, or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the Owners not less than ten (10) days prior to the date fixed for said meeting.

4.04 SPECIAL MEETINGS: Special meetings of the members may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Owners or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, or by twenty percent (20%) of the Voting Members, and delivered not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time, and place of the meeting and the matters to be considered.

4.05 NOTICE OF MEETINGS: Notices of meetings required to be given herein may be delivered either personally or by mail to the members, addressed to such member at the address given by him to the Board for the purpose of service of such notice or to the Dwelling Unit of the Owner, if no address has been given to the Board. A notice of meeting shall include an agenda of business and matters to be acted upon or considered at the meeting.

## ARTICLE V BOARD OF DIRECTORS

5.01 IN GENERAL: The affairs of the Association shall be vested in the board of directors (the "Board"), which shall consist of seven (7) persons ("Directors") or such other number of persons as shall be fixed from time to time by the affirmative vote of 50% of the Voting Members. Each Director shall be an Owner or a Voting Member.

5.02 DECLARANT DESIGNATED BOARDS: Anything herein to the contrary notwithstanding, until the first meeting of the members after the Turnover Date the Board shall consist of three (3) persons from time to time designated by the Declarant, who shall serve at the

discretion of the Declarant. During such period the Owners may elect from among themselves that number of non-voting counselors to the Board as the Declarant may, in its sole discretion, permit.

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

(a) Original copies of the Declaration, these By-Laws, the Association's Articles of Incorporation and the Association's minute book.

(b) An accounting of all receipts and expenditures made or received on behalf of the Association by the Declarant designated Boards.

(c) All Association funds and bank accounts.

(d) A schedule of all personal property, equipment and fixtures belonging to the Association including documents transferring the property to the Association.

**5.04 ELECTION:** At the initial meeting of the Owners, the Voting Members shall elect a full Board of Directors. The four (4) candidates receiving the greatest number of votes shall each serve a two year term and the three (3) candidates receiving the next greatest number of votes shall each serve a one year term. Thereafter, each Director shall serve a two year term. Each Director shall hold office until his term expires or until his successor shall have been elected and qualified. Directors may succeed themselves in office. In all elections for members of the Board, the Voting Member for each Dwelling Unit shall be entitled to the number of votes equal to the number of Directors to be elected (cumulative voting shall not be permitted).

**5.05 ANNUAL MEETINGS:** The Board shall hold an annual meeting within ten (10) days after the annual meeting of the members.

**5.06 REGULAR MEETINGS:** Regular meetings of the Board shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the Directors, provided that not less than four such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, at least two (2) days prior to the day named for any such meeting and such notice shall state the time and place of such regular meeting and such notice shall be posted conspicuously on the Premises so as to inform the Owners of such meetings.

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

5.08 ATTENDANCE AT MEETINGS BY OWNERS: Owners may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion. It is not the intention that Owners shall have the right to attend meetings of the Board in the same manner as provided for members of condominium associations under the Illinois Condominium Property Act.

5.09 WAIVER OF NOTICE: Before or at any meeting of the Board any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

5.10 QUORUM: A majority of the Directors serving from time to time shall constitute a quorum for the election of officers and for the transaction of business at any meeting of the Board, provided, that if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present.

5.11 COMPENSATION/REIMBURSEMENT FOR EXPENSES: Directors shall receive no compensation, except as expressly provided in a resolution duly adopted by 75% of the Voting Members. Upon the presentation of receipts or other appropriate documentation, a Director shall be reimbursed by the Association for reasonable out-of-pocket expenses incurred in the course of the performance of his duties as a Director.

5.12 REMOVAL OR RESIGNATION OF DIRECTOR: Any Director may be removed from office, with or without cause, by the affirmative vote of at least two-thirds (2/3) of the Directors then serving at any annual meeting or at a special meeting called for such purpose. Any Director may resign at any time by submitting his written resignation to the Board. If a Director ceases to be an Owner or Voting Member, he shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Director who resigns may be appointed by a majority of the remaining Directors at any regular meeting or a special meeting called for such purpose and any successor so appointed shall serve the balance of his predecessor's term.

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

(a) To engage the services of a manager or managing agent upon such terms and with such authority as the Board may approve;

(b) To provide for the designation, hiring and removal of such employees and such other personnel, including attorneys and accountants, as the Board may, in its discretion, deem necessary or proper;

(c) To provide for any maintenance, repair, alteration, addition, improvement or replacement of property which the Association is responsible for maintaining under the Declaration and these By-Laws;

(d) To procure insurance as provided for under the Declaration;

(e) To estimate and provide each Owner with an annual budget showing the Community Expenses and Townhome Expenses;

(f) To set, give notice of, and collect Community Assessments and Townhome Assessments from the Owners as provided in the Declaration;

(g) To pay the Community Expenses and Townhome Expenses;

(h) Subject to the provisions of the Declaration, to own, convey, encumber or otherwise deal with any real property conveyed to or purchased by the Association;

(i) To adopt and, from time to time, to amend such reasonable rules and regulations as the Board may deem advisable for the use, enjoyment, administration, management, maintenance, conservation and beautification of the Community Area. Written notice of any such rules and regulations or amendments thereto shall be given to all Owners affected thereby;

(j) To delegate the exercise of its power to committees appointed pursuant to Article Seven of these By-Laws; and

(k) To borrow money and pledge the assets of the Association, including the right to receive future assessments, as collateral for repayment thereof.

## **ARTICLE VI**

### **TOWNHOME COMMITTEE**

**6.01 IN GENERAL:** The Townhome Committee shall consist of three (3) individuals. The Townhome Committee shall have all of the powers granted to it under the Declaration and these By-Laws.

**6.02 DECLARANT DESIGNATED TOWNHOME COMMITTEE:** Anything herein to the contrary notwithstanding, at the first meeting of the Owners after the Turnover Date, the Townhome Committee shall consist of three (3) individuals from time to time designated by the Declarant. Such individuals may, but need not, be Owners and shall serve at the discretion of the Declarant.

**6.03 TOWNHOME COMMITTEE AFTER TURNOVER DATE:** At the first meeting of the Owners (which shall be held no later than thirty (30) days after the Turnover Date) the Voting Members shall elect a full Townhome Committee in the manner hereinafter provided to replace each the Declarant designated Townhome Committee established under Section 6.02.

From and after such meeting, each member of the Townhome Committee shall be a Voting Member who represents a Townhome.

**6.04 ELECTION:** At each election for members of the Townhome Committee, each Voting Member for each Townhome shall be entitled to the number of votes equal to the number of members to be elected and cumulative voting shall be permitted. At the initial meeting of the Owners, a full Townhome Committee shall be elected, each member of which shall serve a two (2) year term. Thereafter, each member of the Townhome Committee shall serve a two (2) year term. Each Member of the Townhome Committee shall serve until his term expires or is terminated or until his successor shall have been elected and qualified. A member of the Townhome Committee may succeed himself in office and may simultaneously serve as a Director.

**6.05 ANNUAL MEETINGS:** The Townhome Committee shall hold an annual meeting within ten (10) days after the annual meeting of the Owners at such place as shall be fixed by the Townhome Committee members at the annual meeting of the Owners.

**6.06 REGULAR MEETINGS:** Regular meetings of the Townhome Committee shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the Townhome Committee members, provided that from and after the Turnover Date, not less than two (2) such meetings shall be held during each fiscal year.

**6.07 SPECIAL MEETINGS:** Special meetings of the Townhome Committee may be called by the President or by at least one-third (1/3) of the Townhome Committee members then serving.

**6.08 NOTICE OF TOWNHOME COMMITTEE MEETINGS:** Notice of each meeting of the Townhome Committee shall be mailed or personally delivered to each member at least forty-eight (48) hours prior to the meeting.

**6.09 QUORUM:** A majority of the Townhome Committee members serving from time to time shall constitute a quorum for the transaction of business at any meeting of the Townhome Committee. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the Townhome Committee members present at a meeting at which a quorum is present.

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

**6.12 REMOVAL OR RESIGNATION OF TOWNHOME COMMITTEE MEMBER:** Any Townhome Committee member may be removed from office, with or without cause, by action of the Voting Members who have the right to vote for such Townhome Committee

members at any annual meeting or at a special meeting called for such purpose. Any Townhome Committee member whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Any Townhome Committee member may resign at any time by submitting his written resignation to the Board. If a Townhome Committee member ceases to be a Voting Member who represents a Townhome, he shall be deemed to have resigned as of the date of such cessation. A successor to fill the unexpired term of a Townhome Committee member who resigns or is removed may be appointed by a majority of the remaining Townhome Committee member at any regular meeting or at any special meeting called for such purpose and any successor so appointed shall serve the balance of his predecessor's term.

**6.13 POWERS AND DUTIES OF THE TOWNHOME COMMITTEE:** Subject to the rights and powers reserved to the Declarant in the Declaration, the Townhome Committee shall have all of the powers and duties granted to it or imposed upon it by the Declaration and these By-Laws, including, without limitation, the following powers and duties:

- (a) To consult with the Board in the preparation of the proposed annual budget for the Townhome Expenses, as provided for in the Declaration;
- (b) To initiate or approve proposed alterations or improvements to the Townhome Exteriors, and/or the levying of special assessments relating thereto; and
- (c) To generally consult with the Board concerning matters relating to the Townhome Exteriors.

## **ARTICLE VII**

### **OFFICERS**

**7.01 OFFICERS:** The officers of the Association shall be a President, one or more Vice Presidents, a Secretary, Treasurer, and such assistants to such officers as the Board may deem appropriate. All officers shall be Directors and shall be elected at each annual meeting of the Board and shall hold office at the discretion of the Board.

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

**7.03 POWERS OF OFFICERS:** The respective officers of the Association shall have such powers and duties as are from time to time prescribed by the Board and as are usually vested in such officers, including but not limited to, the following:

- (a) The President shall be the Chief Executive Officer of the Association and shall preside at all meetings of the members and at all meetings of the Board and shall execute amendments to the Declaration and these By-Laws as provided in the Declaration and these By-Laws.
- (b) The Vice President shall, in the absence or the disability of the President, perform the duties and exercise the powers of such office;

(c) The Secretary shall keep minutes of all meetings of the Owners and of the Board and shall have custody of the Association Seal and have charge of such other books, papers and documents as the Board may prescribe;

(d) The Treasurer shall be responsible for Association funds and securities and for keeping full and accurate accounts of all receipts and disbursements in the Association books of accounts kept for such purpose.

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

## ARTICLE VIII COMMITTEES DESIGNATED BY BOARD

8.01 BOARD COMMITTEES: The Board, by resolution adopted by a majority of the Directors in office, may designate one or more committees, each of which shall consist of two or more Directors, which committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law. Without limiting the foregoing, the Townhome committee provided for in the Declaration shall be a committee of the Board as provided for in this Section.

8.02 SPECIAL AND STANDING COMMITTEES: Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Owners or representative of Owners and the President of the Association shall appoint the members of such committee and shall designate a Director to act as a liaison between such committee and the Board. Any member of such committee may be removed by the President of the Association whenever in his judgment the best interests of the Association shall be served by such removal. The powers and the duties of any such standing committee shall be as set from time to time by resolution of the Board. The chairman of each standing committee shall be a Director (who shall act as the liaison between the committee and the Board), and the other members of the committee (which need not be Directors) shall be appointed and removed from time to time by such chairman.

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

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

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

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

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

## **ARTICLE IX**

### **CONTRACTS, CHECKS, DEPOSITS AND FUNDS**

**9.01 CONTRACTS:** The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances. In the absence of any such authorization by the Board, any such contract or instrument shall be executed by the President or a Vice President and attested to by the Secretary or an Assistant Secretary of the Association.

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

**9.03 BANK ACCOUNTS:** All funds of the Association 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 shall elect.

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

## **ARTICLE X**

### **FISCAL MANAGEMENT**

**10.01 FISCAL YEAR:** The fiscal year of the Association shall be established by the Association and may be changed from time to time by a resolution adopted by two-thirds (2/3) of the Board.

**10.02 ANNUAL STATEMENT:** Within a reasonable time after the close of each fiscal year the Board shall furnish each Owner with a statement of the income and disbursements of the Association for such fiscal year.



10.03 SPECIAL STATEMENT: Within ten (10) days after receipt of a written request from an Owner (together with payment of a reasonable fee, if any, set by the Board) the Board shall provide the Owner with a statement containing the following information:

(a) The status of the Owner's account and the amount of any unpaid assessments or other charges due and owing from the Owner; and

(b) The status and amount of any and all Capital Reserves.

10.04 ASSESSMENT PROCEDURE: Community assessments and special assessments shall be made and collected as provided in the Declaration.

#### ARTICLE XI BOOKS AND RECORDS

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

#### ARTICLE XII SEAL

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

#### ARTICLE XIII AMENDMENTS

These By-Laws may be amended or modified at any time, or from time to time by the affirmative votes of Directors having more than two-thirds (2/3) of the total votes, provided that prior to the Turnover Date, Section 5.02 and this Article XII may not be amended without the written consent of the Declarant, and provided further, that no provision of these By-Laws may be amended or modified so as to conflict with the provisions of the Declaration.

9801162 02/03/1998 12:25P 2 of 2  
Paul Anderson; Kendall County, IL Recorder

**COPY**

**FIRST SUPPLEMENTAL DECLARATION  
FOR  
OGDEN FALLS  
OGDEN FALLS HOMEOWNERS ASSOCIATION**

**FEBRUARY 3, 1998**

**FIRST SUPPLEMENTAL DECLARATION TO  
DECLARATION FOR  
OGDEN FALLS HOMEOWNERS ASSOCIATION**

**THIS SUPPLEMENTAL DECLARATION** (hereinafter "Supplement") is made and entered in by LORD & ESSEX, INC., 1135 Mitchell Road, Aurora, Illinois, 60505, an Illinois Corporation (hereinafter for convenience referred to together as "Declarant") this 3rd Day of February, 1998.

**WITNESSETH:**

**WHEREAS**, Declarant desires to amend the Declaration for Ogden Falls/Ogden Falls Homeowners Association, recorded in Kendall County, Illinois on October 21, 1997 as document #9710665 ("Declaration"); Declarant's right to amend were expressly reserved in said Declaration.

**WHEREAS**, Declarant is the legal title holder of the real estate which was reserved in the original Declaration as Additional Property that may become subject to the Declaration. The Additional property being located in the Village of Oswego, County of Kendall and State of Illinois; and

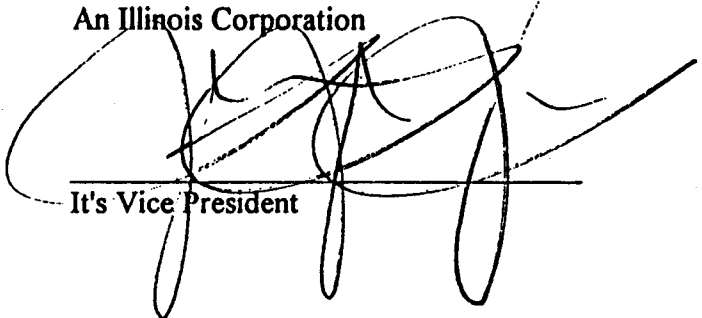
**WHEREAS**, Declarant desires to annex and make subject to the Declaration, additional property described in Exhibit "B", attached hereto and by this reference made a part hereof (hereinafter for convenience referred to as "Annexed Property")

**NOW THEREFORE**, Declarant declares that the real property legally described in Exhibit B ("Added Property"), and the plat thereof are hereby incorporated into, subject to, and made a part of the Ogden Falls Homeowners Association and said property shall be held, occupied, sold and conveyed subject to the Declaration.

\* \* \* \* \*

IN WITNESS WHEREOF, said Declarant as aforesaid has caused it's Vice President and Assistant Secretary to sign this Amendment to Declaration of Ogden Falls Homeowners Association this 3rd day of February, 1998.

LORD & ESSEX, INC.  
An Illinois Corporation

  
It's Vice President

Attest:

  
Assistant Secretary

State of Illinois )

) ss.

County of Kane )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT JOHN J. POPP, JR., personally known to me to be the Vice President and JOSEPH J. POPP, personally known to me to be the Assistant Secretary of said corporation, and personally know to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this 3rd day of February, 1998.

  
Notary Public

Prepared by and Return to:  
John J. Popp, Jr.  
LORD & ESSEX LAND CO., INC.  
1135 Mitchell Road  
Aurora, Illinois 60505

"OFFICIAL SEAL"  
DIANA K. RODGERS  
Notary Public, State of Illinois  
My Commission Expires 9/25/98

**FIRST SUPPLEMENTAL DECLARATION FOR OGDEN FALLS**

**AMENDED**  
**EXHIBIT B**

**The Premises**

**A. Added Premises.**

**1. Homes**

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None

**2. Condominiums**

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LOTS 117, 128, AND 156 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

**3. Townhomes**

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None

**4. Community Area**

---

None

**B. Property Subject to the Declaration**

**1. Homes**

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LOTS 1 THRU 19 IN OGDEN FALLS UNIT 1, PHASE 4 AND LOTS 20 THRU 50 AND 52 THRU 54 IN OGDEN FALLS UNIT 1, PHASE 3 AND LOTS 55 THRU 62 and LOTS 64 THRU 73 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 74 THRU 86 IN OGDEN FALLS UNIT 1, PHASE 3 and LOTS 87 THRU 100 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 101 THRU 107 IN OGDEN FALLS UNIT 1, PHASE 3 and LOTS 108 THRU 116, LOTS 118 THRU 127, LOTS 129 THRU 155, LOTS 157 THRU 162 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

**2. Condominiums**

---

LOTS 117, 128, AND 156 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

**3. Townhomes**

---

None

**AMENDED EXHIBIT B**  
*continued*

**4. Community Area**

---

LOTS 218, 225, 226, 227, 228, 229, 230, 231, 232, 233 AND 234 IN OGDEN FALLS UNIT 1, PHASE 2 and LOTS 215, 216, 217, 219, 220, 221 222, 223 AND 224 IN OGDEN FALLS UNIT 1, PHASE 4 and LOTS 199, 200, 201, 202, 203, 205, 207, 208, 209, 210, 211, 212, AND 213 IN OGDEN FALLS UNIT 1, PHASE 1, all in the Village of Oswego, Kendall County, Illinois.

**C. Additional Property that may become subject to the Declaration:**

**1. Homes**

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None

**2. Condominiums**

---

LOT 51 IN OGDEN FALLS UNIT 1, PHASE 3 and LOT 63 IN OGDEN FALLS UNIT 1, PHASE 4, all in the Village of Oswego, Kendall County, Illinois.

**3. Townhomes**

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LOTS 163 THRU 170, 181 THRU 194 IN OGDEN FALLS UNIT 1, PHASE 2 and LOTS 171 THRU 180 IN OGDEN FALLS UNIT 1, PHASE 5, all in the Village of Oswego, Kendall County, Illinois.

**4. Community area**

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LOT 236 AND 197 IN OGDEN FALLS UNIT 1, PHASE 5 AND LOTS 195, 196, 204 AND 206 IN OGDEN FALLS UNIT 1, PHASE 2, all in the Village of Oswego, Kendall County, Illinois.