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Paul Anderson, Kendall County, IL Recorder

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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

DEERPATH CREEK HOMEOWNERS ASSOCIATION

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Paul Anderson, Kendall County, IL Recorder

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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
DEERPATH CREEK HOME OWNERS ASSOCIATION

This Declaration is made this 28TH day of November, 1997 by Deerpath Development Corp. (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant owns or controls the real property located in Oswego, Illinois which is legally described in Exhibit A of this Declaration, which exhibit is attached hereto and incorporated herein by reference (hereinafter the "Development Tract"); and

WHEREAS, Declarant intends to develop in phases the Development Tract as a residential community, and part of the Development Tract has already been subdivided and constitutes a portion of Phase 2 and all of Phase 3 of Unit 1 of Deerpath Creek Subdivision (herein "Deerpath Creek");

WHEREAS, Declarant desires to promote the orderly development of the Development Tract and to provide for the maintenance of open spaces and any common areas or facilities by subjecting the property owned or controlled by it and described herein to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in the Development Tract, to create an agency to which should be delegated and assigned the powers of administering and enforcing the covenants, restrictions, conditions, reservations, easements, charges, and liens as delineated in this Declaration; and

WHEREAS, as each future phase of development of the Development Tract is subdivided, said phase shall be subjected to the covenants, restrictions, conditions, reservations, easements, charges, and liens as delineated in this Declaration; and

WHEREAS, Declarant now desires to subject the Development Tract to the covenants, restrictions, conditions, reservations, easements, charges, and liens set forth in this Declaration;

NOW, THEREFORE, Deerpath Development Corp. declares that the real property described in Exhibit A is and shall be held, sold, conveyed, transferred, mortgaged, and encumbered subject to the terms, provisions, covenants, restrictions, conditions, reservations, easements, charges, and liens hereinafter set forth, all of which are declared to be for the purpose of enhancing and protecting the value, desirability, attractiveness, and harmonious and proper use of and administration of the residential portion of the Development Tract. These easements, covenants, restrictions, provisions, conditions, reservations, charges, and liens shall run with the property and shall be binding upon all the parties having or acquiring any right, title, or interest in the property described in Exhibit A shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to the Deerpath Creek Home Owners Association, an Illinois not-for-profit corporation, its successors and assigns.

Section 2. "Basement" or "basement" shall mean a portion of the building located partly underground, but having half or more than half of its floor-to-ceiling height below the average grade measured from the adjoining ground to the building front.

Section 3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Deerpath Creek Home Owners Association.

Section 4. "Building" or "building" shall mean any roofed structure intended for the shelter, housing, or enclosure of any person.

Section 5. "Building accessory" shall mean a portion of a principal building, the use of which is incidental to that of the principal building, and customary with that use.

Section 6. "Building height" shall mean the vertical distance measured from the established ground level to the highest point of a mansard roof, and to the mean level of the topside of rafters between the eaves and the ridge of a gable, hip or gambrel roof, chimneys and ornamental architectural projections shall not be included in calculating the height.

Section 7. "Covenants and Restrictions" shall mean and refer to the covenants, restrictions, conditions, reservations, easements, charges, and liens specified in this Declaration

Section 8. "Declarant" shall mean and refer to Deerpath Development Corp., its officers, agents, employees, successors and assigns (other than the purchaser of a lot).

Section 9. "Developer" shall mean and refer to the Declarant, its successors and assigns.

Section 10. "Development Tract" shall mean the property herein referred to and legally described in Exhibit A, and any other property added to this Declaration as provided herein, which by this Declaration is subjected to the covenants, restrictions, conditions, reservations, easements, charges, and liens herein described.

Section 11. "Dwelling" or "dwelling unit" shall mean a single-family residential building or portion thereof, but specifically not including hotels, motels, rooming houses, nursing homes, mobile homes or any form of camping vehicles.

Section 12. "Family" or "family" shall mean one or more persons each related to the other by blood, marriage, or legal adoption, maintaining a common household in a dwelling.

Section 13. "Garage" or "garage" shall mean an enclosed storage area with doors designed or used for storage of motor vehicles.

Section 14. "Grove Road Lots" shall mean and refer to Lots 69, 70, 71 and 74 of Deerpath Creek Unit One, Phase Two, in the Village of Oswego, Kendall County, Illinois.

Section 15. "Lot" or "lot" shall mean and refer to a parcel of land described or depicted on any final recorded plat as a lot, under common fee ownership, occupied by or intended for occupancy by one or more dwellings and having frontage on a platted street.

Section 16. "Lot area" shall mean the area of a horizontal plane, bounded by the vertical planes through front, side and rear lot lines.

Section 17. "Member" or "member" shall mean and refer to a person(s) or entity which holds membership in the Deerpath Creek Home Owners Association.

Section 18. "Occupant" or "occupant" shall mean a person or persons, other than an owner, in lawful possession of one or more residences.

Section 19. "Owner" or "owner" shall mean the person(s) or entity(ies) whose estates or interests, individually or collectively, aggregate fee simple record ownership of a lot, and their successors and assigns. For the purpose of this Declaration unless otherwise specifically provided herein, the word "owner" shall include any trust and beneficiary of a trust, shareholder of a corporation, or partner of a partnership holding legal record title to a lot and the Declarant as to all unsold lots which are or will be constructed on the Development Tract.

Section 20. "Parkway" or "parkway" shall mean the unpaved strip of land within a street right-of-way and which is parallel to the roadway.

Section 21. "Person" or "person" shall mean a natural individual, corporation, partnership, or other entity capable of holding title to or any lesser interest in real property.

Section 22. "Record" or "record" shall mean to record a document in the Office of the Recorder of Deeds of Kendall County, Illinois.

Section 23. "Story" or "story" shall mean that portion of a building included between the surface of any floor and the surface of the floor next above or, if there is no floor above, the space between the floor and the ceiling next above. A basement shall not be counted as a story, and a cellar shall not be counted as a story.

Section 24. "Structure" or "structure" shall mean anything other than a building erected or constructed on a lot, the use of which requires a more or less permanent location on or in the ground. Ornamental masonry walls and fences shall be construed to be structures.

ARTICLE II **PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Existing Subdivided Property. That portion of the real property legally described in Exhibit A which has already been subdivided is hereby and shall hereby be held, sold,

conveyed, transferred, occupied, mortgaged, and encumbered subject to this Declaration.

Section 2. Unsubdivided Property. In addition to Section 1 above, all unsubdivided real property legally described in Exhibit A shall be held, sold, conveyed, transferred, occupied, mortgaged, and encumbered subject to this Declaration. As each phase of same is subdivided, such property shall automatically be deemed subject to this Declaration and to all provisions, terms, covenants and restrictions hereof, without further action of the Declarant. Every person or entity who is a record owner of or a beneficiary of a land trust holding title to such property shall be an automatic member of the Association, on the same terms and subject to the same qualifications and limitations as those members under the provisions of this Declaration. The intent of this paragraph is that in all respects, all of the provisions of this Declaration shall apply equally to the unsubdivided portion of the property described in Exhibit A with like force and effect at the time same becomes subdivided without further action of Declarant of any kind.

Section 3. Exempted Property. Any parcels of property or lots designated on any final recorded plat as park or similar public sites and which are or shall be at any time deeded, donated, transferred, sold or otherwise conveyed to the appropriate governmental authority shall be deemed exempted from and shall not be subject to this Declaration.

Section 4. Additional Property. Declarant reserves the right for itself and its successors and assigns to subject any other additional property to this Declaration. Declarant may take such action at any time and shall be solely at its discretion. In order to subject other additional property to this Declaration, the Declarant shall execute and record a supplementary declaration which shall indicate the action being taken and which shall contain a legal description of the property which is the subject of the supplementary declaration. Upon execution and recordation of a supplementary declaration, the property covered therein shall be subject to the covenants, restrictions, conditions, reservations, easements, charges, and liens set forth in this Declaration, and shall be deemed an addition to Exhibit A and to the Development Tract (unless otherwise specified in such supplementary declaration). Said covenants, restrictions, conditions, reservations, easements, charges, and liens shall run with and bind the property covered by the supplementary declaration and shall inure to the benefit of and be the personal obligation of the owner of said property in the same manner and to the same extent and with the same force and effect as they apply to the property described in Exhibit A and as if said property were subjected to this Declaration on the date of its recordation. Every person or entity who is a record owner of or a beneficiary of a land trust holding title to such additional property shall be a member of the Association on the same terms and subject to the same qualifications and limitations as those members under the provisions of this Declaration. In all respects, all of the provisions of this Declaration shall apply to the property covered in any supplementary declaration and to the owners thereof with equal meaning and of like force and effect.

Section 5. General Provisions. In furtherance of the foregoing provisions of this Article II, a power coupled with an interest is hereby granted to the Declarant, and its successors and assigns, as attorney in fact, to increase the number of members in the Association either by recording a final plat of any phase of the Development Tract or recording a supplementary declaration. Each deed, mortgage, or other instrument with respect to any portion of the property described in Exhibit A or additional property and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power to said attorney in fact, and its successors and

assigns, and shall be deemed to reserve to it, and its successors and assigns, the power to increase the number of members of the Association from time to time as aforesaid. No supplementary declaration shall be deemed or shall constitute a divestment of any owner of his interest in the Association as hereinabove provided. Each and all of the provisions of this Declaration and the exhibits attached hereto, as may be amended by supplementary declaration, shall be deemed to apply to each and every owner. The recording of any supplementary declaration shall not alter or affect the amounts of any liens or common expenses due from any existing owner prior to such recording, nor the respective amounts theretofore assessed to or due from any existing owner for common expenses or other assessments.

Each and every owner of property described in Exhibit A (including all property hereafter added thereto), and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors, assigns, purchasers and lessees, by their acceptance of any deed or mortgage or other interest in or with respect to any such property shall be deemed to have expressly agreed, acknowledged and consented to each and all of the provisions of this Declaration with respect to the recording of any and all supplementary declarations, as aforesaid, which may amend, adjust or reallocate from time to time their respective interests in the Association as hereinabove provided, and hereby further agree to each and all of the provisions of each and all of said supplementary declarations which may hereafter be recorded in the accordance with the foregoing provisions of this Declaration.

Each and every owner of property described in Exhibit A (including all property hereafter added thereto), and their respective mortgagees, grantees, heirs, administrators, executors, legal representatives, successors, assigns, purchasers and lessees, by their acceptance of any deed or mortgage or other interest in or with respect to any such property further agrees, acknowledges and consents as follows, as to each such supplementary declaration that is recorded:

- a. all of the property thereby added to this Declaration (except as specifically exempted herein) shall be governed in all respects by the provisions of this Declaration, as an addition to the Development Tract (unless otherwise specified therein);
- b. the Declarant reserves the right for itself and its successors and assigns to amend this Declaration in such manner at any time, and each owner agrees to execute and deliver such documents as may be necessary or desirable to cause the provisions of this Article II to be carried out in full.

Section 6. Burden Upon the Property. The Declarant declares that this Declaration and the covenants, restrictions, conditions, reservations, easements, charges, and liens established herein shall run with the land, and same shall inure to the benefit of and shall be binding upon each and every owner and his or her respective mortgagees, heirs, administrators, executors, legal representatives, successors and assigns, purchasers, and lessees. By the recording or acceptance of the conveyance of property or any interest therein, the person or entity to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration

Section 7. Rights of Owners. Upon the recording of any supplementary declaration as set forth above, all rights, obligations, easements, restrictions, and liabilities of the owners shall apply to the entire property as then constituted (including the additional property) in the same manner as if the entire property as then constituted was originally subjected to the terms of this Declaration on the date of its recordation.

Section 8. Rights of Prior Deerpath Creek Owners. The record owners of Lots 1 through 66 inclusive of Phase One of Unit One of Deerpath Creek Subdivision and Lots 67, 68, 72, 73, 97, 99, 100, 102, 103, 104, 105, 107, 108, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 139, 140, 141 and 142 inclusive of Phase Two of Unit One of Deerpath Creek Subdivision shall each have the right, upon approval of either the Declarant or by a majority vote of the Board of Directors of the Association at a special meeting duly called for such purpose, to join the Association as members under all of the terms of this Declaration and the Covenants and Restrictions. If approved, said owners shall record within thirty (30) days of approval a "Statement of Joinder to Deerpath Creek Home Owners Association" in substantially similar form to Exhibit B attached hereto. Upon such recording, such lot shall be deemed to be a part of the property described in Exhibit A attached hereto, and all of the rights, covenants, restrictions, easements, charges, liens and liabilities of the owners shall apply to the entire property as then constituted (including the joined property) in the same manner as if the entire property as then constituted was originally subjected to the terms of this Declaration on the date of its recordation.

Section 9. Non-Severability of Rights. The rights, liabilities, and obligations set forth herein shall attach to and run with the ownership of a lot as more specifically set forth below, and may not be severed or alienated from such ownership.

ARTICLE III **GENERAL PURPOSE**

The real property described in Exhibit A is subject to the Covenants and Restrictions hereby declared in order to insure the tasteful and consistent development of the Development Tract and every part thereof; to protect each property owner therein from such improper use of surrounding lots as may depreciate the value of their property, to guard against the erection thereon of buildings built of improper design or unsuitable materials; to insure adequate and reasonable development of said property; to encourage the erection of original designs and attractive improvements thereon; and, in general, to provide adequately for a residential subdivision of the highest quality and character. The purpose of this Declaration is to provide for the high standards of maintenance in the Development Tract so as to ensure a residential community of the highest quality and character for the benefit and convenience of all owners of property and all residents thereof.

ARTICLE IV **HOME OWNERS ASSOCIATION**

Section 1. Creation. Within ninety (90) days of the recording of this Declaration, the Declarant shall cause to be incorporated under the laws of the State of Illinois a not-for-profit corporation to be named the "Deerpath Creek Home Owners Association".

Section 2. Membership. Every person or entity who is a record owner of a lot in the Development Tract or who is the beneficiary of a land trust holding title to a lot in the Development Tract shall be a member of the Association irrespective of the inclusion, exclusion, incorporation by reference, or any specific expression or lack thereof to the effect in the deed or other documents of conveyance. Membership is appurtenant to and shall not be separated from ownership of a lot. Thus, membership shall automatically terminate upon the sale, transfer, or other disposition by a member of its ownership of a lot in the Development Tract at which time the new owner shall automatically become a member of the Association. Such membership may not be sold or transferred other than in conjunction with the sale or transfer of the title interest in the lot to which it is appurtenant. If more than one person or entity is the record owner of or a beneficiary of a land trust holding title to a lot in the Development Tract, all such persons or entities shall be considered collectively as one member. Each member of the Association shall be bound by and shall observe the terms and provisions of this Declaration, the Articles of Incorporation, the By-Laws of the Association, and the rules and regulations promulgated from time to time by the Association or its Board of Directors. Any person or entity who holds an interest in a lot in the Development Tract merely as a security for the performance of an obligation or any person in possession of a lot under a contract to purchase such lot shall not be a member of the Association. No member shall have any right or power to disclaim, terminate, or withdraw from its membership in the Association or from any of its obligations as such member by abandonment of its residence or for any other reason. Ownership of a lot in the Development Tract shall be the sole qualification for membership. There shall be one and only one membership for each lot.

Section 3. Voting Rights. The Association shall have two classes of voting members.

- a. Class A: "Class A" members shall be all record owners of lots in the Development Tract, with the exception of the Declarant.
- b. Class B: The sole "Class B" member shall be the Declarant.

The Class A members shall be entitled to one vote for each lot owned in the Development Tract. If more than one person or entity is the record owner or beneficiary of the title-holding land trust of a lot in the Development Tract, then the vote for that lot or unit shall be exercised as those persons or entities amongst themselves determine. No more than one vote shall be cast with respect to any such lot.

The Class B member shall be entitled to five (5) votes for each lot owned and fifteen (15) votes for each unsubdivided acre of property described in Exhibit A or any other unsubdivided property added to this Declaration.

The Class B membership shall cease and be automatically converted to Class A membership on the happening of either of the following events, whichever occurs first: (a) when title to one hundred percent (100%) of all subdivided property in the Development Tract (including any additional property) has been conveyed, and all unsubdivided property of the Development Tract (including any additional property) has been subdivided and title to one hundred percent (100%) of such newer subdivided property has been conveyed, or (b) whenever the Class B member elects to do so.

The Association shall have the right to suspend the voting rights of any member for any period during which any assessment levied by the Association against the member's lot remains unpaid.

Section 4. Powers, Duties and Responsibility. The Association is created to carry out the purpose of this Declaration and the Covenants and Restrictions. In order to carry out that purpose, the Association shall be the governing body for all of the owners and beneficiaries of title-holding land trusts of lots in the Development Tract. It shall exercise the following powers and shall assume the following duties and responsibilities:

- a. to provide for highest standards of maintenance of the Development Tract and to make and promote the desired quality and character thereof,
- b. to receive property of every kind, whether real or personal, and to administer and apply such property and the income therefrom exclusively for the purposes of the Association;
- c. to receive any gift, bequest, or devise of any property for any purpose specified by the donor or testator or for any of the purposes of the Association;
- d. to maintain, repair, and replace the following in the Development Tract.
 - i. all entrance monuments and gates and accompanying landscaping, vegetation, grass, and fencing;
 - ii. all berms, landscaping, grass and ditchlines along Grove Road adjacent to the Grove Road Lots; and
 - iii. any property owned or leased by the Association.
- e. to provide for a general fund to enable the Association to exercise its powers, duties, and responsibilities as delineated in this Declaration, its Articles of Incorporation, and its By-Laws by levying an annual assessment or special assessment(s);
- f. to enforce any lien for non-payment of any assessment; and
- g. to take any actions necessary to effectuate and fulfill the purposes and provisions of this Declaration and the Covenants and Restrictions

Section 5. Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The initial control and management of the Association shall be entrusted to an initial Board of Directors which shall consist of three directors. Said initial Board shall be selected by the Declarant, and the directors need not be lot owners. The initial Board shall hold office until the initial Annual Membership Meeting, which shall occur on the first Monday in February of the year following the completion and occupancy of the residences of one hundred percent (100%) of the total number of lots in the Development Tract. Said meeting, hereinafter being known as the Annual Membership Meeting, may be at such other reasonable time or date not more than thirty days before or after said date as may be designated by written notice of the Board delivered to the membership not less than ten days prior to the date fixed for said new meeting.

Prior to the completion and occupancy of the residences on one hundred percent (100%) of the total number of lots in the Development Tract (including any additional property), the initial

Board of Directors reserves the right to cease to hold office and transfer control and management of the Association to the second Board of Directors at any time it so decides in its sole discretion irrespective of the criteria set forth herein. When the initial Board of three directors shall desire to cease to hold office as specified herein, there shall be a meeting of the members of the Association for the purpose of electing a second Board of Directors. Said second Board and all subsequent Boards of Directors shall consist of five directors who shall hold office for two-year terms.

The By-Laws of the Association shall set forth the general powers of the Board, the number, tenure and qualifications of directors, their term of office, manner of election and removal, and method of operation of the Board consistent with this Declaration. There shall be an annual election to fill the offices of the directors whose terms are expiring. Said election shall occur at the Annual Membership Meeting. Cumulative voting shall not apply in the election of the directors. Each lot shall have the number of votes as specified in Article IV, Section 3 herein. The Board shall have the power to fill any vacancy that may occur in their own number or in any office of the Association. The directors or officers so appointed shall serve for the unexpired term of the director replaced. If any director fails to attend a majority of the number of meetings of the Board in any fiscal year, the Board may in its sole discretion declare his office vacant. The regular meeting of the Board shall be held immediately after and at the same place as each Annual Membership Meeting. Special meetings may be called on the order of the president or on the motion in writing of a majority of the directors. At least two days notice of such special meeting, specifying its purpose, shall be given by mail or personal service to each director. A majority of the Board shall constitute a quorum for the transaction of business and the action of a majority of such quorum shall be the action of the Board. If a quorum is not present, a less number may adjourn the meeting to another date. The officers of the Association shall be president, vice president, secretary, and treasurer. They shall all be directors and elected by the directors at the regular meeting of the Board subsequent to the annual election of directors and shall hold their respective office for one year and/or until their successors are elected and qualified. The officers shall be subject to the control of the Board and may be removed by the majority of the directors at any regular meeting or any special meeting called for that purpose. The Board may elect such other officers as it deems necessary. The officers shall exercise their functions according to the By-Laws of the Association.

The members of the Board (including the initial Board of three directors and the subsequent Boards of five directors) and the officers of the Association shall not be personally liable to the Association or any owners for any mistake of judgment or any acts or omissions made in good faith while acting in their capacity as directors or officers. The Association shall indemnify and hold harmless the members of the Board and the officers thereof against all contractual liability to others arising out of contracts made by them, unless such contracts shall have been made in bad faith or with knowledge that same was contrary to the provisions of this Declaration. The liability of any owner shall be limited to an amount determined by dividing the total liability by the total number of owners subject to the terms of this Declaration. All contracts and agreements entered into by the Board or any officers thereof shall be deemed executed by said parties as the case may be as agent for the owners and the Association.

In the event of any disagreement between any member of the Association relating to: (a) the maintenance, repair, or replacement of improvements within the landscape easements or entrance monuments, (b) the Covenants and Restrictions, or (c) any questions or interpretation or

application of the provisions of this Declaration or the By-Laws of the Association, the determination thereof by the Board shall be final and binding on each and all members of the Association.

Section 6. Specific Responsibilities for Maintenance, Repair, and Replacement. The Association shall be responsible for the maintenance, repair and replacement of the following in the Development Tract.

- a. all entrance monuments and gates and accompanying landscaping, vegetation, grass, and fencing;
- b. all vegetation planted by the Declarant or the Association, except grass, within landscape easements;
- c. all grass within landscape easements which lies between (i) any fence parallel to the adjoining right-of-way and said right-of-way, or (ii) if there is no fence, either the ridge line of any berm running parallel to the adjoining right-of-way or the trunk line of major plantings and said right-of-way; the balance of grass area within the landscape easement shall be maintained by each respective lot owner;
- d. all fences located within landscape easements which were installed by the Declarant or the Home Owners Association;
- e. all entrance monuments and gates and accompanying landscaping, vegetation, grass, and fencing;
- f. all berms, landscaping, grass and ditchlines along Grove Road adjacent to the Grove Road Lots, as may be directed by the Village of Oswego or other governing authority; and
- g. any property owned or leased by the Association.

The owners of the Grove Road lots shall permit the Association, through its designated members, employees, agents or subcontractors, to come upon their lots for the purpose of mowing the berm along Grove Road.

Section 7. Meetings. The initial meeting of the voting members of the Association shall be held as specified in Article IV, Section 5 herein. The Declarant or the initial Board shall notify the members of said initial meeting at least ten days prior to the date of the meeting. Thereafter, there shall be an Annual Membership Meeting of the voting members on the first Monday in February each calendar year, or at such other reasonable time or date no more than thirty days before or after said date as may be designated by written notice of the Board delivered to the membership not less than ten days prior to the date fixed for said meeting. The purpose of the initial Annual Membership Meeting and all subsequent Annual Membership Meetings shall be to elect directors and to conduct Association business. Special meetings of the voting members may be called at any time for the purpose of considering matters which by the terms of this Declaration require the approval of all or some of the voting members, or for any other reasonable purpose. Said meetings may be called by the president, the Board, or the voting members having in the aggregate not less than ten percent of the total votes of the Association. Special meetings shall be held as provided in the Association By-Laws. The presence in person or by written proxy at any meeting of the voting members having fifty percent of the total votes of the Association shall

constitute a quorum for the transaction of business. Unless otherwise expressly provided herein or required by the Not-For-Profit Corporation Act or the Articles of Incorporation of the Association, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting.

Section 8. Loan and Encumbrances. The Association through the Board may not obtain a loan, whether secured or unsecured, or encumber the assets of the Association without approval by the majority of the total votes of the Association present in person or by written proxy at a membership meeting called for this purpose. The presence in person or by proxy at said meeting of not less than fifty percent of the total membership shall constitute a quorum. However, said loan or encumbrance must be approved by not less than fifty percent of the total membership of the Association. This provision shall not restrict the power of the Board or the Association to contract for goods or services in the ordinary course of the Association's operations. This provision may not be amended except by approval of not less than fifty percent of the total membership of the Association present either in person or by written proxy at a meeting called for this purpose.

Section 9. Rules and Regulations. The Board shall have the authority from time to time to adopt rules and regulations governing the administration and operation of the Association, subject to the terms of this Declaration and the Association By-Laws.

ARTICLE V ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of a lot in the Development Tract by acceptance of a deed or other document of conveyance therefore, whether or not it shall be so expressed in any deed or other document or conveyance, shall be deemed to covenant and agree to pay to the Association regular assessments of charges and special assessments for expenses and capital improvements as provided herein. Such assessments shall be fixed, established, and collected from time to time as hereafter provided. The regular and special assessments together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge against and a continuing lien upon the lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the owner of such lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of the residents in the Development Tract and for any purpose of the Association as specified in this Declaration or the Articles of Incorporation. All funds collected (except for such special assessment as may be levied against less than all of the members and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held in trust for the benefit, use, and account of each of the members in the ratio that the number of lots owned by it bears to the total number of lots in the Development Tract as the same is constituted from time to time.

Section 3. Regular Assessments. The Association, through the Board, shall levy an assessment against each lot in the Development Tract for each assessment year, applicable to that year only, for the purpose of enabling the Association to exercise its powers and duties and to fulfill its responsibilities as delineated herein.

Section 4. Procedure. The Board of the Association shall determine the amount of the regular assessment against each lot for each assessment year. The assessment shall be allocated equally against all lots in the Development Tract. The Board shall notify in writing each member of the Association of the amount of the annual regular assessment against the member's lot no later than December 15 of each year. On or before February 1 of the ensuing calendar year, or otherwise as provided by the Board, each owner, jointly and severally, shall be personally liable for and obligated to pay to the Association the annual assessment. On or before April 1 of each calendar year, the Board shall supply all members an itemized accounting of the expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any net shortage shall be billed to each owner equally and each owner shall be required to pay same within ten days from the receipt of the bill. The Board shall prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association or by the Secretary of the Association and shall be open to inspection by any owner. The Association shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of the assessment therein stated to have been paid.

Section 5. Change in Basis of Regular Assessments. The Board of the Association may change the amount of the annual regular assessment during any assessment year provided that any increase in the assessment shall be approved by a majority of the Board at a meeting duly called for this purpose with appropriate notice and information provided to the membership prior to said meeting.

Section 6. Special Assessment for Expenses. In addition to the regular assessments authorized by Section 3 hereof, the Association, through the Board, may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any repairs, maintenance, replacements, charges, taxes, fees or other expenses or unexpected repair or replacement of any of the vegetation or grass which is the responsibility of the Association pursuant to Article IV herein, provided that any such assessments shall be approved by a majority of the Board, at a meeting duly called for this purpose with appropriate notice and information provided to the membership prior to said meeting. The special assessment shall be allocated equally against all lots in the Development Tract.

Section 7. Special Assessment for Capital Improvements. In addition to the regular assessments authorized by Section 3 hereof, the Association, through the Board, may levy in any assessment year a special assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction of any fencing or entrance monuments or gates or other facilities for the Development Tract provided that any such assessment shall be approved by a majority of the total votes of the Association present in person or by written proxy at a membership meeting called for this purpose. The presence in person or

by written proxy at said meeting of fifty percent of the total membership shall constitute a quorum. However, said assessment must be approved by a majority vote of members in attendance either in person or by written proxy but by not less than fifty percent of the total membership of the Association. This provision may not be amended except by approval of not less than fifty percent of the total membership of the Association present either in person or by written proxy, approved at a meeting called for this purpose, with appropriate notice and information provided to all members prior to said meeting. The special assessment shall be allocated equally against all lots in the Development Tract.

Section 8. Reserve and Contingency Fund. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Upon the conveyance of title to a lot to the first purchaser of a house on said lot, the grantee thereof shall pay to the Association the sum of \$50.00 which shall be deposited in the reserve and contingency fund. Said payment shall not be deemed or considered made in lieu of any annual regular assessment, and is not refundable to the purchaser upon sale of its lot.

Section 9. Effect of Non-Payment of an Assessment. If any regular or special assessment is not paid on the date when due, such assessment shall become delinquent and shall, together with interest thereon (as provided hereinbelow) and costs of collection (including without limitation reasonable attorneys' fees and court costs), thereupon become a continuing lien on the lot and an equitable charge running with the land touching and concerning it, which shall bind the lot in the hands of the then owner and all grantees, heirs, administrators, executors, legal representatives, assigns and successors, and the limitation thereof shall coincide with the statutory limitation of the State of Illinois for the enforcement of oral agreements. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them. If title to a lot is held by an Illinois land trust, the trustee shall not have any personal liability for the assessment, but all beneficiaries of the trust shall be jointly and severally so liable. In the event title to a lot is held by more than one owner, all owners shall be jointly and severally liable. The lien shall attach to rents due from parties in possession to the record owners, provided that it shall be subordinate to an assignment of rent held by a mortgagee delivered in connection with a first mortgage loan to purchase the property. If the assessment is not paid within thirty days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum rate of interest per annum permitted by the usury laws of the State of Illinois, and the Association may bring an action at law against the owner personally obligated to pay same or to foreclose the lien against the lot and there shall be added to the amount of such assessment all the costs of preparing and filing the complaint and maintaining and concluding such action, including without limitation the cost of title reports, and in the event a personal judgment or decree of foreclosure is obtained, such judgment or decree shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court together with all costs of the action. The venue for all legal actions shall be in Kendall County. The persons in possession shall be authorized to accept the summons for the owners of the lot. In the event that title to any lot is conveyed to a land trustee, upon the demand of the Association, the trustee shall furnish the Association with a certified copy of the trust agreement so that the Association shall be advised of the beneficiaries entitled to vote and who will be personally liable for the regular and special assessments.

Section 10. Continuing Obligation. The failure or delay of the Board to prepare or serve notice of the annual or adjusted assessment on the owners shall not constitute a waiver or release in any manner of such owner's obligation to pay the assessments herein described including the maintenance costs and necessary reserves for the Association as herein provided whenever the same shall be determined, and in the absence of notice of the annual or adjusted assessment each owner shall continue to pay the assessment at the then existing rate established for the previous period until such annual or adjusted assessment shall have been mailed or delivered.

Section 11. Accounting. The Board shall keep full and correct books of account of receipts and expenditures. Such records and the vouchers authorizing the payment therefor shall be available for inspection by any owner or any representative of any owner duly authorized in writing at such reasonable time or times during normal business hours as may be requested by the owner. Upon ten days' notice to the Board and payment of a reasonable administrative fee, any owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or any other charges due and owing from such owner.

Section 12. Non-Escape from Obligation. No owner may waive or otherwise escape liability for the assessments provided for herein for any reason.

Section 13. Subordination of the Lien to the Mortgage. The lien for the assessments provided for herein may for any reason be subordinated by the Association by written document executed by its duly authorized officers and shall without any writing be subordinated to the lien of any mortgage placed upon the properties subject to assessments for the purpose of purchasing the subject lot provided, however, that such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the mortgage or mortgages; and provided further such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such property pursuant to the decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The owners agree upon accepting title that liens of assessments shall be prior to any homestead right of the owners.

ARTICLE VI **LOT MAINTENANCE AND REPAIR**

Section 1. Responsibility of Lot Owners. Each owner of a lot in the Development Tract shall provide, at his own expense, all of the maintenance, decorating, repairs, and replacement on his own lot and all adjoining parkways and street right-of-ways, except for those portions of lots which are to be maintained by the Association in accordance with Section 2 below, and shall keep same in good condition. The lot owners shall specifically be responsible for the maintenance of all parkways located between their lot lines and the edges of street pavements on which said lots face or adjoin from the front, rear or side. Front and side yards shall be sodded in the first growing season, subject to any water restrictions directed by the Village of Oswego. Basic landscaping including bushes and shrubs shall be established and maintained in the first growing season. The owners of the Grove Road Lots shall maintain the contours of the berms thereon constructed by the Developer and shall not construct any permanent structures or fencing thereon or upon the public right of way adjacent thereto. If the owners of the Grove Road Lots fail or neglect said

obligation, in addition to the remedies of Developer, the Association and the other owners and the Village of Oswego are each hereby entitled to enter upon the Grove Road Lots to perform such maintenance or replacement, or structure or fence removal, upon thirty (30) days written notice, and to be reimbursed their reasonable costs, including without limitation reasonable attorneys fees, incurred in such activity and to record and enforce liens securing said rights against the Grove Road Lots or against the Association.

Section 2. Responsibility of Home Owners Association. The Association shall be responsible for the maintenance, repair and replacement of the property and items as specified in Article IV of this Declaration.

Section 3. Liability for Damage to Property. Each lot owner in the Development Tract shall be liable for all expenses of any maintenance, repair, or replacement of any of the property or items that the Association is responsible to maintain as specified in Article IV of this Declaration which are incurred or paid by the Association as a result of his act, neglect or carelessness or by that of his family, guests, employees, agents, or lessees. Upon notice to such owner from the Association, such owner shall promptly pay all such expenses or reimburse the Association within ten (10) days thereof; if not so paid, such non-payment shall be treated in the same manner as non-payment of assessments due for such lot, and the Association shall have the same rights in connection therewith as set forth in Article V of this Declaration. Nothing herein contained, however, shall be construed so as to modify any waiver by any insurance companies of rights or subrogation.

ARTICLE VII
ARCHITECTURAL STANDARDS AND USE RESTRICTIONS
FOR DWELLING UNITS

The following architectural standards and use restrictions apply to all lots in the Development Tract:

Section 1. Land Use and Building Type. All lots shall be used for private residence purposes only, and, unless the zoning obtained from the Village of Oswego for the applicable portion of the Development Tract where the lot is located otherwise specifically allows, no building shall be erected except one (1) dwelling, designed by a reputable builder-designer or architect, designed and erected for occupancy by one family, and a private garage containing not less than two or more than four parking spaces for the sole use of the owners or occupants of the dwelling. Said garages may have living quarters located above for the sole use of the owners or occupants, but shall not be used for rental purposes.

Section 2. Intent and Purpose. It is the intent and purpose of this Article VII to assure that all dwellings shall be of high quality design, workmanship and materials approved in writing by the Developer. All dwellings shall be constructed in accordance with all applicable governmental building codes and with more restrictive standards that maybe required by Developer in writing.

Section 3. Minimum Square Footage of Dwelling Units. The minimum ground floor area (exclusive of attached garages, carports, open terraces and breezeways) all dwelling units

constructed on the lots shall be as follows:

- a) One story dwellings: not less than 1,600 square feet of living area.
- b) Two story dwellings: not less than 900 square feet of living area on the ground floor, with the total living area of ground floor and above of not less than 1,800 square feet.
- c) All other dwellings: not less than 1,800 square feet of living area including ground level and all levels above.

Section 4. Building Height. No dwelling shall be erected, altered, or placed, which is more than three stories or 35 feet in height, whichever is lesser.

Section 5. Garages. All dwelling units shall provide at a minimum a two-car attached garage. No detached garages shall be permitted.

Section 6. Signs. No private signs of any kind shall be erected on any lot or any property in the Development Tract, except "For Sale" signs shall be permitted in accordance with the ordinances of the appropriate governmental authority. This section shall not apply to the Declarant.

Section 7. Recreational or Commercial Vehicles. The use of any open carport, driveway or parking area which may be in, adjacent to, or part of any lot as a habitual or repeated parking place for recreational or commercial vehicles or articles is PROHIBITED. All recreational or commercial vehicles shall be stored inside a garage at all times. Violation of the parking regulations set forth in this paragraph shall be deemed a nuisance hereunder.

Section 8. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no more than two dogs or two cats over four months of age shall be kept or maintained on any lot at any time. No dog kennels of any type shall be kept or maintained on any lot. No household pets of any type whatsoever shall be kept, maintained or housed anywhere on any of the lots except INSIDE the dwelling units or garages.

Section 9. Condition of Property. No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon any lot and no refuse pile or unsightly objects or materials shall be allowed to be placed, kept or maintained on any lot. Trash, garbage, or other waste shall not be kept except in sanitary containers which must be properly maintained. All trash, garbage, or other waste shall be stored, kept, or maintained within the dwelling units or the garages on the lots, except on such days as such trash, garbage, or other waste material is to be collected and removed.

Section 10. Swimming Pools. Only in-ground swimming pools may be erected, installed or maintained on any lot.

Section 11. Fences. No fence shall be erected, installed, or maintained which exceeds a height of five (5) feet, but this provision shall not apply to fences which enclose swimming pools if

the appropriate governmental authority requires a fence of greater height. No fencing or part of any fence shall extend into any side or rear yard of the lot whereupon constructed, only perimeter fencing is allowed (and any governmentally required fencing around in-ground swimming pools). All fencing shall be constructed of rough-sawn cedar or a board-on-board semi-private pattern. Chain link fences are specifically PROHIBITED. The provisions of this section shall not apply to any fence constructed by the Declarant, and there shall not be any restrictions regarding said fences of Declarant. All fences permitted by this section shall comply with the ordinances of the appropriate governmental authority.

Section 12. Trucks. Trucks with Class B or higher license plates shall not be parked, stored or left unattended, permanently or temporarily, on any lot, except in an enclosed garage. Notwithstanding this provision, trucks used by service companies or construction trades may be parked while providing its service to the owner of the lot.

Section 13. Home Occupations. All lots must be used for residential purposes. An owner may conduct his or her occupation in the residence provided that the following conditions are met:

- i. no retail or similar commercial activities shall be permitted;
- ii. only office or light professional use shall be allowed;
- iii. only the owner of the residence or an occupant thereof shall be permitted to conduct the home occupation;
- iv. no signs whatsoever shall be permitted; and
- v. all laws, rules, ordinances and regulations of the appropriate governmental authorities shall be complied with.

Section 14. Accessory Structures. Except for gazebos, all accessory structures (e.g., storage sheds) shall be located immediately adjacent to and adjoining the rear of the dwelling unit or garage on any lot, and shall be finished so as to blend visually with the dwelling unit. Gazebos shall be permitted anywhere on the lot in accordance with the ordinances of the appropriate governmental authority. Outbuildings shall not be allowed to be placed or maintained on any lot.

Section 15. Antennae and Satellite Dishes. No exterior television antennae, tower, radio antennae, or large satellite dishes of any type whatsoever shall be erected, installed, or maintained, temporarily or permanently, on any lot.

Section 16. Quiet Enjoyment. No unlawful, noxious, immoral or offensive activity shall be conducted on any lot or in any structure nor shall anything be done therein either willfully or negligently which may become an annoyance or nuisance to any neighboring residents. No owner or occupant shall operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Association's Board of Directors, an unreasonable disturbance to others. No burning of refuse shall be permitted outside the dwelling, except that the burning of leaves will be permitted if and as allowed by ordinance of the Village of Oswego from time to time. No exterior mercury vapor or sodium vapor lighting shall be permitted on any lot at any time.

Section 17. Plant Diseases or Noxious Insects. No plants or seeds or other things or conditions harboring infectious plant diseases or noxious insects shall be introduced or maintained

on any lot

Section 18. Laundry Drying, Flag Poles, Nameplates. No laundry drying equipment shall be erected or used outdoors, whether attached to a building or structure or otherwise. Flag poles shall be permitted, provided the pole is not more than 25 feet in height or as otherwise limited by the appropriate governmental authority. There shall be not more than one nameplate on each lot, which nameplate shall not be more than 72 square inches in area and shall contain the name of the owner or occupant and/or the address of the dwelling. Nameplates may be located on the door of the dwelling or the wall of any structure, or free standing in the front or side yard, provided that the height of the nameplate is not more than 12 inches above the adjoining ground grade.

Section 19. Temporary Structures Used as Residence. No trailer, basement of any uncompleted building, tent, shack, garage or other temporary building or structure of any kind shall be used at any time for a residence of any person, either temporary or permanent.

Section 20. Architectural Control. In no instance shall a building of an appearance exactly the same as any other on another lot be permitted.

Section 21. Underground Wiring. No above ground communication, electric or television lines or cables shall be permitted to be placed anywhere in the Development Tract other than within buildings or structures. It is intended that all such necessary and approved conduits and cables will be constructed, placed and maintained underground.

Section 22. Application of Government Regulations. All structures to be erected shall comply with all government regulations, including zoning and building codes, unless said non-compliance is approved by the appropriate governmental authority.

ARTICLE VIII **DECLARANT'S RESERVED RIGHTS**

Section 1. Easements. Notwithstanding any provisions contained herein to the contrary, all covenants, restrictions, conditions, reservations, easements, charges, and liens created under this Declaration shall be subject to easements of record on the date hereof and any easements which exist or may hereafter be granted by the Declarant.

Section 2. General Rights. The Declarant shall have the right to execute all documents or undertake any actions or activities affecting the Development Tract and any additional property which in its sole opinion are either desirable or necessary to effectuate, fulfill or implement, either directly or indirectly, any of the rights granted or reserved to Declarant in this Declaration. The Declarant shall have the right to maintain sales facilities for itself or others on the Development Tract without payment of any rent or other fee or charge therefor for so long as Declarant in its sole discretion deems necessary. Declarant shall have the right to change any existing name denoting the Development Tract or any portion thereof, or use other names, as desired by Declarant in its sole discretion. Notwithstanding anything to the contrary contained anywhere in this Declaration, Declarant shall have the right to develop the Development Tract and any additional property in any manner desired by Declarant, in its sole discretion, including without limitation for single or multi-family use, and the Association and the owners shall have no rights

whatsoever with respect thereto.

Section 3. Amendment of this Declaration. Notwithstanding anything to the contrary contained anywhere in this Declaration, the Declarant shall have the right to amend, modify, change or rescind this Declaration in whole or in part without complying with Article XI of this Declaration or any other applicable section at any time, in its sole discretion, without notice. This right shall cease upon the election of the initial Board of Directors of the Association. The amendment, change, modification or rescission accomplished under the provisions of this section shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of Kendall County, Illinois.

ARTICLE IX **EASEMENTS**

Section 1. Easements for Utilities. Easements for the installation, construction, reconstruction, maintenance, repair, operation, and inspection of sewer, water, gas, drainage, electric, telephone, or other public utility services may be granted as shown on each final recorded plat of any phase of the Development Tract. Further, any additional easements for such purposes may be granted by the Declarant or the Board of Directors at any time for the purpose of obtaining such utility services. The provisions of this Declaration concerning rights, violations, enforcement, and severability are hereby made a part of the foregoing provisions relating to perpetual sewer, water, gas, drainage and other easements, and notwithstanding any amendment to any other provisions of this Declaration, the aforesaid easement rights contained herein shall be perpetual and run with and bind the land forever once granted.

In any final recorded plat for any phase of the Development Tract, Declarant shall grant utility easements within the area shown on said plat and marked "Utility Easement" to install, lay, construct, renew, operate and maintain underground equipment for the purpose of serving the subdivision with various utilities; including the right to enter upon the lots at all times to install, lay, construct, renew, operate and maintain said easement area, said pipes and conduits and other underground equipment, and the right to cut down and remove any trees, shrubs or saplings that interfere or threaten to interfere with any of the aforesaid uses or rights therein granted. No permanent building or trees shall be placed on said easement but same may be used for gardens, shrubs, smaller landscaping and other purposes that do not then or would later interfere with said uses or rights therein granted.

Section 2. Mowing Easements. Easements for the mowing of the parkway along Grove Road located on the Grove Road Lots are hereby granted to the Association. The provisions of this Declaration concerning rights, violations, enforcement and severability are hereby made a part of said easements, and notwithstanding any amendment to any other provisions of this Declaration, the aforesaid easement rights contained herein shall be perpetual and run with and bind the land forever.

ARTICLE X **RIGHTS OF FIRST MORTGAGE HOLDERS**

Notwithstanding anything in this Declaration to the contrary, the following shall be

applicable with respect to any institutional holder of a first mortgage lien of record on any lot in the Development Tract:

Section 1. Notice. The Association shall, if so requested by any first mortgagee of record of a lot, give written notification as follows:

- a. notice of any default of the owner of any lot which is the subject of such mortgage if such default is not cured within thirty days after its occurrence,
- b. five days prior written notice of any annual or special meeting of the Association. The mortgagee may designate a representative to attend any such meeting;
- c. notice of any proposed amendment to the Declaration or By-Laws which will substantially alter the administration of the Development Tract, the assessments or collection thereof, or any other matter affecting the Development Tract as governed by the terms of this Declaration. Such notice shall be given at least ten days prior to the submission of same for approval by the members of the Association.

The request by a mortgagee for any or all of the above notices may be submitted to the Association by the Board of Directors and in such event, the giving of such notices shall continue until such time as the mortgagee shall request the same to be terminated, or until the interest of the mortgagee in the property is terminated, whichever shall be first in time.

Section 2. Claims for Assessments. Any first mortgagee of record who takes title to a lot or comes into possession of a lot pursuant to remedies provided in such mortgage (including foreclosure, or a deed or assignment in lieu thereof) shall take possession free of any claims for unpaid assessments or charges which may have accrued prior to the date of such possession, provided, however, that such mortgagee shall be liable for a prorata share of such assessments and charges if the Board shall elect to reallocate same among all the lots.

Section 3. Books and Records. Any first mortgagee of record of a lot shall have the right, upon twenty-four hours notice, to examine any and all books and records of the Association at any time during normal business hours, and shall be entitled to receive, at its request, a copy of any and all annual financial statements within ten days from the date of such request or the date of preparation of such statement, as the case may be.

ARTICLE XI **AMENDMENTS**

Section 1. Amendments. The provisions of this Declaration may be amended, changed, modified or rescinded in whole or in part by an instrument in writing setting forth such change, modification, or rescission, certified by the Secretary of the Board of Directors. If said amendment, change, modification or rescission shall be desired prior to the initial Annual Membership Meeting, it need only be approved by a majority vote of the initial Board of Directors. If desired subsequent to the date of the initial Annual Membership Meeting, it must be approved by a majority of the number of votes of the Association present in person or by written proxy at a membership meeting called for this purpose. The presence in person or by written

proxy at said meeting of 50 percent of the total membership shall constitute a quorum; however, said amendment, change, modification or rescission must be approved by a majority vote of members in attendance either in person or by written proxy by not less than 50 percent of the total membership of the Association (unless a higher percentage is required as specified elsewhere in this Declaration). The Declarant shall have the right to amend this Declaration as set forth in Article VIII, Section 3.

Section 2. Recording of Amendment. The amendment, change, modification or rescission accomplished under the provisions of the preceding paragraph shall be effective upon recordation of such instrument in the Office of the Recorder of Deeds of Kendall County, Illinois.

Section 3. Rights of Declarant. No amendment which shall in any way alter or adversely affect or impair the rights of the Declarant (including, but not limited to, the right to maintain sales facilities, signs, and access to the Development Tract for construction purposes) shall be effective without the Declarant's express prior written consent thereto.

ARTICLE XII **GENERAL PROVISIONS**

Section 1. Duration. The covenants, restrictions, conditions, reservation, easements, charges, and liens as delineated in this Declaration shall run with and bind the land so as to insure the lot owners full enjoyment and benefit of their property. They shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective grantees, heirs, administrators, executors, legal representatives, successors and assigns, until December 31, 2027, after which time these covenants, restrictions, conditions, reservations, easements, charges and liens shall be deemed automatically extended for successive periods of 10 years, unless prior thereto an instrument certified by the Secretary of the Association stating otherwise is recorded, after approval by a majority of the number of votes of the Association present in person or by written proxy at a membership meeting called for this purpose. The presence in person or by written proxy at said meeting of 66 percent of the total membership shall constitute a quorum; however, said amendment, change, modification or rescission to this duration provision must be approved by a majority vote of members in attendance either in person or by written proxy by not less than 66 percent of the total membership of the Association.

Section 2. Notices. Any notice required to be given to any owner under the provisions of this Declaration shall be deemed to have been properly given if said notice was either: (a) sent by U.S. mail with first class postage prepaid to the last known address of the person or entity who appears as the owner on the records of the Association at the time of such mailing, or (b) personally delivered to the last known address of the person or entity who appears as the owner on the records of the Association at the time of such delivery.

Section 3. Model Homes. It shall not be deemed to be a violation of these covenants and restrictions for the Declarant to permit the erection or maintenance of model homes anywhere within the Development Tract. However, model homes may be maintained only for a period of not more than two years after the completion and occupancy of 100 percent of the total number of residences to be constructed in the Development Tract. No model home may be erected or maintained unless approved by the Declarant.

Section 4. Leasing of Residence. If any owner shall lease his residence, such lease shall be in writing and shall provide that the lease and all lessees shall be subject to this Declaration and all of the Covenants and Restrictions and the applicable By-Laws, and any breach thereof shall constitute a default under such lease. The owner shall remain primarily bound by all obligations set forth in this Declaration and the Covenants and Restrictions.

Section 5. Rights and Obligations. Each grantee by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed or other conveyance, accepts the property being conveyed subject to: (a) all covenants, restrictions, conditions, reservations, easements, charges, and liens contained in this Declaration, and the jurisdiction, rights, and powers created by this Declaration, and (b) all rights, benefits, and privileges of every character hereby granted, created, reserved, or declared herein. All impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall inure to the benefit of such person in like manner as if he had been the original grantee under the deed of conveyance or any mortgage or trust deed or other evidence of obligation, to the rights described in this Declaration, and shall be sufficient to create and reserve same to the respective grantees, mortgagees, and trustees of such owners as fully and completely as if such rights were recited fully and set forth in their entirety in such documents.

Section 6. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a residential community of the highest quality and character.

Section 7. Conveyances to Abide by this Declaration. Declarant agrees that all conveyances shall be subject to this Declaration and the Covenants and Restrictions as if each and every provision herein was set forth in each and every deed or document affecting title to the property.

Section 8. Covenant in Event of Dissolution of the Association. In the event the Association is dissolved, the lot owners in the Development Tract agree that all provisions contained herein regarding maintenance, repair, and replacement in the Development Tract shall still apply and that those provisions of this Declaration shall remain in full force and effect. Prior to the dissolution of the Association, the membership shall make provisions as to how the responsibilities and obligations of the Association shall be handled by the lot owners.

Section 9. Property Ownership in Trust. In the event title to any lot is conveyed to a title-holding trust, under the terms of which all powers of management, operation, and control of the property remain vested in the trust beneficiary or beneficiaries, then the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants, and undertakings chargeable or created under this Declaration against such lot ownership. 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 a lien upon the property ownership and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such property

ownership.

Section 10. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, restriction, condition, reservation, easement, charge, or lien, either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and Restrictions. The Declarant, the Association, and the lot owners in the Development Tract individually or collectively shall have legal standing for such enforcement actions. All costs of enforcement, including without limitation litigation expenses, title reports, attorneys' fees and court costs, shall be paid by the person judged to be violating or attempting to violate any of the Covenants and Restrictions, and any judgment or decree shall so provide for payment of these costs and expenses. Failure by the Declarant, the Association, or any owner of a lot in the Development Tract to enforce any of the Covenants and Restrictions shall in no event be deemed a waiver of the right to do so thereafter. None of the Covenants and Restrictions shall be deemed to be abrogated or waived by reason of any failure to enforce same, irrespective of the number of violations or breaches which may have occurred. No waiver of any of the Covenants and Restrictions shall be effective unless in writing signed by waiving party. The Declarant reserves the right to enforce any of the Covenants and Restrictions for so long as they shall exist, but Declarant shall have no affirmative obligation to enforce same or enforce same in an equal manner. Declarant shall not be responsible in any manner whatsoever for any failure by it, the Association or any other person to enforce any of the Covenants and Restrictions. Neither the Association nor any lot owner shall have any right or standing at any time to and shall not name or pursue Declarant in any action at any time regarding violation of any of the Covenants and Restrictions by any person other than Declarant.

Section 11. Rescission of Previous Covenants. The terms of this Declaration shall supersede and be substituted for and thereby be deemed to effectively rescind and cancel all covenants, conditions and restrictions contained in that certain document titled "Conditions, Covenants and Restrictions for Deerpath Creek" recorded August 19, 1996 as Doc. No. 9608620 in Kendall County, Illinois as such document pertains to any property or lots described in Exhibit A attached hereto.

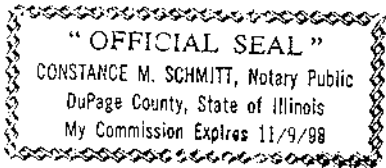
Section 12. Miscellaneous. The terms and provisions of all attached exhibits are incorporated as a part hereof as if fully set forth herein. Headings are intended for convenience only, and are not intended to have legal consequence. A determination of invalidity of any one of these covenants, restrictions, conditions, reservations, easements, charges, or liens by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect. There shall be no personal liability on the part of any officers of Declarant nor any personal liability on the part of the record title holders to the Development Tract in any manner whatsoever relating in any way to this Declaration. This Declaration shall be construed in accordance with the laws of the State of Illinois.

Section 13. Special Tax Service Area Agreement and Ordinance. Declarant and its successors, heirs and assigns further agree that the real property described in Exhibit A shall be subject to the creation by the Village of a "Special Tax Service Area" in order to provide a back-up funding mechanism for maintenance of berms, subdivision signage and common areas of the Development Tract.

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Herbert A. Stade and Walter L. Baumgartner, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 20th day of NOVEMBER, 1997.



Constance M. Schmitt
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF DEVELOPMENT TRACT

Lots 69, 70, 71, 74, 98, 101, 106, 131, 135, 136, 137, 138 and 143 inclusive in Deerpath Creek Unit One, Phase Two, in the Village of Oswego, Kendall County, Illinois; and

Lots 75 through 96 inclusive and Lots 109 through 122 inclusive in Deerpath Creek Unit One, Phase Three, in the Village of Oswego, Kendall County, Illinois; and

THOSE PARTS OF THE SOUTHWEST QUARTER OF SECTION 20 AND THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS; BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SAID SECTION 20; THENCE NORTH 0° 30' 58" EAST 1402.48 FEET; THENCE SOUTH 88° 13' 34" EAST 1138.42 FEET; THENCE SOUTH 87° 58' 33" 479.41 FEET TO THE NORTHWEST CORNER OF DEERPATH CREEK, PHASE ONE, UNIT ONE; THENCE SOUTH 0° 01' 02" WEST 169.60 FEET; THENCE SOUTH 2° 24' 57" EAST 241.25 FEET; THENCE SOUTH 0° 39' 28" EAST 399.44 FEET; THENCE SOUTH 1° 26' 16" WEST 319.56 FEET; THENCE SOUTH 3° 18' 35" WEST 414.57 FEET; THENCE SOUTH 3° 37' 15" WEST 163.58 FEET; THENCE SOUTH 3° 52' 17" WEST 82.36 FEET; THENCE SOUTH 2° 58' 3" WEST 164.73 FEET; THENCE SOUTH 0° 45' 42" WEST 247.09 FEET; THENCE SOUTH 1° 16' 31" WEST 164.27 FEET; THENCE SOUTH 0° 39' 49" EAST 263.22 FEET; THENCE 3° 19' 13" EAST 82.91 FEET; THENCE SOUTH 38° 12' 27" WEST 164.24 FEET; THENCE SOUTH 54° 09' 25" EAST 160.14 FEET; THENCE SOUTH 49° 12' 45" EAST 80.08 FEET; THENCE SOUTH 28° 43' 34" WEST 101.58 FEET; THENCE SOUTH 78° 36' 31" EAST 33.11 FEET; THENCE SOUTH 65° 44' 41" EAST 155.33 FEET; THENCE SOUTH 52° 20' 02" EAST 261.86 FEET; THENCE SOUTH 85° 14' 02" EAST 378.16 FEET; THENCE NORTH 84° 43' 24" EAST 206.46 FEET TO A POINT ON A LINE 50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 29; THENCE SOUTH 01° 01' 09" EAST PARALLEL WITH SAID EAST LINE 734.09 FEET TO A POINT ON A LINE 50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 29; THENCE NORTH 88° 10' 54" WEST PARALLEL WITH SAID SOUTH LINE 2600.79 FEET TO THE WEST LINE OF SAID SOUTHWEST QUARTER; THENCE NORTH 0° 08' 39" EAST ALONG SAID WEST LINE 2618.93 FEET TO THE POINT OF BEGINNING,

AND;

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 37 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHEASTERLY CORNER OF DEERPATH CREEK, PHASE ONE, UNIT ONE; THENCE SOUTH 87° 58' 33" EAST 609.98 FEET TO A POINT ON A LINE 50 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 0° 26' 00" WEST 82.50 FEET; THENCE NORTH 87° 58' 33" WEST 609.98 FEET TO AN EAST LINE OF SAID DEERPATH CREEK PHASE ONE UNIT ONE; THENCE NORTH 0° 26' 00" EAST 82.50 FEET TO THE POINT OF BEGINNING ALL IN THE VILLAGE OF OSWEGO, KENDALL COUNTY, ILLINOIS.

Permanent Parcel Numbers: 03-20-300-006; 03-20-331-001; 03-29-100-003; 03-29-100-004.

EXHIBIT B
Form Statement of Joinder to Deerpath Creek Home Owners Association

[Space for Recorder's Use]

Statement of Joinder to Deerpath Creek Home Owners Association

This Statement of Joinder to Deerpath Creek Home Owners Association is made this _____ day of _____, 19____ by the undersigned _____ (hereinafter [jointly] referred to as "Owner").

WHEREAS, Owner is the record owner of the following legally described property: Lot _____ in Phase _____ of Unit One of Deerpath Creek Subdivision, in the Village of Oswego, Kendall County, Illinois (hereinafter referred to as the "Property"); and

WHEREAS, Owner desires to subject the Property to all of the covenants, conditions, restrictions, reservations, easements, charges and liens contained in that certain Declaration of Covenants and Restrictions for Deerpath Creek Home Owners Association dated _____, 1997 and recorded in Kendall County on _____, 1997 as Doc. No. _____ (hereinafter referred to as the "Declaration").

NOW, THEREFORE, Owner declares that the Property hereby is and shall be held, sold, conveyed, transferred, mortgaged, and encumbered subject to all of the terms, provisions, covenants, rights, restrictions, conditions, reservations, easements, charges, liens and liabilities set forth in the Declaration. These terms, provisions, covenants, rights, restrictions, conditions, reservations, easements, charges, liens and liabilities shall run with the land and shall be binding upon all the parties having or acquiring any right, title, or interest in the Property and shall inure to the benefit of myself/ourselves and each and every subsequent owner thereof, pursuant to the terms of the Declaration, as if the Property had been originally included in the Declaration.

Signed: _____

[Must be Notarized]

Property Address: _____

Permanent Index Number: _____

Prepared By: _____ Mail To: _____