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MCHEERY COUNTY RECORDER  
PHYLLIS K. WALTERS

2005R0018908

03/14/2005 01:31PM

PREES 24  
RECORDING FEE 46.00  
COUNTY STAMP FEE  
STATE STAMP FEE

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR BELLE POINTE HOMEOWNER'S ASSOCIATION**

THIS DECLARATION (the "Declaration") is made this 14th day of MARCH, 2005 by Millstream Estates, Inc, an Illinois corporation, ("Declarant") developer of the subdivision Belle Pointe

**PREAMBLES:**

Declarant owns fee simple title to a certain parcel of real estate in the County of McHenry, State of Illinois, legally described in "Exhibit "A"" attached hereto and made a part hereof (the "Property"); and

The Declarant, also sometimes referred to as the "Developer", desires to develop a single family residential development on the Property to be known as Belle Pointe Subdivision; and

Declarant is desirous of submitting the Property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property is, and shall be, held, transferred, sold, conveyed and occupied, subject to the covenants, conditions, restrictions and easements hereinafter set forth.

**ARTICLE I**

**Definitions**

- 1.1 "Amendment" shall have the meaning set forth in Section 9.6.
- 1.2 "Architectural Control Committee" shall be the Board, unless and until the Board shall establish a separate Committee as provided for herein, and shall discharge those powers and duties as set forth in these Covenants.
- 1.3 "Association" shall mean and refer to Belle Pointe Subdivision Homeowners' Association, an Illinois not-for-profit corporation, its successors and assigns.
- 1.4 "Board" shall mean and refer to the Board of Directors of the Association.
- 1.4 "By-Laws" shall mean those by-laws duly enacted by the Association which govern the Association.

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- 1.5 "Common Area" shall mean all real property including Outlot A and personal property and fixtures to be maintained by the Association for the common use and benefit of the Owners, and shall include, without limitation, the Detention Areas; the retaining walls & other storm water management and control structures and equipment in the Detention Areas and any utility power required to operate such structures and equipment; and any permanent monument sign including any costs to illuminate said signs.
- 1.6 "Declarant" shall mean and refer to Millstream Estates, Inc., and Illinois Corporation, and its designated 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 in section 9.11.
- 1.7 "Detention Area" or "Detention Areas" shall mean those areas depicted on the Subdivision Plat and shall include the right of access to and from such areas.
- 1.8 "Dwelling" shall mean any building located on Lot and intended for the shelter and housing of a single family. Dwelling shall include any improvement attached or adjacent to the Dwelling utilized for storage of personal property, tools and equipment.
- 1.9 "Estimated Cash Requirement" shall have the meaning set forth in Section 7.3.
- 1.10 "Improvement" or "Improvements" shall mean and include Dwelling any and all buildings, out buildings, driveways, pedestrian walkways, walls, swimming pools, fences, decks, patios, hedges, lawns, sidewalks, mailboxes, planted trees, shrubs and all other structures or landscaping improvements of every kind and description, including any changes in grade or slope.
- 1.11 "Island" shall mean the landscaped area within the right of way.
- 1.12 "Lot" shall mean each of the Lots of the Property as established pursuant to the Subdivision Plat.
- 1.13 "Lot Deed" shall mean the deed of the Declarant conveying a Lot to an Owner.
- 1.14 "Member" shall mean and refer to every Person who holds membership in the Association and "Members" shall mean and refer to all Persons who hold membership in the Association.
- 1.15 "Mortgage" shall mean 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 Property.
- 1.16 "Outlot" shall mean Outlots depicted on the Subdivision Plat.
- 1.17 "Owner" shall mean and refer to the record owner, whether one or more persons, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.18 "Person" or "Persons" shall mean all natural individuals, corporations, partnerships, trustees or other legal entities capable of holding title to real property.
- 1.19 "Property" shall mean and refer to the real estate legally described in "Exhibit A" attached hereto and made part hereof.

- 1.20 "Subdivision Plat" shall mean the plat of subdivision for Belle Pointe Subdivision as recorded in the Office of Recorder of Deeds of McHenry County, State of Illinois.
- 1.21 "Township" shall mean Coral Township, State of Illinois and "County" shall mean McHenry County, State of Illinois.
- 1.22 "Turnover Date" shall have the meaning set forth in Section 5.3.

## ARTICLE II

### Declaration Purpose and Property Subjected to Declaration

- 2.1 The Declarant desires to create on the Property a single-family development for future owners of Lots for the following general purposes:
- (a) The Declarant desires to provide upon the Property, through its planning and layout, the harmonious development of a community of single family residences by the imposition of the covenants, conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the Owners.
- (b) By the imposition of covenants conditions, restrictions set forth herein and the reservation of certain powers as herein contained, Declarant intends to provide a plan for development of the Property, which is intended to enhance and protect the value of the residential community.
- (c) The Declarant desires to provide for the maintenance of the Common Area.
- 2.2 To further the general purposes herein expressed, the Declarant for itself, and its successors and assigns, hereby declares that the Property at all time in and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements as hereinafter set forth in this Declaration.

## Article III

### Maintenance of Common Area

- 3.1 The Association shall be responsible for the maintenance, replacement, and pruning of all landscaping as well as brush removal located in the common areas.
- 3.2 The Association shall be responsible for the maintenance of any permanent monument sign including any charges to illuminate same as well as any landscaping around said signs.
- 3.3 The Association shall be responsible for the maintenance of the all detention and retention pond(s) constructed and all storm sewers, if any, located in the non-right-of-way areas, including those areas located in all drainage easements, for the benefit of all lot owners. Those storm water retention and detention areas located within the right-of-way of Coral Township, shall be maintained by said township.

## ARTICLE IV

### General Restrictions

- 4.1 All Lots shall be used for single-family Dwellings. Each Owner shall (i) maintain his Lot and all Improvements located thereon in a clean, sightly and safe condition, (ii) cause the

prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from all driveways and similar areas serving said Lot, and (iii) comply with all applicable governmental codes, laws, ordinances, orders, decrees, rules and regulations.

- 4.2 All Improvements shall be constructed in accordance with the Plans and Specifications approved in accordance with the terms and conditions in Article VI and in accordance with all applicable governmental building and zoning codes, laws, ordinances, orders, decrees, rules and regulations.
- 4.3 Except as expressly provided herein, no temporary building trailer, mobile home, recreational vehicle, camper, boat, snowmobile, tent, shack or other similar improvement shall be located upon the Lots.
- 4.4 No Person shall accumulate on his Lot any derelict vehicles, litter, refuse or other unsightly materials. Garbage shall be placed in receptacles and all garbage receptacles will be properly screened. Landscaping and grass will be kept trim and neat. No burning of refuse or building materials will be permitted. No unimproved Lot or Outlot shall be planted with anything other than grass. Each Owner of a vacant Lot or Outlot shall keep the Lot or Outlot in a clean and sightly condition and all natural growth shall be kept trim and neat.
- 4.5 Trucks, boats, recreational vehicles, trailers or other vehicles (other than automobiles) shall at all times be parked in the garage of the Dwelling and their repair or maintenance shall not be permitted except within the confines of the Garage. Parking of commercial vehicles on any Lot and habitual parking on roadways is prohibited.
- 4.6 No animals (other than inoffensive common domestic household pets such as dogs and cats) shall be kept on any Lot or within the confines of any Improvement thereon, excluding Lot 19, whose owner(s) shall be allowed to keep horses over and upon the lands of said Lot 19. No other uncommon domestic pets shall be allowed without the consent and written approval of the Board of Directors established herein. Any and all stables, barns or outbuilding necessary for the keeping and training of horses shall be allowed on Lot 19 upon the approval in writing of the Association, or Architectural control Committee as the case may be, of the material, size, design, location, landscaping, etc., of the structure(s).
- The breeding or keeping of dogs or cats for sale or profit is expressly prohibited.
- 4.7 Each Owner shall keep all areas of the Lots and Outlots, including drainage easements, designed or intended for the proper drainage or detention of water, including swale lines and ditches, unobstructed and mowed regularly. No trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other obstruction shall be planted, placed or allowed to remain in any such areas, and no Owner shall alter the rate or direction of flow of water from any Lot or Outlot by impounding water, changing grade, blocking or re-directing swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that any and all such drainage or detention areas are for the benefit of the entire Property.
- 4.8 No noxious or offensive activity shall be carried on, in or upon any Lot. No plants, seeds, or other things harboring infectious plant diseases or noxious insect shall be introduced or maintained on any Lot.

- 4.9 All mailboxes shall be of similar design as approved by the Developer, or the Association if after the turnover date, and shall be provided by the lot owner.
- 4.10 No billboards or any advertising signs shall be erected, placed, permitted or maintained on any Lot or Improvement except "For Sale" signs which shall be removed upon execution of contract of sale.
- 4.11 Any construction undertaken on any Lot shall be continued with diligence toward the completion thereof and construction of any Dwelling shall be completed within eighteen (18) months of commencement of construction unless Declarant agrees in writing otherwise. If the Declarant declines in writing or the Turnover Date has occurred, then the Association has the right, but is not obligated to complete the construction and (A) recover costs of the same from the Owner and (B) place a lien on such Lot for the amount of such costs.
- 4.12 The covenants, conditions and restrictions contained in Articles III and IV of the Declaration shall not apply in any manner to Lots owned by the Declarant, the Developer or any affiliate or subsidiary of or other entity controlled by or in common control with the Declarant or the Developer.
- 4.13 Square Footage Requirement: All residences shall have a minimum of 2800 square feet 2 stories unless specifically approved by the Architectural Control Committee, excluding garage, porches, and basement. No below grade areas shall be considered in determining square footage.
- 4.14 SAME PLAN CLAUSE: The same front elevation may not be built more than 2 times within the subdivision. If the same elevation is built more than once, the homes must be separated by at least 4 lots or 900 feet, whichever is greater. All homes with the same front elevation must use a single siding materials of different composition and/or color.
- 4.15 No flat, tar, or gravel roof shall be allowed.
- 4.16 No concrete blocks, vinyl or aluminum siding shall be allowed as an exterior to a residence. A total of no less than 80% of the front of each dwelling shall be stone or masonry. All chimneys shall be constructed of brick or stone.
- 4.17 Each residence shall be serviced with an attached garage of no less than two (2) cars and no more than four (4) car capacity. The garage shall be built of the material similar to the main structure. No garage shall be used for a temporary or permanent residential structure. All garages must be side loading (i.e. not facing the road).
- 4.18 No utility buildings or storage sheds, attached or detached, shall be erected on any lot except for a pool house 400 square feet or less and those exceptions listed in paragraph 4.6 above for Lot 19.
- 4.19 No exterior satellite dish over 18 inches shall be installed on any lot unless approved in writing by the Architectural Control Committee.
- 4.20 No fences, walls, terraces, yard lights or tennis courts shall be installed until plans and specifications have been approved in writing by the Architectural Control Committee.
- 4.21 The approval or disapproval of the Architectural Control Committee as required in these Covenants shall be in writing. In the event the Architectural Control Committee fails to

act on the plans and specifications within sixty (60) days after they have been submitted to it, approval will be deemed to have been denied.

- 4.22 No tree larger than six (6) inches in diameter shall be removed from any lot without prior written consent from the Architectural Control Committee.
- 4.23 Portions of the following lots have impervious limitation easements, which have the following limitations in those impervious limitation easements:
- Lot 1: 500 square feet
  - Lot 2: 1,000 square feet
  - Lot 13: 500 square feet
  - Lot 19: 23,000 square feet
- 4.24 Location/placement of each house on each respective lot in Belle Pointe Subdivision shall be approved by the Architectural Control Committee prior to any excavation on the Lot.
- 4.25 There shall be no above-ground swimming pools allowed at any time on any Lot.
- 4.26 All structures, including but not limited to dwellings, accessory structures, pool houses, etc., and where applicable, stables and barns, shall be earth-tone in color.

#### ARTICLE V

##### Belle Pointe Homeowner's Association

- 5.1 The Declarant shall form an Illinois non-for-profit corporation to be known as Belle Pointe Homeowner's Association, which shall provide for maintenance and operation of the Common Area and in general to maintain and promote the desired character of Belle Pointe Subdivision.
- 5.2 (a) The Association shall have a Board of three (3) directors who shall be elected by the Members of the Association at such intervals as the By-Laws of the Association shall provide, however, the first Board and subsequent Boards (until the Turnover Date) shall be appointed by the Declarant.
- (b) The Association shall have such officers as shall be appropriate from time to time, whom the Board shall elect 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 the Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The directors and officers of the Association shall not be liable to the Owners or any others for any mistake of judgment or any acts or omissions made in good faith as such directors or officers.
- 5.3 The Declarant shall appoint the Board until the first to occur of the following: (a) The date which is twenty (20) years from the date of this Declaration, (b) the date of the sale and conveyance of legal title to all of the Lots to Owners other than Declarant, Developer or an assignee as provided in Section 9.11 occurs, or (c) the date Declarant elects voluntarily to turn over to Members the authority to appoint the Board, which election shall be made in writing. 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 Declarant shall convey, quit claim and assign to the Association,

and the Association shall accept and assume the Outlots and any fixtures or improvements located on the Common Area and the Association (1) maintain enhancement of the entire Common Area as required hereunder and (2) shall assume all obligations of Declarant or Developer with respect to any agreement by Declarant or Developer to maintain any public or private property within the Subdivision and the Association shall thereafter maintain such property.

5.4 (a) Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any of its successors in interest owns one or more Lots.

(b) From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owner by him on each matter submitted to a vote of Members; provided, however, that where there is more than one Owner of a Lot, such Co-Owners of a Lot shall only be entitled to one vote.

5.5 The Association shall have the power over the Outlots, Common Areas, and the Detention Areas, and duty to:

(a) Own, maintain, manage and pay all applicable taxes on the Outlots;

(b) Maintain and otherwise manage the Common Area and all Improvements and storm water and drainage and detention facilities thereon, including the Detention Areas, and all other property acquired by the Association or which the Association agrees or is required to maintain;

(c) 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;

(d) Maintain, at the expense of the defaulting Owner, all drainage areas and facilities located on the Property in accordance with the reasonable and acceptable engineering requirement of the County in the event that one or more Owners fail to do so;

(e) Provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems, lighting and care for, spray, trim, protect and replant trees, shrubbery and grass in the Common Area and maintain entrance way easements, if any, and other improvements located in the Common Area;

(f) Mow, care for, remove underbrush from, maintain and remove rubbish from any vacant or unimproved portions of the property and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Property neat in appearance and in good order and no such entry shall be deemed a trespass. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Declarant;

(g) Make such improvements to the Common Area and entrance to the Property, if any, and provide such other facilities and services as may be authorized from time to time by the affirmative vote of 4/5 of the members of the Association acting in accordance with articles of incorporation and By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping the development a highly desirable residential community;

- (h) Ensure all continuity, care, conservation, maintenance including operation in a first rate condition of Detention Areas in accordance with the terms and provisions within the Declaration and as required by the County's laws, codes, ordinances, rules and regulations;
  - (i) Maintain casualty and liability insurance and pay all real estate taxes with respect to the Common Area; and
  - (j) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, the Articles of Incorporation or the By-Laws.
- 5.6 The Board shall also have the authority and responsibility to obtain and maintain such insurance as it may reasonably deem necessary or desirable, including, without limitation, casualty and liability insurance for the Common Area. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with Article VII.
- 5.7 The Declarant, the Developer, the Board, Officers of the Association and the employees and agents of any of them shall not be liable to the Owners or any other person (except the County, which shall have whatever rights it would otherwise have by contract, pursuant to this Declaration, at law or in equity) for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Article VII hereof. To the extent possible, the Board's and Association's liability hereunder and the Owner's indemnification obligation may be insured by means of appropriate contractual endorsements to the insurance policies held from time to time by the Association.
- 5.8 (a) Until the Turnover Date, the Declarant shall have all the rights and powers therein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board but shall not be obligated to exercise any obligation or duty of the Board or Association.
- (b) Until the Turnover Date, and thereafter, if approved by the Association, Declarant shall have the right, but not the obligation, to maintain the Common Area and all signs and monuments located thereon and, in its sole discretion, pay all expenses and costs, arising in connection with the Common Area, including, without limitation, the costs of improving and maintaining the Common Areas (and any signs and monuments located thereon) general real estate taxes payable in connection with the Common Area. Such costs and expenses shall be deemed expenses for which assessments can be collected under Article VII.
- (c) Declarant shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests and invitees, to utilize roads, streets, Common Areas and all other portions of the Property, excluding sold Lots, for such purpose until all Lots are sold. Declarant may at all times utilize signage



and lighting and establish sales offices, trailers, and model homes as required to conduct its sales and marketing of the Property.

## ARTICLE VI

### Architectural Control Committee

- 6.1 The purpose of requiring Architectural Approval is to preserve the architectural and aesthetic appearance of the dwellings, to protect the value of the property of all Residential Lot Owners and to maintain and protect the ecological balance and stability of the Common Area and other natural areas located within the Subdivision. The requirement for Architectural Approval shall not apply to any Dwelling Units, accessory structures, additions thereto or any other exterior aspect of a Residential Lot, or any exterior aspect of the Common Area constructed and installed or approved by Declarant in connection with the initial construction by Declarant on each Residential Lot.
- 6.2 The Architectural Control Committee. The Board shall act as the Architectural Control Committee subject to the rules and guidelines of this provision until such time as the Board may elect to establish an architectural control committee (the "Architectural Control Committee") which shall consist of three members, at least one of whom shall be a Residential Lot Owners and who may or may not be Directors. The Architectural control Committee shall be an approval committee whose function shall be to review every request for architectural approval and provide a written response thereto within the time allowed for under these Covenants.
- 6.3 Subject to Section 6.2 above, the regular term of office for each member of the Architectural control Committee shall be determined by the Board. Any member of the Architectural control Committee may be removed with or without cause by the party who appointed such member (that is, either the Board or Declarant) at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancies shall serve for the remainder of the term of the former member. The Architectural Control Committee shall elect a chairman from its members. The Architectural control committee shall meet as needed, as well as upon the call of the chairman, and all meetings shall be held at such places as may be designated by the Chairman. The Architectural control Committee shall be authorized, upon written approval of the Board, to retain the services of consulting architects, landscape architects, designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural control Committee with each request for Architectural Approval.
- 6.4 A Residential Lot Owner shall, in connection with each request for Architectural Approval, submit two (2) copies of the plans and specification described below for such proposed action (the "Plans and Specifications") to the Architectural control Committee. The Plans and Specifications shall conform with such standards as may be published from time to time by the Board regarding, without limitation, the harmony and variation of external design (it being understood that anti-monotony standards shall be developed, implemented and maintained within the Premises), location and appearance in relation to surrounding structures and topography. For purposes hereof, Plans and Specifications shall be deemed to mean:
- (i) If the proposed action consists of anything other than landscaping, painting/staining of exterior or resurfacing of existing driveways, a site plan of the Residential Lot as prepared by the Residential Lot Owner's engineer and/or

architect or such other less formal plans, drawing or depictions which are acceptable to the Architectural control Committee, showing among other things, the location and dimensions of all intended construction, top of foundation elevation, drainage and grading plans (which shall be in conformity with the lot and black grading plans prepared by Declarant's engineer and approved for the Premises by the County, and such other data and information as will enable the Architectural control Committee to understand the proposed construction and its relationship to surrounding topography;

(ii) A detailed description, together with detailed drawings, plans and specifications, as prepared by the Residential Lot Owner's engineer and/or architect (or such other less formal plans, drawing or depictions which are acceptable to the Architectural control Committee), of all aspects of the proposed action, including all exterior surfaces (showing elevations and grade), methods of construction, proposed time period for construction, and the color, quality and type of exterior construction materials;

(iii) With respect to any landscaping, drawings, plans and specifications as prepared by the Residential Lot Owner's landscape architect (or such other less formal plans, drawings or depictions which are acceptable to the Architectural control Committee), showing all proposed changes to the original landscaping of; and any sprinkler system on a Residential Lot specifying without limitation, types of trees, bushes, sod, etc. to be used, their location on the Residential Lot and generally describing the maintenance required for such landscaping; and

(iv) In each instance, such other information as may be reasonably required by the Architectural control Committee to determine the location, scale, design, character style and exterior appearance of Residential Lot Owner's intended action.

6.5 Within fifteen (15) days of the Residential Lot Owner completing his submittal, the Architectural control Committee shall review the Plans and Specifications and forward its recommendations to the Board. The Board shall approve or disapprove the request for Architectural Approval by a majority vote taken within sixty (60) days of the date that the Residential Lot Owner has completed his submittal to the Architectural control Committee. Each Residential Lot Owner requesting Architectural Approval shall be entirely responsible for payment of all fees for architects, engineers, designers, landscape architects and other consultants incurred by the Architectural control Committee and the Board and reasonable required to review the Plans and Specifications. In the event that the Board denies the requested Architectural Approval, a Residential Lot Owner may submit revised plans and Specifications to be considered by the Architectural control Committee and the Board in the manner set forth herein. In the event a Residential Lot Owner receives no written communication from the Board with respect to the requested Architectural Approval within the aforementioned sixty (60) day Board approval period, the Plans and Specifications shall be deemed approved and the requested Architectural Approval deemed issued. Upon issuance of the requested Architectural Approval, no further approvals shall be required with respect thereto, unless either (a) such action has not been substantially commenced within two (2) years of the issuance of the requested Architectural Approval (i.e., clearing and grading, pouring of footings, etc.) or (b) the approved Plans and Specifications are altered or changed in any material manner or fashion.

6.6 Effect of Architectural Approval. Neither the approval of the Plans and Specifications, the Issuance of the Architectural Approval on or the publication of standards shall be construed as

representing or implying that such Plans and Specifications or standards shall, if followed, result in properly designed construction. Such approvals and standards shall in no event be construed as representing or guaranteeing that the Dwelling Unit, Residential Lot or other improvement/landscaping performed in accordance therewith shall be built in a good or workmanlike manner. Neither Declarant, the Association, nor the Architectural control Committee shall be responsible or liable for any defects in any Plans or Specifications submitted, revised or approved pursuant to this Article, any loss or damage to any person or property arising out of the approval or disapproval of any Plan or Specifications, any loss or damage arising from the non-compliance of such Plans and Specifications with any governmental ordinances or regulations, nor any defects in construction pursuant to such Plans and Specifications. Notwithstanding the obtaining of Architectural Approval, the Residential Lot Owner shall solely be responsible to apply and pay for and obtain any and all required governmental approvals, permits, licenses, etc. and to comply with the requirements of all ordinances and regulations of the City (including the zoning ordinance) or, as applicable, the County of McHenry; all applicable building, health and safety codes and all recorded restrictions, covenants and conditions applicable to his Residential Lot. Architectural Approval given to any one Residential Lot Owner shall be based upon the Board's sole and unrestricted discretion and Architectural Approval given to any Residential Lot Owner's proposed action or any particular aspect thereof in connection with such proposed action shall not be construed as, or interpreted to be or require Architectural Approval to any part or portion of any other Residential Lot Owner's

## ARTICLE VII

### Assessments

- 7.1 Each Owner, by taking title to a Lot, shall be deemed to have covenanted and agreed to pay to the Association (whether or not incorporated) annual assessments or charges and special assessments for expenses related to the Common Area and other functions and costs of the Association hereunder, to be collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a lien on the Lot against which each such assessment is made and each such assessment, together with such interest, costs and reasonable attorney's fees, shall be their personal obligation of the person who was the owner of such Lot at the time when the assessment fell due.
- 7.2 The assessments levied by the Association shall be used exclusively for charges required or permitted by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purpose of the Association.
- 7.3 Each year, on or about the first day of November, the Board will estimate the total amount of expenses necessary for the Association to perform its duties and otherwise operate hereunder during the ensuing calendar year (January 1 - December 31) and shall, on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"), provided however, such Estimated Cash Requirement may be adjusted to meet the needs of the Association by the affirmative vote of those Owners owning not less than 51% of the Lots. The Estimated Cash Requirement shall be assessed equally against each Lot, including Lots owned by Developer or Declarant. On or before January 1 of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 6.3 on or before the date of the annual meeting of each calendar year. At any Owner's request, the Board shall furnish an itemized accounting of the collections and expenses for the preceding fiscal year and showing the net amount over or short of the actual expenditures. The Board shall within ten (10) days of demand by any Owner at any time furnish a certificate in writing signed by an officer or agent of the Association, setting

forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment or non-payment of any assessment thereon.

- 7.4 The Board may, at any time, levy a special assessment, which shall be assessed equally among the Lots. The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefore, and such special assessment shall become effective and fully payable thirty (30) days after the delivery or mailing of any notice of assessment.
- 7.5 When the first Board elected by the members hereunder takes office, it shall determine the estimated cash requirement for the period commencing on the Turnover Date and ending on December 31<sup>st</sup> of the calendar year in which the Turnover Date occurs. The initial Estimated Cash Requirement shall be assessed equally against the Lots.
- 7.6 The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner or any Owner's obligation to pay his share of the Estimated Cash Requirement as herein provided, as when the Estimated Cash Requirement shall be determined, and, in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time at the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.
- 7.7 The Board shall keep full and correct books of account in chronological order. Such records and the vouchers authorizing the payments described therein shall be available for inspection by any owner or any other representative of an Owner duly authorized in writing, at such time or times during normal business hours when requested by Owner.
- 7.8 Any assessments or other charges, which are not paid when due, shall be delinquent. If the assessments or charge is not paid on the due date, the assessment shall bear interest from and after the due date at the rate of 9% per annum, compounded monthly, plus a late fee equal to two times the outstanding assessments that are more than 30 days past due, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of any such overdue assessment. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from re-acquiring his interest at such foreclosure/sale. No right or action shall accrue or be brought by anyone against Declarant, Developer or the Association for or on account of delay or failure to bring any action on account of any breach by Owner hereunder.
- 7.9 The lien of assessments provided for herein shall be subordinate to the lien of any Mortgage now or hereafter placed on the Lots. In the event of the issuance of 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 such lien for assessment authorized by this Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed but after recording of the Mortgage.

## ARTICLE VIII

### Estuents

8.1 Declarant hereby declares the following non-exclusive easements are hereby created with respect to:

Detention Areas

(a) An easement is hereby granted to the Declarant, the Association and McHenry County over, on and above Detention Areas for emergency, utility, enforcement and government services purposes and for the purpose of maintaining Detention Areas.

(b) A utility and enforcement easement is hereby granted to McHenry County, other governmental bodies having jurisdiction over the Property and utility companies providing service to the Property or other property in the vicinity of the property, over, on and across the Property for the purpose of enforcing applicable laws, making repairs, installing and servicing utilities and drainage, and providing public and emergency services.

(c) An easement on, under and above Detention Areas and adjacent land as needed for access thereto, is hereby granted to, and for the use and benefit of, the Association, the Declarant, and McHenry County for the sole purpose of storm water detention and drainage, and shall be subject to the following terms and conditions:

1. Detention Areas shall be continuously maintained in a first rate manner.
2. No change shall be made in the finished grade of the land within Detention Areas, nor shall any construction of any kind whatsoever be erected or permitted to exist within the Detention Areas that might materially impede storm water drainage therein or materially reduce the storm water detention capacity thereof. Trees, shrubs, fences, and normal landscape planting shall be permitted within the Detention Areas only with the prior written approval of the County.
3. In the event McHenry County determines, in its sole and absolute discretion, that required or desirable maintenance of Detention Areas is not performed at any time, McHenry County, after ten (10) days prior written notice to the Association, may, but shall not be obligated to, enter upon Detention Areas for the purpose of performing maintenance work.
4. In the event that McHenry County shall cause to be performed any work pursuant to these paragraphs, the County shall have the right to charge the Association an amount sufficient to defray the entire cost of such work or action, including administrative costs, either before or after such cost is incurred. If the amount so charged is not paid by the Association within thirty (30) days following a demand in writing by the County for which such payment, charge, together with interest and costs of collection, shall become a lien upon the Property and the County shall have the right to collect such charge, with interest and costs, and to enforce such lien as in foreclosure proceedings as permitted by law.
5. Nothing in these paragraphs shall be construed to constitute a dedication of any portion of Detention Areas to, or an acceptance thereof by, the County.
6. McHenry County shall be under no obligation to exercise the rights granted in these paragraphs except as it shall determine to be in its best interest. No failure

to exercise at any time any right herein granted to the County shall be construed as a waiver of that or any other rights.

- 8.2 The Declarant and Association and any of their respective agents, employees and independent contractors shall have the right to enter upon Detention Areas and any Lot to the extent necessary for the purpose of maintaining, repairing and replacing Detention Areas, and any improvements in, on, under or upon Detention Areas as herein provided or for performing any of their respective obligations herein provided. In any such case, the Declarant, Developer and Association or any of their agents, employees or independent contractors shall not be guilty of any trespass. With respect to lot 19 specifically, the Declarant, Developer and any future owner agrees and understands that an easement shall be granted to the extent necessary for the purpose of maintaining or repairing any storm water detention area or any storm sewer pipe or system, which may be present on or under the Lot, including any area under any drive or entrance that may be present on said Lot. The Association, or the County as the case may be, shall reimburse Owner of Lot 19 for any damage to the driveway or entrance of Lot 19 that may occur during the performance of the Association's and/or the County's aforementioned duties. The Association and/or the County shall incur no other responsibilities to maintain the driveway or any other part of Lot 19 other than those herein stated.
- 8.3 The Declarant and the Association hereby reserve the right to grant easements for ingress, egress, installation, construction, reconstruction, maintenance, repair, operation and inspection of utility services over, under across, and through Detention Areas as they deem necessary or desirable in order to effectuate the intent of this Declaration; provided such easements are first approved by the County.
- 8.4 The Declarant and the Association hereby reserve the right to retain easements on any Lot for the purpose of placing signs thereon (including related improvements and landscaping) identifying the Subdivision.
- 8.5 The Property shall be subject to those additional easements as set forth on the Subdivision Plat.

## ARTICLE IX

### General Provisions

- 9.1 The covenants and restrictions of this Declaration shall run with the land, and bind the Owners and shall inure to the benefit of and be enforceable by the Board, or the Owner of any Lot subject to this Declaration or the County, their respective legal representatives, heirs, successors, and assigns, for a term of (20) years from the date this Declaration is recorded in the Office of the Recorder of Deeds of McHenry County, Illinois, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinabove provided.
- 9.2 If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time 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 of the lawful descendants of the current Governor of the State of Illinois, living at the date of this Declaration.

- 9.3 Each grantee of Declarant by taking title in a Lot, 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 charges, 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, shall bind any person 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 this 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 Section 8.3 or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgages and trustees of such Lot as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.
- 9.4 Declarant, the Association and the County from time to time, shall have the right jointly, and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall be a violation of any restriction or covenant on any Lot, then Declarant, Association or County shall have, in addition to the foregoing right, the right to enter upon the property where such violation exists and summarily to remedy such violation at the expense of the Owner, and such entry and remedy shall not be deemed a trespass. In no event should the failure to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver or the right to so respecting any such violation or any subsequent violation. No right or action shall accrue or be brought or maintained by any person against Declarant, Developer, Association, or County for or on account of delay in bringing, or failure to bring, any action or enforcement proceedings on account of any breach of any covenant or restriction or for imposing any covenant or restriction which may be unenforceable.
- 9.5 After the Turnover Date and subject to the other provisions of these Covenants, the Owners may revoke, modify, amend or supplement in whole or in part, any or all of the covenants, obligations and conditions contained in this Declaration. Any such revocation, modification, amendment or supplement may be made effective at any time if the Owners of at least three-fifths (3/5) of the Lots and the Declarant consent therein, the consent of the Declarant being required so long as the Declarant owns any Lots. Any such revocations, modifications, amendments or supplements shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting Owners, certified by the Secretary of the Association and recorded in the Office of Recorder of Deeds, McHenry County, Illinois. No revocations, modifications, amendments or supplements to this Declaration may be made without the consent of the corporate authorities of the County, by resolution duly adopted, unless such revocations, modifications, amendments or supplement (1) is technical in nature or (2) does not diminish the rights of the County or the obligations of the Lot Owners hereunder including without limitation as may be set forth in that certain subdivision agreement relating the Property entered into by and between the Declarant and the County. In the event that revocations, modifications, amendments or supplements not requiring the consent of the County is effected, a copy thereof shall promptly be delivered to the County.
- 9.6 Declarant hereby reserves the right and power to record amendments to this Declaration at any time and from time to time, in its sole discretion, until the 10<sup>th</sup> anniversary hereof,

so long as such amendment will not materially alter the scheme of the Declaration. 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 an Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Said power shall be irrevocable. Each deed, mortgage, trust deed or other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Declaration to make, execute and record such Amendments. No revocations, modifications, amendments or supplements may be made without the consent of the corporate authorities of the County, by resolution duly adopted, unless such revocations, modifications, amendments or supplement (1) is technical in nature or (2) does not diminish the rights of the County or the obligations of the Lot Owners hereunder including without limitation as may be set forth in that certain subdivision agreement relating the property entered into by and between the Declarant and the County. In the event that revocations, modifications, amendments or supplements not requiring the consent of the County is effected, a copy thereof shall promptly be delivered to the County.

- 9.7 The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property.
- 9.8 In the event title to any Lot is conveyed to a title holding trust, under the terms of which all power of management, operation and control of the Lot remain vested in the trust beneficiary(s), then the beneficiaries hereunder from time to time shall be personally responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Declaration against any such Lot. No claim shall be made against any such title holding trustee personally for payment for any lien or obligation hereunder created. The amount of such lien or obligation shall continue to be a charge or lien upon said Lot and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any trust or any transfers of title to any such Lot.
- 9.9 All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine, the feminine and neuter and visa versa.
- 9.10 If a court of competent jurisdiction shall hold invalid or unenforceable any part of this Declaration, such holding shall not impair, invalidate or otherwise affect the remained or this Declaration, which shall remain in full force and effect.
- 9.11 Notwithstanding anything herein to the contrary, Declarant hereby reserves the right to transfer, assign, mortgage or pledge any and all of its 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 McHenry County Illinois. Upon such assignment, the assignor 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 or assignee shall have or incur any liability for the obligations or acts of any predecessor in interest.
- 9.12 A written or printed notice, deposited in the United States mail, postage pre-paid, and addressed to any Owner at the address of the Owner's Lot, shall be sufficient and proper notice to such Owner shall be deemed delivered on the third (3<sup>rd</sup>) day after deposit in the United States mail.



9.13 Enforcement of these covenants and restrictions may be by any proceeding at law or in equity against any Person or entity violating or attempting to violate any covenant or restriction. Such action may be to restrain or enjoin such violation or to recover damages, or to enforce any lien created by this Declaration. Should Declarant, Association or County take any action hereunder (including under Section 8.4) or seek legal action or appoint legal counsel to enforce any covenant or restriction or to prosecute the violation or attempt to violate any term hereof, then all costs and expenses incurred by Declarant, Association or the County by reason thereof, including attorneys' fees and expenses, shall be recoverable against and paid by person or entity against whom such enforcement or prosecution is brought. The Declarant, Association or County shall have a lien against any Lot owned by any such person in order to secure payment of all such costs, expenses and fees.

IN WITNESS WHEREOF, Millstream Estates, Inc., has signed this Declaration, as of the date shown on Page One (1).

MILLSTREAM ESTATES, INC.,

By: [Signature]  
Millstream Estates - President

Attest:

[Signature]

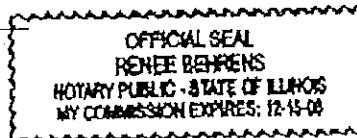
STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF McHENRY )

I, the undersigned, a Notary Public in and for said County and State, do hereby certify Jim Hennig, an officer of Millstream Estates personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that said officer of said association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 14<sup>th</sup> day of March, 2004 2005

[Signature]

Notary Public



THIS DOCUMENT WAS PREPARED BY  
 AND AFTER RECORDING RETURN TO:  
 Thomas C. Zanck  
 Militello, Zanck & Coen, P.C.  
 40 Brink Street  
 Crystal Lake, IL 60014

EXHIBIT A

Legal Description of Property

The Northwest Quarter of the Southwest quarter of Section 23 (except the North 916.25 feet of the East 160.0 feet thereof).

ALSO

That part of the West Half of the Northwest quarter of Section 23 lying Southerly of the center line of the Marengo-Huntley Road (EXCEPT the South 445.0 feet of the East 160.0 feet thereof) and except that part described as follows: (Commencing at the northwesterly most corner of Lot 33 in Knoll Top Subdivision, Unit No. 1, as recorded in the McHenry County Recorder's Office on August 13, 1969, as Instrument No. 513144; Thence North 0 degrees 16 minutes East along the Northerly extension of the West line of the aforesaid Knoll Top Subdivision, Unit Number 1 (said line being the East line of the Southwest Quarter of the Northwest Quarter of said Section 23), 463.25 feet to a point of intersection with the centerline of the Marengo-Huntley Road for a place of beginning; then South 0 degrees 16 minutes West along said Northerly extension and along the west line of said Subdivision, 675.37 feet; Thence North 89 degrees 44 minutes West, at right angles to the last described course; 330.0 feet; Thence North 0 degrees 16 minutes East, parallel with the West line of said Subdivision, 730.51 feet to a point of intersection with the centerline of the Marengo-Huntley Road; Thence southeasterly along said curving centerline, 337.65 feet to the place of beginning.) and except that part described as follows: Commencing at the intersection of the center line of the Marengo-Huntley Road with the west line of said Northwest Quarter; Thence South 64 degrees 37 minutes 12 seconds East along said center line 471.20 feet to a point of curve in said centerline; Thence southeasterly along said center line, being along a curve to the left having a radius of 2869.09 feet and tangent to the last described course, a distance of 107.62 feet for the place of beginning; Thence South 00 degrees 16 minutes 59 seconds West 597.9 feet; Thence South 84 degrees 57 minutes 59 seconds East 498.84 feet to the west line of a parcel of land conveyed by Document Number 620481; Thence North 00 degrees 16 minutes 59 seconds East along said west line 520.37 feet to the center line of the Marengo-Huntley Road; Thence northwesterly along said center line, being along a curve to the right having a radius of 2869.09 feet, a distance of 317.76 feet to the place of beginning. All the above being situated in Township 43 North, Range 6 East of the Third Principal Meridian in Coral Township, McHenry County, Illinois. Containing 63.41 Acres (2,761,931 Sq. Ft.) more or less.

## EXHIBIT B

### BY-LAWS OF BELLE POINTE HOMEOWNER'S ASSOCIATION

#### ARTICLE I

##### Purpose and Intent

The Association shall be responsible for the general management and supervision of the Property and the ownership of a portion of the Common Area and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not-For-Profit Corporation Act of the State of Illinois, which shall be consistent with the purposes, specified herein and in the Declaration. Any defined terms used in these By-Laws shall have the same meaning as set forth in the Declaration, except as otherwise provided herein.

#### ARTICLE II

##### Offices

- 2.1 The Association shall have and continuously maintain in the State of Illinois a registered office and a registered agent whose office shall be identical with such registered office.
- 2.2 The principal office of the Association shall be maintained in McHenry County, Illinois.

#### ARTICLE III

##### Membership

- 3.1 (a) Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or any of its successors in interest owns one or more Lots.  
  
(b) From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by him on each matter submitted to vote of Members; provided, however, that where there is more than one Owner of a Lot, such co-owners of a Lot shall only be entitled to one vote.
- 3.2 (a) Meetings of the Members shall be held at the principal office of the Association or at such other place in McHenry County, Illinois, as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.1 above shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having more than 50% of the total votes present at such meeting. Any Member in writing may waive notice of a meeting, or consent to any action of the Association without a meeting.  
  
(b) The initial meeting of the Members shall be held at such time as may be designated upon not less than ten (10) days written notice given by Declarant, provided that such initial meeting shall be held no later than sixty (60) days after the Turnover Date.

Thereafter, there shall be an annual meeting of the Members on the third Tuesday of November of each succeeding year at 7:30 p.m.

(c) Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration of these By-Laws, require the approval of all or some of the Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board or by the Members having one-fourth of the total votes, and delivered not less than five (5) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

- 3.3 Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat.
- 3.4 At any meeting of the Members, a Member entitled to vote may either vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

#### ARTICLE IV

##### Board of Directors

- 4.1 The direction and administration of the Property in accordance with the provisions of the Declaration shall be vested in the Board consisting of three (3) persons who shall be elected in the manner hereinafter provided, excepted that until the Turnover Date the first and each subsequent Board shall be appointed by the Declarant. Each member of the Board, with the exception of the Board members initially appointed by the Declarant, shall be an Owner.
- 4.2 All matters of dispute or disagreement between Owners or with respect to interpretation or application of the provisions of the Declaration or these By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Owners.
- 4.3 At the initial meeting of the Members as provided in Section 3.2(b) hereof, and at all subsequent annual meetings of the Members there shall be elected member of the Board. In all elections for the member of the Board, each member shall be entitled to vote on a cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Three (3) Board members shall be elected at the initial meeting and shall serve until the first annual meeting. The two (2) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the one (1) person receiving the next highest number of votes at the first annual meeting shall be elected to the Board for a term of one (1) year. In the event of tie votes, the members of the Board shall determine which members shall have the two (2) year terms and which member shall have the one (1) year term. Upon expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each. Notwithstanding the aforesaid election procedure the Declarant may appoint a Board comprised of one director which shall have the same powers and authority as given to the Board generally, as provided herein after, and such appointed Board shall function until such time as the initial meeting of the Members is held.

- 4.4 Members of the Board shall receive no compensation for their services. However, any member of the Board may be reimbursed for reasonable expenses incurred in the performance of his duties.
- 4.5 Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.7, shall be filled by majority vote of the remaining members of the Board or of the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.
- 4.6 The Board shall elect from among its members: (i) a President who shall preside over both its meetings and those of its Members, and who shall be the chief executive officer of the Board and Association, (ii) a Secretary who will keep the minutes of all meetings of the Members and of the Board and who shall, in general, perform all the duties incident to the office of Secretary, and (iii) a Treasurer to keep the financial records and books of accounts, and such additional officers as the Board shall see fit to elect.
- 4.7 Any Board member or officer may be removed from office by affirmative vote of the Members having at least sixty percent (60%) of the total votes, at any special meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a Board member removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose.
- 4.8 The initial meeting of the Board shall be held immediately following the initial meeting of the Members and at the same place. At such meeting which shall be held immediately following the first annual meeting of the Members, and at the same place. All subsequent meetings of the Board shall be held immediately after, and at the same place as, the annual meeting of the Members. Special meetings of the Board shall be held upon call by the President or by majority of the Board on not less than forty-eight (48) hours notice to each member of the Board, delivered personally or by mail or telegram. Any member of the Board, may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Board members shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of a majority of those present at its meetings when a quorum is present.

## ARTICLE V

### General Powers of the Board

5. In addition to the duties and powers inherently charged to and possessed by the Association as an Illinois not-for-profit corporation and the duties and powers enumerated herein and in its Articles of Incorporation and Declaration, or elsewhere provided for, and without limiting the generality of the same, the Association shall have the following duties and powers:
- (a) Preparation, adoption and distribution of the annual budget for the Property;
  - (b) Levying of assessments;
  - (c) Collection of assessments from members;

(d) Owning, conveying, encumbering, leasing and otherwise dealing with Lots conveyed to or purchased by it, including payment of all applicable taxes on the Outlots, Common Areas, and Detention Areas.

(e) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;

(f) To have access to each Lot from time to time as may be necessary for the maintenance, repair or replacement of the Common Area therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common area or to other Lot or Lots;

(g) To pay any amount necessary to discharge any mechanic's lien or other encumbrance against the Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Area, rather than merely against the interests therein of particular Lot Owners. Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred (including attorney's fees, if any) by the Board by reason of said lien or liens shall be specially assessed to said Lot owner or Lot Owners;

(h) To maintain and repair any Lot if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Area or any other portion of the Property, and a Lot owner of any Lot that has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair mailed or delivered by the Board to said Lot Owner, provided that the Board shall levy a special assessment against such Lot Owner for the cost of said maintenance or repair;

(i) The Board shall have the power to seek relief from or in connection with the assessment or levy of any general real estate taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful assessing body, which are authorized by law to be assessed and levied on the Common Area and to charge all expenses incurred in connection therewith to the Association.

(j) The Board's powers hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Lots requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of Voting Members having four-fifths (4/5) of the total votes;

(k) All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Board;

(l) The Board may adopt such reasonable rules and regulations, not inconsistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Lot Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all Lot Owners and

Occupants and the Property shall at all times be maintained subject to such rules and regulations;

(m) The Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board;

(n) Nothing hereinabove contained shall be construed to give the Board, Association, or Lot Owners authority to conduct an active business for profit on behalf of all the Lot Owners or any one of them;

(o) Maintain casualty and liability insurance with respect to the Common Area, Outlots, and detention areas and facilities;

(p) To make such necessary expenditures to provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems, lighting and care for, spray, trim, protect and replant trees, shrubbery and grass in the Common Area and maintain entrance way easements, if any, and other improvements located in the Common Areas, Outlots, or Detention Areas.

#### ARTICLE VI

##### Indemnification/Legal

1. The Association shall indemnify any person who serves the Association without compensation, who was or is a party or is threatened to be made a party to or witness in any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, by reason of the fact that he or she is or was a member, governor, delegate, director, or officer of the Association, or is serving at the request of the Association without compensation as a member, governor, delegate, director, or officer of another corporation, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding to the fullest extent and in the manner set forth in and permitted by the Illinois General Not for Profit Corporation Act and any other applicable law, as may from time to time be in effect. Neither payment of indemnification nor reimbursement of expenses shall be deemed compensation.
2. Such right of indemnification shall not be deemed exclusive of any other rights to which such member, governor, delegate, director, or officer of the corporation may be entitled. The foregoing provisions of this Article shall be deemed to be a contract between the Association and each member, governor, delegate, director, and officer who serves in such capacity at any time while this Article and the relevant portions of the Illinois General Not for Profit Corporation Act and other applicable law, if any, are in effect, and any repeal or modification thereof shall not affect any right or obligations then existing, with respect to any state of facts then or theretofore existing, or any action, suit, or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.
3. All legal matters pertaining to these By-Laws shall be governed by the laws of the state of Illinois. Any and all legal disputes arising under these By-Laws shall be heard by the courts of McHenry County, Illinois.
4. Invalidation of any one of these articles or sections, by judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.

ACCEPTED AND APPROVED THIS 14<sup>th</sup> Day of MARCH, 2005

Number voting aye: 3  
Number voting nay: \_\_\_\_\_  
Number abstaining: \_\_\_\_\_

INITIAL DIRECTORS

Jim Hennig  
\_\_\_\_\_  
Jim Hennig  
printed name

GARY MILLERS  
\_\_\_\_\_  
Gary Millers  
printed name

Michael J. Paulson  
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