

DECLARATION OF  
COVENANTS, CONDITIONS,  
EASEMENTS AND  
RESTRICTIONS FOR  
SETTLER'S CROFT  
SUBDIVISION

THIS DECLARATION (the  
"Declaration") made this \_\_\_\_ of Au-  
gust, 2002 by Bruti Associates, Ltd.,  
an Illinois corporation (hereinafter  
referred to as the "Declarant"),

MARY ANN STUKEL

Will County Recorder  
Will County

68P

R 2003070784

Page 1 of 68

PC2 Date 03/27/2003

Time 14:06:17

Recording Fees:

82.00

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of a certain parcel of real estate ("Property") in the County of Will, State of Illinois, legally described on schedule attached hereto, marked Exhibit "A" and made a part hereof.

WHEREAS, Developer (hereinafter defined) desires to develop a residential development on the Property to be known as SETTLER'S CROFT (the "Development"); and

WHEREAS, Declarant is desirous of submitting the Property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, transferred, occupied and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property and be binding on all parties having or acquiring any right, title, or interest in the Property ("Owner") or any part thereof and shall inure to the benefit of each Owner thereof.

ARTICLE 1

DECLARATION PURPOSES AND  
PROPERTY SUBJECT TO DECLARATION

1.1. The Declarant desires to create on the Property a residential development for future Owners for the following general purposes:

- a. The Declarant desires to provide upon the Property, through its planning and layout, the harmonious development of a residential community by the imposition of the covenants, conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the Owners.
- b. The Declarant, by the imposition of covenants, conditions and restrictions and the reservation of certain powers unto itself, intends to provide for the Property a plan for development which is intended to enhance and to protect the values of Declarant's residential community.
- c. The Declarant desires to: i) prevent improper use of Parcels and Units which may depreciate the value of the Owner's property; ii) prevent the construction of buildings containing improper or unsuitable materials; iii) ensure adequate and reasonable development of the Property; iv) encourage the construction of attractive improvements on the Property; v) prevent haphazard and inharmonious development; and vi) in general, provide for the highest quality environment for the Development.
- d. The Declarant desires to provide for the maintenance of the Common Area (as hereinafter defined) portion of which may be owned by the Association (as hereinafter defined) and used in common by the Owners of the Property.

Notwithstanding the foregoing, Declarant acknowledges that the Development is located to the west of a four (4) year high school, known as Lincolnway High School East. Any Owner acquiring a Parcel or Dwelling in the Development is, therefore, chargeable with knowledge of this fact.

## ARTICLE 2

### DEFINITIONS

The following words, when used in this Declaration or in any supplemental Declaration shall, unless the context otherwise requires, have the following meanings:

2.1. "Association" shall mean and refer to the Settler's Croft Homeowners Association, an Illinois not-for-profit corporation and a common interest community as defined in Section 5/9-102(a)(8) of Chapter 735 Illinois Compiled Statutes as from time to time amended, its successors and assigns.

2.2. "Board" shall mean and refer to the Board of Directors of the Association, an Illinois not-for-profit corporation, the entity which shall govern and control administration and operation of the Property.

2.3. "By-Laws" shall mean and refer to the By-Laws of the Association. The By-Laws are incorporated into this Declaration by this reference.

2.4. "Common Area" shall mean and refer to all real property and improvements thereon owned, or to be owned or maintained by the Association for the common use and enjoyment of all Members of the Association. This shall include the parcels and area described on schedule attached hereto, marked Exhibit "B" and made a part hereof.

2.5. "Contingency, Replacement and Start-Up Reserve" shall have the meaning set forth in paragraph 6.5.

2.6. "Declarant" shall mean and refer to Bruti Associates, Ltd., an Illinois corporation, and its successors and assigns. Any such successor or assignee shall be deemed a Declarant and entitled to exercise all or any rights of Declarant provided herein if designated as such by Declarant in any instrument recorded for such purposes as provided paragraph 10.7.

2.7. "Deed" shall mean the deed of Declarant conveying a Parcel or Unit to an Owner.

2.8. "Developer" shall mean and refer to Bruti Associates, Ltd., an Illinois corporation, or its successors or assigns.

2.9. "Dwelling" shall mean any single family unit/residence.

2.10. "Estimated Cash Requirement" shall have the meaning set forth in paragraph 6.3.a.

2.11. "Improvement" or "Improvements" shall mean and include Dwellings, any and all buildings, outbuildings, driveways, pedestrian walkways, fences, decks, patios, hedges, lawns, sidewalks, planted trees, shrubs and all other structures or landscaping improvements of every kind and description.

2.12. "Lot" shall mean each part of the Property, the size and dimension of which shall be established by the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Declarant which designates a part of the Property as a Lot for the purposes of the Declaration.

2.13. "Member or Membership" shall mean and refer to every person or entity who holds Membership in the Association.

2.14. "Mortgage" shall mean and refer to either a Mortgage or Deed of Trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

2.15. "Owner" shall mean and refer to the record owner, whether one or more persons, individuals, or entities, of a fee simple title to any Parcel, which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Developer to the extent Declarant owns Parcels and also includes the interest of Developer or of Declarant as contract seller of any Parcel.

2.16. "Parcel" shall mean and refer to that portion of the Property shown upon the recorded subdivision plat or plats of the Property improved or intended to be improved by a Dwelling and which has a separate legal description.

2.17. "Person" shall mean and refer to a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

2.18. "Property" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto and made a part hereof.

2.19. "Single Family" shall mean and refer to one or more persons, each related to other by blood, marriage, or adoption, or a group of not more than three (3) persons not all so related, maintaining a common household.

2.20. "Special Amendment" shall have the meaning set forth in paragraph 10.5.

2.21. "Subdivision Plat" shall mean and refer to the Plat of Subdivision for the Settler's Croft Subdivision as recorded with the Office of the Recorder of Deeds of Will County, Illinois.

2.22. "Turnover Date" shall mean and refer to the meaning referred to and set forth in paragraph 5.3. hereof.

2.23. "Unit" shall mean and refer to one individual residence for the shelter and housing of a Single Family.

2.24. "Village" shall mean the Village of Frankfort, State of Illinois.

### ARTICLE 3

#### GENERAL RESTRICTIONS

3.1. All Parcels shall be used only for residential Dwellings and at no time shall any Parcel or Parcels be resubdivided or consolidated. Each Owner shall maintain his or her Parcel and all Improvements located thereon in a clean, sightly and safe condition and shall at all times cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from paved areas when and as required. No room or rooms in any residence or part thereof, including the

garage, may be rented or leased and no paying guests shall be quartered in any residence; nothing contained in this paragraph, however, shall be construed as preventing the renting or leasing of an entire residence as a single unit in accordance with this Declaration.

3.2. All residences constructed upon any Lot in said Subdivision shall be of brick, stone, masonry, or wood construction only. No plywood of any kind, including reverse board and batten, or aluminum or vinyl siding shall be used on any structure erected on any Lot. All driveways must be paved with either brick or concrete from the garage to the street. Asphalt driveways shall not be permitted. Under no circumstance shall two (2) or more residences of the same model and/or color be constructed on lots which are adjacent to one another.

3.3. The work of constructing, altering, or remodeling any building on any said Lot shall be prosecuted diligently from its commencement and until the completion thereof. The complete exterior structure of shell, not including finished exterior wall materials (e.g., brick, stone, or other approved material), must be completed, erected and constructed within ninety (90) days after the date construction of any residence shall have been commenced. The completion (including the roof and all exterior walls) on every building or residence commenced to be constructed in the Subdivision shall be completed within six (6) months after the date of commencement of such building. The effect of this provision shall be to require that on the exterior and from neighboring Lots each such residence shall appear completed within said six (6) months.

3.4. It is intended that the Development shall qualify for the "housing for older persons" exemption under the Fair Housing Amendments Act of 1988, as amended from time to time ("FHAA"). Accordingly, each Dwelling shall at all times be occupied by at least one (1) resident who is fifty-five (55) years of age or older. If, as completed, the Development qualifies for the "housing for older persons" exemption referred to above, then no person under the age of twenty-one (21) years shall be a resident of a Dwelling, provided that, subject to such reasonable rules and regulations as the Board may adopt from time to time, a person under the age of twenty-one (21) years may be a guest of a resident for no more than thirty (30) days in any consecutive twelve (12) month period. If, as completed, the Development qualifies for the "housing for older persons" exemption referred to above, the Board shall adopt, implement and enforce rules, regulations and procedures to ensure that, at all times thereafter, the Development shall qualify for the "housing for older persons" exemption under FHAA. If applicable under the terms of this paragraph, the Association shall maintain appropriate records evidencing such compliance for a period of not less than ten (10) years.

3.5. No noxious or offensive activity shall be carried on, in or upon the Property and/or Parcel, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No plants or seed or other conditions, harboring, or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Parcel. No Owner shall conduct or permit any person to conduct any unlawful activity on the Parcel owned by such Owner.

3.6. No prefabricated or modular homes, temporary building, trailer, mobile home, recreational vehicle, tent, shack, or other similar Improvement shall, except as otherwise herein provided, be constructed or located upon the Parcels.

3.7. No person shall accumulate on his or her Parcel abandoned or junked vehicles, litter, refuse, or other unsightly materials. Garbage shall be placed in receptacles provided therefor and, if outside, shall be properly screened. No implements, machinery, lumber, or building materials shall be permitted to remain exposed upon any Lot so they are visible from the streets or any neighboring Lot, except as necessary during the period of construction of a building thereon. Vacant Parcels shall not be used for the purpose of raising crops thereon.

3.8. Trucks, boats, recreational vehicles, trailers, toys, skateboards, bikes and/or other recreational equipment shall at all times be parked in the garage of a Dwelling and none of same shall be left on Lots or in Common Areas overnight without the approval of the Board of Directors. The repair or maintenance of any motorized vehicle shall not be permitted except within the confines of the garage of a Dwelling.

3.9. There shall be no obstruction in the driveways or other portions of the Common Area nor shall ready access to a garage or entrance to a Parcel be obstructed or impeded in any manner. Further, no fencing of any kind, other than that fencing installed by Developer on homesite and/or Common Areas and landscaping fencing approved by the Board, shall be erected on the Property.

3.10. No animals other than inoffensive common domestic household pets such as dogs and cats shall be kept on any Parcel. The number of such domestic household pets shall be limited to two (2). The breeding or keeping of dogs or cats for sale or profit is expressly prohibited. Said domestic household pets shall be subject to the rules and regulations adopted by the Association.

3.11. Without express written consent of the Board, no outdoor television antenna or satellite dish shall be affixed to or placed upon the exterior walls or roof of any Dwelling, garage, or other Improvement on a Parcel, upon any other portion of a Parcel, or on any portion of the Common Area, except for a single television mast antenna.

3.12. The operation of a "ham" or other amateur radio stations or the erection of any communication antennae or similar devices (other than simple mast antennae located on the roof of a Dwelling) shall not be allowed unless completely screened from view from all streets and approved in writing in advance by the Developer prior to the Turnover Date or by the Board thereafter.

3.13. All areas of the Parcels designed or intended for the proper drainage or retention of storm water, if any, including swale lines and ditches, shall be kept unobstructed and shall be mowed regularly. Trees, planting, shrubbery, fencing, patios, structures, landscaping treatment, or other like Improvements may be planted, placed, or allowed to remain in any such areas so long as they do not substantially obstruct or alter the rate or direction of flow of storm water from any Parcel. No Owner shall alter the rate or direction of flow of storm water from any Parcel by impounding water,

changing grade, blocking or redirecting swales, ditches or drainage areas, or otherwise. Each Owner acknowledges, by acceptance of a deed to a Parcel, that each drainage or detention area is for the benefit of the entire Property.

3.14. No for rent, for sale, advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed, or permitted to remain on any Parcel or Unit nor shall any Parcel or Unit or portion thereof be used in any way for any purpose which may endanger the health or unreasonably disturb the residents of the Development. No commercial activities of any kind whatsoever shall be conducted in any Unit or on any portion of the Property. The foregoing restrictions shall not apply to the commercial or sales activities or the signs and billboards, if any, of the Declarant or its agents during the construction and sales period or of the Association in the furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, By-Laws and Rules and Regulations, as the same or amendments thereof may be in force from time to time.

3.15. No Owner shall permit anything to be done or kept on his or her Parcel or in the Common Area which will increase the rate charged for or cause the cancellation of insurance carried by the Association on the Common Area Improvements or contents thereof, or which would be in violation of any law, nor shall any waste be committed in the Common Area.

3.16. Accessory buildings, above-ground and in-ground pools, swing-sets, playground equipment, open air laundry facilities, outdoor fireplaces, dog enclosures, or flagpoles are prohibited.

3.17. Drapes on front elevations are to be lined with off-white or beige lining. Carpet colors for all patios are to be one color or approved by the Board of Directors of the Association. The design and color of all storm doors must be approved by the Board of Directors of the Association.

3.18. All additional landscaping in Parcels, e.g., flowers, trees, shrubs, must be approved by the Board of Directors of the Association. At no time shall artificial grass, plants, or other artificial vegetation be placed or maintained upon the exterior portion of any Lot.

3.19. The restriction in paragraph 3.1 shall not, however, be construed in such a manner as to prohibit an Owner from: a) maintaining his or her personal professional library therein; b) keeping his or her personal business records or accounts therein; or c) handling his or her personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said paragraphs.

3.20. There is also reserved to the Developer, its agents and prospective purchasers and lessees, the right of ingress and egress in and through the Common Area and to park in the outdoor parking areas. There is further reserved to the Developer, incident to sales or leasing purposes and/or during construction by the Developer, the right of ingress and egress in and through the Common Area in connection with such construction.

3.21. Nothing shall be altered in or removed from the Common Area except upon the written consent of the Board.

#### ARTICLE 4

#### CONSTRUCTION AND ARCHITECTURAL CONTROL

4.1. An Architectural Review Committee is hereby created. It shall consist of three (3) members to be appointed by the Declarant.

4.2. No addition to or alteration of any Unit or building shall be made, except interior alterations, until the construction plans and specifications, showing the nature, kind, shape, height and materials, color scheme and location, shall have been submitted to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall not approve any plans or specifications which do not comply with any provision of the aforesaid covenants, conditions and restrictions, and shall have the right to refuse to approve any such construction plans or specifications which are not suitable or desirable, in the opinion of the Committee, for aesthetic or other reasons; and in so passing upon such construction plans and specifications, the Committee shall have the right to take into consideration the suitability of the proposed addition or alteration with the surrounding, and the effect on the outlook from adjacent Units. It is understood and agreed that the purpose of architectural controls is to secure an attractive harmonious residential development having continuing appeal. In consideration of the eventual overall aspect of the Subdivision, the Architectural Review Committee will be guided by the standards of good architectural design.

4.3. In the event of damage to, or destruction of, any Dwelling, garage, or other Improvement installed by Developer on any Parcel, the Owner of any such Improvement covenants and agrees that it will, within a reasonable time after such destruction, repair or rebuild same in a substantial and workmanlike manner with material comparable to those used in the original structure and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as, and of architectural design in conformity with, the exterior of such structure immediately prior to such damage or destruction. If an Owner fails to make the necessary repairs or reconstruction within thirty (30) days after written notice is sent, the Board may cause same to be done and the cost thereof shall be charged to such Owner as his or her personal obligation and shall be a lien on his or her Parcel.

4.4. The work of constructing, altering, or remodeling any Dwelling, garage, or other Improvement on any said Parcel shall be pursued diligently from its commencement date and until completion thereof. The complete exterior structure of the shell, not including finished exterior wall materials (e.g., brick, stone, or other approved material), must be completed not more than ninety (90) days from and after the date of commencement of construction. Completion (including the roof and all exterior walls) on every Dwelling, garage, or other Improvement to be constructed in the



Subdivision shall be completed within six (6) months after the date of commencement of such construction. The effect of this provision shall be to require that, on the exterior and from neighboring Lots, each such residence shall appear completed within said six (6) month period.

4.5. All plans, specifications and other material shall be filed in the office of the Association, its successor or assigns, for referral to the Architectural Review Committee. The Architectural Review Committee's approval or disapproval on matters required by this Declaration shall be by majority vote of the Committee. A report in writing setting forth the decisions of the Committee and the reasons therefore shall thereafter be transmitted to the applicant by the Architectural Review Committee within thirty (30) days after the date of filing the plans, specifications and other material by the applicant. The Architectural Review Committee will not aid or collaborate with prospective contractors and make suggestions from preliminary sketches for informal comment, prior to the submittal of architectural drawings and specifications for approval. In the event that: i) the Architectural Review Committee fails to approve or disapprove, within sixty (60) days after submission, the final plans, specifications and other material, as required in this Declaration, or ii) no suit to enjoin construction has been filed within three (3) months after commencement of such construction, approval shall not be required and the related requirements of this Declaration shall be deemed to be complied with.

4.6. In addition to all other requirements in this Declaration, the following shall be the minimum sizes for the residences in this Subdivision:

- a. A one (1) story residence shall contain at least two thousand two hundred (2,200) square feet of living area, exclusive of garage, breezeway, porches and basement.
- b. A two (2) story residence shall contain at least two thousand four hundred (2,400) square feet of living area, exclusive of garage, breezeway, porches and basement.
- c. The Subdivision shall contain no one and one-half (1 1/2) story residences.

4.7. In the event curbside mailboxes (boxes not attached to a residence) are required for delivery of the U.S. Mail in the Development, the Owner of each Lot upon which a residence shall be constructed shall install, erect, or place on such Lot or within any other Lot or any right-of-way in the Development only such a mailbox or receptacle as the Architectural Review Committee shall approve. Under no circumstances shall non-decorative, rural curbside mailboxes (sometimes referred to as U.S. 1, 1 1/2, or 2, etc.) be installed anywhere in the Development. The street number, or other identification approved by the U.S. Postal Service, shall be affixed to the mailbox. In those cul-de-sacs where there are landscape islands, mailboxes for cul-de-sac lots shall be clustered in the island. Landscaping is to be located no closer than five (5) feet from the edge of the curb.

4.8. The provisions of this Article, relating to approval by the Architectural Review Committee, shall not apply to any Improvements installed or completed by the Developer or any affiliate or subsidiary of or other entity controlled by or in common control with the Developer.

## ARTICLE 5

### **MEMBERSHIP AND BOARD OF DIRECTORS SETTLER'S CROFT HOMEOWNERS ASSOCIATION**

5.1. The Developer shall form a not-for-profit corporation to be known as the Settler's Croft Homeowners Association which shall provide for maintenance and operation of the Common Area and Improvements thereon and in general to maintain and promote the desired character of the Settler's Croft Development. Every Owner of a Parcel shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Parcel. Ownership of a Parcel shall be the sole qualification for Membership. Nothing herein contained shall be interpreted to exclude Declarant from Membership while Declarant or any of its successors in interest owns one (1) or more Parcels or Units. Prior to the Turnover Date, the Association shall have two (2) classes of Membership and each class of Membership shall have a number of votes for each Parcel which such Member owns, which number of votes shall be determined in accordance with the following:

- a. Class A Members shall be all the Owners, with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Parcel in which an Owner owns the interest required for Membership under the terms of this Article. If more than one (1) person is the record Owner of a Parcel or Parcels, the votes for each Parcel shall be exercised by such person ("Designee") which such Owner or Owners shall designate. Such designation shall be made in writing to the Board or in such other manner as may be provided in the By-Laws. In case of unresolved dispute as to an authorized Designee, the Board may, in its sole discretion, make a determination as to acceptance of the vote of an alleged Designee or the Board may, in its sole discretion, disqualify the vote of such alleged Designee. In no event shall more than one (1) vote be cast with respect to any one (1) Parcel.
- b. The Class B Member shall be the Declarant. The Declarant shall be entitled to six (6) votes for each Parcel upon which a Unit may be built and with respect to which it holds the interest required for Membership hereunder, provided that Class B Membership shall cease and be converted to Class A Membership no later than the first to occur of the following: i) one (1) year after Seventy-Five (75%) Percent of the Parcels in the Development have been conveyed to Parcel purchasers, or ii) five (5) years after the first Unit and Parcel is conveyed to a purchaser.

5.2. The Officers and Directors shall take office as follows and have the following liabilities and indemnifications:

- a. The Association shall be governed by a Board comprised of three (3) persons or such greater number as may be determined by Board resolution. The Board shall act

pursuant to, and in accordance with, the terms and provisions of this Declaration and the By-Laws. Notwithstanding anything contained herein to the contrary, for a period commencing on the date of execution hereof and ending upon the qualification of the Directors elected at the initial meeting of the Association after the Turnover Date set forth in paragraph 5.3 below, Developer shall have the right to designate the three (3) person Board and select the persons who shall serve as Members of said Board and who shall exercise the powers of said Board.

- b. The Association shall have such Officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the corporate charter or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board and its Officers, under the direction of the Board, and shall not be subject to the approval of the Members. The corporate charter and By-Laws of the Association may include such added provisions for the protection and indemnification of its Officers and Directors as shall be permissible by law. The Directors and Officers of the Association shall not be liable to the Owners or others for any mistake of judgment or any acts or omissions made in good faith as such Directors or Officers.
- c. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors or Officers except for any acts or omissions found by a court to constitute fraud or gross negligence. The Association shall indemnify and hold harmless the Directors and Officers, their heirs, executors, administrators, personal representatives and assigns, 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 such act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys 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 or Officer may be involved by virtue of being or having been such Director or Officer, provided, however, that such indemnity shall not be operative with respect to any matter as to which such person shall have finally been adjudged in such action, suit, or proceeding to be liable for fraud or gross negligence in the performance of his or her duties as such Director or Officer.

5.3. The Developer shall, through the Board appointed by it in accordance with Section 5.2.a., exercise control over all Association matters, until the first to occur of the following dates:

(a) twenty (20) years from the date of this Declaration, (b) the sale and conveyance of legal title to all of the Parcels to Owners other than Declarant or an assignee of Declarant as provided in paragraph 10.7. hereof, or (c) Developer elects voluntarily to turn over to the Members the authority to elect the Board, which election it shall evidence by directing the Declarant to execute and record in the Office of the Recorder of Deeds of Will County, Illinois an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or prior to the Turnover Date, the Developer shall cause Declarant to convey the Association, and the Association shall accept, the Common Area to be owned by the Association hereunder and the Association shall undertake to maintain the Common Areas pursuant to the terms hereof.

5.4. The Association, through the Board, shall have the following powers and duties:

- a. Own, maintain and otherwise manage the Common Area and all Improvements thereon and own, maintain and otherwise manage all other property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain any landscaping located in concrete islands, cul-de-sac and median strips, if any, in the dedicated streets which are adjacent to or within the Property and to maintain any signage and lighting located thereon.
- b. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate same not later than ninety (90) days after the date the initial meeting of the Members of the Association is held as provided by the By-Laws.
- c. Establish and maintain a working capital and contingency and replacement reserve fund in an amount to be determined by the Board.
- d. Provide for the maintenance of landscaping, detention areas, signs, monuments, fencing, retaining walls, water systems, lighting and other Improvements located at the entrance ways to the Property and along the perimeter of Parcels.
- e. Mow, care for, maintain vacant and unimproved portions of the Property and remove rubbish from same and to do any other things necessary or desirable in the judgment of the Board to keep any vacant portions of the unimproved portions of the Property neat in appearance and in good order. The foregoing rights shall not apply to any Parcel or other portion of the Property owned by Declarant.
- f. Make such Improvements to the Common Area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its corporate

charter and By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping Settler's Croft Subdivision a highly desirable residential community.

- g. Provide normal and customary exterior maintenance of each Parcel or Unit and Limited Common Element without special charge to the Owner as follows:
  - i) Care of grass and, additionally, trees and shrubs, in such a manner as to preclude convenient access by large equipment;
  - ii) Repair of shingles roof and flashing on roofs;
  - iii) Painting and repair of exterior walls;
  - iv) Painting and cosmetic repair of garage doors;
  - v) Repair and maintenance of walks and driveways and "alleys".
  - vi) Seal driveways and ingress/egress easements, *i.e.*, alleys;
  - vii) Powerwash, stain and seal wood decks;
  - viii) Painting of gutters and downspouts;
  - ix) Repair and replacement of chimneys and exterior fireplace parts;
  - x) Removal of snow from driveways and "alleys", and both public and private walks, within twenty-four (24) hours when accumulation of one (1) inch or more;
  - xi) Repair and maintenance of outside electrical fixtures;
  - xii) Repair and maintenance of patios, decks, or other installed Improvements; and
  - xiii) Repair and maintenance of glass surfaces.
- h. At the discretion of the Association, provide maintenance for the following items with or without special charge to Owners:
  - i) Replacement of trees, grass and shrubs;
  - ii) Repair and maintenance of front and rear stoops;

- iii) Repair and maintenance of sewer and water lines;
  - iv) Care of trees, grass and shrubs situated within enclosed areas; and
  - v) Replacement of roofs.
- i. Exercise all other powers and duties vested in or delegated to the Association and which are not specifically reserved to the Members by this Declaration, the corporate charter, or the By-Laws.

5.5. With respect to Board powers as set forth paragraph 5.4. above, the cost of any exterior maintenance which, by the terms of this Declaration, the Association is required to furnish shall be paid with funds from the annual assessment to which each Parcel is subject hereunder.

5.6. If the Association furnishes maintenance with respect to a Parcel or Unit thereon at the request of an Owner other than that required by this Declaration, the Association will require such Owner to pay the cost thereof.

5.7. For the purpose solely of performing the exterior maintenance required or authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter upon any Parcel or Unit at reasonable hours on any day. Landscaping and snow removal work shall not require prior notice.

5.8. The foregoing services provided by the Association with respect to exterior surfaces of an Owner's Unit shall be limited to normal wear, tear and deterioration and the Owner shall be solely responsible for all exterior repair and replacement as well as all interior and structural repair and replacement, occasioned by insurable casualty as hereinafter provided. In the event the Owner shall fail to effect promptly the repairs and replacements occasioned by insurable casualty, the Association may (but shall not hereby be required) to effect such repairs and replacements and the Association shall be entitled to reimbursement in full from the Owner for its costs of every kind incurred in this connection, including the right to receive applicable insurance proceeds. Each Owner shall keep the Unit nor or hereafter insured against loss or damage by fire, lightning and windstorm under policies issued by the Company or Companies approved by the Board of Directors and providing for payment of moneys sufficient to cover the full cost of replacing or repairing the same under insurance policies payable in case of loss or damage to the Owner or to the Association as their interest may appear and shall deliver to the Association evidence of such insurance and the renewal thereof from time to time upon request. If, in such circumstances, the Association shall elect to undertake such repairs and replacements, the Association shall have the right through its agents, employees and independent contractors, to enter upon the Unit and to both the exterior and interior of the Unit situated thereon to the extent necessary for the aforesaid purpose and shall not be guilty of any trespass. Such costs to the Association for repairs and replacement shall become the personal obligation of the Owner and a continuing lien on the Unit recoverable with interest, costs and

reasonable attorneys fees in the same manner and to the same extent as provided under Article 6 hereof with respect to delinquent assessments.

5.9. The Board shall also have the authority to and shall obtain comprehensive liability insurance, including liability for injuries to and death of persons and property damage, in such limits as it shall deem desirable, and worker's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers, members of the Board, the Developer, the Declarant and their respective employees and agents from liability and insuring the Officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses payable from proceeds of the assessments required by and collected in accordance with Article 6 hereof. The Association shall be further responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable and may also obtain such other kinds of insurance as the Association shall from time to time deem prudent. The coverage shall contain an endorsement to the effect that such coverage shall not be terminated for non-payment of premiums without at least thirty (30) days written notice to the Association. The insurance policies shall contain waivers of subrogation with respect to the Board, its employees, agents, owners and mortgagees and with respect to any other insurance coverages which may otherwise be maintained by them or any of them.

5.10. The Developer shall have the following rights:

- a. Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized and empowered to take as otherwise herein provided.
- b. Until the Turnover Date, Developer may elect to maintain the Common area and all signs and monuments located thereon and shall pay all expenses and costs in connection with the Common Area, including, without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area. To the extent that any real property taxes payable after the Turnover Date are attributable to the period prior to the Turnover Date, Developer shall reimburse the Association, on a *pro rata* basis, for such real property taxes. Declarant shall, not later than the Turnover Date, convey to the Association that portion of the Common Area to be owned by the Association.
- c. Developer shall be entitled at all times to conduct sales of Parcels from the Property and shall have the right, for itself and its agents, employees, guests and invitees, to

utilize roads, streets, Common Area and all other portions of the Property, excluding sold Parcels, for such purposes until all Parcels are sold. Developer may at all times utilize signage, lighting and establish temporary construction and sales office, buildings and trailers and construct model homes to conduct its construction, sales and marketing of the Property.

5.11. Any lease between an Owner and a Lessee shall be in writing and shall provide that the terms of such lease are subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association and that failure by the Lessee to comply with the terms of such documents, rules and regulations shall be a default under the lease. The Board may promulgate a form which shall be signed and attached to every lease and returned to the Board. In every case, a copy of the lease must, as soon as possible both before and after signing by both Owner and Lessee, be delivered to the Board. No lease shall be less than thirty (30) days in duration. The foregoing shall constitute a restriction on the right of any Owner, including Declarant or Developer, to lease any Parcel which it owns.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS

6.1. Each Owner of a Parcel (excluding Declarant and Developer), by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other covenants, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Parcel owned by such Owner, all annual assessments and charges, and all special assessments, levied pursuant to this Declaration. Such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Parcel against which such assessment is made. Each such assessment, together with such interest and costs and, additionally, reasonable attorneys fees and court costs, shall also be the continuing personal obligation of the person who was the Owner of such Parcel at the time when such assessment fell due. The personal obligation of an Owner shall not pass to the successors in title unless expressly assumed by the successors in title, provided, however, that the terms and provisions of this sentence shall not abrogate the lien rights of the Association as are otherwise created hereunder.

6.2. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, in particular, without limiting the foregoing, for maintenance, repair, replacement, Improvement and additions of and to the Common Area and the Improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Area and all facilities and Improvements thereon, for certain maintenance and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-Laws. The annual



assessments provided herein shall commence for each parcel on the date of delivery of a Deed to a Owner.

- 6.3. The following provisions shall apply to annual assessments:
- a. Each year, on or before November 1, the Board shall prepare a budget for the Association for the ensuing twelve (12) months which shall include Estimated Cash Requirement ("Estimated Cash Requirement") which Estimated Cash Requirement shall estimate the total amounts of maintenance expenses necessary to pay the cost of wages and materials, taxes, insurance, services, supplies and any other necessary or desirable items required and, additionally, reasonable amounts as a reserve for repairs to and replacement of the Improvements on the Common Area and for such other contingencies as the Board may deem proper and shall, on or before December 1<sup>st</sup>, notify each Owner in writing of the amount of such estimate, on a line-item basis (and with reasonable itemization thereof). The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before the next January 1, following the preparation of the budget, and on the first day of each and every month for the next twelve (12) months, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before the date of the annual meeting of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding twelve (12) months together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, of income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association and shall be placed in a reserve account. Notwithstanding the foregoing, after the Turnover Date set forth in paragraph 5.4 above, the first Board shall, after it takes office, determine the Estimated Cash Requirement for the period commencing after the date of such determination and ending on December 31<sup>st</sup> of the calendar year in which the Turnover Date occurs and such (revised) Estimated Cash Requirement shall supercede the Estimated Cash Requirement theretofore established and determined by the Developer.
  - b. If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves in paragraph 6.5, charge the deficiency against existing reserves or levy a further assessment which shall be assessed equally against all Parcels subject to assessment. The Board shall serve notice for such further assessment on all Owners by a statement in writing showing the amount due and reasons therefor and such further assessment shall become effective with the monthly installment which is due more than ten (10) days after delivery or mailing of such notice of further

assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly assessment.

- c. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever same shall be determined and, in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay his or her monthly installment at the then existing rate established for the previous period until the monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.4. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital Improvement upon or to the Common Area and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessment which in any one (1) year exceeds Five Thousand and no/100 (\$5,000.00) Dollars for all Parcels involved shall first be approved by a majority of the Board and thereafter by a majority of the votes cast after determination of a quorum by the Members present at a general or special meeting duly called for that purpose or, in lieu of such Member's meeting, by an instrument signed by the Members owning two-thirds (2/3) of the Parcels. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the Members and shall be used only for the specific purpose for which such assessment was levied.

6.5. To the extent the annual budget includes an amount specifically designated as a capital reserve, that proportion of each installment of the annual assessment paid to the Association as the amount so designated as a capital reserve bears to the total annual budget shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Area, to those portions of the Parcels and the Improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration and for the purchase of equipment to be used by the Association in connection with its duties hereunder.

6.6. Developer shall collect, from each initial purchaser of a Parcel at the closing of the sale of such Parcel, a disclosed sum in an amount equal to two (2) times the then current monthly assessment as a "Contingency, Replacement and Start-Up Reserve" for the Association to be utilized for repair and replacement of capital Improvements made or to be made on the Common Areas. After the Turnover Date, the Developer shall assign to the Association all proceeds of the Contingency, Replacement and Start-Up Reserve to be applied by the Association for the purposes set forth in the preceding sentence. The Board shall thereafter maintain such Contingency, Replacement and Start-Up Reserve for the purposes set forth in this paragraph. Capital Improvements and expenditures which may become necessary during the year shall be charged first against

the Contingency, Replacement and Start-Up Reserve. Any expenditure from said Contingency, Replacement and Start-Up Reserve in a sum in excess of One Thousand and 00/100 (\$1,000.00) Dollars shall require approval of a simple majority of the Members present at the meeting at which any such expenditure is considered.

6.7. Written notice of any meeting called for the purpose of authorizing special assessments which requires approval of the Members shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of voting Members in person or by proxy having Sixty (60%) Percent of the votes entitled to be cast after determination of a quorum shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any approved Special Assessments shall become effective and fully payable ten (10) days after delivery or mailing of any notice of assessment (unless otherwise provided in the resolution enacting and adopting the Special Assessment).

6.8. Both annual and special assessments must be fixed at a uniform rate for all Parcels.

6.9. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to such Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year and the total amount shall be immediately due and payable and commence to bear interest from the date of acceleration at the rate of Eighteen (18%) Percent per annum or, if unlawful, then at the maximum rate permitted by law. The Board may determine a late charge not to exceed Fifty and 00/100 (\$50.00) Dollars per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments and recover same, including interest, costs and reasonable attorneys fees for any such action, the amount of which shall be added to the amount of such assessment and included in any judgment rendered in any such action. To the extent permitted by any court decision or any statute or law now or hereafter effective, the amount of any delinquent or unpaid charges or assessments and any accelerated installments, together with interest, late charges as determined by the Board, costs, attorneys fees and court costs as above provided, shall be and become a lien or charge against the delinquent Owner's Parcel and may be foreclosed by any action brought in the name of the Association. To the extent permitted by statute or law now or hereafter effective, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

6.10. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his or her Parcel. Any claim by an Owner against the Association shall be separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

6.11. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses so incurred. Such records and the vouchers authorizing the payments described therein shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a Mortgage at such reasonable time or times during normal business hours when requested by an Owner or by the holder of a Mortgage. Upon five (5) days' prior written notice to the Board, any Owner shall be furnished a statement of his account, which statement shall set forth the amount of any unpaid assessments or other charges due and owing from such Owner.

6.12. All funds collected hereunder shall be held and expended for the purposes designated herein, and hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

6.13. The lien of the assessments provided herein shall be subordinate to the lien of any mortgage placed at any time on a Parcel by a *bona fide* mortgagee. Each holder of a mortgage on a Parcel which obtains title or comes into possession of that Parcel pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take title to the Parcel free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title, possession, or the filing of a suit to foreclose the mortgage.

6.14. The lien of assessments provided for herein shall be subordinate to the lien of any Mortgage now or hereafter placed on the Parcels or Units. In the event of issuance of a deed pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for assessment authorized by this Declarant so long as any such lien shall have arisen prior to the date of recording of any such deed. No assessment shall be levied against the Parcel or Parcels affected until same have had construction of a Unit or Units completed.

## ARTICLE 7

### MAINTENANCE RESERVE FUND AND EXTERIOR MAINTENANCE BY ASSOCIATION AND VILLAGE

7.1. At the time of the initial closing of the sale of any residential lot or lots and/or the resale thereafter, but not at time of refinance, the purchaser shall make a non-refundable, non-transferable deposit of Three Hundred (\$300.00) Dollars into an interest-bearing maintenance reserve fund to be established at a banking institution ("Bank") with offices in the Village. The purpose of the fund is to provide additional assurance to the Village that the common areas, detention and cul-de-sac islands will be maintained in the manner in which they were designed. After turnover, the Homeowner's Association shall be required to collect membership dues on a regular basis for

purposes of providing such maintenance. However, if maintenance obligations exceed the funds made available by the Homeowner's Association, the Homeowner's Association may apply to the Village for release of a portion of the fund and the Village may, at its discretion, allow for such a release. Said Bank shall agree to be bound by the terms of this section of these covenants by noting the same, including the recorder's document number, in the account records. In addition to all rights set forth herein, the Village shall be entitled to be fully and immediately reimbursed for any and all costs incurred under any of the terms of these covenants, including, but not limited, those set forth herein, by presenting the following to the Bank.

- a. A letter setting forth the nature of the default of the Homeowner's Association, which includes an itemized list of the costs to be reimbursed; and
- b. A statement that a demand for payment has been made upon the Homeowner's Association and the Homeowner's Association has not paid the amount due.

Upon presentation of the foregoing, the Bank shall treat this notice in the same fashion as a draw on a Letter of Credit (and this matter shall be governed by the rules applicable to a Letter of Credit) and shall promptly make payment to the Village in accordance herewith.

7.2. In addition to other rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-Laws of the Association, the Association shall have the following rights, powers and duties with regard to the Common Area and the cost and expense of which shall be paid for by the Association from assessment funds. The Association shall maintain, repair, replace and manage the Common Area and all facilities, Improvements and equipment thereon and pay for all expenses and services in connection therewith, including, without limiting the generality of the foregoing: landscape maintenance, comprehensive liability, hazard and other insurance, payment of all taxes (including real estate taxes), assessment and other liens and encumbrances which are assessed to or charged against the Common Area or other property owned by the Association and such other services for the Common Area as the Board deems to be in the best interests of the Association and its Members. In the event the Association or an Owner fails to maintain repair and replace said Common Area, upon twenty-one (21) days written notice, the Village shall have the right, but not the obligation, to maintain, repair and replace said Common Area and the cost thereof, including reasonable attorneys fees and costs, shall be charged to, and reimbursed by, the Association and/or the non-complying Owner(s). If the Association and/or non-complying Owner(s) fail to reimburse the Village for the costs incurred by the Village within thirty (30) days of notice thereof, the Village shall have the right to lien the Property of the Association and/or the non-complying Owner(s) within the Development and seek all remedies to enforce said lien, including, but not necessarily limited to, foreclosure of same.

## ARTICLE 8

### EASEMENTS AND PROPERTY RIGHTS

8.1. An Easement is hereby declared and crated over and upon the Common Area ("Easement Property") for the benefit of the entire Property and every Owner shall have a right and easement of use and enjoyment and a right of access to and of ingress and egress on, over, across, in, upon and to the Common Area and such right and easement shall be appurtenant to and shall pass with title to every Parcel, subject to the following provisions:

- a. The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Area.
- b. The right of the Association to suspend an Owner's right to use or enjoy such easement for any period during which such Owner may be in violation of this Declaration.
- c. The right of the Association to levy assessments is herein provided.
- d. The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Area unless such mortgage is approved by the Board and by a majority of the Members voting at a general or special meeting duly called and held in accordance with the By-Laws.
- e. The right of the Association to dedicate or transfer all or any part of the Common Area or any utility system thereon to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of the members of the Board, has been recorded and the approval of mortgagees, as provided in paragraph 9.1, has been obtained.
- f. The right to exercise any powers reserved to the Declarant, Developer and/or the Association is herein provided.

8.2. All persons who lawfully, and in accordance with the relevant provisions hereof, reside on a Parcel shall have the same rights to use and enjoy the Common Area and all Improvement situated thereon as the Owner of that Parcel.

8.3. The authorized telephone company, Commonwealth Edison Company, the authorized cable television company, Northern Illinois Gas Company, Will County Public Works Department, the Village and all other suppliers of utilities serving the Property are hereby granted the right to

install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housings for such equipment, into, over, under, on and through the Common Area for the purpose of providing utility services to the Property. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Parcel for any and all purposes arising from construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Parcel.

8.4. Notwithstanding anything herein contained to the contrary, the Owners, and their respective heirs, executors, administrators, personal representatives and assigns, covenant to do and refrain from doing upon the Easement Property the various acts as hereafter set forth.

- a. No advertising of any kind or nature shall be located on or within the Easement Property, except for advertising by the Developer.
- b. The general topography of the Easement Property (excluding any portions thereof that may be owned by the Village) shall be maintained in its present condition to the fullest extent practicable and no excavation or topographic changes shall be made without the written approval of the Association, except that underground utilities may be installed to serve the Property (including the Easement Property) provided that the topography is restored and the area so utilized for such underground utilities are re-seeded or sodded to restore, as nearly as possible, the existing grass and landscaping.
- c. Ingress or egress across the Easement Property by vehicular means, including, but not limited to, automobiles, trucks, snowmobiles, motorized bicycles, scooters, or motorcycles, shall be prohibited except to the extent necessary to install, repair, maintain and replace underground utilities.
- d. No dumping or placing of trash, waste, soil, or other substances or materials on the Easement Property shall be permitted.
- e. No activities shall be permitted on the Easement Property which adversely affect the Property with respect to drainage, flood control, water conservation, erosion control, or soil conservation.

8.5. In the event that: i) by reason of settlement, shifting, or movement, any Dwelling, garage, or other Improvement as originally constructed by the Developer on any Parcel or upon the Common Area overhangs or otherwise encroaches or shall hereafter encroach upon any other Parcel or upon the Common Area, ii) by reason of such settlement, shifting, or movement, it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Area for any reasonable use appurtenant thereto which will not unreasonably interfere with the use or enjoyment of the Common Area by other Owners, or iii) by reason of settlement, shifting, or movement of utility, ventilation and exhaust systems, as originally constructed by Developer, any mains, pipes,

ducts, or conduits servicing any Parcel or more than one Parcel, encroach or shall hereafter encroach upon any part of any Parcel or the Common Area, then in any such case valid easements for the maintenance of such encroachment and for such use of the Common Area, together with the right to enter upon such Parcel or Common Area to maintain, repair and replace such encroachment, are hereby established and shall exist for the benefit of such Parcel or the Common Area, as the case shall be, so long as such Dwelling, garage, or other Improvement (such as, but not limited to, patios, porches, side and front courtyard entries, fireplace chimneys and building unit bays) shall remain standing, provided, however, that if any such Dwelling, garage, or other Improvement is partially or totally destroyed and thereafter repair or rebuilt, the same encroachment may be re-established and the easements herein granted for the maintenance, repair and replacement thereof shall continue in force, provided, further, that in no event shall a valid easement for any encroachment or use in the Common Area be created in favor of any Owner if such encroachment or use was created by the intentional, willful, or negligent conduct of any Owner or that of his or her agent.

8.6. All easements and rights described herein are easements appurtenant to and running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and binding upon any Owner, purchaser, mortgagee, or to the person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements or trust as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

## ARTICLE 9

### RIGHTS OF FIRST MORTGAGEES

9.1. In addition to all other rights of the First Mortgagees pursuant to this Declaration and notwithstanding any other provisions herein to the contrary, unless at least Fifty-One (51%) Percent of the First Mortgagees (based upon one vote for each first mortgage held by such First Mortgagee) of individual Parcels have given their written approval, the Association shall not be entitled to:

- a. Abandon, partition, subdivide, encumber, sell, or transfer any real estate or Improvement thereon which is owned, directly or indirectly, by the Association for the benefit of the Parcels and the Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.
- b. Change the method of determining the obligations, assessments, dues, reserves for maintenance, repair and replacement of Common Area, or other charges which may be levied against a Parcel and the Owner thereof as provided in Article 6, subject, however, to the provisions in paragraph 9.5 hereof.



- c. Waive, abandon, or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any Dwelling or garage on a Parcel, the exterior maintenance of any such Dwelling or garage, the maintenance of common fences and driveways, if any, or the upkeep of lawns and planting on the Property.
- d. Fail to maintain fire and extended coverage insurance on the insurable Improvements to the Common Area in an amount not less than One Hundred (100%) Percent of the full insurable replacement cost.
- e. Use hazard insurance proceeds for losses to any Improvements to the Common Area for other than the repair, replacement, or reconstruction of such Improvements.
- f. Change the responsibility for maintenance and repairs of the Common Area and/or Parcels thereof as provided in Article 7.
- g. Change the interests in the Common Area or rights to its use.
- h. Change the voting rights of any Member of the Association.
- i. Impose any restrictions on an Owner's right to sell or transfer his or her Parcel.
- j. Seek to terminate the legal status of the Association after substantial destruction or condemnation.

9.2. First Mortgagees shall have the right to examine the books and records of the Association at reasonable times upon reasonable notice.

9.3. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

9.4. Any First Mortgagee, at its written consent, shall be entitled to written notice from the Board of any default by the mortgagor of such Parcel in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.

9.5. First Mortgagees are entitled to timely written notice, if requested in writing, of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the Parcel securing its mortgage.

- b. Any sixty (60) day delinquency in the payment of assessments or charges owned by the Owner of any Parcel on which it holds the mortgage.
- c. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage or eligible mortgage holders.

The request under this paragraph must be directed to Association; the request must set forth the name and address of the First Mortgage and the address of the Parcel upon which it holds a mortgage.

## ARTICLE 10

### GENERAL PROVISIONS

10.1. In addition to all other rights herein granted, Declarant, Developer and/or the Association, as the case may be, may enforce the provisions of this Declaration and the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and failure of the Declarant, Developer, and/or the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by an aggrieved party in connection with any such proceedings, including court costs and attorneys fees, together with interest thereon at the rate of Eighteen (18%) Percent per annum or, if unlawful, then at the maximum rate permitted by law, shall be charged to and assessed against any Owner or the person(s) violating any such provisions and, if applicable, shall be added to and deemed a part of his or her assessment and constitute a lien on his or her Parcel and be enforceable as provided in Article 6. If any Owner, or his or her guests, violates any provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner and such fine shall be added to and deemed a part of his or her assessment and constitute a lien on his or her Parcel and be enforceable as provided in Article 6.

10.2. Whenever possible, each provision of this Declaration shall be interpreted in such manner to be effective and valid under applicable law, but, if any provision of this Declaration shall be unenforceable or shall be prohibited by, or be invalid under, applicable law, such provision shall be ineffective only to the extent of such unenforceability, prohibition, or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Declaration.

10.3. In the event title to any Parcel is conveyed to a title-holding trust under the terms of which all powers of management, operation and control of the Parcel remain vested in the trust beneficiary or beneficiaries, then the beneficiary or 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 Parcel. 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 Parcel and the beneficiaries of such trust, notwithstanding any transfer of the beneficial interest of any such trust or any transfers of title of such Parcel.

10.4. The provisions of paragraph 6.1. and Article 8, and this paragraph, may be amended only by an instrument in writing setting forth such amendment and which is signed and acknowledged by not less than Seventy-Five (75%) Percent of the votes cast after determination of a quorum), provided that the provisions of this Declaration may not be amended without the written consent of the Village. Subject to Article 9 and the express requirements of any provision hereunder which otherwise provides, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment signed and acknowledged by the voting Members having at least Fifty-One (51%) Percent of the total votes cast after determination of a quorum by the Members at a duly called and held general or special meeting of Members and containing a certification by an Officer of the Association that said instrument was duly approved as aforesaid. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of Will County, Illinois.

10.5 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:

- a. To comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, 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;
- b. To induce any of those agencies or entities to make, purchase, sell, insure, or guarantee first mortgages encumbering any Parcel; or
- c. To correct clerical or typographical errors in this Declaration or to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant shall elect to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power

coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. 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 reservations of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments.

10.6. When any term is used in this Agreement and interpretation thereof so requires, the singular shall include the plural, the plural shall include the singular, the masculine shall include the feminine and the neuter, the feminine shall include the masculine and the neuter and the neuter shall include the masculine and the feminine.

10.7. Notwithstanding anything herein to the contrary, Declarant and/or Developer reserve the right to transfer, assign, mortgage, or pledge any and all of their respective privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Will County, Illinois. Upon such assignment, Declarant and/or Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of Declarant and/or Developer shall have or incur any liability for the obligations or acts of any predecessor in interest.

10.8. Each Owner of a Parcel shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address, provided that, if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the street address of the Parcel owned by such Owner. The Association shall maintain a file of such addresses. Any notice required or desired to be given under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid and addressed to any Owner at the last address filed by such Owner with Declarant and shall be deemed delivered on the third (3rd) day after deposit in the United States mails.

10.9. Except for matters discussed in Article 9 of this Declaration, the easements created by this Declaration shall be of perpetual duration unless canceled in a written document signed by not less than Seventy-Five (75%) Percent of the votes cast after determination of a quorum of Parcel Owners. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforceable by, the Association or the Owner of any Parcel subject to this Declaration, their respective heirs, executors, administrators, personal representatives, successors and assigns.

10.10. If and to the extent that any of the covenants would otherwise be unlawful or void for violation of: i) the rule against perpetuities; ii) the rule restricting restraints on alienation,; or iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time during which such covenants may be valid, then said covenant shall continue and endure only until the expiration of twenty-one (21) years after the death of the last to survive of the

class of persons consisting of all lawful descendants of George Bush, President of the United States, living at the date of this Declaration.

10.11. If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration or any part hereof in the Office of the Recorder of Deeds of Will county, Illinois, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained under any of the provisions of commonly known as the Marketable Title Act, or any other law or statute of similar purport, it shall submit the matter to a meeting of the Members of the Association called upon not less than ten (10) days' notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such rerecording, the Board shall have, and is hereby granted, power to so rerecord this Declaration or such part hereof, and such rerecording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and then rerecording document executed and acknowledged by each of them.

10.12. Each grantee of Declarant by taking title to a parcel, and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and changes, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in said land and shall inure to the benefit of such person in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance or in any mortgage or trust deed or other evidence of obligation and the rights described in this paragraph or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

10.13. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creation a uniform plan for development for the Property.

10.14. A breach of the provisions hereof shall entitle an aggrieved party to institute and prosecute proceedings in any court of competent jurisdiction, either in law or equity, to obtain damages for any breach, or to specifically enforce (by injunction or otherwise) the performance of the terms and conditions of this Agreement. In the event that an aggrieved party exercises its rights as provided for herein and in the event that such aggrieved party is successful, the party against whom enforcement is sought and against whom an adverse decision is rendered shall be required to pay unto the aggrieved party, in addition to all other damages which the aggrieved party may have, all reasonable attorneys fees, costs and expenses incurred by the aggrieved party as a result of such litigation. Notwithstanding the foregoing, all rights and remedies of an aggrieved party shall be cumulative and not exclusive.

10.15. Each Owner of a Parcel shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that, if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the street address of the Parcel or Unit owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice shall be sent by any one of the following:

- a. Certified or Registered Mail, return receipt requested with proper postage prepaid;
- b. Receipted U.S. Post Office or private overnight or express mail;
- c. Receipted hand delivery; or
- d. Facsimile teletransmission with telefax confirmation.

With respect to Certified or Registered Mail (unless proof of delivery is otherwise established), the date of United States Post Office postmark cancellation shall conclusively be presumed to be the date of receipt. The last address filed by an Owner with Declarant (or, subsequently, with the Board) shall be sufficient.


## ARTICLE 12

### COMMON INTEREST COMMUNITY


12.1. The Association shall act and operate as a Common Interest Community as defined in Illinois Compiled Statutes (1992), Chapter 735, Section 5/9-102, from time to time amended. The Declaration and By-Laws shall be deemed to be amended as necessary to comply with any statute relating to Common Interest Communities and the Developer or Board may record such documents as are necessary to effect this compliance.

**IN WITNESS WHEREOF** and pursuant to its corporate powers, Bruti Associates, Ltd. has executed this instrument as of the date and year first above written.

BRUTI ASSOCIATES, LTD.

By:   
\_\_\_\_\_  
President

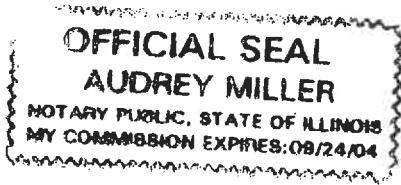
ATTEST:

  
\_\_\_\_\_  
Secretary

STATE OF ILLINOIS )  
 )  
COUNTY OF WILL )

I, the undersigned, a notary public in and for the county in the state aforesaid, do hereby certify that Charles Bruti, personally known to me to be the President of Bruti Associates, Ltd., and Barbara Bruti, personally known to me to be the Secretary of aid corporation, and 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 severally acknowledged that as such President and Secretary they signed and delivered the said instrument, 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 official seal this 8<sup>th</sup> day of April, ~~2002~~ 2003



Audrey Miller  
Notary Public

THIS DOCUMENT WAS PREPARED BY:

Sheldon L. Lebold  
16061 S. 94<sup>th</sup> Avenue  
Orland Hills, IL 60477

MAIL TO:

~~Sheldon L. Lebold  
16061 S. 94<sup>th</sup> Avenue  
Orland Hills, IL 60477~~

document\settlersdec

Mail To:

Bruti Associates Ltd.  
21146 Washington Pkwy  
Frankfort, IL 60423