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**THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:**

David L. Reifman, Esq.
PIPER RUDNICK
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601

5451786

FILED FOR RECORD BY:
MARY ELLEN VANDERVENTER
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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR
HAMILTON ESTATES PHASE TWO SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS FOR THE HAMILTON ESTATES PHASE TWO SUBDIVISION (this "Declaration") is made and entered into on this 14th day of SEPTEMBER, 2004, by RSD METTAWA, LLC, an Illinois limited liability company ("Declarant").

L. HYNES M

WITNESSETH:

WHEREAS, Declarant is the owner, legal title holder, and developer, of certain real estate in the Village of Mettawa, County of Lake and State of Illinois, which real estate is legally described in Exhibit A attached hereto and by this reference made a part hereof (the "Premises"); and

WHEREAS, Declarant has caused the Plat of Subdivision (as hereinafter defined) to be recorded against the Premises and, pursuant to the Plat of Subdivision, the Premises will consist of (a) 15 subdivided lots on which single-family detached dwellings are intended to be constructed (hereinafter individually called a "Residential Lot" and collectively called the "Residential Lots"), the Residential Lots being legally described on Exhibit B attached hereto and by this reference made a part hereof and (b) the Common Area (as hereinafter described and defined and legally described on Exhibit C attached hereto and by this reference made a part hereof).

WHEREAS, the Common Area will generally consist of a roadway, curb, gutter, entry signage, stormwater management facilities (which include manholes, inlets and underground

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storm sewer mains) and parkway landscaping located on Lot 16 shown on the Plat of Subdivision;

WHEREAS, Declarant desires to establish for its own benefit and for the mutual benefit of all future owners, tenants and occupants of the Residential Lots or any part thereof, certain easements and rights in, over, under, upon and along the Premises or portions thereof and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof and of certain adjacent land; and

WHEREAS, Declarant desires to subject the Premises or portions thereof to the covenants, conditions, restrictions, easements and rights set forth in this Declaration, each and all of which is and are for the benefit of the Premises and portions thereof and each owner, tenant and occupant of each Residential Lot and shall inure to the benefit of and shall pass with the Premises and each and every portion thereof;

NOW, THEREFORE, Declarant hereby declares that only the Premises are and shall be transferred, held, sold, conveyed and accepted subject to this Declaration. Declarant does hereby further declare that the following easements, covenants, restrictions, rights, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquiring any right, title or interest in or to any portion of the Premises, (2) be binding upon and inure to the benefit of each owner of each Residential Lot and (3) run with the land subjected to this Declaration, to be held, sold and conveyed subject to this Declaration.

ARTICLE 1

DEFINITIONS

1.1 **"Annexation Agreement"** shall mean that certain agreement dated as of December 11, 1998 and recorded in the Office of the Recorder of Lake County, Illinois on January 15, 1999 as Document No. 4277639 by, between, and among the Village of Mettawa, Newton Korhumel, Irene Korhumel, Harris Bank Palatine (successor to Harris Bank Roselle), as trustee under Trust Number 12672 date August 8, 1987 and Hamilton Forsythe Lake Cook 4, L.L.C. an Illinois corporation relating to the Premises (and other adjacent property), as the same may have been or may hereafter be amended from time to time.

1.2 **"Association"** shall mean and refer to an Illinois not-for-profit corporation, its successors and assigns, to be organized at the sole cost and expense of Declarant and to be known by the name of the Enclave at Hamilton Estates Homeowners Association, or such other name or names as Declarant shall designate. All Residential Lot Owners (as hereinafter defined) of all Residential Lots shall be members of the Association, all as more particularly described in this Declaration.

1.3 **"Board"** shall mean the Board of Directors of the Association as constituted, at any time or from time to time, in accordance with the applicable provisions of Article 3 of this Declaration.

1.4 **"By-Laws"** shall mean the By-Laws of the Association, a copy of which is attached hereto as Exhibit D and by this reference made a part hereof.

1.5 **"Common Area"** shall mean Lot 16 (also known in part as "Emma Lane") on the Plat of Subdivision. The Common Area is legally described on Exhibit C attached hereto. The Common Area shall be owned by the Association for the benefit of all Residential Lot Owners. The maintenance, repair, improvement, use, enjoyment and operation of the Common Area shall be in accordance with the terms and provisions of this Declaration.

1.6 **"Covenant and Grant of Stormwater Drainage Easement Agreement"** as defined in Section 5.3.

1.7 **"Declarant"** shall mean RSD Mettawa, LLC, an Illinois limited liability company and its respective successors and assigns; provided, however, that no rights reserved herein to Declarant shall inure to the benefit of their respective successors and assigns unless and until specifically assigned in a recorded instrument or conveyed by operation of law.

1.8 **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Rights for the Hamilton Estates Phase Two Subdivision.

1.9 **"Dwelling Unit"** shall mean a single-family detached residential housing unit consisting of a group of rooms which are designed or intended for the exclusive use as living quarters for one family and are constructed upon a Residential Lot.

1.10 **"Limited Common Area"** shall mean that portion of the Common Area depicted as "Limited Common Area" on Exhibit E attached hereto and by this reference made a part hereof and each Residential Lot's appurtenant Limited Common Area is, although owned by the Association, intended for the exclusive use and enjoyment of the Residential Lot Owner of that Residential Lot (except as otherwise set forth herein). Each Residential Lot Owner shall have the right to landscape, maintain and otherwise improve such Residential Lot Owner's appurtenant Limited Common Area, all subject to the terms and provision of this Declaration and the Plat of Subdivision. Each designated "Limited Common Area" shall be appurtenant to only one Residential Lot. The Limited Common Area shall specifically exclude those portions of the Common Area that abut Lot 1 and Lot 15, which portions are depicted as "Reserved for Entry Signage / Landscape" on Exhibit E.

1.11 **"Lot"** for the purpose of this Declaration shall mean and refer to a platted lot of record, whether a Residential Lot or the lot comprising the Common Area, designated as such upon the Plat of Subdivision.

1.12 **"Member"** shall mean and refer to any person or entity who holds membership in the Association, as more specifically described in Section 3.1 of this Declaration.

1.13 **"Occupant"** shall mean any person or persons other than the Residential Lot Owner in possession of a Dwelling Unit.

1.14 **"Offsite Stormwater Property"** As defined in Section 5.3.

1.15 **"Plat of Subdivision"** shall mean that certain Plat of Subdivision of the Premises recorded in the Office of the Recorder of Deeds of Lake County, Illinois on September 24 2004 as Document No. 5651784

1.16 **"Residential Lot"** shall mean each of Lots 1 through 15, inclusive, designated as such upon the Plat of Subdivision.

1.17 **"Residential Lot Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Residential Lot, including, without limitation, contract (articles of agreement for a deed) purchasers, and beneficiaries of land trusts holding record title to a Residential Lot, but excluding those having such interest merely as security for the performance of an obligation.

1.18 **"Sanitary Sewer Lines"** as defined in Section 4.3.

1.19 **"Sanitary Sewer Mains"** as defined in Section 4.3.

1.20 **"Storm Sewer Mains"** shall mean those storm sewer mains within the Premises that serve the Premises.

1.21 **"Transfer Date"** shall mean that date which is the first to occur of: (i) seven (7) years from the date of the transfer of the first Residential Lot to a Residential Lot Owner (other than Declarant); and (ii) the date on which 75% of the Residential Lots have been transferred to Residential Lot Owners (other than Declarant and other than those Residential Lot Owners having acquired one or more Residential Lots from Declarant for the purpose of constructing thereon a Dwelling Unit intended to be sold to an unrelated person or entity in a commercial, arms length transaction [which unrelated person or entity will in turn become a Residential Lot Owner within the meaning of this Section 1.21]).

1.22 **"Village"** shall mean the Village of Mettawa, Illinois, an Illinois municipal corporation and home rule unit, as described in the Illinois Constitution.

1.23 **"Water Lines"** as defined in Section 4.3.

1.24 "Water Mains" as defined in Section 4.3.

ARTICLE 2

GENERAL PURPOSES

2.1 **Purposes of this Declaration.** The Premises are made subject to this Declaration in order to ensure proper use, appropriate development and improvement of the Premises and every part thereof; to protect each Residential Lot Owner from the improper use of surrounding Residential Lots and Dwelling Units and the Common Area; to encourage attractive improvements on each Residential Lot with appropriate locations thereof; to prevent haphazard and inharmonious improvements; to insure desired high standards of maintenance for the benefit and convenience of all Residential Lot Owners; and in general to provide adequately for a first class residential subdivision.

2.2 **Purposes of the Association.** In order to implement the general purposes of this Declaration, the Association is being created with responsibility for, among other things, ownership of all of the Common Area, maintenance, repair and preservation of the Common Area, enforcement of the restrictions contained in this Declaration and the levying and collection of assessments to fund all of its responsibilities, all in accordance with the terms of this Declaration.

ARTICLE 3

THE ASSOCIATION

3.1 **Membership in the Association.** Every person or entity who is a Residential Lot Owner, including Declarant, including a contract seller of a Residential Lot, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Residential Lot Owner shall have more than one membership in the Association for each Residential Lot owned. Membership shall be appurtenant to and may not be separated from ownership of each Residential Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Residential Lots. If the record owner of fee simple title to a Residential Lot shall be more than one person, all such persons shall be Members, but the voting rights in the Association attributable to that Residential Lot shall be exercised in the manner hereinafter provided such that only one vote shall be cast with respect to each Residential Lot. If the record owner of fee simple title to a Residential Lot shall be a land trust, corporation, partnership or other legal entity, then the one individual who shall be entitled to exercise the rights and privileges (such as, to vote and to be a director on the Board), and who

shall be responsible to bear the obligations associated with membership in the Association with respect to that Residential Lot, shall be designated by the Residential Lot Owner thereof in writing to the Association. Such designation may be changed from time to time thereafter by notice in writing from the Residential Lot Owner to the Association. No Residential Lot Owner shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of the obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Residential Lot Owner shall be of any force or effect for any purpose.

3.2 **Voting Rights in the Association.** The Association shall have two classes of voting membership:

Class A. Class A Members shall be all of the Residential Lot Owners, as defined in Article 1, including Declarant for each Residential Lot that it owns. Class A Members shall be entitled to one (1) vote for each Residential Lot in which they hold the interest required for membership in the Association. When more than one person holds such interest in any Residential Lot, all such persons shall be Members, but the right to vote for such Residential Lot shall be exercised as they among themselves determine; provided, however, that in no event shall more than one vote be cast with respect to each Residential Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each Residential Lot within the Premises, provided that the Class B Membership shall cease on the first to occur of (the "Class B Member Termination Date"): (i) seven (7) years from the date of the transfer of the first Residential Lot to a Residential Lot Owner (other than Declarant); and (ii) the date of the transfer of the last Residential Lot to a Residential Lot Owner (other than Declarant).

3.3 **The Board.** The Association shall have a Board which, as set forth below, shall consist of not less than three (3) directors (hereinafter individually a "Director" and collectively "Directors") who shall be determined as follows:

A. The first Board shall consist of three (3) Directors, all to be appointed by Declarant or its designee, and shall serve until the Transfer Date.

B. Subsequent to the Transfer Date and continuing until the Class B Member Termination Date, the Board shall consist of three (3) Directors who shall be elected by combined majority vote of the Class A and Class B Members of the Association, at meetings to be held for such purpose at such intervals as are provided in the articles of incorporation of the Association or the By-Laws, as the case may be.

C. Subsequent to the Class B Termination Date, the Board shall consist of three (3) Directors who shall be elected by majority vote of the Class A Members of the Association at meetings to be held for such purpose at such intervals as are provided in the articles of incorporation or the By-Laws, as the case may be.

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Vacancies in the Board occurring prior to the Transfer Date shall be filled by the Declarant appointing a person to fill such vacancy. Vacancies in the Board occurring from and after the Transfer Date and occurring between meetings of the Members may be filled by the majority vote of the remaining Directors then sitting on the Board if so provided in the articles of incorporation of the Association or the By-Laws. Notwithstanding anything to the contrary, Declarant may, in its sole discretion, voluntarily terminate its right to appoint Directors and to fill vacancies pursuant to this Section, in which event the Members (including Declarant) shall elect Directors, and the Directors may fill vacancies occurring between meeting of the Members. Except for Directors to be appointed by Declarant, all other Directors shall be Members.

3.4 **Officers of the Association.** The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. All officers of the Association shall be Directors on the Board. Except as expressly otherwise provided by the articles of incorporation of the Association or the 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 any requirement of approval on the part of the Members.

3.5 **Prohibition on Distributions to Members.** The Association, being a not-for-profit corporation, shall not distribute to the Members (being, in effect, the "shareholders") any sums in the nature of dividends.

3.6 **Agreements between the Association and Others.** Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with persons and business entities regularly engaged in the performance of generally similar functions and duties, which agreements shall be with such parties, for such length of time, at such rates of compensation and upon such other terms and provisions, all as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Premises or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

3.7 **Rules and Regulations of the Association.** The Association, through the resolutions of the Board, shall have the right to adopt reasonable rules and regulations governing the Residential Lots and the Common Area or any portion of the Common Area; provided, however, that no rule or regulation shall conflict: (i) with any provision of this Declaration; or (ii) with any applicable law, ordinance or code.

3.8 **Books and Records of the Association.** The books and records to be kept by the Board shall be available for inspection by any Member or any representative of a Member duly authorized in writing, at such reasonable time or times during the normal business hours as may be requested by the Member or its representative.

3.9 **Liability of the Directors and Officers of the Association.** Neither the Directors nor the officers of the Association shall be liable to the Residential Lot Owners for any

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mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors and officers, except for any acts or omissions finally adjudged by a court of competent jurisdiction to constitute gross negligence or other willful misconduct or fraud. The Association shall indemnify and hold harmless each of the Directors and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by, or other acts of, the Board and officers of the Association on behalf of the Association or arising out of their status as Directors or officers of the Association, unless any such contract or act shall have been finally adjudged by a court of competent jurisdiction to have been made fraudulently or with gross negligence or other willful misconduct. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any Director or officer of the Association may be involved by virtue of such persons being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or other willful misconduct or fraud in the performance of his duties as such Director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or other willful misconduct or fraud in the performance of his duties as such Director or officer. It is also intended that the liability of the Association arising out of any contract made by, or other acts of, the Board or officers of the Association, or out of the aforesaid indemnity in favor of the Directors or officers of the Association, shall be limited to an amount equal to the total liability thereunder. Every agreement made by the Board on behalf of the Association shall be deemed to provide that the Directors are acting only as agents for the Association, and shall have no personal liability thereunder in their capacity as Directors and that the Association's liability thereunder shall be limited to an amount equal to the total liability thereunder.

ARTICLE 4

COMMON AREA

4.1 **Description of the Common Area.** The Common Area shall consist of certain portions of the Premises and other property, all as set forth in Section 1.5 of this Declaration.

4.2 **Rights of Residential Lot Owners, the Association and Declarant.**

A. Every Residential Lot Owner shall have: (i) a perpetual non-exclusive right and easement of ingress and egress in, over, under, through, across, on, upon and to, and use and enjoyment of, all portions of the Common Area (except the Limited Common Area) and all portions of the Common Area (except the Limited Common Area), shall be held for the use and benefit of each Residential Lot Owner; and (ii) a perpetual non-exclusive right and easement on, under, in, through, across, over and above the Common Area for such Residential Lot Owner's use and benefit for the purpose of stormwater detention and drainage. The aforesaid non-



exclusive right and easements shall be appurtenant to and shall pass with the title to every Residential Lot, subject to the following reserved rights and easements in favor of others (each of which following described reserved rights and easements apply to all portions of the Common Area, specifically including the Limited Common Area):

(a) From and after the Transfer Date, the right of the Association to dedicate, grant, convey or transfer all or any portion of the Common Area it then owns to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, grant, conveyance or transfer shall be effective unless accomplished by means of an instrument signed or duly authorized by Members entitled to cast not less than three-fourths (3/4) of the votes.

(b) To the extent not granted by Declarant, the Association hereby reserves the right, without the necessity of having to obtain any Members' consent, to grant, at any time and from time to time after title to the Common Area has been conveyed to the Association, utility easement(s) for sanitary and storm sewers, water, gas, electricity, telephone, cable television and any other necessary public or municipal service over, under, in, through, upon and across all or any portion of the Common Area, all upon such terms and conditions as the Board deems necessary or appropriate.

(c) As part of the overall program of development of the Premises into a residential community and to encourage the marketing, sales and construction thereof, Declarant hereby reserves for itself, its contractors and their respective subcontractors, agents and employees the right and easement of ingress and egress and of access and use through, in, over, upon, under and across each and every portion of the Common Area for marketing, sales and construction purposes, as well as the right and easement of use of certain Residential Lots and the Common Area and facilities thereof, all without charge, during the entire marketing, sales and construction period on the Premises.

(d) At any time prior to the Class B Member Termination Date and notwithstanding that title to the Common Area may have theretofore been conveyed to the Association, Declarant shall have and hereby reserves the rights, without having to obtain the consent of any other party: (A) to grant and record such easements (in addition to the easements set forth and granted on the Plat of Subdivision) over, under, through, across, upon, in and on the Common Area or portions thereof for the provision of any utility service, landscaping, buffering, ingress and egress, and such other purposes as Declarant, in its reasonable discretion, deems necessary, desirable or required by the final engineering plans for the Premises or by the "as-built" condition of the Premises, or any part or portion thereof; and (B) to dedicate or transfer all or any portion of the Common Area then owned by Declarant to any public agency, authority or utility for such purposes and subject to such conditions as may be reasonably determined by Declarant, consistent with the intent and purposes of this Declaration.

Notwithstanding the foregoing, (i) no dedication or transfer of title pursuant to (a) or (d) (B) of this Section 4.2A shall be effective without the consent of the corporate authorities of the Village by resolution duly adopted, and (ii) no grant of easement pursuant to (b) or (d) (A) of this

Section 4.2A shall be effective without the consent of the Administrative Officer of the Village, which consent the Administrative Officer shall not unreasonably withhold if the proposed grant of easement does not cause an adverse impact on any easement, facility or improvement of any public entity or agency or on the stormwater drainage and detention of the Premises and the surrounding area, and does not cause a violation of any applicable codes, ordinances, laws, rules or regulations.

B. The foregoing described non-exclusive easements and rights granted to the Residential Lot Owners shall extend not only to each Residential Lot Owner, but also to members of his immediate family, his authorized guests, other authorized Occupants and authorized visitors of the Residential Lot Owner. The use and enjoyment of the Common Area shall be subject to such reasonable rules and regulations as are adopted from time to time by the Association; provided, however, that in no event shall any rule or regulation have the effect of reducing or adversely affecting the obligations of the Association to maintain all portions of the Common Area.

4.3 **Common Area Improvement.** Declarant shall initially cause to be constructed, installed and/or located upon the Common Area a roadway, curb, gutter, the sanitary sewer mains serving the Residential Property (the "Sanitary Sewer Mains"); sanitary sewer service lines connecting the Sewer Mains to individual Residential Lots (the "Sanitary Sewer Lines"); water mains serving the Residential Property (the "Water Mains"); water service lines connecting the Water Mains to individual Residential Lots (the "Water Lines"); the Storm Sewer Mains serving the Residential Property (the "Storm Sewer Mains", it being understood that the term Storm Sewer Mains shall also include Storm Sewer Mains which are not within the Common Area so long as they are installed within the Premises by Declarant); landscaping, entry signage and other improvements, all as Declarant shall from time to time determine to be necessary, appropriate or desirable or to be required by governmental laws, ordinances or regulations as shall be in effect during, and applicable to, the development of the Premises. In conjunction with the foregoing, Declarant hereby reserves a non-exclusive easement over those portions of the Residential Lots (such as, without limitation, the easement areas shown on the Plat of Subdivision) necessary for such installation and construction, and each Residential Lot Owner, by acceptance of a deed for such Residential Lot, hereby consents to such easement. Subsequent to the Class B Member Termination Date, the Association shall have the right, subject to obtaining the approval of a majority of the Members, to further improve the Common Area in a manner consistent with the intent and purpose of this Declaration or as required or permitted by any governmental laws, ordinances or regulations then in effect.

4.4 **Declarant's Reserved Rights With Respect to the Common Area.** Notwithstanding that title to the Common Area may be vested in the Association, Declarant shall have and hereby reserves the right to exercise any and all rights elsewhere reserved in this Declaration to or for the benefit of Declarant with respect to the Common Area without having to obtain the consent of any other party and such rights may be exercised by Declarant to the fullest extent provided by this Declaration and applicable law.

4.5 **Grade Restrictions.** No change shall be made in the finished grade of the Common Area, nor shall any construction of any kind whatsoever be erected or permitted to exist within the Common Area that might materially impede stormwater drainage therein or materially reduce the stormwater detention capacity thereof. Normal landscape planting (including those planting obligations set forth in Section 8.2(B) below) shall be permitted by Residential Lot Owners within the Limited Common Area that abuts such Residential Lot Owner's Residential Lot, the maintenance obligation of which shall be borne solely by such Residential Lot Owner. In the event that the Declarant or the Association grants an easement (or easements) as articulated in this Article 4, which easement(s) run through the Limited Common Area, the Declarant, the Association, and the grantee of such easement shall not have any restoration obligations related to such landscaping (or any other materials located within the Limited Common Area) unless such obligation is specifically articulated in an easement agreement.

ARTICLE 5

MAINTENANCE OF COMMON AREA, RESIDENTIAL LOTS, DWELLING UNITS AND OFF-SITE STORMWATER FACILITIES

5.1 Maintenance of the Common Area.

A. The Association shall determine and carry out or cause to be performed, in a first rate manner and in compliance with Village standards, all maintenance, improvement, repair and replacement of the Common Area and the improvements that lie therein,

(a) including, without limitation:

- (i) the road, curb and gutter; and
- (ii) the Storm Sewer Mains; and
- (iii) the fence that lies at the rear of Lots 9 through 15 (notwithstanding the fact that such fence does not lie within the Common Area);
- (iv) the entry signage and landscaping that is located within the Common Area but not within the Limited Common Area, as shown on Exhibit E; but

(b) excluding:

- (i) facilities located thereon (i.e., the Water Mains and Sanitary Sewer Mains) which are hereafter dedicated, donated or otherwise conveyed to Lake County or other public or quasi-public body; and
- (ii) the Limited Common Area and any and all improvements located thereon (including, without limitation, the driveway and landscaping).

B. As part of its obligations with respect to the Common Area, the Association shall be responsible to keep the road within the Common Area, at all times, free and clear of all obstructions, including snow, ice, debris of any kind and temporary and permanent structures. The foregoing obligation shall not apply to those portions of driveways and landscaping located within the Common Area.

C. The Association shall have the right to ingress and egress over and upon the Common Area and over easement areas shown on the Plat of Subdivision for any and all purposes connected with the use, maintenance, repair, operation, improvement, replacement and reconstruction of: (i) the Common Area; and (ii) those portions of the Storm Sewer Mains which are not located within the Common Area; (iii) the fence that lies at the rear of Lots 9 through 15.

D. Each Residential Lot Owner shall have the obligation to maintain in good condition and repair all improvements located within the Limited Common Area that abuts such Residential Lot Owner's Lot, including, but not limited to: (i) the driveway; (ii) landscaping; (iii) Water Lines; and (iv) Sanitary Sewer Lines. Upon the failure of any Residential Lot Owner to so maintain the foregoing, in a manner reasonably satisfactory to the Association, the Association, through its agents and employees, is hereby granted the right to make such reasonable repairs, maintenance, rehabilitation or restoration thereof as may be necessary, and the costs thereof shall become a lien upon his Residential Lot in the same manner as provided in Article 6 for nonpayment of maintenance assessments.

5.2 **Maintenance of Dwelling Unit, etc. on Residential Lot.** Each Residential Lot Owner shall have the obligation to maintain in good condition and repair his Dwelling Unit and any driveway, service walks, landscaping, Water Lines, Sanitary Sewer Lines and all other permitted improvements located on his Residential Lot. Upon the failure of any Residential Lot Owner to so maintain his Residential Lot in a manner reasonably satisfactory to the Association, the Association, through its agents and employees, is hereby granted the right to enter upon his Residential Lot and make such reasonable repairs, maintenance, rehabilitation or restoration thereof as may be necessary, and the costs thereof shall become a lien upon his Residential Lot in the same manner as provided in Article 6 for nonpayment of maintenance assessments.

5.3 **Right to use and maintenance of Off-Site Stormwater Facilities.** The stormwater management system for the Premises dictates that stormwater from the Premises runs / flows to property which is not within the Premises (the "Off-Site Stormwater Property"). Accordingly, Declarant has entered into that certain Covenant and Grant of Stormwater Drainage Easement Agreement with the Owner of the Off-Site Stormwater Property (the "Covenant and Grant of Stormwater Drainage Easement Agreement") which Stormwater Easement Agreement, *inter alia*, grants to the Association and every Residential Lot Owner a perpetual non-exclusive right and easement for the Association's and such Residential Lot Owner's use and benefit for the purpose of stormwater detention and drainage on the Off-Site Stormwater Property. As of the date hereof, the maintenance of the stormwater detention facilities on the Off-Site Stormwater Property is being paid for with funds collected by the Village, which funds are collected pursuant to the terms of Village Ordinance No. 386 establishing Special Service Area Number Three ("Special Service Area Number Three"), which Ordinance was recorded with the Lake County Recorder on January 15, 1999 as Document No. 4277656. Upon the

expiration, or prior termination, of Special Service Area Number Three, the Association and each Residential Lot Owner shall be responsible for their pro rata share of the cost of the maintenance of the stormwater detention facilities on the Off-Site Stormwater Property.

5.4 **Rights of the Village to Access and to Maintain.** An irrevocable license and easement is hereby granted to the Village and police, fire, water, public works, engineering, development, health and other authorized officials, employees and vehicles of the Village or other governmental body which has jurisdiction over the Premises, specifically including Lake County, to go upon the Common Area at any time and from time to time for the purpose of performance of official duties, emergency services, and for the purpose of enforcing Village ordinances, rules and regulations, and the statutes of the State of Illinois and the United States and any easements granted to the Village on the Plat of Subdivision. In addition, duly designated officials and employees of the Village and Lake County are hereby granted an easement to enter upon, on and over the Common Area for the purposes of maintaining and repairing, except as otherwise provided hereunder, the stormwater management areas, storm and sanitary sewers, water mains, and any other utility or public services located or which may be located in the Common Area. Said easement rights shall be exercised only to the extent and for such period of time as is required to accomplish said maintenance or repair. Except in the event of emergency situations, the Village shall serve written notice upon the Association setting forth the manner in which the Association has failed to comply with its obligations under this Declaration or the Plat of Subdivision. Said notice shall include a demand that such deficiency be cured within thirty (30) days from the date such notice is received. If such deficiency has not been cured within said thirty (30) days or any extension thereof granted by the Village, the Village may exercise its easement rights under this Declaration by entering the Common Area and performing such maintenance or repair that, in the Village's reasonable opinion, the Association has failed to perform on all or any portion of the Common Area. The Association shall reimburse the Village for all expenses, including administrative costs, incurred by it in performing such reasonable maintenance or repair. If the Association does not reimburse the Village in full for all such expenses incurred within thirty (30) days after receipt of a bill detailing such expenses, then the portion of the cost of such maintenance or repair not so reimbursed shall be assessed in equal shares against all of the Residential Lots and shall become a lien upon such Residential Lots, which lien shall be in all respects subject and subordinate and junior to any prior mortgage recorded against all or any portion of such Residential Lots. The Village shall be under no obligation to exercise the rights herein granted except as it shall determine to be in its best interest. No failure to exercise any right herein granted to the Village shall be construed as a waiver of that or any other rights.

ARTICLE 6

COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 **Covenant for Assessments.** Declarant, for each Residential Lot owned by Declarant, and subject to the provisions of Section 6.6 below, hereby covenants, and each Residential Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed

in such deed or other conveyance, is deemed to covenant and agree to pay to the Association (hereinafter the "Association Assessment") from and after the date of conveyance of such Residential Lot to such Residential Lot Owner: (1) regular assessments and charges, and (2) special assessments for capital or other improvements or maintenance requirements; the amount of the Association Assessment to be fixed, established and collected from time to time as provided in this Declaration. The Association Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each Residential Lot and shall be a continuing lien upon such Residential Lot against which such Association Assessment is levied. Each such Association Assessment, together with such interests and costs of collection, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Residential Lot Owner of such Residential Lot at the time when the Association Assessment or installment thereof became due. Such personal obligation shall pass to said Residential Lot Owner's successors in title if not fully discharged by the transferor Residential Lot Owner prior to any transfer of said Residential Lot.

6.2 **Purpose and Use of Assessments.** The Association Assessment shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Premises or any portion thereof and in particular for the improvement and maintenance (i) of the Premises, and (ii) of the services and facilities devoted to or serving the Premises or related to the use or enjoyment of any part or portion of the Common Area. Such uses shall include, but are not limited to, the cost to the Association of any taxes and insurance premiums with respect to, and the expense of operation, repair, replacement and maintenance of, the Common Area as may from time to time be authorized by the Board. In addition, the Association shall have the right to establish and maintain a reserve for capital expenditures and major repairs and replacements that may be required from time to time, as determined by the Board. At the time each Residential Lot is sold by Declarant, the Residential Lot Owner (initial purchaser from Declarant) shall pay (in addition to the first monthly [or other then applicable assessment period] installment of the Association Assessment attributable to that Residential Lot) to the manager or managing agent or as otherwise directed by the Board, an amount equal to one-sixth (1/6) of the then annual Association Assessment, which amount shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses of the Association and held and used for future working capital needs. This payment shall not be refundable or be applied as a credit against the Residential Lot Owner's installments of the Association Assessment. The Board or the Declarant shall have the right to transfer such funds from time to time as may be necessary to fund a reserve for capital improvements and major repairs.

6.3 **Establishment of Assessments.**

A. The Board shall, on or before December 1 of each year, estimate the total amount necessary to pay all costs and expenses to be incurred (such as, but not limited to, real estate taxes, insurance, snow removal, stormwater management areas maintenance, etc.) during the ensuing calendar year to effect the purposes of the Association, including the establishment/continued funding of the reserve for capital improvements and major repairs, if any. Said "estimated cash requirement" shall be allocated among and assessed to the Residential Lot Owners in the manner hereinafter described. On January 1st of the ensuing year and on or before the 1st day of each and every month (or other assessment period as the Board may

establish, as hereinafter provided) thereafter during said year, each Residential Lot Owner shall be personally obligated to pay an installment of said Residential Lot Owner's annual Association Assessment. Notwithstanding anything contained herein to the contrary, the Board shall have the right to establish that each Residential Lot Owner shall be obligated to pay the annual Association Assessment due hereunder in one annual payment, two equal semi-annual installments, four equal quarterly installments, or twelve equal monthly installments; provided, however, that said payment schedule shall be uniformly and equally applicable to all Residential Lot Owners within the Board's jurisdiction. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said "estimated cash requirement", any net shortage or excess shall entitle the Board, upon giving written notice thereof to all Residential Lot Owners within its jurisdiction, to adjust accordingly the amount of those installments of the current year's Association Assessment falling due after the date when the amount of such net shortage or excess is determined.

B. If, during an assessment year, said "estimated cash requirement" proves inadequate for any reason (including, for example, nonpayment by one or more Residential Lot Owners of their respective Association Assessment), the Board may at any time levy a further assessment. The Board shall serve notice of such further assessment on all affected Residential Lot Owners by a statement in writing setting forth the amount of said further assessment and the reasons for it, and thereupon, such further assessment shall become effective with the next installment of the applicable Association Assessment and all affected Residential Lot Owners shall be personally liable for and obligated to pay their respective adjusted installments of that Assessment.

C. The failure or delay of a Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Residential Lot Owner's obligation to pay the installments of the Association Assessment, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, each Residential Lot Owner shall continue to pay at the then existing Association Assessment rate established for the previous period.

6.4 **Special Assessments.** In addition to the annual Association Assessments authorized above, the Association, with respect to the Common Area, may levy a special Association Assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, if any. The foregoing special Association Assessment may be levied notwithstanding the fact that the Association may have then accumulated a reserve.

6.5 **Uniform Assessment Amount.** Both the annual and special Association Assessment shall be the same amount for each Residential Lot, notwithstanding the size of the Residential Lot or the size or nature of the improvements located on that Residential Lot. Such Association Assessment shall be levied, paid and collected on a monthly basis or on such other alternative payment schedule as the Board may establish in the manner provided in this Declaration.

6.6 Declarant's Obligations Concerning Payment of Costs and Expenses.

Notwithstanding anything in this Declaration which is or may appear to be to the contrary, Declarant shall have the obligation to pay to the Association for each assessment year (or portion thereof) prior to the Class B Member Termination Date only the aggregate excess, if any, of the amount of operating expenses incurred and paid with respect to the Premises prior to the Class B Member Termination Date over the aggregate amounts assessed to the Residential Lot Owners (other than Declarant) for use by the Association for the payment of such operating expenses prior to the Class B Member Termination Date. Declarant shall make such payments to the Association as needed during such assessment year (but at least quarter annually), and a final accounting shall be made between Declarant and the Association within one hundred twenty (120) days after the end of each such assessment year. For purposes of this Section 6.6, the term "operating expenses" shall refer solely to those ordinary expenses attributable only to the period in question covering maintenance and operation of the Common Area and shall not include; nor shall Declarant be responsible for the payment of, capital expenditures, reserves for contingencies or replacement, special assessments, repair items or inventory items.

6.7 Delinquent Assessments. Installments of any Association Assessment shall be due on the first day of each applicable assessment period and if not paid when due, shall be delinquent. If payment of said installment of an Association Assessment is not made on or before the 15th day following the date upon which it is due, then the delinquent Residential Lot Owner shall pay to the Association a late charge of \$25.00 for each month or portion thereof that said installment remains delinquent, said late charge to cover the Association's administrative costs in monitoring and collecting said installment. In addition, the Association may bring an action at law against the Residential Lot Owner personally obligated to pay said delinquent installment(s), or may foreclose its lien against said Residential Lot Owner's Residential Lot; and in either event, there shall be added to the amount of such delinquent Association Assessment installment(s) (and in the amount of said lien) any late charge(s) and the costs of collection, including reasonable attorneys' fees and all court costs. Each Residential Lot Owner, by acceptance of a deed to a Residential Lot, hereby expressly vests in the Association or their agents, the right and power to bring all actions against such Residential Lot Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien or liens by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a manner similar to the type of action instituted to foreclose the lien of a mortgage or deed of trust on real property.

6.8 Priority of the Lien for Assessment. The lien or liens for any Association Assessment as it relates to each Residential Lot shall be subordinate to the liens of any mortgage(s) or deed(s) of trust (a "Mortgage") now or hereafter recorded against title to that Residential Lot provided that said Mortgage is recorded prior to the recording of any such liens for delinquent Association Assessment installment(s). In the event that title to any Residential Lot is transferred either pursuant to the foreclosure of a Mortgage or by deed or assignment in lieu of such foreclosure, such transfer shall extinguish the lien for Association Assessment payment(s) for sums which became due prior to the first to occur of (a) the date of the transfer of title and (b) the date on which the transferee comes into possession of the Residential Lot. Notwithstanding the foregoing, said transferee of said Residential Lot shall be liable for his share of any sums with respect to which a lien against his Residential Lot has been extinguished pursuant to the preceding sentence and the amount so extinguished is reallocated among all

Residential Lot Owners pursuant to a subsequently adopted annual revised Association Assessment or special assessment, and non-payment thereof by said transferee shall result in a lien against his Residential Lot as provided in this Article.

6.9 **Common Area Real Estate Taxes.** Notwithstanding anything to the contrary herein contained, from and after the date of recording of this Declaration, the Association shall be responsible to pay and discharge all general and special real estate taxes and assessments levied by any public authority with respect to the Common Area.

ARTICLE 7

INSURANCE

7.1 **Liability and "All Risk" Insurance.** The Association shall be responsible for procuring and maintaining comprehensive public liability insurance, including general liability for injuries to and death of persons and for property damage, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence with a Two Million Dollar (\$2,000,000.00) aggregate, umbrella or excess liability coverage in an amount of not less than One Million Dollars (\$1,000,000.00), and other liability insurance as it may deem desirable, insuring the Association from liability in connection with the ownership and/or use of the Common Area. In addition, the Association shall be further responsible for maintaining such policies of insurance for the improvements from time to time located in the Common Area against loss or damage by fire and such other hazards contained in a customary "all risk" policy provided that such policies shall (i) state that such policies may not be cancelled or substantially modified without at least thirty (30) days written notice to the Association; and (ii) provide for coverage in the amount of one hundred percent (100%) of current full replacement value of said improvements. The aforesaid liability insurance policies shall also name as insureds the Directors, agents, officers, employees, and all Residential Lot Owners.

7.2 **Fidelity Insurance.** The Association shall be responsible for procuring and maintaining a fidelity bond insuring the Association and its Board and the Residential Lot Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agents, if any, or of any other person handling the funds of the Association or its Board or the Residential Lot Owners, in such amounts as the Board shall deem necessary, but not less than 150% of the annual operating expenses of the Association, including amounts collected for reserves. Such bonds shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bonds shall provide that they may not be cancelled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to the Association.

7.3 **Other Insurance.** The Association may also obtain such other kinds of insurance as the Board shall from time to time deem prudent or necessary, in such amounts as shall be deemed to be desirable, including, but not limited to, the following: flood risk;

Directors' and Officers' Liability; Worker's Compensation and Employer Liability; and Non-Owned or Hired Automobile Insurance.

ARTICLE 8

SPECIFIC RESTRICTIONS AND PROVISIONS RELATING TO USE OF RESIDENTIAL LOTS AND COMMON AREA

8.1 Restrictions on the Use of a Residential Lot.

A. Each Residential Lot shall be used only for residential purposes, as a private residence, and for such professional, business or commercial use as is not otherwise prohibited under applicable Village ordinances and regulations governing the Premises. Each Residential Lot Owner shall have the right to (i) maintain his personal professional library therein; (ii) keep his personal, business or professional records or accounts therein; or (iii) handle his personal, business or professional telephone calls or correspondence therefrom. A Residential Lot Owner's use of a Residential Lot shall not endanger the health or disturb the reasonable enjoyment of any other Residential Lot Owner or Occupant, except that the foregoing restriction on disturbing reasonable enjoyment shall not be deemed to preclude or prohibit any of the rights or activities expressly reserved by or granted in this Declaration to Declarant.

B. No Residential Lot Owner shall do or permit to be done on his Residential Lot or anywhere else in the Premises any act or thing which will impair any easement or hereditament granted to any other party, nor shall any Residential Lot Owner create or permit to exist on his Residential Lot or anywhere else in the Premises any condition which will adversely affect the use or enjoyment of the Premises or any part or portion thereof by any party entitled to such use or enjoyment.

C. No nuisance, noxious or offensive activity shall be or permitted to be carried on by any Residential Lot Owner on his Residential Lot or anywhere else in the Premises nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an unreasonable annoyance or nuisance to any other Residential Lot Owner or Occupant.

D. In addition to the restrictions set forth in this Declaration, the Association may from time to time adopt such rules and regulations governing the use or enjoyment of the Residential Lots as the Board, in its reasonable discretion, deems desirable, appropriate or necessary.

8.2 Grading, Landscaping and Planting on the Residential Lots.

A. Declarant shall initially cause each Residential Lot to be graded in conformity with the grading plan included as a part of the final engineering plans for the Premises approved by and on file with the Village (the "Grading Plan"). Each Residential Lot Owner shall maintain

the grading of such Residential Lot Owner's Residential Lot in strict conformity with the Grading Plan and all work and improvements on such Residential Lot Owner's Residential Lot shall strictly conform with the Grading Plan. In the event the grading of a Residential Lot is not maintained as aforesaid, (i) Declarant prior to the Class B Member Termination Date or; (ii) the Association subsequent to the Class B Member Termination Date, shall serve written notice upon the Residential Lot Owner of such Residential Lot setting forth the manner in which said Residential Lot Owner has failed to comply with its obligations under this Section 8.2A., including a demand that such deficiency be cured within ten (10) days from the date such notice is received. If such deficiency has not been cured within said ten (10) days or any extension thereof granted by Declarant, or the Association, as the case may be, Declarant, or the Association, as the case may be, shall have the right to enter onto such Residential Lot to re-grade the same or to take any and all other actions which may be necessary to cause such Residential Lot to conform with the Grading Plan. The applicable Residential Lot Owner shall reimburse Declarant, or the Association, as the case may be, for all expenses, including such party's administrative costs, incurred in such party's re-grading or other actions in connection with the matters contained in this section, and if the applicable Residential Lot Owner does not reimburse such party in full for all such expenses incurred within thirty (30) days after receipt of a bill detailing such expenses, then such amounts shall become a lien upon the applicable Residential Lot, which lien shall be in all respects subject and subordinate and junior to any prior mortgage recorded against all or any portion of such Residential Lot. Declarant and the Association shall be under no obligation to exercise the rights herein granted except as it shall determine to be in its best interest. No failure to exercise any right herein granted to Declarant and the Association shall be construed as a waiver of that or any other rights.

B. Each Residential Lot Owner shall cause: (i) such Residential Lot Owner's Residential Lot; or (ii) the Limited Common Area that abuts such Residential Lot Owner's Residential Lot; or (iii) any combination of the foregoing, to be planted with not less than three trees (each having a caliper of not less than four (4) inches), all by not later than six months after the first to occur of (i) the date of the issuance by the Village of a temporary certificate of occupancy for the Dwelling Unit on said Residential Lot and (ii) the date the Dwelling Unit on that Residential Lot is first occupied.

8.3 **Prohibition on Use or Occupancy of Temporary Structures.** Except as expressly hereinafter provided, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used as a residence at any time, either temporarily or permanently.

8.4 **Prohibition on Advertising.** Except for Declarant and its activities within the Premises, no advertising sign (excluding "For Rent" and "For Sale" signs), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on a Dwelling Unit or a Residential Lot, except as may be approved in advance by the Board.

8.5 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Residential Lot or Common Area, except dogs, cats or other common household pets (not to exceed a total of five (5) pets for each Residential Lot) may be so kept; provided, that they are not kept, bred, or maintained for any commercial purposes and provided further that

they are kept, bred and maintained solely on the Residential Lot and, in accordance with rules and regulations adopted by the Board.

8.6 **Garbage.** All rubbish, trash, and garbage shall be kept on each Residential Lot so as not to be seen from any other Dwelling Unit, and shall be regularly removed from each Residential Lot and shall not be allowed to accumulate thereon. In addition to the foregoing, all rubbish, trash and garbage shall be stored and removed in accordance with the rules and regulations adopted by the Board.

8.7 **Prohibited Exterior Activities.** Hanging of clothes shall be confined to the interior of each Dwelling Unit.

8.8 **Antennae and Satellite Dishes.** Television and radio antennae and television satellite dishes having a diameter not exceeding thirty two (32) inches shall be permitted on the exterior of any Dwelling Unit, on the exterior of other improvements located on a Residential Lot, or in a free-standing nature elsewhere on a Residential Lot, subject to all applicable laws, ordinances and regulations.

8.9 **Parking of Vehicles, Boats, Vans, etc.** Parking areas and driveways shall be used for parking operable automobiles, pick-up trucks and trucks of similar size and nature, vans, campers, trailers, boats, snowmobiles and other vehicles, subject to all reasonable rules and regulations promulgated by the Association with respect thereto and to all applicable Village ordinances. The Board may authorize vehicles parked in violation of the Association's rules and regulations with respect thereto to be towed away and any such towing charge shall become a lien upon the Residential Lot of the Residential Lot Owner who owns such vehicle or of whom the owner of such vehicle is the guest, in the same manner as provided in this Declaration for nonpayment of assessments.

8.10 **Exceptions to Restrictions.**

A. The foregoing covenants of this Article shall not apply to the activities of Declarant or the Association.

B. Declarant may maintain, while engaged in marketing, constructing and selling activities, in or upon such portions of the Premises as Declarant determines, such temporary facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, garages, signs and construction and storage trailers, in compliance with all applicable Village codes, ordinances and regulations.

ARTICLE 9

ARCHITECTURAL CONTROLS

9.1 **Village Requirements.** All Dwelling Units, accessory structures, additions thereto, and any other exterior aspect of a Residential Lot, whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled, placed or installed in compliance with all applicable Village ordinances and codes.

9.2 **Architectural Standards.** All Dwelling Units, accessory structures, additions thereto, and any other exterior aspect of a Residential Lot, whether original or replacement, temporary or permanent, shall be constructed, altered, restored, added to, located, remodeled on the exterior, placed or installed in a manner that is in compliance with the following: (i) shall preserve the architectural and aesthetic appearance of the Premises; (ii) shall not impair the value of the property of all Residential Lot Owners; (iii) shall be undertaken in a manner that is consistent with the use of the Premises as a quality residential subdivision; (iv) shall be of quality, design, workmanship and materials which are compatible and harmonious with the natural setting of the area. With respect to specific materials: (i) all exterior materials shall be face brick, stone, cedar, E.I.F.S. or redwood; (ii) wood chip or wood composite products, aluminum or metal siding, and plastic or fiberglass materials shall not be used on the exterior; and (iii) asphalt brick siding, asphalt shingle siding and materials of like quality shall not be used. Notwithstanding the foregoing, nothing contained in this Section 9.2 shall prevent the use of the following materials: (i) vinyl/aluminum windows; (ii) vinyl/aluminum soffit, fascia; and gutters / downspouts. Any Dwelling Unit, accessory structure, additions thereto and any other exterior aspect of a Residential Lot constructed and installed by Declarant in connection with the initial construction of improvements on each Residential Lot shall conclusively be deemed to comply with the standards contained in this Section 9.2.

ARTICLE 10

MISCELLANEOUS

10.1 Enforcement of this Declaration.

A. The Association, any Residential Lot Owner, the Village (as concerns its rights hereunder) and Declarant shall have the right to enforce, by any proceeding at law or in equity, the restrictions, easements, conditions, covenants, reservations, rights, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Residential Lot Owner found by a court of competent jurisdiction to be in violation of any of the foregoing shall also be liable for reasonable attorney's fees incurred by the prevailing party in prosecuting such action. The amount of any money judgment as well as such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Residential Lot Owner's Residential Lot, enforceable as other liens herein established. Failure by the Association, any Residential Lot Owner, the Village (as concerns its rights hereunder) or Declarant to enforce any covenant, restriction, easement, condition, reservation, right, lien or charge for such party's benefit herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. In amplification of and in addition to the provisions contained in the other provisions of this Declaration, in the event that any Residential Lot Owner shall be in violation of any provision of this Declaration, the Association may and shall have each and every right and remedy as shall otherwise be provided or permitted by law, including the right to take possession of such Residential Lot Owner's Residential Lot for the benefit of all other Residential Lot Owners by an action for possession in the manner prescribed in Article IX of the Code of Civil Procedure.

10.2 **Partial Invalidity.** Invalidation by judgment or court order of anyone of the covenants, restrictions, terms, provisions, etc. in this Declaration or of the application thereof to any particular person or circumstance shall in no way affect any other covenant, restriction, term, provision, etc. or the application of said covenant, restriction, term, provision, etc. to other persons or circumstances and this Declaration in all such other respects shall remain in full force and effect.

10.3 **Term of this Declaration and Amendment of this Declaration by Residential Lot Owners.** The covenants, conditions, easements, rights, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, Declarant (prior to the Transfer Date), the Association, the Village and each Residential Lot Owner subject to this Declaration (including Declarant subsequent to the Transfer Date for each Residential Lot it then owns), their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions, easements, rights, and restrictions shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants, conditions, easements, rights, and restrictions of this Declaration may be amended during the first fifty (50) year period or within any successive ten (10) year period by an instrument signed or duly authorized by those Members entitled to cast seventy-five percent (75%) or more of the total votes of the Association, which executed instrument is then properly recorded. The covenants, conditions, easements, rights, and restrictions of this Declaration may also be cancelled or amended by an instrument signed or duly authorized by those Members entitled to cast seventy-five percent (75%) or more of the votes of the Association, which executed instrument is then properly recorded within ninety (90) days of the expiration of any successive ten (10) year period and thereupon, such cancellation or amendment shall be effective on the date of the expiration of the ten (10) year period in question; provided, however, that any cancellation of this Declaration at any time shall require the prior written consent of the Village. Any instrument executed pursuant to the provisions contained herein shall be filed for record in the Office of the Recorder of Deeds of Lake County, Illinois and a true, complete copy of such instrument shall be transmitted to each Residential Lot Owner promptly. Notwithstanding anything to the contrary hereinabove contained, Declarant shall have the right, without having to obtain the signature or consent of any other party (including any First Mortgagee, as defined in Section 10.9), to amend this Declaration in the manner expressly provided in Section 10.12 and elsewhere in this Declaration.

10.4 **Rule Against Perpetuities.** If and to the extent that any of the covenants, restrictions, rights, conditions, terms, provisions, etc. contained in this Declaration 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 for which such covenants, restrictions, rights, conditions, terms, provisions, etc. may be valid, then the covenant, restriction, right, condition, term, provision, etc. concerned shall continue and endure only until the expiration of a period 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 Rod Blagojevich, Governor of the State of Illinois, living at the date of this Declaration.

10.5 **Notices.** Any notices required or desired to be sent to any Member of the Association, a Residential Lot Owner or the Village under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of the Village, such Member or the Association or Residential Lot Owner (as the case may be), as such address appears on the records of the Association at the time of such mailing.

10.6 **Marketable Title to Lots.** If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration or any part hereof in the Office of the Recorder of Deeds of Lake County, Illinois, in order to avoid the expiration hereof or of any of the covenants, conditions, restrictions, rights, reservations, easements, agreements or other provisions herein contained under any of the provisions of any law or act relating to or governing marketable title, the Board shall submit the matter to a meeting of the Members of the Association called upon not less than ten (10) days prior notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such rerecording, the Association shall have, and is hereby granted, the power to so rerecord this Declaration or such part thereof, and such rerecording shall be binding upon all Residential Lot Owners in every way and with the full force and effect as though such action were taken by each of said Residential Lot Owners and the rerecorded document executed and acknowledged by each of them.

10.7 **Covenants, Restrictions, etc. to Run with Land.** All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Premises and their respective grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Premises or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation with respect to any part of the Premises, to the easements, rights, covenants, agreements, reservations, restrictions and conditions herein described shall be sufficient to create and reserve such easements, rights, covenants, agreements, reservations, restrictions and conditions to the respective grantees, mortgagees or trustees of such parts of the Premises as fully and completely as though said easements, rights, covenants, agreements, reservations, restrictions and conditions were fully recited and set forth in their entirety in such document.

10.8 **Interpretation of this Declaration.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first-class residential development.

10.9 **Rights of First Mortgagees, Insurers and Guarantors.** The following provisions are intended for the benefit of each holder of a recorded first mortgage or trust deed encumbering a Residential Lot ("First Mortgagee") and to the extent, if at all, that any other provision of this Declaration conflicts with the following provisions, the following provisions of this Section shall, in all instances, control:

A. Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded first mortgage or trust deed on a Residential Lot ("Insurer or Guarantor") and the Residential Lot number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of the default of any Residential Lot Owner's obligations under this Declaration which is not cured within thirty (30) days. Any First Mortgagee of a Residential Lot who comes into possession of the said Residential Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take said Residential Lot free of any claims for unpaid assessments or charges in favor of the Association against said Residential Lot which became due prior to the first to occur of (i) the date on which the First Mortgagee or its successor or assigns comes into possession of said Residential Lot and (ii) the date on which title to said Residential Lot was transferred to the First Mortgagee or its successor or assigns.

B. Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

(a) to examine current copies of this Declaration, and the By-Laws, rules and regulations and the books and records of the Association during normal business hours;

(b) to receive, without charge and within a reasonable time after such request, a copy of the then most current set of such financial statements as are prepared by the Association at the end of each of their respective fiscal years;

(c) to receive written notices of all meetings of the Association to designate a representative to attend all such meetings;

(d) to receive written notice of any decision by the Association to make a material amendment to this Declaration or to the By-Laws or the articles of incorporation of either the Association; and

(e) to receive written notice of any proposed action which would require the consent of a specified percentage of First Mortgagees.

C. No amendment to, change or modification of either Section 6.8 (dealing with the priority of assessment liens) or, subject to the terms and conditions therein contained with respect to the rights of Declarant, Section 10.3 (dealing with the method of amending this Declaration) shall be effective unless, in addition (but subject) to the terms and conditions set forth in Sections 6.8 and 10.3, such change or amendment shall be first consented to, in writing, by not less than seventy-five percent (75%) of the Residential Lot Owners and their respective First Mortgagees.

10.10 **Condemnation.** If all or any part of the Common Area shall be taken through condemnation by any governmental authority having power so to do, the net proceeds of such taking shall be paid to and retained (i) prior to the Class B Member Termination Date, by the Declarant and (ii) subsequent to the Class B Member Termination Date, by the Association. If the effect of such condemnation shall be to isolate any part of the Premises from the remainder of the Premises, then all Lots, whether Residential or comprising the Common Area, lying wholly or partly within the portion of the Premises so isolated, shall be deemed to have been and shall be removed from and released from all of the terms and provisions of this Declaration and this Declaration shall be of no further force or effect with respect thereto. For purposes of this Section, the term "condemnation" shall include also: (i) any sale under threat of condemnation to any governmental authority having condemnation power; and (ii) any voluntary dedication which is accepted by the Village.

10.11 **Dissolution of the Association.** Upon any dissolution of the Association its assets shall be transferred to another homeowners association or associations having similar purposes.

10.12 Declarant's Rights with Respect to Amending the Plat of Subdivision and this Declaration.

A. Subject to the approval of the Village, Declarant hereby reserves to itself the right to re-record the Plat of Subdivision to correct any inaccuracies, errors or mistakes contained therein.

B. Declarant hereby reserves to itself the right and power, to be exercised without the consent of any Residential Lot Owner or his First Mortgagee to record a special amendment ("Special Amendment") to this Declaration or to the Plat of Subdivision at any time and from time to time for any of the following purposes:

(a) To cause this Declaration or the Plat of Subdivision to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities;

- (b) To induce any of the aforesaid agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering a Residential Lot;
- (c) To correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto; or
- (d) To change, amend or modify any of the terms or conditions of this Declaration or of the Plat of Subdivision based upon Declarant's determination, made in good faith, that such change, amendment or modification is in the best interests of the Premises and is consistent with the intent and purposes of this Declaration.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Residential Lot Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Residential Lot, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record Special Amendments. The right of Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the last Residential Lot has been sold to the Residential Lot Owners thereof (other than Declarant).

10.13 **Prohibition Against Amending this Declaration or the By-Laws to Conflict with the Annexation Agreement.** Notwithstanding anything to the contrary herein contained, neither this Declaration nor the By-Laws shall be amended by any party without the prior written approval of the Village, by resolution duly adopted, if such amendment shall conflict with the Annexation Agreement or the codes, ordinances or regulations of the Village.

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IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions, Restrictions, Easements and Rights for the Hamilton Estates Phase Two Subdivision to be executed as of the date first above written.

DECLARANT:

RSD METTAWA, LLC, an Illinois limited liability company

By: **Red Seal Development Corp.**, an Illinois corporation, its Manager

By: _____

Its: _____

BRIAN HOFFMAN
VICE CHAIRMAN &
CHIEF FINANCIAL OFFICER

Approved as to Form:

By: _____

John Zimmermann, Village Attorney

5651785

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Nada Popovic, a Notary Public
in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT
Brian Hoffman, the CFO/Vice chair of
Red Seal Development Corp., an Illinois corporation, personally known to me to be the same
person whose name is subscribed to the foregoing instrument as such
CFO/Vice chair appeared before me this day in person and acknowledged that
he signed and delivered the said instrument as his own free and voluntary act, and as the free and
voluntary act of said corporation in its capacity as the Manager of RSD METTAWA, LLC, for
the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of
Sept., 2004.

Nada Popovic
Notary Public

My Commission Expires: _____



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5651786

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Karen J. Smith, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT John Zimmermann, the Village Attorney for the Village of Mettawa, an Illinois municipal corporation and home rule unit, as described in the Illinois Constitution, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Village Attorney appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of June, 2004.

Karen J. Smith
Notary Public

My Commission Expires: October 18, 2007



5651786

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

LOTS 1 THROUGH 16, INCLUSIVE, IN THE HAMILTON ESTATES PHASE TWO
SUBDIVISION, ACCORDING THE PLAT THEREOF RECORDED IN THE OFFICE OF
THE RECORDER OF DEEDS OF LAKE COUNTY, ILLINOIS ON
September 24, 2004 AS DOCUMENT NO. 5651784

11-36-103-021

11-36-103-022

5651786

EXHIBIT B

LEGAL DESCRIPTION OF THE RESIDENTIAL LOTS

LOTS 1 THROUGH 15, INCLUSIVE, IN THE HAMILTON ESTATES PHASE TWO
SUBDIVISION, ACCORDING THE PLAT THEREOF RECORDED IN THE OFFICE OF
THE RECORDER OF DEEDS OF LAKE COUNTY, ILLINOIS ON
September 24, 2004 AS DOCUMENT NO. 5651784.

11-36-103-021

11-36-103-022

5651786

EXHIBIT C

LEGAL DESCRIPTION OF THE COMMON AREA

LOT 16 IN THE HAMILTON ESTATES PHASE TWO SUBDIVISION, ACCORDING THE
PLAT THEREOF RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF LAKE
COUNTY, ILLINOIS ON September 24, 2004 AS DOCUMENT NO.
5651784

11-36-103-021

11-36-103-022

EXHIBIT D**BY-LAWS OF THE ENCLAVE AT HAMILTON ESTATES HOMEOWNERS
ASSOCIATION****ARTICLE 1****Purposes and Powers**

The Association shall be responsible for the general management and supervision of the Premises and the ownership of the Common Area thereof (unless otherwise provided in this Declaration) and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in this 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 this Declaration.

ARTICLE 2**Offices**

2.1 **Registered Office.** The Association shall have and continuously maintain in this State a Registered Office and a Registered Agent whose office shall be identical with such Registered Office. The Association may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

2.2 **Principal Office.** The principal office of the Association shall be maintained in Mettawa, Illinois, or such other location as determined by the Association.

ARTICLE 3**Membership**

3.1 **Voting Members.** Every person or entity who is a Residential Lot Owner, including Declarant and the contract purchaser of a Residential Lot, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Residential Lot Owner shall have more than one membership in the Association for each Residential Lot owned. Membership shall be appurtenant to and may not be separated from ownership of each Residential Lot. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Residential Lots. If the record owner of fee simple title to a Residential Lot shall be more than one person, all such persons shall be Members, but the voting rights in the Association attributable to that Residential Lot shall be exercised in the manner hereinafter provided such that only one vote shall be cast with respect to each Residential Lot. If the record owner of fee simple title to a Residential Lot shall be a land trust, corporation, partnership or other legal entity, then the one individual who shall be entitled

to exercise the rights and privileges (such as, to vote and to be a director on the Board), and who shall be responsible to bear the obligations associated with membership in the Association with respect to that Residential Lot shall be designated by the Residential Lot Owner thereof in writing to the Association. Such designation may be changed from time to time thereafter by notice in writing from the Residential Lot Owner to the Association. No Residential Lot Owner shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of the obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Residential Lot Owner shall be of any force or effect for any purpose.

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

Class A. Class A Members shall be all of the Residential Lot Owners, as defined in Article 1, including Declarant for each Residential Lot owned by Declarant. Class A Members shall be entitled to one (1) vote for each Residential Lot in which they hold the interest required for membership in the Association. When more than one person holds such interest in any Residential Lot, all such persons shall be Members, but the right to vote for such Residential Lot shall be exercised as they among themselves determine; provided, however, that in no event shall more than one vote be cast with respect to each Residential Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote for each Residential Lot within the Premises, provided that the Class B Membership shall cease on the first to occur of (the "Class B Member Termination Date") (i) seven (7) years from the date of the transfer of the first Residential Lot to a Residential Lot Owner (other than Declarant) and (ii) the date of the transfer of the last Residential Lot to a Residential Lot Owner (other than Declarant).

3.3 Meetings.

A. Quorum: Procedure. Meetings of the Members shall be held at the principal office of the Association or at such other place in Lake or Cook 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 3.2 above shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, 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 a majority of the total votes present (whether in person or by proxy) 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. Initial and Annual Meeting. The initial meeting of the Members shall be held at such time as may be designated upon thirty (30) days' written notice given by the Declarant, provided that such initial meeting shall be held no later than one hundred and twenty (120) days after the Transfer Date. Thereafter, there shall be an annual meeting of the Members on the first Tuesday of May of each succeeding year, at 7:30 P.M., or such other date, as determined by the

Board of Directors. If the date for the annual meeting of Members is a legal holiday, the meeting will be held at the same hour on the first day succeeding such date which is not a legal holiday.

C. **Special Meetings.** Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purposes. Said meetings shall be called by written notice, authorized by a majority of the Board or by the Members having twenty per cent (20%) of the total votes entitled to be cast by Class A Members as provided in Section 3.2 above, 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.

3.4 **Notices of Meetings.** Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Dwelling Unit of the Residential Lot Owner with respect to which such voting right appertains, if no address has been given to the Board. The notices required herein shall state the specific purpose and the nature of the business for which the meeting is called. At any meeting, no business may be transacted other than that specified in the notice.

3.5 **Proxies: Absentee Ballots.** At any meeting of Members, a Member entitled to vote may either vote (i) in person or (ii) by proxy executed in writing by the Member or (iii) by such member's duly authorized attorney-in-fact or (iv) by duly-executed absentee ballot. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

ARTICLE 4

Board of Directors and Officers

4.1 **Board of Directors.** Except with respect to the number of members of the initial Board of Directors to be appointed by Declarant (which, shall consist of three persons, as set forth in this Declaration), the direction and administration of the Property in accordance with the provisions of this Declaration shall be vested in the Board of Directors, consisting of three (3) persons who shall be elected in the manner hereinafter provided. The Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the number and term of the office of the Board members at any annual meeting, provided that such number shall not be less than three (3), and that the term of at least one of the persons on the Board shall expire annually. Each member of the Board, with the exception of the Board members initially appointed by the Declarant (or its designee) shall be one of the Residential Lot Owners (including the Declarant); provided, however, that in the event a Residential Lot Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a member of the Board and provided further that in the event a member of the Board has entered into a

contract to sell his Residential Lot and vacates the Residential Lot prior to the consummation of that transaction, such member shall no longer be eligible to serve on the Board and his term of office shall be deemed terminated.

4.2 **Determination of Board to be Binding.** All matters of dispute or disagreement between Residential Lot Owners with respect to interpretation or application of the provisions of this 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 Residential Lot Owners subject, however, to the jurisdiction of any applicable court of law.

4.3 **Election of Board Members.** At the initial meeting of the Members and at all subsequent annual meetings of the Members there shall be elected a Board of Directors. In all elections for members of the Board of Directors, each Member shall be entitled to vote on a non-cumulative 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. The initial Board of Directors designated by the Declarant pursuant to Section 4.1 hereof shall serve for a period commencing on the date this Declaration is executed and ending upon the qualification of the directors elected at the initial meeting of Members held as provided in Section 3.3(B) hereof. Members of the Board elected at the initial meeting shall serve until the first annual meeting. Three (3) Board Members shall be elected at the initial 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 shall be elected to the Board for a term of one (1) year. In the event of a tie vote, the members of the Board shall determine which member shall have the two (2) year term and which member shall have the one (1) year term. Upon the expiration of the terms of office of the Board members so elected at the initial meeting and thereafter, successors shall be elected for a term of two (2) years each. Notwithstanding the aforesaid election procedure the Declarant or its designee or beneficiaries may appoint a Board which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members is held.

4.4 **Compensation.** Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Members having two-thirds (2/3) of the total votes. However, any director may be reimbursed for reasonable expenses incurred in the performance of his duties.

4.5 **Vacancies in Board.** Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.7 hereof, including vacancies due to any increase in the number of persons on the Board, shall be filled by the remaining members of the Board or by the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

4.6 **Election of Officers.** The Board shall elect from among its members a President who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and Association, a Secretary who will keep the minutes of all meetings of the Members and of the Board who shall, in general, perform all the duties incident

to the office of Secretary, and a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. All officers shall be elected as each annual meeting of the Board and shall hold office at the pleasure of the Board.

4.7 **Removal of Board Members.** Any Board member may be removed from office by affirmative vote of the Members having at least two-thirds (2/3) 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 **Meeting of Board.** 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 the Board shall elect its officers to serve until the first annual meeting of the Board which shall be held immediately following the first annual meeting of the Members and at the same place. All subsequent annual meetings of the Board shall be held without other notice than the By-Law immediately after, and at the same place, or other place, as the annual meeting of Members. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours' notice in writing to each member, delivered personally or by mail or telegram. Any member 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 those present at its meetings when a quorum is present.

4.9 **Execution of Instruments.** 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 President and countersigned by the Secretary.

ARTICLE 5

Powers of the Board

5.1 **General Powers of the Board.** Without limiting the general powers which may be provided by law, this Declaration or these By-Laws, the Board shall have the following general powers and duties:

- A. to elect the officers of the Association as hereinabove provided;
- B. to administer the affairs of the Association and the Property;

C. subject to Section 5.4(B) below, to engage the services of a manager or managing agent who shall manage and operate the Premises and the Common Area thereof;

D. to formulate policies for the administration, management and operation of the Premises, and the Common Area thereof;

E. to adopt administrative rules and regulations governing the administration, management, operation and use of the Premises and the Common Area, and to amend such rules and regulations from time to time;

F. to provide for the maintenance, repair and replacement of the Common Area and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the manager or managing agent;

G. to provide for the designation, hiring and removal of employees and other personnel, including accountants and legal counsel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Area and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be the employees of the managing agent);

H. to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Residential Lot Owners of such Residential Lots which have been occupied for residential purposes, their respective shares of such estimated expenses, as hereinafter provided;

I. to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility or to mortgage the Common Area or any portion for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, transfer or mortgage shall be effective unless an instrument signed by the Class B Member has been recorded, agreeing to such mortgage, dedication or transfer. In the event Class B membership has ceased, then three-fourths (3/4) of the votes of the Class A membership shall be the required to make such action effective;

J. to exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Residential Lot Owners by the Articles of Incorporation, this Declaration or these By-Laws.

5.2 Capital Additions and Improvements. The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions or capital improvements to the Common Area (other than for purposes of replacing or restoring portions of the Common

Area, subject to all the provisions of this Declaration) having a total cost in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of the owners holding two-thirds (2/3) of the total votes.

5.3 **Tax Relief.** In connection with the Common Area, the Board shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge all expenses incurred in connection therewith to the maintenance fund.

5.4 **Rules and Regulations; Management.**

A. **Rules.** The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Premises, and for the health, comfort, safety and general welfare of the Residential Lot Owners and Occupants. Written notice of such rules and regulations shall be given to all Residential Lot Owners and Occupants, and the entire Premises shall at all times be maintained subject to such rules and regulations.

B. **Management.** The Declarant or the Board shall engage the initial management organization under contracts expiring not later than ninety (90) days after the date the initial meeting of Members is held. Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board provided however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Premises before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Any management fees incurred pursuant to this Section 5.4(B) shall be paid from the assessments collected pursuant to Article 6 hereof.

C. Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

5.5 **Liability of the Directors and Officers of the Association.** Neither the Directors nor the officers of the Association shall be liable to the Residential Lot Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors and officers, except for any acts or omissions finally adjudged by a court of competent jurisdiction to constitute gross negligence or other willful misconduct or fraud. The Residential Lot Owners (including the Directors and the officers of the Association in their capacity as Residential Lot Owners) shall indemnify and hold harmless each of the Directors and each of the officers of the Association against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers of the Association on behalf of the Residential Lot Owners or arising out of their status as Directors or officers of the Association, unless any such contract or act shall have been finally adjudged by a court of competent

jurisdiction to have been made fraudulently or with gross negligence or other willful misconduct. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid or received in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any Director or officer of the Association may be involved by virtue of such persons being or having been such Director or officer; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director or officer, or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such Director or officer. It is also intended that the liability of each Residential Lot Owner arising out of any contract made by, or other acts of, the Board or officers of the Association, or out of the aforesaid indemnity in favor of the Directors or officers of the Association, shall be limited to an amount equal to the total liability thereunder divided by the then total number of Residential Lots. Every agreement made by the Board on behalf of the Residential Lot Owners shall be deemed to provide that the Directors are acting only as agents for the Residential Lot Owners, and shall have no personal liability thereunder (except as Residential Lot Owners) and that each Residential Lot Owner's liability thereunder shall be limited to an amount equal to the total liability thereunder divided by the then total number of Residential Lots.

ARTICLE 6

Assessments

Covenants for the Association Assessment, the purposes and use of the Association Assessment, the procedures for the establishment of the Association Assessment, and other provisions applicable thereto shall be in accordance with the terms and provisions of this Declaration and with any additional rules and regulations adopted by the Board or by the Members consistent with the terms and provisions of this Declaration and these By-Laws.

ARTICLE 7

Covenants and Restrictions as to Use and Occupancy

All Residential Lot Owners shall maintain, occupy and use their Residential Lots, Dwelling Units and the Common Area only in accordance with the terms of this Declaration and any additional rules and regulations adopted by the Board or by the Members.

The Board shall have full authority to enforce all such rules and regulations by taking all action as may be necessary.

ARTICLE 8**Committees**

8.1 **Board Committees.** The Board, by resolution adopted by a majority of the directors in office, may designate one (1) or more committees, each of which shall consist of one (1) or more directors; said committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and the delegation thereof of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it or him by law.

8.2 **Special Committees.** Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Members, and the President of the Association shall appoint the members thereof. Any member thereof may be removed whenever in the Board's judgment the best interests of the Association shall be served by such removal.

8.3 **Term.** Each member of the committee shall continue as such until the next annual meeting of the Board and until his successor is appointed and shall have qualified, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

8.4 **Chairman.** One (1) member of each committee shall be appointed chairman.

8.5 **Vacancies.** Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointments.

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

8.7 **Rules.** Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board.

ARTICLE 9**Interim Procedure**

Until the initial meeting of the Members, the Declarant (or its designee) may appoint the Board which shall have the same powers and authority as given to the Board generally.

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ARTICLE 10

Amendments

These By-laws may be amended or modified from time to time in accordance with and in the same manner as provided by the provisions of Section 10.3 and 10.12 of this Declaration. Such amendments shall be recorded in the Office of the Recorder of Deeds of Lake County, Illinois.

ARTICLE 11

Definition of Terms and Construction

The terms used in these By-Laws shall have the same definition as set forth in this Declaration to which these By-Laws are attached to the extent such terms are defined therein. In the event of any conflict, contradiction or ambiguity between the terms and provisions contained in this Declaration or those contained in these By-Laws, the terms and provisions contained in this Declaration shall, in all instances, control and prevail.

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THIS DOCUMENT
PREPARED BY AND
AFTER RECORDING
RETURN TO:

Peter A. Levy Esq.
DLA PIPER RUDNICK GRAY
CARY, LLP
203 North LaSalle Street
Chicago, Illinois 60601-1293

5916146



FILED FOR RECORD BY:
MARY ELLEN VANDERVENTER
LAKE COUNTY, IL RECORDER
12/16/2005 - 12:43:29 P.M.
RECEIPT #: 261105
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DRAWER #: 30

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**FIRST SPECIAL AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS EASEMENTS AND RIGHTS
FOR HAMILTON ESTATES PHASE TWO SUBDIVISION**

THIS FIRST SPECIAL AMENDMENT ("First Special Amendment") amends that certain Declaration of Covenants, Conditions, Restrictions, Easements and Rights for Hamilton Estates Phase Two Subdivision recorded on September 24, 2004 in the Office of the Recorder of Deeds of Lake County, Illinois (the "Recorder's Office") as Document No. 5651789 (the "Declaration"), and is executed as of this 15th day of December, 2005 by RSD METTAWA, LLC an Illinois limited liability company ("Declarant").

RECITALS

A. Declarant has heretofore caused to be recorded that certain Final Plat of Hamilton Estates Phase 2 Subdivision (the "Plat"), which Plat was recorded in the Recorder's Office on September 24, 2004 as Document No. 5651784 and pursuant to which the real estate covered thereby (hereinafter the "Premises") was subdivided into fifteen (15) residential lots (collectively referred to herein as the "Residential Lots" and individually as a "Residential Lot") and one (1) common area lot (the "Common Area Lot") (the Residential Lots and the Common Area Lot collectively make up the Premises which is legally described on Exhibit A attached hereto and by this reference made a part hereof).

B. Pursuant to Article 10.12(B) of the Declaration, Declarant reserved the right and power, so long as Declarant owned at least one Residential Lot, to record a Special Amendment to the Declaration to, *inter alia*: (a) correct clerical or typographic or similar errors in the Declaration; and (b) change, amend or modify terms and conditions of the Declaration based upon Declarant's determination, made in good faith, that such change, is in the best interests of the Premises and is consistent with the intent and purposes of the Declaration.

C. As of the date hereof, the Declarant holds title to one Residential Lot. Specifically, as of the date hereof, the Declarant holds title to Lot 11.

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D. Section 5.1(A)(a)(iii) of the Declaration contains a typographical error, incorrectly listing "Lots 9 through 15" instead of "Lots 7 through 15".

E. Section 5.1(C) of the Declaration contains a typographical error, incorrectly listing "Lots 9 through 15" instead of "Lots 7 through 15".

F. The Declaration does not define the party responsible for the maintenance, improvement, repair and replacement of the landscaping that is present at or on the exterior of the fence that is located at the rear of Lots 7 through 15.

G. Declarant desires to amend the Declaration to correct the typographical errors in Sections 5.1(A)(a)(iii) and 5.1(C) and Declarant has determined that it is in the best interests of the Premises to allocate responsibility for maintenance of the landscaping described in Recital F above to the Association, such responsibility being consistent with the intent and purposes of the Declaration.

NOW, THEREFORE, the Declarant does hereby amend the Condominium Declaration as follows:

1. **Amendment to Section 5.1 – Maintenance of the Common Area.**

A. Section 5.1(A)(a) of the Declaration is hereby deleted in its entirety and replaced with the following:

"A. The Association shall determine and carry out or cause to be performed, in a first rate manner and in compliance with Village standards, all maintenance, improvement, repair and replacement of the Common Area and the improvements that lie therein,

(a) including, without limitation:

- (i) the road, curb and gutter; and
- (ii) the Storm Sewer Mains; and
- (iii) the fence that lies at the rear of Lots 7 through 15 (notwithstanding the fact that such fence does not lie within the Common Area);
- (iv) the entry signage and landscaping that is located within the Common Area but not within the Limited Common Area, as shown on Exhibit E; and
- (v) the landscaping that exists at or on the exterior of the fence that is located at the rear of Lots 7 through 15 (notwithstanding the fact that such landscaping does not lie within the Common Area); but"

B. In Paragraph 5.1(C) of the Declaration the phrase, "the fence that lies at the rear of Lots 9 through 15" is hereby deleted in its entirety and replaced with: "the fence that is located at the rear of Lots 7 through 15".

2. **Terms.** Capitalized terms used in this First Special Amendment shall have the same meanings as ascribed to them in the Declaration, except to the extent they are amended or otherwise defined in this First Special Amendment.

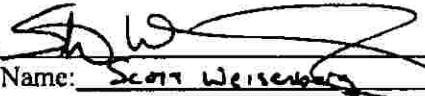
3. **Continuation.** All terms, conditions and provisions of the Declaration, as expressly amended and supplemented by this First Special Amendment, are hereby ratified, confirmed and shall continue to apply with full force and effect. In the event of any inconsistency between this First Special Amendment and the Declaration, this First Special Amendment shall control.

IN WITNESS WHEREOF, RSD METTAWA, LLC has caused this First Special Amendment to be signed as of the date aforesaid.

DECLARANT:

RSD METTAWA, LLC, an Illinois limited liability company

By: Red Seal Development Corp., an Illinois corporation, its sole Manager

By: 
Name: Scott Weisenberg
Its: General Counsel

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Nada Popovic, a Notary Public in and for the
County in the State aforesaid, DO HEREBY CERTIFY that Scott Weisberg the
General Counsel of Red Seal Development Corp., an Illinois corporation, the sole manager of
RSD METTAWA, LLC, an Illinois limited liability company, who is personally known to me
to be the person whose name is subscribed to the foregoing instrument as such G.C.,
appeared before me this day in person and acknowledged that he signed and delivered the said
instrument as his own free and voluntary act and as the free and voluntary act of said corporation
in its capacity as the sole manager of said limited liability company, for the uses and purposes
therein set forth.

GIVEN under my hand and notarial seal this 15th day of December, 2005.

Nada Popovic
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

LOTS 1 THROUGH 16, INCLUSIVE, IN THE HAMILTON ESTATES PHASE TWO SUBDIVISION, ACCORDING THE PLAT THEREOF RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF LAKE COUNTY, ILLINOIS ON SEPTEMBER 24, 2004 AS DOCUMENT NO. 5651784.

PIN: A part of 11-36-103-021 *and*
A part of 11-36-103-022

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