

HAWTHORN GROVE SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

This Declaration made this 15th day of March, 2001 by HAWTHORN GOVE ASSOCIATES, LLC, an Illinois Limited Liability Company (hereinafter referred to as either the "Developer" or the "Declarant").

RECITALS:

- A. Developer is the title holder of that certain real property, consisting of approximately 109 acres, situated in the Village of Hawthorn Woods, Lake County, Illinois, the legal description of which is set forth on Exhibit A attachment hereto and made part hereof (the "Property").
- B. Developer as the Owner of the Property intends to develop the Property into single family residences.
- C. In order to preserve and enhance the value of the Property, developer will form an Illinois Not-For-Profit Corporation ("Association"), comprised of each of the Owners of the Lots within the Property, which will have the responsibility of maintenance of the Common Areas and enforcement of the restrictions, covenants and conditions as herein provided.
- D. The Association is obligated hereby to maintain, manage and preserve the Outlots and wetlands as set forth in the Plat of Subdivision and provided for herein in Article III, Section 1 and Article VII, Section 5 (see Exhibit D for guidelines on preservation of Wetlands).
- E. Declarant intends to subject the Property to the covenants, conditions, easements and restrictions hereinafter set forth, each and all of which are for the benefit of the Association.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding upon and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their respective personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot including contract sellers and title holding trusts. Each Lot, for the purposes of this Agreement, shall be deemed to have one Owner. Owner may also be referred to herein as a Unit Owner, Lot Owner or Homeowner.

Section 2. "Association" shall mean and refer to the Lot Owners' Association to be formed, its successors and assigns. The Association shall be the governing body for all of the Owners with respect to the administration, maintenance and repair of certain portions of the Property as provided herein and said Association shall be the legal representative for all matters and claims relating directly or indirectly to the Common Areas or matters of common interest to all Owners. Each owner shall automatically become and be a member of the Association so long as he or she membership shall thereupon automatically terminate and transfer and inure to the new Owner succeeding in interest.

Section 3. "Plat of Subdivision" ("Plat") shall mean and refer to the Plat of Subdivision for HAWTHORN GROVE SUBDIVISION recorded April 9, 2001 and any other recorded plat of subdivision relating to the Property.

Section 4. "Common Areas" shall mean those areas of the Property referred to as Outlots A through H on the Plat of Subdivision, subject to the provision of Article VI, Section 2 hereof.

Section 5. "Lot" shall mean and refer to the subdivided parcels of land which are part of the Property and which are shown on the Plat of Subdivision, intended for development of single family residences.

Section 6. "Developer" shall mean HAWTHORN GROVE ASSOCIATES, LLC, an Illinois Limited Liability Company.

Section 7. "Village" shall mean the Village of Hawthorn Woods, an Illinois municipal corporation. Any covenants or provisions contained herein are intended to inure to the benefit of the Village and governmental body or agency hereafter designated or appointed by the Village to provide maintenance, repair, drainage or landscaping services for or upon the Property.

ARTICLE II

PROPERTY RIGHTS

Section 1. **Association Maintenance Easements.** The Declarant does hereby grant to the Association an access easement for maintenance and repair over the Common Areas.

Section 2. **Developer's Easement.** Declarant does hereby grant to the Developer, its agents, employees, contractors, successors and assigns (1) the right and easement to maintain and repair the Common Areas, until such time as the Developer no longer owns any Lots; (2) the right to enter upon the Common Areas from time to time to the extent reasonably necessary to repair or maintain any facilities in the Common Areas; (3) the right to construct a fence on Outlots (4) the right to construct a Sales Office and model home area on designated areas of the Property and (5) an easement, for the purpose of erecting, maintaining, repairing and replacing billboards, banners

and exterior lighting, and other advertising and promotional displays over and across the Common Areas and the exterior of any structure or any Lot being uses as a model for so long as the Developer, its agents, employees, contractors, successors and assigns is engaged in the constructions, sale or leasing of Lots on any portions of the Property.

Section 3. Outlot Easement Provision. An easement is hereby reserved and granted over and under the platted areas of Outlots A through H to the Village of Hawthorn Woods, together with their respective successors and assigns, to renew, operate and maintain storm water detention ponds, overland flow paths, storm sewers, streams and channels, surface and subsurface drainage and its Wetlands in the event the Association fails to do so.

Section 4. Governmental Easements. Declarant hereby grants to the Village a perpetual easement to enter upon the Property including the Common Areas and Lots for the purposes of (1) maintaining, inspecting, repairing, reconstructing and replacing any retention and detention facilities and any other Village utilities, and pipes, cables and appurtenant structures of any cable TV or other utility licensed or designated by the Village to provide utility or cable TV services, and (2) the maintenance of the Village streets and (3) providing governmental service, including, but not limited to, fire protection and police protection, and (4) for the enforcement of all Village ordinances, state statutes and other laws, including, but not limited to, reading meters and ticketing vehicles parked in violation ordinance, state statute or other law.

Section 5. Easements to Run with the Land. All easements and rights described and granted in the Declaration are easements appurtenant to and run with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in any deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantee, mortgagee or trust of the Declarant and the Owner as fully and completely as though such easements and rights were set forth and recited in their entirety in such document.

ARTICLE III

MAINTENANCE OF PROPERTY

Section 1. Common Areas and Easements. Developer, and thereafter upon its establishment the Association, shall be charged with the responsibility for the ownership, maintenance, landscaping, repair, restoration and upkeep of all of the Common Areas of Outlots A through H and may employ, retain, or contract with appropriate entities or individuals as necessary to perform the obligations stated herein. All Common Areas which include wetlands, flood plains and floodways must be maintained in accordance with all applicable Village and Lake County Codes and Ordinances. All such wetlands, flood plains and floodways shall be maintained in their natural state to the extent practical. The Common Areas include Village limited restorative easements rights for anything

which may be reasonably necessary including signage. Upon the failure of the Developer or the Association to perform any of its maintenance duties or other obligations relating to the Common areas within thirty (30) days after mailing written notice to the Association at its last address known to the Village, the Village shall have the right, but not the obligation, to enter upon the Property and the Common Areas to abate, correct, or eliminate any nuisance or any violation of village ordinance, state statute or other law at the expense of the Association; provided, however, that no notice shall be required in the event that the Village President or Board of Trustees of the Village determines in good faith that an emergency exists. Upon such determination, the Village may proceed to abate or eliminate such nuisance or violation without notice to the Association.

This Declaration shall constitute a contract between the Association and all of the Owners from time to time of the Lots for the performance of such work as the Village may determine to be reasonably required to abate such nuisance or correct or eliminate such violation. The Association and the Owners from time to time of Lots are hereby given notice that the Village has the right to perform and may perform such work without further notice.

If the Village performs any such work, it shall be entitled to completed reimbursement by the Association. If payment is not made within thirty (30) days after demand, then a proportionate share of the total expense (determined in the same manner as the annual assessment is determined under this Declaration and the Bylaws) shall become a lien on each Lot. Each such lien shall be subordinate to the lien of the first mortgage on a Lot, but shall be superior to the Association's assessment lien with respect to the Lot for assessments which become due after the date on which the Village's lien attached to the Lot.

Section 2. **Lots.** The Owner of each Lot shall at all times and at his or her own expense keep his or her respective Lot, and the buildings, improvements, and appurtenances thereon in a safe, clean and, wholesome condition and comply in all respects with all governmental, health, fire, and police requirements and regulations, including all building lines and, if applicable, all wetland building lines and wetland buffer zones, setbacks and conservancy easements as depicted on the Final Plat of Subdivision. Owners shall in no manner be permitted to obstruct or divert the natural surface water drainage across and over their Lots. Owners shall not use or permit the use of any of the detention or retention areas, if any, for any activity other than drainage purposes. In the event an Owner fails to comply with any or all of such specifications or requirements, the Association shall have the obligation, right, privilege and license to enter upon such Lot and shall have the duty to make any and all corrections or improvements that may be necessary to meet such standards, and to charge such Owner the expense incurred in so doing.

ARTICLE IV **LOT OWNERS' ASSOCIATION**

Section 1. **Membership.** Every Owner shall automatically be a member of the Association without the right of withdrawal, and shall remain so as long as he or she remains and Owner.

Declarant shall be a member of the Association to the extent of any Lots it owns. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Voting Rights. The Association shall have one class of voting membership. This class shall consist of all Owners including the Developer or the Developer's lender. Each member shall be entitled to one (1) vote for each Lot owned and voting shall not be committed. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If the Owners of a Lot cannot agree how their vote shall be cast, their vote shall not be counted.

Section 3. Bylaws. The Association shall be governed by Bylaws which shall be in the form of Exhibit B attached hereto and made part hereof.

Section 4. Rules and Regulations. The Association shall adopt such Rules and Regulations as it may deem advisable from time to time for the maintenance, conservation, repair and beautification of the Property and for health, comfort, safety and general welfare of the Owners. The initial Rules and Regulations for the subdivision are attached hereto as Exhibit C. The Rules and Regulations may be amended by a majority vote of the Lot Owners.

Section 5. Payment of Association Charges. Each Owner of any Lot by acceptance of a deed therefore, whether from Declarant or any Owner, and whether or not expressed in any such deed or other conveyance for each Lot owned by each Owner shall pay to the Association (a) annual assessments or charges due and payable on a date the board of directors of the Association shall elect; and (b) special assessments to be fixed, established and collected from time to time by the board of directors of the Association. The annual and special assessments, together with statutory interest thereon and cost of collection thereof, including, but not limited to, reasonable attorneys' fees, shall be a continuing lien upon such Lot against which each such assessment is made. Such assessments shall be a continuing personal obligation of the person who is the Owner of such Lot at the time the assessment was incurred.

A contribution to the Association for the start-up costs and the operating reserves of the Association, in an amount equal to three (3) times the first monthly assessment for the Lot, shall be collected from the purchaser at the initial sale of each Lot by the Developer, the purchaser shall pay its prorata share of the monthly assessment beginning on the closing date and thereafter.

ARTICLE V **INSURANCE**

Section 1. Liability Insurance. The Association shall acquire as a common expense, a policy or policies of comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas, including the

design, operation or maintenance of the detention basins and retention ponds on Outlots A through H (subject to provisions of Article VI, Section 2), in the minimum amount of \$500,000 for each occurrence and \$500,000 in the aggregate and naming the Village, its officials, employees and agents as additional insured, insuring the Association, the Owners, and the Declarant, and their respective employees, agents and all persons acting as agents. The developer shall be included as an additional insured. The insurance shall cover claims of one or more parties against other insured parties. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above-named insured persons or entities.

ARTICLE VI

RIGHTS AND OBLIGATIONS OF DEVELOPER

Section 1. **Initial Administration of the Development.** Until the first meeting of the members of the Association, which meeting shall be held in September 2004, or within sixty (60) days after the conveyance of 80% of the Lots whichever first occurs, the rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Association by this Declaration, including the insurance provisions contained in Article V, shall be held and preformed by Developer. In exercising such rights, and the other rights reserved by Developer pursuant to this Declaration, Developer shall not be under any disability which would otherwise be imposed by law by reason or Developer's interest in the subject matter of the transaction or of any transaction.

Section 2. **Non-Recourse to Developer.** It is expressly understood and agreed, anything herein to the contrary notwithstanding, that each of the representations, covenants, undertakings, and agreements herein made on the part of Developer are made and intended not as personal representations, covenants, undertakings and agreements by Developer, but are made and intended solely for the purpose of binding the Property and Common Areas to the terms, conditions and provision of the Declaration. No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Developer (or any officers, directors, partners, agents or employees of Developer) on account of this instrument or on account of any representation, covenant, undertaking or agreement of Developer in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released. The remedy of any Owner for the failure of Developer to perform any of its obligations, covenants or agreement hereunder is expressly limited to and shall be enforceable only against the Property and Common Areas.

ARTICLE VII

REAL ESTATE TAXES

Section 1. **Common Areas.** All real estate taxes, if any, levied, assessed or otherwise imposed on the Common Areas, including without limitation all special assessments and special service district taxes, shall be an obligation of the Association and shall be paid by the Association as otherwise provided herein.

ARTICLE VIII
GENERAL PROVISION

Section 1. **Severability.** Invalidation of any one of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

Section 2. **Amendments.** At any time and from time to time while these covenants, conditions, easements and restriction are in effect, they may be amended or revoked by the recording in the Office of the Recorder of Lake County, Illinois, of an instrument declaring such amendment or revocation, which instrument shall be signed by the undersigned or its successors or assigns or by the then Owners of not less than two-thirds (2/3) of the Lots in the HAWTHORN GROVE SUBDIVISION, which instrument shall set forth such amendment or revocation and shall be effective from and after the date of its recording; provided, however, that if the undersigned or its successors and assigns shall hold legal title to any Lot or Lots in the Subdivision, then an amendment or revocation signed by not less than two-thirds (2/3) of the Owners of such Lots must also be signed by the undersigned, its successors or assigns and if not so signed, such amendment or revocation shall not be valid. A Certificate signed and acknowledged by the Board of Directors of the Association shall be prima facie evidence that such instrument of amendment or revocation has been signed by the Owners of the required number of Lots.

Notwithstanding the foregoing, no amendment relating to obligations and duties of the Association with respect to the Common Areas or affecting any of the rights of the Village shall be effective without the prior written consent of the Village, by ordinance duly passed and approved by the corporate authorities of the Village.

Section3. **Rights and Obligations.** The provisions of this Declaration and the rights and obligations established hereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or other document transferring any interest therein, or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration, the Bylaws, and any Rules and Regulations enacted by the Developer or the Board of Directors of the Association whether or not mentioned thereof is made in the deed.

Section 4. **Title in Trust.** In the event title to any Lot shall be conveyed to a title-holding trust under which all powers of management, operation and control of the Lot remain or become vested in the trust beneficiary or beneficiaries, then the trust estate and the beneficiaries thereunder shall

be personally liable for the payment of any obligation, lien or indebtedness chargeable pursuant to this Declaration against such Lot. No claim shall be made against the trustee of any title holding trust personally for payment of any claim, lien or obligation hereby created.

Section 5. **Outlot Deed Restriction.** All designated wetlands, buffer areas, and natural areas located in Outlots A through H in Hawthorn Grove Subdivision, as identified heron, shall be maintained, preserved, and protected by the Hawthorn Grove Homeowners Association.

Except for signage on Outlots A and B to identify the development, berms to be constructed and replanted by the developer on Outlots A, B, and G and detention ponds on Outlots B, D and H, no above grade structures or any obstructions to overland storm water flow routes shall be constructed on any of the Outlots without the prior written consent of the Village of Hawthorn Woods and the U.S. Army Corps of Engineers, Chicago District.

Neither the developer nor the Association may sell or convey any of the Outlots to any third party without the prior written consent of the Village of Hawthorn Woods and the U.S. Army Corps of Engineers, Chicago District.

This Document Was Prepared By And After Recording Mailed To:
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(SIGNED BY PURCHASER AT INITIAL SALE OF EACH LOT)

HAWTHORN GROVE ASSOCIATES, an Illinois Limited Liability Company

By: _____

Its: President

STATE OF ILLINOIS)

) SS

COUNTY OF LAKE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that the above named President of HAWTHORN GROVE ASSOCIATES, LLC, an Illinois Limited Liability Company, Declarant, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledge that he signed and delivered the said instrument as his own free and voluntary act and as the act of said company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this _____ day of _____.

Notary Public

My Commission Expires: _____ (SEAL)

CONSENT OF MORTGAGEE

The undersigned, as Mortgagee under those certain Mortgages date _____ and recorded on _____ with the Recorder of Lake County, Illinois as Documents No. _____ and _____ hereby consents to this Declaration.

By: _____

Its: _____

ATTEST: _____