

THIS INSTRUMENT PREPARED
BY AND MAIL TO:
Hartz Construction Co., Inc.
9026 Heritage Parkway
WOODRIDGE, IL 60517
ATTN.: MARK E. BURT, ESQ.

COPY


R2014046485
Receipt # T20140014768
Karen A. Stukel Will County Recorder 32P
KK Date 06/04/2014 Time 10:46:50
Recording Fees: \$66.75
IL Rental Hsng. Support Program: \$ 9.00

(This Space for Recorder's Use Only)

DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR
WHISPER CREEK SOUTH SINGLE FAMILY HOMEOWNERS' ASSOCIATION,
MOKENA, ILLINOIS

THIS DECLARATION is made by The Chicago Trust Company, as Trustee under Trust Number HBT-2060, dated May 26, 2005 ("Trustee" or "Declarant"), and Hartz Construction Co., Inc. ("Developer"), this 2nd day of June, 2014.

WITNESSETH:

WHEREAS, Developer is the owner of 44 single family lots in Whisper Creek Subdivision, located in the Village of Mokena, Will County, Illinois;

WHEREAS, Developer is a developer of single-family homes located throughout the Chicago suburban area and is the developer of the Property (defined below) in the Subdivision (defined below); and

WHEREAS, Developer desires to provide for the preservation of the distinctive residential quality of the Property and for the maintenance of the entranceway monuments, common areas, easements and, for these purposes, Developer desires to make the Property subject to the covenants, restrictions, conditions, reservations, grants and easements herein set forth (all of which are hereinafter referred to collectively as the "Covenants and Restrictions"); and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which the powers of administering and enforcing the Covenants and Restrictions shall be delegated and assigned.

NOW, THEREFORE, Developer, for the purposes above set forth, hereby declares as follows:

ARTICLE I
General Purpose of this Declaration

1.1 Statement of Purpose: The purpose of this Declaration and of the Covenants and Restrictions contained herein is to insure the use and development of the Property consistent with the

desire and intention of Developer to establish a residential community of the highest quality. It is the purpose of this Declaration, in general, to provide that the Property will be so managed, maintained and preserved, such that it will at all times be regarded as a residential community of outstanding excellence.

1.2 Declaration and Description of the Property: Developer does hereby declare that the Property is, and shall be, subject to the uses and purposes herein set forth and shall be managed and administered on the terms and conditions set forth herein.

ARTICLE II

Definitions

2.1 Annexation Agreement: The agreement whereby the Property was annexed into, and made a part of the jurisdiction of, the Village of Mokena, Illinois which agreement was recorded with the Recorder of Deeds of Will County, Illinois on April 6, 2005 as document number 2005056890.

2.2 Association: The Whisper Creek South Single Family Homeowners' Association, an Illinois not-for-profit corporation, its successor and assigns.

2.3 Board of Directors: The Association shall have a board of three (3) directors who shall constitute the Board of Directors. All rights, titles, powers, privileges and obligations vested in or imposed upon the Board of Directors, pursuant to the Illinois General Not For Profit Corporation Act of 1986, (805 ILCS 105 et seq.), and upon the Association in this Declaration, shall be held and executed by this Association through the duly elected members of the Board of Directors and their successors in office.

2.4 By-Laws: The By-Laws of the Association as enacted and amended from time to time.

2.5 Common Area: Lot 134 and the area of the easement depicted on the Plat on Lot 131 as "25' SIGN, FENCE & LANDSCAPE EASEMENT" and the area of the easement depicted on the Plat on Lot 133 as "10' SIGN, FENCE & LANDSCAPE EASEMENT" including the land and improvements, whether now constructed, or to be constructed, repaired or replaced thereon, including entranceway and other landscaping, monuments, signs, irrigations systems, lighting, fencing, or other improvements, legal title to which is owned by the Developer and will ultimately be owned by the Whisper Creek Townhome Homeowners' Association, intended for the non-exclusive use and benefit of all Owners.

2.6 Common Area Expenses: The expenses of administration, professional services, operation, repair, replacement and maintenance of the Common Area as more fully set forth herein and at Sections 5.3 and 7.10.

2.7 Declaration: This instrument as amended or supplemented from time to time.

2.8 Developer: Hartz Construction Co., Inc., an Illinois corporation, its successors and assigns.

2.9 Lot: A portion of the Property shown on the Plat that is one of forty-four (44) parcels of land improved, or intended to be improved, with one single-family residence and are designated on the Plat as Lots 71 through 114 inclusive.

2.10 Member or Membership: Every Person (or Persons collectively) who holds fee simple title to a Lot within the Property.

2.11 Operating Expenses: See Section 7.2(A).

2.12 Operating Fund: See Section 7.4.

2.13 Owner: The record holder of fee simple title to any Lot on the Property, other than the Developer, whether such Owner shall be one or more Persons, but excluding those Persons having any interest merely as security for the performance of an obligation.

2.14 Person: all natural individuals, corporations, partnerships, trustees, the beneficiary or beneficiaries of a trust, partner of a partnership, or any other legal entity.

2.15 Plat: The Subdivision Plat for Whisper Creek Subdivision recorded with the Will County Recorder of Deeds, Will County, Illinois, on June 28, 2006, as Document number R2006106466, which includes more lots and property than is covered by this declaration.

2.16 Property: The Lots and Common Area, either improved, unimproved or both and all easements, rights and appurtenances belonging thereto and legally described on Exhibit "A."

2.17 Reserve Fund: See Section 7.2(B).

2.18 Rules and Regulations: The Rules and Regulations adopted and amended from time to time by the Board of Directors governing the Association and the use of the Property by the Owners and by all other Persons.

2.19 Subdivision: The Whisper Creek Subdivision as recorded pursuant to the Plat.

2.20 Turnover Date: Turnover Date shall mean the date the Association is turned over to the Members, which shall be the first to occur of the following events:

- (a) Voluntary turnover by the Developer to the Members;
- (b) 60 days after the date that 80% of all Lots have been sold to Owners; or
- (c) Seven (7) years from the date of recording of this Declaration.

2.21 Village: Village of Mokena, an Illinois municipal corporation.

2.22 Voting Member: The Persons entitled to membership in the Association and who shall be entitled to vote at meetings of the Owners, as more fully set forth in Section 10.2.

2.23 Sale. Means a sale of a Lot consummated by delivery of a deed for the Lot to an Owner other than Developer.

ARTICLE III Architectural Control

3.1 Minimum Square Feet: Single-family ranch style (one story) homes shall be a minimum of 2,200 square feet. Single family two-story homes shall be a minimum of 2,400 square

feet. Both are required to have a minimum of three bedrooms and two full baths. A partial basement is required.

3.2 Exterior finish: First floor brick or stone. Second floor brick, cedar, Dryvit, or fiber-cement siding. Aluminum gutters are allowed, and aluminum or cedar fascia and soffits.

3.3 Garage: Two car minimum.

3.4 Driveway: Concrete, brick pavers or other equivalent.

3.5 Roof Pitch: One story 8:12 pitched roofline; two story 7:12 pitched roofline.

3.6 Windows: Windows and patio doors must be wood or wood clad type.

3.7 Monotony Clause: Monotony of design in multiple building projects shall be avoided. Variation of detail, form and siting shall be used to provide visual interest. In multiple building projects, variable siting or individual buildings may be used to prevent a monotonous appearance. For ease of reference purposes, the following is the current Monotony Code for the spacing of single-family homes:

- (a) Identical models with identical elevations may be erected no more often than every third lot along the same frontage; i.e., two dissimilar models must be erected between each identical model with identical front elevations. Identical models, regardless of elevations, shall not be constructed directly across the street or other right-of-way from the front of that model.
- (b) Identical models with significantly different front elevations may be erected on every second lot; i.e., a completely different model must be erected between identical models with different elevations. Identical models regardless of elevations shall not be constructed directly across the street or other right-of way from the front of that model.

In the event the Village amends the existing Monotony Code and the same is generally applicable Village-wide, any such amendments, upon its passage, shall be applicable to the Owner's remaining buildings and/or phases.

3.8 Site Lighting: Must be done in contained moderation according to Village ordinance.

3.9 Swimming Pools: No above-ground pools. In-ground pools cannot be visible from the street.

3.10 Fences: Shall be 5' in height and wrought iron or equivalent material in the color black. Solid fences are not allowed.

3.11 Fireplaces: Are allowed.

ARTICLE IV
Restrictions and Responsibilities

4.1 Land Use and Building Type: All Lots shall be used for single-family home purposes only, and no dwellings, other than a single-family private residence, shall at any time be constructed or maintained on a Lot. Only one family shall occupy each home. One family shall be defined as one or more natural individual persons each related to the other by blood, marriage, guardianship or legal adoption, or a group of less than four (4) persons not so related.

All Owners shall comply with Village of Mokena ordinances regarding tree planting. Front and side yards must be landscaped and sodded. Rear yards may be seeded.

4.3 Violations: Violation of the restrictions described in this Declaration shall entitle Developer or the Association to enforce the rights and remedies hereinafter specified whether or not said violation constitutes a legal nuisance.

4.4 Single Family Residential Buildings Only: No business or profession of any nature shall be conducted on any Lot or in any residence constructed on any Lot, except for a) the business of sale of Lots and single family houses on the Property constructed by the Developer.

None of said Lots as heretofore platted shall be divided or re-subdivided except for the purpose of combining portions thereof with adjoining Lots, provided that no additional building site is created thereby. Any single ownership or single holding by any Person which comprises the whole of one of said Lots (as heretofore platted and subdivided) and a part of or parts of one or more adjoining Lots shall, for all purposes of this Declaration, be deemed to constitute a single Lot upon which only one residential building may be erected, constructed, or allowed to exist.

No room or rooms in any residence or parts thereof 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 to a single family. Any such rental shall require the Owner to notify the Board of Directors as to the duration of the rental lease, and identification of the lessee. The Owner shall remain liable for compliance by the tenant with all provisions in this Declaration as well as the Rules and Regulations and the By-Laws as may exist or be enacted.

Anything to the contrary notwithstanding, nothing herein contained shall be construed so as to prevent the Developer, or its successors or assigns, from erecting a single family residential building or buildings as a sales office, model home, business office, storage area, or construction area, and using such temporary facilities for the purpose of the development, construction, and sale of Lots or homes on the Property or any adjoining property.

4.5 Fences and Walls: No fence or wall shall be installed in any portion of retention, detention, drainage area, or floodway, as designated by the Plat and drainage plan, except those installed by the Developer. No fence shall be installed without a permit from the Village of Mokena.

4.6 Parking: No semi-truck, tractor, bus, motor home, trailer, recreational vehicle, snowmobile, boat, utility vehicle, camper, or truck (other than a personal pick-up truck owned by a resident of the dwelling), commercial trucks, truck-mounted campers, motor homes, trailers, house trailers, buses, jet skis, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles,

and no vehicle of any kind, other than passenger vehicles, shall be permitted to be parked on any Lot in the Property for more than forty-eight (48) hours out of any consecutive fifty-four (54) hour period unless placed inside a garage, it being the intent that parking of the foregoing restricted objects be confined as much as possible to the interior of garages.

4.7 No Trucks, Buses, Campers, Etc. to be Kept on any Lot or Street: No semi-truck, tractor, bus, motor home, trailer, recreational vehicle, snowmobile, boat, utility vehicle, camper, or truck (other than a personal pick-up truck owned by a resident of the dwelling), commercial trucks, truck-mounted campers, motor homes, trailers, house trailers, buses, jet skis, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles, and no vehicle of any kind, other than passenger vehicles, shall be maintained, stored, or parked on any dedicated or undedicated street or right-of-way in the Subdivision, and the dedication of such right-of-way or street in the plats incorporated herein shall be subject to this provision. The sole exception to this shall be the temporary loading and unloading of recreational vehicles or temporary camping associated with children's activities for no longer than seventy-two (72) hours.

4.8 Junk, Machinery and Materials: No equipment, implement, machinery, lumber, building materials or similar items shall be permitted to remain exposed upon any Lot so they are visible from the street or any neighboring Lot, except as necessary during the period of construction of a building thereon. No part of the Property or Subdivision shall be used for storage or display of junk or unsightly items, or materials.

4.9 Detention and Retention Areas: No type of structure, wall, fencing, building, nor any other item may be placed in any designated detention, retention or critical drainage area, nor shall any Owner alter the finished grade elevations of these areas.

4.10 Signs: Other than a name plate of the occupant and the street number, no advertising or signs of any type or character shall be erected, placed, permitted or maintained on any Lot unless the letters or numbers do not exceed two inches by one inch in size generally, and in the case of a "For Sale" sign, the sign itself shall not exceed three feet by three feet in size. This paragraph shall not apply to any sign which the Developer may erect identifying and/or advertising the Property, Subdivision, adjoining land, and model homes, or which may be deemed necessary by the Developer for the operation and sale of the Property, Subdivision, and adjoining land or any house or Lot therein, which signs the Developer may erect and maintain.

4.11 Garbage Containers, Garbage Cans and Storage of Garbage: No garbage, trash or refuse cans, containers or receptacles shall be maintained or kept in any portion of a Lot beyond the front of any building constructed thereon. All such garbage, trash or refuse cans, containers and receptacles shall be placed as to reasonably screen them from view from the streets. Trash cans and receptacles may, however, be placed at the curb no earlier than 7:30 p.m. the evening prior to collection and be removed by 7:00 p.m. the evening of collection. No garbage or trash shall be burned on the premises.

4.12 Lakes and Ponds: The configuration of the lakes and ponds within or bordering the Property or Subdivision shall not be altered by an Owner in any way. This includes, but is not limited to, the addition of docks, decks, stone, or planted vegetation not approved by Developer or the Association after turnover. No aquatic or other recreational uses, other than fishing in accordance with applicable law, shall be permitted in any lake or pond within the Property including, but not limited to, swimming, boating, or ice-skating. Further, Owners shall not be permitted to stock the lakes or ponds

with fish or other aquatic life without the written consent of the Board of Directors. No vegetation shall be planted by a Lot Owner in or upon the lakes and ponds without the written consent of the Board of Directors. The Association may stock the ponds pursuant to all State and local regulations.

4.13 Alteration of Grades: Lots in the Property are generally designed to provide for storm water run-off along the side and rear yards. Grades and contours shall not be modified in any way that would interfere with the flow of water away from the buildings or sites. Existing contours and grades may not be altered in a manner that would adversely affect vegetation.

4.14 Owners' Maintenance Obligations: Owners, as members of the Association, shall be responsible for their equal share of the Association's share of the costs and expenses for the maintenance and upkeep of the Common Area as provided herein.

4.15 Maintenance Assessment: The Association shall annually prepare and distribute a budget for each calendar year to all Owners of the Association. The Association shall have the right to assess each Lot an equal share of the Association's cost associated with the maintenance, insurance, garbage collection if applicable, taxes and other expenses of upkeep, operation, safeguarding maintenance and repair of the Common Area. Each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association: periodic assessments or charges and special assessments for maintenance, repair, removal of liens and capital improvements as they relate to the Common Area Expenses.

4.16 General Appearance: Owner shall be responsible to properly maintain all aspects of the Owner's real and personal property on Owner's Lot and to not detract, devalue, or create any kind of nuisance to the other Owners or residents in the Subdivision. All temporary holiday decorations shall be installed no earlier than two weeks before a holiday (except in the case of Christmas when decorations may be installed four weeks prior to Christmas) and removed 2 weeks after the holiday. The Board of Directors shall have the right to remove any displays or decorations it deems offensive upon notice to the Owner.

4.17 Covenants and Restrictions, Running with Land: The covenants and restrictions created by this Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting the Property from and after the execution hereof shall be deemed subject to this Declaration and the covenants and restrictions and bound thereby as fully and as firmly as if said covenants and restrictions were fully set forth in each said conveyance or other instrument.

4.18 Public Utility and Landscape Easements: No building or other structure, including in-ground pools, decks, patios, etc., shall be erected on or within any area designated as a public utility, drainage or landscape easement on the Plat. No variations from the Village of Mokena Zoning Code shall be made for any accessory structure as a result of any hardship that may be caused by the covenants and restrictions identified in this paragraph. The restrictions created herein are for the benefit of Owners and the parties benefited by the above-referenced easements. These restrictions shall run with the land of the Property.

ARTICLE V
Use of the Common Area and Open Area

5.1 Use by Owners and Developer: Developer, its agents, employees and invitees and the Owners, their families, guests and invitees have the joint right of access and the shared right to use the Common Area and the Open Areas as depicted on the Plat, subject to the Rules and Regulations in existence or as amended from time to time by the Developer or the Association.

5.2 Use to Comply with Declaration and Rules and Regulations: No use of the Common Area or Open Areas shall be made by any Person which does not comply with, and conform to, the requirements of this Declaration and the Rules and Regulations.

5.3 Title to Retention/Detention Lots 135 and 136 and Lot 134: Upon acceptance of the public improvements by the Village, or upon any other date agreed upon by the Developer and Village, the Declarant will convey fee simple title to Lots 135 and 136, and the facilities, if any, located thereon, to the Village. On or about the same time, or upon any other date determined by the Developer, the Declarant shall convey fee simple title to Lot 134, and the facilities, if any, located thereon, to the Whisper Creek Townhome Homeowners' Association. Until such conveyance of Lots 135 and 136, the Owners shall pay their equal share of the Associations cost (being the entire cost) of the maintenance and repair of the portions of Lots 135 and 136 which are south of the middle of the bridge that supports the roadway, Whisper Creek Way, where it crosses over the creek in the Subdivision.

ARTICLE VI
Maintenance and Repair

6.1 Individual Responsibility of Owner: Each Owner shall provide, at his or her own expense, and be liable for, the following keeping the exterior surfaces of all structures located on any Lot in good repair, cleaned and painted as required to avoid any unsightly appearance.

6.2 Responsibility of Association: The Association shall be responsible for the cost of maintenance, repair and replacement of the equipment, fixtures and other improvements in or on the Common Area as specified in Sections 5.3, 7.10, 11.1 of this Declaration and as otherwise set forth herein.

6.3 Liability for Damage to Property: Each Owner of a Lot in the Subdivision may be liable for the expense to the Association of any maintenance, repair or replacement of any of the Property including, but not limited to, any and all public improvements, the storm water detention facilities and structures and surface water drainage ways. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

ARTICLE VII
Maintenance Assessments for the Association

7.1 Lien and Personal Obligation for Assessments and Other Amounts Due: Each Owner, by acceptance of a deed for a Lot or other document of conveyance therefore, whether or not it shall be so expressed in any deed or other document of conveyance, shall be deemed to covenant and agree to pay to the Association regular assessments or charges and special assessments for capital improvements and maintenance expenses as provided herein. Such assessments shall be fixed,

established and collected from time to time as herein provided. The regular and special assessments, together with any other amounts due pursuant to this Article VII, with interest thereon, and costs of collection thereof, as hereinafter provided, shall be a charge against and a continuing lien upon the Lot against which such assessment is made. Each such assessment, or other amount due, together with any accrued late fees, interest, and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment, or other amount due, fell due. The Developer shall not be obligated to pay assessments on unsold lots.

7.2 Purpose of Assessments:

(A) Owners' Assessments. The assessments due under this Declaration represent each Owner's proportionate share of the expenses of maintenance, repair, replacement, administration and operation of the Common Areas. This includes but is not limited to maintenance and repair to the Common Area and all related structures and facilities, including, but not limited to, electricity costs, upkeep and replacement of landscaping, sprinklers, electricity costs for site lighting, taxes, insurance, and management fees. Said expenses shall be known as "Operating Expenses." Assessments will be levied by the Association and used exclusively to promote the health, safety and welfare of the Owners and for the purposes of the Association as provided by this Declaration. To the extent, if at all, that any assessments collected for any fiscal year are not expended by the Association, any such savings shall be applied by the Association in reduction of its budget and the annual assessments to the Owners for the following year.

(B) Reserve Fund. All Owners shall at the time of closing be assessed for six (6) months of assessments which sum shall be set aside in a reserve (the "Reserve Fund"). The Reserve Fund shall be drawn on by the Association in the event there is a shortcoming of assessments to reasonably cover the Operating Expenses or there is a need to finance any unexpected expenses not covered by the assessments. If the Reserve Fund is depleted or, in the opinion of the Board of Directors, significantly reduced, then any supplemental budget, or the next assessment requirements, shall provide for re-establishment of such Reserve Fund as the Board of Directors shall deem reasonably appropriate. Any such assessment for the Reserve Fund shall be levied equally per Lot against each Owner. Any interest of any Owner in and to such Reserve Fund shall automatically transfer and inure to such Owner's successor in interest.

7.3 Regular Assessments: The Association, through the Board of Directors, shall levy for each assessment year an assessment, applicable to that year only, for the purpose of enabling the Association to exercise its powers and duties and to fulfill its responsibilities as delineated herein. The regular assessments shall be at a uniform rate for each Lot.

7.4 Procedures: The Board of Directors of the Association shall determine the amount of the assessment for each assessment year. The Board of Directors shall notify in writing each member of the Association of the amount of the assessment against each member's Lot no later than December 1st of each year. Each Owner shall pay a monthly pro-rated amount to the Association at the time of closing, plus a non-refundable amount equal to two (2) months of assessments as a contribution to an operating fund (the "Operating Fund"). The annual assessment shall be paid on or before February 1st of each calendar year. Any annual assessment received thirty (30) days after the due date will be subject to a late fee and interest as prescribed by the Board of Directors. The Board of Directors shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the

Association and shall be open to inspection by any Owner. The office of the Association shall be deemed the address of the Secretary of the Association, or the managing agent.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.5 Change in Basis of Regular Assessments: The Board of Directors of the Association may change the amount and/or basis of the regular assessment during any assessment year, provided that any increase in the assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.6 Special Assessments for Capital Improvements and Maintenance Expenses: In addition to the regular assessments authorized by Section 7.3 hereof, the Association, through the Board of Directors, may levy from time to time in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or unexpected repair or replacement of any of the Common Area provided that any such assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.7 Quorum for any Action Authorized under Sections 7.5 and 7.6: The quorum required for any action authorized by Sections 7.5 and 7.6 hereof shall be the presence in person at the meeting of the Board of Directors of a majority of members of the Board of Directors having the total votes that could be cast by the Board of Directors. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be the same number, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Effect of Non-Payment of an Assessment: If any regular or special assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with any accrued late fees, interest, and costs of collection including reasonable attorneys' fees, thereupon become a continuing lien on the Lot and equitable charge running with the land touching and concerning it, which shall be binding upon the Lot and Owner, the Owner's heirs, devisees, personal representatives, assigns, successors, and grantees. If title to a Lot is held by an Illinois land trust, the trustee shall not have any personal liability for the assessment, but all beneficiaries of the trust shall be jointly and severally so liable. In the event title to a Lot is held by more than one Owner, all Owners shall be jointly and severally liable. The lien shall attach to rents due from parties in possession to the record Owners, provided that it shall be subordinate to an assignment of rents held by a mortgagee delivered in connection with a first mortgage loan to a purchaser of a Lot.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear a monthly late fee as prescribed by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay same and/or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment all costs of preparing and filing the complaint and maintaining and concluding such action, including the cost of title reports, and in the event a personal judgment or decree of foreclosure is obtained, such judgment or decree shall include interest on the assessment as above provided and a reasonable attorneys fee to be fixed by the court

together with all costs of the action. The venue for all legal actions shall be in Will County, Illinois. The persons in possession shall be authorized to accept summons for the Owners of the Lot.

In the event that title to any Lot is conveyed to a land trustee, upon the demand of the Association, the trustee shall furnish the Association with a certified copy of the trust agreement so that the Association shall be advised of the beneficiaries entitled to vote and who will be personally liable for the regular and special assessments.

7.9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein may for any reason be subordinated by the Association by written document executed by its duly authorized officers and shall without any writing be subordinate to the lien of any mortgage placed upon the Lots subject to assessments for the purpose of purchasing the subject Lot or Lots provided, however, that such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the mortgage or mortgages, and provided further that such subordination shall apply only to the assessments which have become due and payable prior to sale or transfer of such property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The Owners agree upon accepting title that the lien of the assessments shall be prior to the homestead rights of the Owners since it runs with the land and is in existence before commencement of ownership interests.

7.10 Payment to the Whisper Creek Townhome Homeowners' Association: On the 15th day of January each year, the Board of Directors shall receive a bill from the Whisper Creek Townhome Homeowners' Association (the "WCTHA") for the previous year's expenses incurred by the WCTHA relating to the costs, fees and other expenses incurred and paid by the WCTHA for the maintenance, operation, repair and upkeep of the Common Area (excluding any such costs, fees and expenses relating to Lot 134). The Association's share of said bill, and the amount the Association shall reimburse to the WCTHA, is thirty percent (30%) of the total of said bill. This percentage is based on the (44) lots which make up the Whisper Creek South Single Family Homeowners' Association, divided by the 146 home sites of the entire Subdivision. The Whisper Creek North Single Family Homeowner's Association shall be responsible for forty-eight percent (48%) of the total of said bill and The Whisper Creek Townhome Homeowner's Association (the "WCTHA") shall be responsible for twenty-two percent (22%) of the total of said bill.

In addition, on the 15th day of January each year, the Board of Directors shall receive a bill from the WCTHA for the previous year's expenses incurred by the WCTHA relating to the costs, fees and other expenses incurred and paid by the WCTHA for the maintenance, operation, repair and upkeep of Lot 134. The Association's share of said bill, and the amount the Association shall reimburse to the WCTHA, is fifty percent (50%) of the total of said bill. The Owners shall pay their equal share of the Association's share. The Whisper Creek Townhome Homeowners' Association is responsible for the other fifty percent (50%) of said cost, regardless of when or if the Declarant ever conveys Lot 134 to the WCTHA.

The Board of Directors shall receive reasonable information to support said bills. If at any time either of the respective bills exceeds 110% of the previous year's bill, a meeting shall take place between the boards of directors of the WCTHA and the Association and the expenses shall be reviewed and the expenses must be agreed upon for the ensuing year. Payment shall be made to the WCTHA by the 15th day of February of the same year. Non-payment of this assessment shall be remedied in the manner set forth in section 7.8.

ARTICLE VIII

Easements

8.1 Easements Reserved by Developer: Notwithstanding any provision herein to the contrary, until such time as the Developer is no longer vested with or controls title to any part of the Association or any Lot in the Property, the Developer and its agents and contractors shall have the right (a) to place and maintain on the Property model residences, sales offices, advertising signs, construction trailers, parking spaces and lighting in connection therewith, at such locations and in such forms as the Developer may determine, in its discretion, to be used by the Developer in connection with the promotion, sale, or lease of the residences constructed or to be constructed on any part of the Property, (b) to come over, across and upon the Property for the purposes of making alterations or improvements to the residences, Lots or Common Area, and (c) to store on the Common Area or any Lot owned by it, equipment and materials used in connection with such work on the residences, Lots or Common Area, all without the payment of any fee or charge whatsoever.

8.2 Perpetual Easement in Gross to Association: The Common Area and Lots shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association to properly perform its duties and responsibilities and to enter upon a Lot where reasonably necessary in the judgment of the Association for the purpose of properly performing or executing a duty or responsibility of the Association in respect of the Common Area and Lots. Without limiting the above easement in gross, the Association has a perpetual easement in the Common Area and the Lots for the purpose of inspection of the Common Area generally, and for inspecting any installation, repair, maintenance, or other system or item, if any, for which the Association has the duty or responsibility to contribute to the cost of such, for the benefit of the Owners or the Association. Developer also has an easement in gross for the purpose of enabling and permitting Developer to properly perform its duties and responsibilities as Developer.

In the event the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration and such delinquency shall exist on the part of the Association for a period of thirty (30) days after the date of delivery by the Village to the Association of written notice advising the Association of the existence and nature of such delinquency, the Village shall succeed to and become the beneficiary of the easement rights described in the preceding paragraph and such easement rights shall be exercised by the Village in support of the exercise of its rights described in Article XV of this Declaration.

8.3 Easements for Public Utilities, Sanitary and Storm Sewers: Developer initially, and the Association thereafter, has the right to establish easements over (a) the Property for public utilities, drainage, and ingress and egress to and from the Property; and (b) portions of the Property for sanitary and storm sewers, storm water facilities, and for all other public utility purposes including but not limited to electricity, gas, water, cable television, and telephones, and Developer and the Association have the concomitant right, in connection with such grants of easements, to grant the right and power to do all things necessary or appropriate in connection with said grant of easements, including, but without limitation, the right of maintenance, repair and replacement. Developer and the Association are fully authorized and empowered to execute and deliver any and all documents necessary to implement these provisions, and the Owners shall be deemed to have approved and confirmed such documents, and shall be bound thereby.

8.4 Creation of Easements: Easements for all public utilities or other purposes, including, but without limitation, electricity, gas, water, cable television, security, and telephone, shall be initially

created by the recording of the Plat in the Recorder of Deeds of Will County, Illinois, and, if necessary, individual grants of easements to which shall be appended plats of easements showing the location of the easements being initially created. Thereafter, easements for public utilities shall be created by the recording of separate plats or grants of easements, each of which shall show the location, within the Common Area and within any Lots covered by such subsequent plats or grants of easements, of the easements being newly created. The utility easements created by the filing of plats or grants of easements shall be deemed to have been created upon, and subject to; all of the terms and conditions of the Plat and initial grants of easements to the respective utilities or services, so that upon the recording of a plat or grant of easement subsequent to the recording of the Plat or an initial grant of easement, each utility or service company shall forthwith have all the rights, powers and obligations contained in the Plat or in the initial grants of easements, as fully and as effectively as if all the terms of said grant of easements were contained within the subsequently recorded plat or grant of easements.

8.5 Conservation Easements: Developer shall provide conservation easements as shown on "Exhibit B" (the Plat) over Lots 82, 83, 91, 92, 93, 101, 102, 107, 108, 109, 119, 120, and 121, to preserve the open space and to preserve trees located in the rear of many lots, with said conservation easements to include open space. Conservation easements shall be shown on the Preliminary and Final Plats adjacent to all adjoining properties, and the Village shall have authority to enforce the provisions identified in this Declaration and all conservation easements. Said grant of easement shall be subject to the approval of the Village Attorney.

8.6 Tree Preservation: Developer shall provide conservation easements to protect trees and provide permanent markers to denote the boundaries of the conservation easements. Developer shall provide adequate tree preservation measures, such as snow fencing, during construction, such that trees will not be killed, damaged, or removed without the prior approval of the Village Engineer.

8.7 Conditions: No permanent structures, impervious surfaces, fences, sheds, other accessory structures or fill are to be placed in these conservation easements. No changes of grade will be permitted within the conservation easements without the consent of the Village Engineer. Each Owner shall maintain all easements free of obstructions. The Village of Mokena shall have the right to access the conservation easements for emergency maintenance or any other practical purposes.

8.8 Penalties: Any person found to be in violation of the above noted conditions of this Article VIII shall be subject to a fine pursuant to Village Code for each offense and any other remedy available at law or at equity. Each day any violation exists shall constitute a separate offense.

8.9 Representation on Plats: The conservation easements shall be clearly illustrated along with the language pertaining to conditions and penalties, noted on both the Plat for each phase as well as individual plats of survey for each Lot. It shall be further noted on the Plat that the conservation easements shall be indicated on individual plats of surveys for individual lots.

8.10 Covenants: The covenants for the subject Lots shall reference this Declaration and these covenants shall be recorded against all Lots within this Property.

8.11 Reports from Arborist: Owner shall provide periodic reports from a certified arborist during the entire duration of the construction of the public improvements or the homes to confirm continuing compliance with the tree preservation plan. Such reports shall be presented to the Village: a) prior to the commencement of earthwork certifying that the boundaries of the conservation easements have been properly located, marked, and secured to prevent damage or encroachments to

same; b) after the completion of rough grading to certify that there have been no encroachments into the conservation easements; c) prior to the issuance of a building permit to certify that there have been no encroachments into the conservation easements; and d) prior to the issuance of a Certificate of Occupancy to certify that there have been no encroachments into the conservation easements. The reports shall address the adequacy of and compliance with the tree preservation measures. Upon the sale of a Lot to an Owner, the primary responsibility for compliance with c) and d) above will transfer to said Owner, however, the Developer and subsequent Owners shall inform the purchaser of any Lot about these provisions and require, as part of any sales agreement, that said purchaser shall conform to the obligations.

ARTICLE IX Developer's Reserved Rights

9.1 Developer's Rights, Powers and Obligations for Duration: Until such time as required by law, or sooner at the option of Developer, all of the rights, powers and obligations which by this Declaration are to be vested in the Board of Directors shall be deemed vested in and possessed by Developer.

9.2 Easement Grants: Developer may grant such easements and convey Lots in the Property subject to such easements, as are necessary or desirable, in the sole discretion of Developer, for the benefit of the Property or the Association for the performance of its obligations pursuant to this Declaration, including, but not limited to, maintenance, repair or replacement of the landscaped areas, including grass, trees and vegetation, and for access to maintain, repair or replace any such items or other items in any Common Area or Lot, and for public utilities, monuments, landscaping and drainage easements.

9.3 Construction and Advertising by Developer: Prior to Developer's completion of improvements on the Property, sale of all Lots owned by Developer, and Developer's transfer of all of its rights, powers and obligations to the Board of Directors, Developer shall have the right and power to erect and maintain advertising and to use and employ on the Property other sales devices and arrangements, all to be in good taste and consistent with the quality and character of the development, and for the purpose of advertising Lots and residences in and upon the Property. Developer shall have the further right and power to maintain for the aforesaid period, sales, business and construction offices.

9.4 Developer's Successors and Assigns: Developer's successors and assigns shall have without limitation, qualification or exception, all rights, powers and authority of the Developer itself including each easement in gross benefitting Developer as set forth herein.

9.5 General Rights: The Developer shall have the right to execute all documents or undertake any actions affecting the Property which, in its sole discretion, are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to it by this Declaration, until such time as the Board of Directors is turned over pursuant to Section 2.20. Prior to such Turnover, the Developer shall be entitled to appoint all members of the Board of Directors. Such members appointed by Developer need not be an Owner.

9.6 Exceptions. Except for rights granted to the Village, Developer, for itself only, hereby reserves the right to enter into written agreements without the consent of any Owner to deviate from any or all of the provisions set forth herein for any Lot. Any deviation so approved shall not constitute

a waiver of the right of Developer or any Owner to enforce against any other Lot within the Property, the provision deviated from, nor shall Developer have any obligation to extend or grant such deviation to any other Lot within the Property.

9.7 General Authority. Developer shall have the right to execute all documents and undertake any actions affecting the Property, and any portions thereof, which in Developer's sole and absolute discretion are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to Developer or the Association in this Declaration.

9.8 Amendment. Developer hereby reserves the right to amend this Declaration, in whole or in part, except for those rights granted to the Village, without the consent of or notice to any Owner, which amendments are in Developer's sole and absolute discretion either desirable or necessary to fulfill or implement, either directly or indirectly the purpose and intent of this Declaration; provided that no such amendment may be affected without Association approval after the Turnover Date as provided in Section 2.20.

9.9 Assignment of Developer's Rights. Developer, its successors or assigns, shall have the right to transfer and assign all or any of the rights, privileges, easements, powers, and duties herein retained or reserved by Developer, its successors or assigns, by written instrument or instruments in the nature of an assignment expressly providing for such assignment and specifically referencing this Declaration and the provisions assigned, which shall be effective when recorded in the office of the Recorder of Deeds of Will County, Illinois, and Developer, its successors or assigns, shall thereupon be relieved and discharged from every duty so vested in the transferee.

ARTICLE X

Whisper Creek South Single Family Homeowners' Association Organization and By-Laws

10.1 The Association: The Association shall be organized under the Illinois General Not-For-Profit Corporation Act, in a manner that allows such organization to function under this Declaration. The Association shall be the governing body for all of the Owners and for the administration and operation of the Property as provided in this Declaration and the By-Laws.

10.2 Membership: Every Owner of any Lot, in whole or in part, shall automatically be a member of the Association and shall remain one so long as such person owns a Lot. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Upon termination of an Owner's interest in a Lot, such membership shall thereupon automatically terminate and transfer and inure to the new Owner succeeding in interest.

10.3 Classes of Voting Membership: The Association shall have two classes of voting membership.

(A) Class A. Class A members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. Provided, however, until such time as the Class B membership terminates, the Class B member shall have the sole vote, provided the Class B members cannot materially alter the rights and obligations of the Class A members to their detriment. After the Class B membership

terminates, a majority of the Class A vote will be required on all matters covered in this Declaration unless a higher percentage vote is otherwise set forth herein.

(B) Class B. The Class B member shall be the Developer and shall have the sole vote, provided the Class B member cannot materially alter the rights and obligations of the Owners to their substantial detriment. Developer shall be entitled to one vote per Lot owned by Developer and retain the same rights as a Class A member upon the termination of the Class B membership. The Class B membership will be considered terminated upon the happening of any of the following events, whichever occurs first:

- (1) Ten (10) years after the date the first Lot is conveyed by Developer to another Owner; or
- (2) Upon the date of written notice by Developer to the Association, electing to terminate the Class B membership.

10.3 Election of a Board of Directors: When Developer notifies the Owners that Developer is ready to transfer and assign to the Association all of its rights, powers and obligations under this Declaration pursuant to Section 2.20, the Owners shall proceed to elect a Board of Directors consisting of three Members pursuant to Illinois law. If in the judgment of Developer, the Owners fail to elect an initial Board of Directors after notice authorizing such election has been given by Developer, then Developer shall have the right to designate, in its discretion, any three of the Owners as an initial Board of Directors. A director shall serve for one year, and thereafter until his successor is elected.

10.4 Adoption of Rules and Regulations: The Board of Directors may from time to time adopt Rules and Regulations governing the Common Area and Lots and use of the Common Area by the Owners and by all other Persons. Developer shall have the right to adopt Rules and Regulations prior to their adoption by the Board of Directors. All users of the Common Area and all use of the Common Area shall comply with the Rules and Regulations, and no use shall be made of the Common Area by any person that does not comply with the Rules and Regulations. Although the Rules and Regulations shall apply to, and be effective throughout the Property, including the Lots located therein, the rights, powers and duties of the Board of Directors shall be primarily concerned with the Common Area and the primary responsibility of the Board of Directors is the enforcement of the provisions of the provisions of this Declaration. No Rules or Regulations may be adopted by the Board of Directors unless there is at least a quorum consisting of two-thirds (2/3) of the Board of Directors members present at the meeting where such Rules and Regulations are adopted.

10.5 Vacancies, Compensation and Other Matters: The Board of Directors shall receive no compensation for its services. A vacancy in the Board of Directors, whatever the reason for the vacancy, shall be filled by vote of the remaining members of the Board of Directors. If there are two or more vacancies in the Board of Directors, the vacancies shall be filled by majority vote of the Owners at a special meeting called for that purpose. The Board of Directors shall act by majority vote of those present at its meetings when a quorum is present. The presence of two thirds of the Board of Directors Members shall constitute a quorum for such purposes.

10.6 Officers of the Board of Directors: The Board shall elect from among its members a President, a Secretary and a Treasurer. Each officer shall perform the duties that commonly attach to the office he or she holds.

10.7 Meetings of the Owners: When Developer is prepared to transfer and assign all of Developer's rights, powers and obligations to the Association, Developer shall give notice to Owners of said transfer by mail. Owners shall meet within twenty-one (21) days of said notice at a place designated by the Owners at which, by majority vote of those Owners present at said meeting, the Owners shall elect the Board of Directors. Thereafter, the Owners shall meet at least annually for the purpose of electing Directors, and discussing any other business at a place to be designated by the Board of Directors in Will County. Developer shall give due written notice to the Owners of said transfer by mail. The first annual meeting of the Owners shall be held one year, as nearly as practicable, after the date of the first meeting of the Owners, and subsequent meetings shall be held at yearly intervals thereafter.

10.8 Meetings of the Board of Directors: The Board of Directors shall meet promptly after the first meeting of the Owners and annually thereafter, at a place to be designated by the Board of Directors in Will County for the purpose of electing officers and transacting any other business which may properly come before the annual meeting. In addition to the said annual meeting, the Board of Directors may hold special meetings when business before the Board of Directors makes it necessary. Special meetings of the Board of Directors shall also be held on the written request of one-third of the Owners, delivered to the Board of Directors. The request of the Owners shall state the purpose of the special meeting for which a request has been made, and in response to a proper request by one-third of the Owners, the Board of Directors shall set a suitable date for a special meeting and shall give not less than 10 days notice to each Owner, of the date, time and place of the special meeting.

ARTICLE XI

Rights, Powers and Obligations of Association

11.1 Rights, Powers and Obligations of Association: For the benefit of all the Owners, the Association shall have all powers relating to the maintenance, repair, improvement, management, and operation of the Property including, but not limited to, the power set forth in this Article XI, and all the rights and powers possessed by Developer under the terms of this Declaration. The power of the Association shall include the power to acquire and pay out funds, as hereinafter provided for the following expenses:

(a) Comprehensive public liability and property damage insurance in such limits as the Association shall reasonably deem desirable, insuring the Association itself, its manager; if any, agents and employees, the Owners, including each member of the Board of Directors personally, the Trustee and the Developer, its agents and employees, from any liability in connection with the Common Area or the public spaces adjoining the Common Area. Such insurance coverage shall also cover cross liability claims of one insured against another. The insurance coverage provided for Developer; its agents and employees, shall continue in force and effect only until the time of the transfer by Developer to the Association of all of the rights, powers and obligations of Developer, and said coverage may then be canceled;

(b) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Association in its judgment shall elect to effect;

(c) General real estate taxes, assessments or other charges of governmental bodies against the Common Area;

(d) The services of any person or firm employed by the Association. The Association may employ the service of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments, and in connection with any other matter where the respective interests of the Owners are deemed by the Association to be similar and non-adverse to each other;

(e) Landscaping, gardening, watering, painting, cleaning, maintenance, decorating, repair and replacement in the Common Area as the Association shall determine are necessary and proper;

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations or assessments, tax or otherwise, which the Association is required to secure or pay for pursuant to the terms of this Declaration or the By-Laws; and

(g) All funds collected hereunder shall be held and expended for the purposes designated herein.

11.2 Books and Records: The Association, through its Treasurer or Manager, if any, shall keep complete and correct books of account of the receipts and expenditures relating to the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred as provided by the Association. Such records and vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten days notice to the Association and payment of a reasonable fee, any Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

11.3 Employment of Professional Management: The administrative duties of the Board of Directors may be performed by a Manager (which may be a professional management firm) employed by the Association, and the Association has the right to pay reasonable compensation to a Manager so employed. The Developer has the right, but not the obligation, on behalf of the Owners, to engage the initial manager and to enter into a contract with said Manager expiring not later than one year after the voluntary turnover to the members of the Association the authority to elect the Board of Directors. The professional manager hired may be the Developer, but is not required to be the Developer.

11.4 Execution of Agreements, Contracts, etc.: All agreements, contracts, vouchers for payment of expenditures and other instruments shall be signed by the President of the Board of Directors, or by such other persons and in such manner, as from time to time may be determined by the Board of Directors.

11.5 No Business Activity: Nothing in the Declaration shall be construed to give the Association authority to conduct a business for profit.

11.6 Non-Liability of the Board of Directors: The Board of Directors, its officers and Developer shall not be personally liable to the Owners or to any others for any mistake in judgment or for any acts or omissions except for any acts or omissions found by a court of competent jurisdiction to constitute criminal conduct, gross negligence or actual fraud. The Owners shall indemnify and hold harmless each member of the Board of Directors and the Developer against all contractual liability to others arising out of contracts made by the Board of Directors, its officers, or the Developer on behalf

of the Owners unless any such contract shall be found by a court of competent jurisdiction to constitute criminal conduct, gross negligence or actual fraud. The liability of the Owners, based upon a contract made by the Board of Directors or Developer, or based upon Owners agreement to indemnify and hold harmless, shall be several, and not joint and no Owner shall be liable for more than his or her equal proportionate share of any such contract or indemnity liability. Every agreement made by the Board of Directors or Developer shall provide that the Board of Directors or the Developer, as the case may be, are acting only as agents for and on behalf of the Association and the Owners shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be several, and not joint and shall not exceed the Owner's equal proportionate share of such contract liability. The indemnity herein provided shall extend to and be operative in favor of the Manager and all other agents and employees of the Association and the Developer.

11.7 Delegation of Power: The maintenance, repair, and improvement of the Common Area shall be the responsibility of the Whisper Creek Townhome Homeowners' Association but the Association has the obligation to pay its proportional share as set forth in Section 7.10. The Board of Directors has the right to delegate to the manager or others such authority and duties as may be granted and imposed upon the Board of Directors by this Declaration.

11.8 Funds and Titles for the Owners: All funds and all properties acquired by the Association, and the proceeds thereof, shall belong to the Owners and shall be held for the benefit of the Owners subject to this Declaration for the purposes herein stated.

ARTICLE XII Conveyance of Title by Developer to Association

12.1 Developer's Rights, Powers and Obligations Prior to Transfer to Association: Until such time as Developer voluntarily turns over to the Members of the Association the authority to appoint the Board of Directors, all of the rights, powers and obligations which by this Declaration are to be vested in the Association or its Board of Directors shall be deemed vested in and possessed by Developer.

12.2 Transfer of Rights, Powers and Obligations by Developer to Association: When Developer voluntarily turns over to the Members of the Association the authority to appoint the Board of Directors, it shall transfer and assign to the Association all of its rights, powers, and obligations under this Declaration.

12.3 Developer's Successors and Assigns: Developer's successors and assigns shall have, without limitation, qualification or exception, all the rights, powers and authority of Developer itself.

12.4 No Capital Reserve to be maintained by Developer: **THE DEVELOPER SHALL NOT BE OBLIGATED TO COLLECT OR FUND CAPITAL RESERVES, BY PURCHASE OR OCCUPATION OF A DWELLING UNIT. OWNERS HEREBY ACKNOWLEDGE THAT ANY AMOUNTS NECESSARY FOR CAPITAL RESERVES SHALL BE THE SOLE AND EXCLUSIVE OBLIGATION OF THE OWNERS THROUGH THE ASSOCIATION AND NEITHER THE OWNERS, ASSOCIATION, NOR THEIR SUCCESSORS AND ASSIGNS SHALL HAVE ANY CAUSE OF ACTION AGAINST DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES FOR ANY DEFICIENCY IN CAPITAL RESERVES.**

ARTICLE XIII
Amendment and Termination of Declaration

13.1 Amendment Prior to Sale of a Lot: Prior to the sale of any Lot, Developer itself has the right to amend or to terminate this Declaration at any time and in any manner. If Developer elects to terminate this Declaration, Developer may evidence its election by recordation of an appropriate statement of termination with the Recorder of Deeds of Will County, Illinois, and upon such recordation, the entire title in the Property shall stand free and clear of this Declaration.

13.2 Amendment After Sale of a Lot: After one or more Lots have been sold, but prior to Developer's turnover to the Members of the Association the authority to appoint the Board of Directors, Developer itself, acting without concurrence of any other party, has the right to amend this Declaration as often as Developer deems necessary, but no such amendment shall unfairly or unreasonably affect any rights of the Owners of Lots already sold.

13.3 Amendment After All Lots Have Been Sold: After Developer voluntarily turns over to the Members of the Association the authority to appoint the Board of Directors, and all Lots have been sold by Developer, this Declaration may be amended by a two-thirds (2/3) vote of the Owners, but such amendment shall not unfairly or unreasonably affect the rights of the Owners.

13.4 Procedure on Amendment or Termination:

(a) If this Declaration is to be amended or terminated by the Developer solely, pursuant to the above provisions of this Article XIII, which provides for amendment or termination by Developer solely, Developer shall amend or terminate by due execution of an appropriate written instrument setting forth the terms of the amendment, or stating that this Declaration is terminated, as the case may be.

(b) If this Declaration is to be amended before the Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board of Directors, the amendment shall be effected by an appropriate written instrument setting forth the terms of the amendment and duly executed by the Developer.

(c) If an amendment is to be effective after Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board of Directors, and after the rights and powers of Developer have been transferred to the Association, then the amendment may be evidenced by a written instrument executed on behalf of two-thirds (2/3) of the Owners, and participation by the Developer may be required only as the Owner of a Lot or Lots.

(d) The instrument effecting an amendment of this Declaration shall, after execution, be recorded promptly in the Office of the Recorder of Deeds of Will County, Illinois, and the amendment provided for therein shall become effective and operative upon recordation.

13.5 Notices with Respect to Amendment or Termination: All parties who have a right to participate in the amendment of this Declaration, subject to covenants and restrictions, shall have the right to initiate proceedings for amendment of this Declaration. Any such party desiring to initiate proceedings for amendment shall give at least ten (10) days prior written notice of the meeting at which amendment or termination is to be considered. If Developer solely amends this Declaration, in

pursuance of the foregoing provisions providing for such amendment solely, then within fifteen (15) days after adoption of the amendment, notice of the amendment shall be given by Developer to all Owners, and each Owner, promptly upon receipt of such notice, shall give notice of the amendment to his mortgagee, if any.

13.6 Amendment Affecting the Rights of the Village: No amendments to the Association's duties and obligations relating to the rights of the Village may be adopted without the prior written consent of the Village.

ARTICLE XIV General Provisions

14.1 Notices:

(a) Notices given pursuant to this Declaration or in connection therewith shall be written and shall be delivered in person or by regular mail. Notices of default or formal demands by any party hereunder to any other party shall be sent by certified or registered mail, return receipt requested. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing. Notice to an Owner may be given to the Owner at his or her Lot, unless the Owners have informed the Association otherwise. Notice may be given to the Association at its registered office, or sent to the home of the President of the Board of Directors. Until Developer has transferred all its rights, powers and obligations to the Directors, all notices which the Board of Directors would be entitled to receive shall be given to Developer, Hartz Construction Co., Inc., 9026 Heritage Parkway, Woodridge IL 60517. Notices in respect of meetings or Special Meetings of the Board of Directors or of the Owners shall be given in accordance with the provisions of this Declaration.

(b) Notice to the personal representative of a deceased Owner shall be sent to the address furnished by such personal representative to the Board of Directors, and if no address is furnished by said personal representative, the notice to a deceased Owner shall be given to the deceased by a writing directed to the Owner at such Owner's Lot.

(c) Upon request of a mortgagee of a Lot, and payment of a reasonable charge therefore, the Board of Directors shall supply to said mortgagee a copy of this Declaration and any amendment to this Declaration.

14.2 Non-Waiver Except by Written Instrument: No conditions, covenants, restrictions, reservations, grants or other provisions of this Declaration shall be deemed to have been waived by silence, or inaction, or failure to enforce rights or by any other matters whatsoever. Only writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived shall be effective. No waiver shall be deemed to have been affected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights that have occurred.

14.3 Liberal Interpretation: This Declaration shall be liberally construed so as to effectuate and facilitate the objectives of this Declaration as herein above set forth. Narrow, technical and literal construction of this Declaration inconsistent with the objectives of the Developer or the Association shall be avoided.

14.4 Rule Against Perpetuities: Should any provision of this instrument be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then, and in that event, such provisions shall be deemed to be operative only until twenty-one (21) years after the death of Barack Obama, President of the United States of America.

14.5 Partial Invalidity-Severability: The invalidity of any of the conditions, covenants, restrictions or reservations herein contained, or of any other provision or provisions, of whatever nature, of this Declaration shall not in any way impair or affect the validity or enforceability of any other provision or provisions of this Declaration, and any such invalidity or enforceability of other provision of this Declaration as remains, and any such invalidity shall be deemed partial and separable, and all of this Declaration shall be deemed valid, enforceable and binding except for the invalid provision.

14.6 Gender, Usage of Singular and Plural Forms and Other Usage: Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders. Prior to completion of development of the Property and sale of all Lots by Developer and to Developers transfer of its rights, powers and obligations to the Board of Directors and Association, all references to the rights, powers and obligations of and to the Board of Directors or Association shall be read as references to the rights, powers and obligations of the Developer.

14.7 Captions: Captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text thereof.

14.8 Recordation: Prior to consummation of the sale of the first Lot in the Property by delivery of a deed to a Lot, this Declaration shall be recorded in the Office of the Recorder of Deeds of Will County, Illinois. All amendments to the Declaration shall also be recorded in said Recorder's office.

14.9 Conflicts Between Declaration and Village Ordinance Provisions: In the event there is at any time a conflict between any provision of this Declaration and any provision of any then effective ordinance, rule or regulation of the Village, the ordinance, rule or regulation of the Village then in effect shall prevail, but only to the extent it is more restrictive than this Declaration.

ARTICLE XV Rights of the Village

The following covenants and provisions are intended to inure to the benefit of the Village and it is specified and provided as follows:

15.1 Right of Village to Perform Obligations of Association: In the event the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration and such delinquency shall exist on the part of the Association for a period of thirty (30) days after the date of delivery by the Village to the Association of written notice advising the Association of the existence and nature of such delinquency, the Village shall have the right, but not the obligation, to perform the obligations required to be performed by the Association pursuant to this Declaration. In the event the Village elects so to do, the Association shall pay promptly to the Village

the amount of the cost and expense incurred by it in the performance of such work, including compensation for staff time, the use of Village equipment, as well as materials and outside services.

15.2 Right of Village to Levy Assessment: In the event the Village performs any of the Association's duties and obligations and the Association fails to pay the Village any costs it incurred as aforesaid, within sixty (60) days after the date of the Village's demand for payment or date of any statement, the Village shall have the right to levy an assessment on all Lots for the costs and expenses incurred by it in the performance of such work to the same extent and as fully as the association might do pursuant to the provisions contained herein. Should any Owner fail to pay to the Village such Owner's portion of any assessment levied pursuant to this paragraph upon the due date thereof, then the Village shall have the right to exercise all rights, powers, privileges and remedies granted to the Association by this Declaration, and any other remedies provided by law. This paragraph is not a limitation on other remedies that may be pursued by the Village.

ARTICLE XVI Declarant Disclosure

Each Seller of a Lot shall disclose to the purchaser the following:

16.1 Subdivision Zoning: Village of Mokena P.U.D. with R-3, R-4 single family residential and R-6 multiple family residential.

16.2 Contiguous Zoning:
North -Will County R-2 single family residential
East -Village of Mokena R-3 single-family residential and R-6 multiple family residential
South -Will County R-2 single family residential
West -Will County A-I agricultural.

16.3 Homeowners Association: An association will be established and dues will be collected to maintain the Common Area.

16.4 Mokena Park District Land Dedication: Lot 133, located on the land north of Regan Road, south of Palmira Court and east of Whisper Creek Drive will be dedicated to the Mokena Park District.

16.5 Expedition of Disclosure: Each purchaser of a Lot has received a copy of the Annexation Agreement and the Declaration of Covenants, Conditions & Restrictions of Whisper Creek South Homeowners' Association and has read and agrees to comply with all of the requirements contained in those documents. The purchaser of a Lot understands that the Village of Mokena will require proof that this disclosure was signed and a copy of the Annexation Agreement was provided to future residents as a condition of receiving a building permit. If a model or speculative home is being built, proof of receipt of such will be required prior to issuance of a Certificate of Occupancy. In the event of any conflict between the terms of this Declaration and the Annexation Agreement, the Annexation Agreement shall supersede the Declaration.

16.6 Conservation Easements: There are various conservation easements throughout the Subdivision. These conservation easements are addressed in the covenants, on the individual plats, on the final plat and in the annexation agreement. It is the responsibility of all Owners to read and understand the language on the conservation easements and follow them as written.

CONDITIONS

Developer shall provide conservation easements as shown on "Exhibit B" (the Plat) to preserve the open space and to preserve trees located in the rear of many lots, with said conservation easements to include open space. Conservation easements are shown on the Plat adjacent to all adjoining properties, and the Village shall have authority to enforce the provisions identified in this Declaration, the Annexation Agreement and all conservation easements.

Developer shall provide conservation easements to protect trees and provide permanent markers to denote the boundaries of the conservation easements. Developer shall provide adequate tree preservation measures, such as snow fencing during construction, such that trees will not be killed, damaged, or removed without the prior approval of the Village Engineer.

No permanent structures, impervious surfaces, fences, sheds, other accessory structures or fill are to be placed in these easements. No changes of grade will be permitted within the conservation easements without the consent of the Village Engineer. Property owners shall maintain all easements free of obstructions. The Village of Mokena shall have the right to access the conservation easements for emergency maintenance or any other practical purposes.

PENALTIES

Any person found to be in violation of the above noted provisions or conditions shall be subject to a fine pursuant to the Village Code for each offense and any other remedy available at law or in equity. Each day any violation exists shall constitute a separate offense.

REPRESENTATION ON PLATS

The above-noted conservation easements shall be clearly illustrated along with the language pertaining to conditions and penalties, noted in this declaration, on the Plat for each phase, as well as individual plats of survey for each Lot. It shall be further noted on the Plat that the conservation easements shall be indicated on individual plats of surveys for individual Lots.

COVENANTS

The Covenants for the Property shall include the language regarding the conditions and penalties as noted in this subsection. These covenants shall be recorded against all Lots.

16.7 Reports from Arborist: Developer shall provide periodic reports from certified arborist during the entire duration of the construction of the public improvements and homes to confirm continuing compliance with the tree preservation plan. Such reports shall be presented to the Village: a) prior to the commencement of earthwork certifying that the boundaries of the conservation easements have been properly located, marked, and secured to prevent damage or encroachments to same; b) after the completion of rough grading to certify that there have been no encroachments into the conservation easement; c) prior to the issuance of a building permit to certify that there have been no encroachments into the conservation easements; and d) prior to the issuance of a Certificate of Occupancy to certify that there have been no encroachments into the conservation easements. The reports shall address the adequacy of and compliance with the tree preservation measures. Village acknowledges that upon the sale of lots to a new Owner, the primary responsibility for compliance with c) and d) above will transfer to said new Owner; however, Developer and subsequent Owners shall inform the new Owner of any Lot within the Property about these provisions and require, as part of any sales agreement, that the new Owner shall conform to these obligations. Failure to so inform

and notify of these requirements may result in continuing liability by the Developer or subsequent Owners.

16.8 Tree Removal: Tree removal within the conservation easements and within the right-of-way south of the centerline of Regan Road shall be subject to approval by the Village prior to the removal of any tree. Failure to obtain approval from the Village prior to the removal of or damage to a preserved tree within the conservation easements shall result in the replacement of the killed or damaged tree at a one-inch to one-inch trunk diameter ratio. Replacement of trees approved for removal by the Village shall be replaced at a one-tree to one-tree ratio except that dead trees and certain "undesirable" trees need not be replaced at the sole discretion of the Village.

16.9 School Districts: Lots 71-114 of the Whisper Creek Subdivision are located in New Lenox Elementary School District #122 and New Lenox High School District # 210.

16.10 Each purchaser shall acknowledge receipt of this disclosure and knowingly agree to accept the Lot subject to all of the terms and conditions set forth herein. Acceptance by one owner shall be binding on all owners.

16.11 Providing each purchaser of a Lot with a copy of this Declaration and the Annexation Agreement in electronic form shall be sufficient for purposes of the necessary disclosures required hereunder.

ARTICLE XVII Notice of Declaration


17.1 Each Person who owns a Lot for the purpose of constructing and selling a residence on the Lot shall provide a copy of these declarations to a prospective purchaser at the time of or before a contract is signed with a prospective purchaser and shall receive a receipt and acknowledgement thereof as set forth in Exhibit C.

ARTICLE XVIII Trustee Exculpation

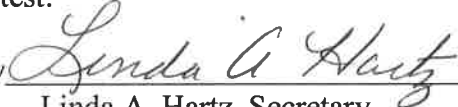
It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose of the intention of binding said Trustee personally, but are made and intended for the benefit of binding only that portion of the Trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon at such Trustee; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against the Trustee or any of the beneficiaries of said Trust Agreement, on account of this instrument or on account of any representation, covenant, undertaking or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the Developer and Trustee, as aforesaid, have caused their names to be signed to these presents on the day and year first above written.


Hartz Construction Co., Inc.,
an Illinois corporation

By: 
Donald L. Hartz, President

Attest:

By: 
Linda A. Hartz, Secretary

The Chicago Trust Company not personally
but as Trustee under Trust Agreement dated
May 26, 2005 and known as Trust Number
HBT-2060

By: 
Its: _____ Robert J. Mayo
President & CEO

ATTEST:

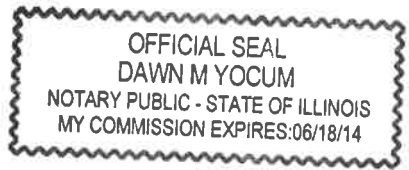
By: 
Its: Senior Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, do hereby certify that Donald L. Hartz, as President, and Linda A Hartz as Secretary of an Illinois corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and they did also then and there acknowledge to said instrument as his/her own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 2nd day of June, 2014.

Dawn M. Young
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF ~~DUPAGE~~)

I, the undersigned, a Notary Public in and for said county, in the State aforesaid, do hereby certify that ROBERT J. MAYO, as President + CEO and Gerard Leenhouts as Sr. Vice President of The Chicago Trust Company not personally but as Trustee under Trust Agreement dated May 26, 2005 and known as Trust Number HBT-2060, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Trust for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 28 day of May, 2014.

L Gregory Clark
Notary Public



**EXHIBIT A
LEGAL DESCRIPTION**

Lots 71 through 114 as shown on the final Plat of Subdivision of the Whisper Creek Subdivision recorded on June 28, 2006 as document number R2006106466 in Will County, Illinois being a subdivision in part of the southwest Quarter of Section 1 and the Northwest Quarter of Section 12, all in Township 35 North, Range 11 East of the Third Principal Meridian in Will County, Illinois.

<u>LOT</u>	<u>PIN NO.</u>	<u>LOT</u>	<u>PIN NO.</u>
71	15-08-12-103-002-0000	93	15-08-12-103-027-0000
72	15-08-12-103-003-0000	94	15-08-12-103-026-0000
73	15-08-12-103-004-0000	95	15-08-12-103-025-0000
74	15-08-12-103-007-0000	96	15-08-12-103-024-0000
75	15-08-12-103-006-0000	97	15-08-12-103-028-0000
76	15-08-12-103-005-0000	98	15-08-12-103-029-0000
77	15-08-12-103-008-0000	99	15-08-12-103-030-0000
78	15-08-12-103-009-0000	100	15-08-12-103-031-0000
79	15-08-12-103-010-0000	101	15-08-12-103-032-0000
80	15-08-12-103-011-0000	102	15-08-12-103-033-0000
81	15-08-12-103-012-0000	103	15-08-12-102-013-0000
82	15-08-12-103-013-0000	104	15-08-12-102-012-0000
83	15-08-12-103-018-0000	105	15-08-12-102-011-0000
84	15-08-12-103-017-0000	106	15-08-12-102-010-0000
85	15-08-12-103-016-0000	107	15-08-12-102-009-0000
86	15-08-12-103-015-0000	108	15-08-12-102-008-0000
87	15-08-12-103-014-0000	109	15-08-12-102-002-0000
88	15-08-12-103-019-0000	110	15-08-12-102-003-0000
89	15-08-12-103-020-0000	111	15-08-12-102-004-0000
90	15-08-12-103-021-0000	112	15-08-12-102-005-0000
91	15-08-12-103-022-0000	113	15-08-12-102-006-0000
92	15-08-12-103-023-0000	114	15-08-12-102-007-0000