



# DIAMOND BAY DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration made this 17th day of May, 1991, by PULTE HOME CORPORATION, a Michigan corporation (hereinafter referred to as "Declarant").

## WITNESSETH:

WHEREAS, Declarant is the owner or has an interest in certain Properties in the City of Aurora, County of DuPage, State of Illinois, which is more particularly described in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the said Properties shall be conveyed, subject to certain protective easements, restrictions, covenants, conditions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, the Declarant hereby declares that all of the Properties described in said Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, liens and charges which are for the purpose of protecting the value and desirability of, and which shall run with the Properties and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE ONE

### DEFINITIONS

**SECTION 1. "ASSOCIATION"** shall mean and refer to Diamond Bay Homeowner's Association, an Illinois not-for-profit corporation, its successors and assigns.

**SECTION 2. "COMMON AREA"** shall mean all real property (and improvements thereto, including but not limited to any Detention Areas) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Outlots B, C, D, E, F, G, H and J in Diamond Bay Units I and II being a Resubdivision of part of Lot 92 in Willow Shores, being a Subdivision of part of the Southeast Quarter of Section 20 and part of the East Half of Section 29, Township 38 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document No. R79-72361 in DuPage County, Illinois.

The Common Area may be designated on any Plat of Subdivision of the Properties or on any Amendments or Supplementary Declaration.

**SECTION 3. "COMMUNITY FENCES"** shall mean those fences initially installed by Declarant on any land within the Properties but excluding privacy fences installed between townhouses.

**SECTION 4. "CUL-DE-SAC LANDSCAPING"** shall mean the landscaping initially installed by Declarant within the cul-de-sac islands or eyebrows on the streets located within the Properties. Such cul-de-sac islands or eyebrows, like the streets, shall be dedicated to the City of Aurora.

**SECTION 5. "DECLARANT"** shall mean and refer to Pulte Home Corporation, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**SECTION 6. "ENTRYWAYS"** shall mean such portions of the Properties as may be identified on any Plat of Subdivision thereof or as Declarant may determine, on which Declarant, prior to conveyance of the same to a third party, has constructed or has commenced construction of a sign or monument identifying the Diamond Bay Development or any portion thereof.

**SECTION 7. "LOT"** for the purposes of this Declaration shall mean and refer to any plot of land shown upon any Plat of Subdivision of the Properties and upon which one individual townhouse dwelling unit is constructed or to be constructed.

**SECTION 8. "MEMBER"** shall mean and refer to every person or entity who holds a membership in the Association.

**SECTION 9. "OWNER"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 10. "PARK PATHWAYS"** shall mean those asphalt pathways installed by Declarant on any Lot or the Common Area within the Properties, which are eight (8) feet in width, designed to accommodate pedestrian traffic between the Properties and land near the Properties which is owned by the Fox Valley Park District, (a) designated on the Plat of Subdivision, a deed, declaration of easement or grant of easement executed and recorded by Declarant with the Recorder of Deeds of DuPage County, Illinois, or (b) which Declarant has installed or has commenced the installation of for uses as a Park Pathway prior to the time such Lot or Common Area is conveyed by Declarant to a third party. Park Pathways may be located in the Common Areas or within Lots. Park Pathways located on any Lot shall be owned by the Owner of the Lot and Park Pathways located on the Common Area shall be owned by the Association, but such Park Pathways shall be maintained by the Fox Valley Park District.

**SECTION 11. "PARKING AREAS"** shall mean (a) any areas designated as "Parking Areas" on any Lot or Common Area, by a plat of subdivision, a deed, a declaration of easement or a grant of easement executed and recorded by Declarant with the Recorder of Deeds of DuPage County, Illinois, or (b) any areas constructed by Declarant for use as parking areas within any rights-of-way within the Properties, or (c) any areas within a Lot or Common Area on which Declarant has commenced construction for use as Parking Areas at the time such Lot is conveyed by Declarant to a third party. Areas designated as "Parking Areas" may (but shall not be required to) be deeded to the Association as Common Area.

**SECTION 12. "PATHWAY LIGHTS"** shall mean those lights installed by Declarant on any Lot or Common Area for purposes of lighting the Pedestrian Pathways or Park Pathways. Pathway Lights shall be owned and maintained by the Association.

**SECTION 13. "PEDESTRIAN PATHWAYS"** shall mean those asphalt pathways installed by Declarant on any Lot or Common Area within the Properties, which are five (5) feet in width, designed to accommodate pedestrian traffic within the Properties, over, upon, and across Common Areas and Lots, (a) designated on the Plat of Subdivision, a deed, declaration of easement, or grant of easement executed and recorded by Declarant with the Recorder of Deeds of DuPage County, Illinois or (b) which Declarant has installed or has commenced the installation of for use as a Pedestrian Pathway prior to the time such Lot or Common Area is conveyed by Declarant to a third party. Pedestrian Pathways may be located in the Common Area or within Lots. Pedestrian Pathways located on any Lot shall be owned by the owner of the Lot, but shall be maintained by the Association.

**SECTION 14. "PLAT OF SUBDIVISION"** shall mean a plat of the Properties, or any part thereof, subdividing or resubdividing the same into Lots, and recorded with the Recorder of Deeds of DuPage County, Illinois.

**SECTION 15. "PROPERTIES"** shall mean and refer to that certain real property hereinbefore described on Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**SECTION 16. "RIGHT-OF-WAY LANDSCAPING"** shall mean landscaping initially installed by Declarant within the right-of-way along the dedicated streets within or abutting the Properties.

## ARTICLE TWO

### ANNEXATION OF ADDITIONAL PROPERTIES

**SECTION 1. Annexation by Declarant.** If within six (6) years after the date of this Declaration, the Declarant should develop Additional Land within the area described on Exhibit "B" attached hereto and incorporated herein, such Additional Land may be annexed to the Properties within the assent of the Class A Members, as that term is hereinafter defined. Such Additional Land or portions thereof may be annexed in separate phases and shall be considered annexed to said Properties and subjected to the provisions of this Declaration of Covenants, Conditions and Restrictions if within such six (6) year period Declarant executes and records an Amendment or Supplementary Declaration with the Recorder of Deeds of DuPage County, Illinois, describing the portion to be annexed to said Properties and legally and specifically making said Additional Land or portions thereof, subject to this Declaration. Any such Amendment or Supplementary Declaration may designate Lots, Common Area, and Parking Areas.

Prior to the time Declarant annexes any such Additional Land to the Properties, it shall first (i) pay or cause to be paid all general real estate taxes which are due and payable at the time of annexation, and (ii) complete, cause to be completed, or make arrangements for or cause arrangements to be made for the completion of all public and quasi public improvements required to service the Lots to be contained in the phase(s) then being annexed, if any. In improving or causing the improvements of any additional phase(s), Declarant shall keep the Properties subjected to this Declaration free of any liens, or claims for liens, for labor or materials provided in such improvements, pursuant to the Illinois Mechanics' Lien laws. Although it shall not be a requirement that the townhouses constructed by Declarant on any phase(s) of the Additional Land annexed to the Properties have the same architectural design or

style of those to be located on the Properties described in Exhibit "A", any such townhouses shall be of a quality of construction at least as good as the quality of construction of the townhouses located in the Properties described in Exhibit "A", and the design of such townhouses shall be compatible with the design of the townhouses located in the Properties described in Exhibit "A".

**SECTION 2. Annexation by the Members.** Except as provided in Section 1, above, annexation of any real estate to the Properties shall require the recording of an instrument signed by the Association with the assent of not less than sixty-seven percent (67%) of the votes of each class of Members present in person or by written proxy at a meeting duly called for this purpose, at which a quorum is present, written notice of which shall be sent to all Members not less than five (5) days nor more than forty (40) days in advance of the meeting setting for the purpose of the meeting.

**SECTION 3. Annexation Limited to Lots and Common Area.** No real estate may be annexed to the Properties whether under the provisions of Section 1 or Section 2 of this Article, other than real estate that will fall within the definition of "Lots" or "Common Area", as set forth in ARTICLE ONE hereof, but such real estate may also contain Parking Areas, Park Pathways, Pedestrian Parkways, Pathway Lights, Community Fences, Entryways, Cul-de-Sac Landscaping, or Right-of-Way Landscaping.

## ARTICLE THREE

### MEMBERSHIP IN THE ASSOCIATION

**SECTION 1. Membership.** Every person or entity, including the Declarant, who is a record owner of a fee or an undivided fee interest in any Lot which is subject to this Diamond Bay Declaration of Covenants, Conditions and Restrictions, including contract sellers, shall be a Member of the Association and each purchaser of any Lot by acceptance of a deed therefor covenants and agrees to be a member of the Association whether or not it shall be so expressed in any deed or other conveyance. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. For each Lot owned, the Owner thereof shall be entitled to one (1) membership. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. For the purpose of this Declaration, the word "Member" shall include any beneficiary of a trust holding legal title to one or more Lots.

**SECTION 2. Transfer.** Membership held by any Owner of a Lot is an appurtenance to such Lot and shall not be transferred, alienated, or pledged in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser of such Lot. Any attempt to make a transfer except by the sale or encumbrance of a Lot is void. Reference to the transfer of membership need not be made in an instrument of conveyance or encumbrance of such Lot for the transfer to be effective, and the same shall automatically pass with title to the Lot.

## ARTICLE FOUR

### VOTING RIGHTS IN THE ASSOCIATION

The Association shall have two classes of voting membership:

**Class A:** Class A Members shall be all those Owners as defined in ARTICLE THREE with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership in ARTICLE THREE. When more than one person holds such interest in any Lot, all such persons shall be Members and 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.

**Class B:** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by ARTICLE THREE, provided that the Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- (a) Seven (7) years from the date of this Declaration of Covenants, Conditions and Restrictions.
- (b) One hundred twenty (120) days after which seventy-five percent (75%) of the Lots which have been submitted to this Declaration (either as a part of the original Properties or as Additional Land or a phase thereof annexed thereto) shall have been conveyed by Declarant to Owners, if Declarant has failed to start construction of a townhouse on any Lot in a phase of the Additional Land which has not yet been annexed to the Properties within such one hundred twenty (120) day period; provided however, if Declarant has so started construction of a townhouse on any Lot in a phase of the Additional Land which has not yet been annexed to the Properties within such one hundred twenty (120) day period, then the provisions of this

subparagraph shall be applicable to the combined total of the Lots then comprising the Properties and those contained in such phase of the Additional Land which is thereafter annexed to the Properties (for purposes hereof, the term "start construction" shall mean the excavation of a building site on one Lot within the boundaries of a phase); or

- (c) The date on which Declarant voluntarily withdraws as the Class B Member by executing and recording with the Recorder of Deeds of DuPage County, Illinois, a written declaration of intent to withdraw, which shall become effective in the manner specified in such declaration of intent.

Anything contained in the Articles of Incorporation or the By-laws of the Association notwithstanding, so long as Declarant is a Class B Member, it shall have the absolute right to appoint and remove any member of the Board of Directors and/or officers of the Association.

## **ARTICLE FIVE**

### **PROPERTY RIGHTS**

**SECTION 1. Members' Easements of Enjoyment.** Every Member shall have a right and easement for ingress and egress over and across and use of enjoyment in and to the Common Area, Parking Areas, Park Pathways and Pedestrian Pathways and such easements shall be appurtenant to and shall pass with the title to every Lot. Reference in the respective deeds of conveyance, or in any mortgage or trust deeds or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of said parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents. Said right of easement for ingress and egress over and across and of enjoyment in and to the Common Area, Parking Areas, Park Pathways or Pedestrian Pathways shall be subject to the following provisions:

- (a) The right of the Association, in accordance with Articles and By-Laws to borrow money for the purposes of improving or reconstructing the Common Area and facilities thereof and in aid thereof to mortgage said Common Area (or a portion thereof).
- (b) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association provided that any suspension of such voting rights, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the By-Laws of the Association.
- (c) The right of the Association to declare or grant easements and licenses and to dedicate or transfer all or any part of the Common Area, Parking Areas and Pedestrian Parkways to any public agency, authority, or public or private utility and to dedicate or transfer all or part of the Park Pathways to the Fox Valley Park District for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument has been recorded, signed by the Association and authorized by the assent of at least sixty-seven (67%) percent or more of the votes of each class of Members present in person or by proxy and entitled to vote at a meeting duly called for this purpose at which a quorum is present, written notice of which is mailed to all Members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purposes of the meeting.
- (d) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, Parking Areas, Pedestrian Pathways and Park Pathways.
- (e) The right of Declarant and its designees within the area described on Exhibit "A" (and their respective sales agents and representatives) to (1) non-exclusive use of the Common Area (as may be amended by annexation from time to time) in connection with the sale or rental of residential units within such tracts; and (2) the use of any improved townhouse on any of the Lots as a sales office until the last such Lot in the Properties or any of the Additional Lands annexed thereto is improved with a townhouse and conveyed to a third party purchaser.
- (f) Such other rights as are reserved or created by this Declaration.

**SECTION 2. Delegation of Use.** Any Member may delegate in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area, Parking Areas, Pedestrian Pathways and Park Pathways to the members of his family, his tenants or contract purchasers who reside on the property.

**SECTION 3. Access to Lots.** The Association and its respective agents, employees and independent contractors shall have the right and license to enter upon any Lot to the extent necessary to exercise any right or responsibility of the Association as set forth in this Declaration, as to the Lot or the home or other improvements situated thereon, and shall not be guilty of trespass.

**SECTION 4. Access to Adjoining Lots.** Every Owner of a Lot and also the Association, and their respective agents, employees and independent contractors, shall have and is hereby granted the right and license to enter upon the adjoining Lot or the Common Area to the extent necessary for the purpose of maintaining, repairing and replacing the improvements situated on or near the boundary of such Owner's Lot and shall not be guilty of any trespass. In the event the Owner of a Lot or the Association, or their respective agents, employees or independent contractors enter upon any such Lot or the Common Area for the purposes of exercising the right and license created by this Section 4, then such Owner, or the Association, as the case may be, shall make all necessary repairs or replacements on such Lot or the Common Area to correct any damage inflicted upon the same by exercise of the right and license.

**SECTION 5. Title to the Common Area.** The Declarant covenants for itself, its heirs and assigns, that it will convey or cause to be conveyed fee simple title to the Common Area to the Association free and clear of all encumbrances and liens, prior to the conveyance by Declarant of the first Lot improved with a townhouse dwelling to an Owner subject to:

- (a) Covenants, conditions and restrictions then of record;
- (b) The terms of this Declaration;
- (c) Public zoning ordinances;
- (d) Current real estate taxes, not yet due and payable (for which Declarant shall pay or make arrangements to pay its pro rata share);
- (e) Utility easements granted or to be granted for sewer, water, gas, electricity, telephone and any other necessary utilities; and
- (f) Reservation of easement for ingress and egress.

**SECTION 6. Waiver of Use.** No Member may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or by abandonment of his Lot.

## **ARTICLE SIX**

### **COVENANT FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant (subject to the provisions set forth in Sections Seven and Eight of this ARTICLE SIX) for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor or possession thereof, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to personally and individually covenant and agree to pay to the Association; (1) annual assessments or charges, (2) special assessments, and (3) a single capital contribution, such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments, together with interest thereon, attorney's fees and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment (and deficiency contributions, in the case of Declarant), together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment falls due. The personal obligation shall pass to his successors in title accepting a deed to or assignment of beneficial interest in any trust holding title to said Lot.

**SECTION 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare and enjoyment of its members, and in this connection, for the maintenance of the Lots including yards and landscaping, for the maintenance and repair of the townhouses constructed on the Lots, for the maintenance, repair, improvement of the Parking Areas, Common Area, Pedestrian Pathways, Pathway Lights, Community Fences, Entryways, Cul-de-Sac Landscaping and Right-of-Way Landscaping and for the snow plowing of the Parking Areas, Common Areas and facilities thereon, and the payment of real estate taxes thereon, for snow removal from driveways, for snow removal around and maintenance, repair and replacement of any cluster mailboxes within the Properties, for the payment of premiums for the insurance

which is the obligation of the Association, and to provide funds for the Association to carry on its duties set forth herein or in its Articles of Incorporation or By-Laws.

**SECTION 3. Basis and Maximum of Annual Assessments.** Until January 1st of the year immediately following the year of conveyance of the first Lot to an Owner, the maximum annual assessment permitted shall be \$840.00 per Lot (and if collected monthly, at the rate of \$70.00 per month).

- (a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1st of each year by the Board of Directors of the Association (at any meeting of the Board of Directors duly convened at least thirty (30) days prior to said January effective date) without a vote of the membership, provided that any such increase shall not be greater than a ten percent (10%) increase over the maximum annual assessment permitted for the year immediately preceding.
- (b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased for any year by the Board of Directors of the Association at any time, over the maximum annual assessment permitted for the year immediately preceding, without the vote of the membership, if the same is necessary to (i) pay the costs of any increases in real estate taxes for the Common Area over prior years, or (ii) pay the cost of increases in premiums for insurance procured by the Association over the prior years.
- (c) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased for the coming assessment year only or for all succeeding assessment years effective January 1st of each year by the Board of Directors at any meeting of the Board of Directors (duly convened at least thirty (30) days prior to said January 1st effective date) in an amount greater than provided in subsections (a) or (b) hereof for the coming assessment year provided that any such change shall have the assent of the majority of the votes of each class of Members voting in person or by proxy, at a meeting duly called for such purpose, at which a quorum is present, written notice of which will be sent to all Members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purpose of the meeting.
- (d) After consideration of future needs and expected expenditures of the Association, the Board of Directors may fix regular annual assessments in lesser amounts than the maximum annual assessments permitted or may, in its discretion, require no annual assessment whatsoever for any year, but such action shall not limit or prohibit the Board from fixing assessments for any year(s) following on the basis of increases in the maximum annual assessments permitted hereunder rather than the actual assessments so fixed.

**SECTION 4. Reasonable Reserves.** The Association shall establish and maintain from annual assessments collected hereunder, reasonable reserves for the costs of the maintenance and repair of the townhomes, yards, landscaping and driveways located on the Lots and for the costs of maintenance, repair and replacement of the Common Area, Entryways, Community Fences, Pedestrian Pathways, Pathway Lights, Cul-de-Sac Landscaping and Right-of-Way Landscaping, all of which are the obligation of the Association hereunder.

**SECTION 5. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment for the purpose of defraying in full or in part: (a) the cost of any reconstruction, repair or replacement of the townhome located on any Lot, including landscaping related thereto; (b) the cost of any construction, reconstruction, repair or replacement of any improvement on the Common Area, including the necessary fixtures, personal property or landscaping related thereto; (c) the cost of any reconstruction, repair, or replacement of the Entryways, Community Fences, Parking Areas, Pedestrian Pathways, Pathway Lights, Cul-de-Sac Landscaping, or Right-of-Way Landscaping; or (d) for the purpose of providing funds to the Association to carry on any of its duties set forth in this Declaration or in its Articles of Incorporation or By-Laws; provided that any such assessment shall have the assent of a majority of the votes of each class of Members voting in person or by proxy at a meeting duly called for this purpose, at which a quorum is present, written notice of which shall be sent to all Members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purpose of the meeting. Unless the special assessment specifies that it shall be applicable to a specified number of years, it shall be applicable only to the year enacted. In the event a special assessment is to be levied for the construction, reconstruction, repair or replacement of less than all of the townhouses located within the Properties,

such assessment may, by the action described herein, be levied against only those Lots which benefit by such construction, reconstruction, repair, or replacement, in proportion to their benefit, and not against the other Lots in the Properties.

**SECTION 6. Uniform Rate of Assessment.** Annual assessments must be fixed at a uniform rate for all Lots, and may be collected on a monthly basis or such other basis as set by the Board of Directors.

**SECTION 7. Assessment for Lots Owned by Declarant.** Notwithstanding the foregoing provisions, the annual assessments and the special assessments for any Lots while owned by Declarant and improved with a completed townhouse, but unoccupied by any tenant of Declarant shall be limited to 25% of the amounts fixed with respect to Lots owned by Owners other than Declarant. Prior to the completion of a townhouse on any Lot, such Lot shall be exempt from assessments.

**SECTION 8. Deficiency Contributions.** For every calendar year during which Declarant remains a Class B Member of the Association, Declarant shall contribute to the Association all funds in excess of the budgeted and collected assessments which shall be necessary to defray the costs properly paid or incurred by it for the purposes for which annual assessments may be collected, all without limitation to the maximum amounts provided under Section 3. Declarant's contribution for the calendar year during which Declarant's Class B membership terminates shall be prorated to the date of such termination.

For purposes hereof, the establishment of reserves pursuant of Section 4 of this ARTICLE SIX does not constitute the payment or incurring of costs by the Association and Declarant's deficiency contribution shall not be required to be applied to the establishment of reserves.

**SECTION 9. Date of Commencement of Annual Assessments, Due Dates:** The annual assessments provided for herein shall commence for any Lot within the Properties or any phase thereof annexed to the Properties on the day of the conveyance of the first Lot in the Properties or such phase and shall be prorated for the month of said conveyance. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of the annual assessment shall be sent to every Owner subject thereto. The due dates when said annual assessments are due and payable shall be established by the Board of Directors.

**SECTION 10. Capital Contribution.** At the time of the initial sale of any Lot from Declarant to any Owner, such Owner shall pay to Declarant for the use of the Association a sum equal to twice the monthly charge for the Annual Assessment then in effect. Such sum shall be delivered by Declarant to the Association for use as described in Section 2 of this ARTICLE SIX. The Capital Contribution for any Lot shall be levied only upon the sale by Declarant to an Owner and shall not be levied on any subsequent sales of the Lot.

**SECTION 11. Certificate of Payment.** The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the annual assessments on a specified Lot have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Said certificates shall be conclusive evidence that any assessment therein stated to have been paid has in fact been paid. No charge shall be made for issuing from time to time said certificates to the Declarant on Lots then owned by Declarant.

## ARTICLE SEVEN

### EFFECT OF NONPAYMENT OF ASSESSMENTS, REMEDIES OF ASSOCIATION

**SECTION 1. Delinquency.** Any assessment provided for in this Declaration which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association and applied uniformly. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessments shall bear interest from the date of delinquency at the highest rate permitted by Illinois law, and the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien (provided for in Section 1 of ARTICLE SIX hereof) against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing a Complaint and such action and reasonable attorney's fees, and in the event a judgment is obtained, such judgment shall include all assessments accrued from date of suit to judgment, increased by such late charges, costs and fees, plus interest. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosures against such



Owner for the collection of such delinquent assessments.

**SECTION 2. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a mortgage or trust deed or any proceeding or deed in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE EIGHT

### PARTY WALLS

**SECTION 1. General Rules of Law to Apply.** Each wall which is built as part of the original construction of the townhouses and/or garages units in the subdivision and placed on the dividing line or adjacent to or near the dividing line (provided same serves two or more units) between the units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**SECTION 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall or walls shall be shared by the Owners who make use of the wall or walls in proportion to such use.

**SECTION 3. Encroachments and Overhangs.** Since some of the individual townhouses in a building may be aesthetically and functionally designed with structures that encroach and/or overhang (above, beneath, and/or at grade level) adjoining Lots, the Owners of each Lot hereby take title subject to a perpetual easement for any such overhang and/or encroachment, which easement shall include the reasonable right of access thereto for inspection, maintenance, repair and/or replacement of all or a portion thereof. In the event of a fire or other casualty that results in a total or partial destruction of a townhouse or a building, each townhouse is entitled to be repaired or rebuilt in such a fashion to permit these overhangs or encroachments to be reestablished.

**SECTION 4. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and, if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to require for a larger contribution of reimbursement from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

**SECTION 5. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**SECTION 6. Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE NINE

### EASEMENTS

**SECTION 1. Utility Easements.** The Declarant hereby reserves unto itself, its successors, assigns and designees, the right to create, declare and grant over, above, under and across the Common Area and the Parking Areas, nonexclusive perpetual utility easements for the installation, construction, improvement or removal or reconstruction, replacement, substitution, and maintenance of sewer (storm and sanitary) water, gas, electricity, master television antenna and transmission systems, telephone and any other easements as may be necessary in the Declarant's sole judgment to develop, service and maintain the Properties. The aforesaid easement shall include reasonable rights of ingress and egress.

**SECTION 2. Easement for Installation and Maintenance of Storm Water Lines.** The Declarant hereby reserves unto itself, the Association and their respective successors, assigns and designees an easement over each of the Lots within the Properties, the Parking Areas and the Common Area for the following purposes: (i) the installation, maintenance and repair of downspouts on any townhome constructed on any Lot where deemed necessary or appropriate by Declarant or the Association or their successors or assigns to alleviate storm water run off problems and (ii) the installation, maintenance and repair of underground storm water lines on any Lot, the Parking Areas, or the Common Area for connection to any downspout so installed by Declarant or the Association or their successors or assigns on that Lot or any other Lot, for connection to any storm water sewer constructed within the Properties. Such downspouts and/or storm water lines so installed by the Declarant, the Association or

their respective successors, assigns and designees on any townhome on any Lot or Common Area shall be and remain the property of the Association or its successors or assigns, and shall thereafter be maintained, replaced and repaired thereby. The aforesaid easement shall include reasonable rights for ingress and egress and shall be perpetual. No Owner of a Lot shall interfere with any downspout or storm water line installed on his townhouse or Lot, or the passing of storm water through the same.

**SECTION 3. Ownership of Utility Lines.** The Declarant shall initially own all storm sewers, sanitary sewers, and water lines when situated in, or over, under, along or across the Common Area and shall have the right (but not the obligation) of maintenance, replacement, repair or removal thereof and reasonable access thereto. Prior to the termination of its Class B membership, Declarant shall transfer title to said storm sewers, sanitary sewers and water lines and Declarant's rights of maintenance, replacement, repair and removal thereof to any designee deemed beneficial or appropriate by Declarant (including the Association, or any governmental or quasi-governmental authority), which transfer and assignment shall be effectuated by a bill of sale or other appropriate writing.

**SECTION 4. Driveway and Parking Area Easements.** Each Owner shall have a right of easement for ingress and egress for his benefit and for the benefit of his guests and invitees over that portion of any Lot on which is located a Parking Area, or a driveway leading from the right-of-way to the garage on his Lot. It is contemplated that in some instances driveways constructed by Declarant shall serve more than one (1) Lot. In no event shall any Owner block any driveway or Parking Area so as to prevent reasonable access by others.

**SECTION 5. Reservation of Easements for Declarant's Benefit.** Anything contained in this Declaration to the contrary notwithstanding, the Declarant hereby reserves for itself, its agents, employees, contractors, sub-contractors, workmen, materialmen, invitees and any successor builders an easement under, over and across the Common Area (as amended from time to time by annexation) for the purposes of constructing, completing, repairing, maintaining, inspecting, exhibiting and selling any Lots or townhouses then owned by the Declarant.

**SECTION 6. Easements for Construction Errors, Settlement, Shifting.** Declarant hereby declares and reserves to itself and all Owners easements of not more than one (1) foot for the continuation, repair, and replacement of any walls or structures encroaching on any adjoining Lot by reason of inadvertent construction error, settlement, or shifting.

**SECTION 7. Easement for Pedestrian Pathways.** There is hereby declared and reserved for the benefit of all Owners and their guests and invites an easement and right of ingress and egress, over, upon and across any Pedestrian Pathways located on any Lot or Common Area within the Properties. The Association shall have the right to adopt reasonable rules and regulations governing and limiting the right and easement granted hereunder.

**SECTION 8. Easement for Park Pathways.** There is hereby declared and reserved for the benefit of the Fox Valley Park District and those members of the general public utilizing land owned by the Fox Valley Park District within the general viewing of the Properties, an easement and right of ingress and egress over, upon, and across any Park Pathways located on any Common Area or Lots within the Properties. The Fox Valley Park District shall have the obligation to maintain any such Park Pathways.

**SECTION 9. Installation, Maintenance and Repair of Entryways, Community Fences, Parking Areas, Pathway Lights and Pedestrian Pathways.** The Declarant hereby reserves unto itself, its successors, assigns, and designees, and to the Association the right and easement to come on to the Lots or the Common Area for purposes of building, installing, maintaining, repairing, and replacing Entryways, Parking Areas, Pathways Lights, Community Fences and Pedestrian Pathways thereon.

**SECTION 10. Rights to Reserve or Grant Specific Easements for Entryways, Community Fences, Parking Areas, Pedestrian Pathways and Pathway Lights.** Declarant shall have the right to grant or reserve specific non-exclusive easements on any portion of any Lot (except portions occupied by dwellings) or on the Common Area for the installation, maintenance and repair of Entryways, Community Fences, Parking Areas, Pedestrian Pathways and Pathway Lights. Such easements may be created after such Lots are conveyed to Owners or after the Common Area is conveyed to the Association only if (i) such areas are designated as such by a plat of subdivision, a deed, a declaration of easement or a grant of easement executed and recorded by Declarant with the Recorder of Deeds of DuPage County, Illinois or (ii) construction of such has commenced prior to conveyance of such Lot or Common Area. Failure to so grant or reserve a specific easement shall not invalidate or adversely affect the easements reserved under Section 9 hereof.

**SECTION 11. Extended Use Easement.** In order to create an aesthetically attractive and functional development, townhouses may be positioned on Lots in such manner that the use and enjoyment thereof may reasonably require that Owners of such townhouses have the right to use or have access to and across portions of adjacent Lots or adjacent Common Areas. To accomplish the foregoing, Declarant hereby reserves the right to grant

or reserve non-exclusive easements on any portion of a Lot (except portions occupied by dwellings) or Common Area prior or subsequent to the conveyance thereof by Declarant for the benefit of an adjacent Lot owner for such purposes as Declarant may in its sole determination deem essential to the reasonable use and enjoyment of the Lot owned by the beneficiary of such easement.

**SECTION 12. Power Coupled with an Interest.** In furtherance of declarant's rights to create easements pursuant to Sections 10 and 11 above, a power coupled with an interest is hereby reserved to Declarant, as attorney-in-fact of the Association and of the Owners of all Lots within the Properties, to grant or reserve such easements, and the giving of any deed, mortgage, or other instrument with respect to the Common Area or any Lot, and acceptance thereof, shall be deemed a grant and acknowledgment of and a consent to such power of said attorney-in-fact.

## ARTICLE TEN

### APPEARANCE CONTROL COMMITTEE

No structure, patio, deck, post, improvement or addition or landscaping or plant materials (including, but not limited to those set forth in ARTICLE TWELVE, Section 5 hereof), shall be erected, placed or altered on any Lot within the Properties described herein (except as are installed or approved by the Declarant in connection with the initial construction of the dwellings and other improvements on the Lot) until the building plans, specifications and plot plan showing the location and proposed erection, placement or alteration of any such structure, patio, deck, post, improvement or addition or a plan or description of any landscaping or plant materials have been approved in writing as to conformity of external design and harmony with existing structures or landscaping on the Properties and as to location with respect to topography and finished ground elevation, by an Appearance Control Committee which shall consist of three (3) members designated and replaced from time to time by the Declarant, 2500 W. Higgins Road, Suite 770, Hoffman Estates, Illinois 60195. The committee shall notify an applicant of such approval or disapproval of its action within thirty (30) days after said building plans and specifications and plat plan or landscaping plan or description have been submitted to the committee; or, in the event the committee does not disapprove of building plan, specifications and plat plan as submitted within said 30 day period and no suit to enjoin the erection, placement or alteration of such structure, patio, deck, post or other improvement or addition or such landscaping or plant materials has been commenced prior to the completion thereof, such approval will not be required, and this covenant shall be deemed to have been fully complied with. No member of such committee, nor its designated representative, shall be entitled to any compensation for such services performed pursuant to this covenant. The powers and duties of Declarant to designate and replace such committee shall cease at the time the last Lot of the Properties or any phase later annexed by Declarant is developed with a townhouse and is sold to a third party purchaser. Thereafter, such powers and duties shall be vested in the Board of Directors of the Association or in a committee duly appointed by such Board of Directors.

## ARTICLE ELEVEN

### DUTIES AND POWERS OF THE ASSOCIATION

**SECTION 1. General.** The Association shall have the power and duties to pay any real property taxes and other charges assessed against the Common Area and the Parking Areas; grant easements where necessary for public utilities over the Common Area and the Parking Areas to serve the Common Area or the Lots; adopt reasonable rules and regulations controlling and limiting the use of the Parking Areas, the Common Area, and the Pedestrian Pathways, and further to adopt reasonable rules and regulations supplementing the General Use Restrictions as provided by ARTICLE TWELVE hereof; maintain such policy or policies of insurance at all times as the Board of Directors deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members, officers and directors including, but not limited to those described in ARTICLE EIGHTEEN hereof; employ a manager or other persons and contract with independent contractors, managing agents, collection agents and others to perform and effectuate all or any part of the duties and powers of the Association, if deemed necessary by the Directors; and establish such reserves as may be required hereunder or as the Board of Directors shall from time to time deem necessary to fulfill and further the purposes of the Association.

**SECTION 2. Common Area.** The Association shall maintain, repair, and replace the Common Area, and its elements, including but not limited to grass, trees, shrubs, plantings, creeks, lighting, private sidewalks and other improvements located upon the Common Area. The Association shall also snowplow the Common Area. The Association shall perform its obligations hereunder to the extent deemed by the Board to be beneficial and convenient.

**SECTION 3. Parking Areas.** The Association shall maintain, repair and replace the Parking Areas, including those located in rights-of-way, and shall snowplow the Parking Areas, all to the extent deemed by the Board to be beneficial and convenient.

**SECTION 4. Pedestrian Pathways and Pathway Lights.** The Association shall maintain, repair and replace the Pedestrian Pathways and Pathway Lights, including those located in rights-of-way, to the extent deemed by the Board to be beneficial and convenient.

**SECTION 5. Entryways.** The Association shall maintain, repair and replace the Entryways to the extent deemed by the Board to be beneficial and convenient.

**SECTION 6. Cul-de-Sac Landscaping.** The Association shall maintain, repair and replace the Cul-de-Sac Landscaping to the extent deemed by the Board to be beneficial and convenient.

**SECTION 7. Right-of-Way Landscaping.** The Association shall maintain, repair and replace the Right-of-Way Landscaping to the extent deemed by the Board to be beneficial and convenient.

*dup of §4* **SECTION 8. Pedestrian Pathways.** The Association shall maintain, repair and replace the Pedestrian Pathways to the extent deemed by the Board to be beneficial and convenient.

*dup of §3* **SECTION 9. Parking Areas.** The Association shall snowplow, maintain, repair and replace the Parking Areas.

**SECTION 10. Lots.** The Association shall maintain and repair the Lots and the townhomes located thereon, as follows:

- (a) Painting, maintenance and repair and replacement of and tuckpointing of all exterior surfaces of the Owner's home, including, among other things, siding, roofs, chimneys, gutters, downspouts and shutters, but excluding the following: all glass surfaces; door surfaces (including garage door); window systems; structural or landscape improvements added by Owner; patios, decks, improvements, additions or betterments added by Owner; subsurface structures including, but not limited to, foundation walls and floors, window wells, drain tile, and utility lines and pipes, etc.; interior areas of the townhouse (i.e., beginning from the back surface of the roof decking, siding or brick veneer inward towards the living space); sill cocks; and ejection (sump) discharge pipes. All of the foregoing services shall comply with the aesthetic standards from time to time adopted by the Appearance Control Committee pursuant to ARTICLE TEN hereof.
- (b) Maintenance of the lawns, trees, decorative shrubs and other landscaping (as defined and limited by the Board) within each Lot unless fenced, surrounded by shrubs, landscaped, improved or equipped by the Owner in such manner as to preclude convenient access by large equipment. Notwithstanding the foregoing, it shall be the responsibility of each Owner to water the lawn, plants, shrubs and other landscaping within the Owner's Lot.
- (c) Refuse collection (to the extent such services are not provided by the City of Aurora), snow removal from driveways, seal-coating of driveways, service walks, and sidewalks (but not stoops), maintenance of cluster mailboxes and other services with respect to the residence areas to the extent deemed by the Board to be beneficial and convenient.
- (d) Maintenance, repair and replacement of any Parking Areas (other than driveways) located on any Lot or Common Area, to the extent deemed by the Board to be beneficial and convenient.

*SNOW*

The foregoing services provided by the Association in regard to exterior surfaces of an Owner's home shall be limited to normal wear and tear and the Owner shall be solely responsible for (i) all maintenance exclusions described above and (ii) all exterior repair and replacement resulting from causes other than normal wear and tear, including but not limited to losses from casualties for which the Association or the Owner has obtained insurance coverage and shall be solely responsible for all interior and structural repair and replacement. Insurance proceeds from policies obtained by the Association shall be made available to any such Owner to defray the cost of rebuilding in the event of casualty loss covered by such policies. In the event the Owner shall fail to effect promptly the rebuilding, repairs or replacements of his townhome necessitated by causes other than normal wear and tear, or losses from casualties including those for which the Association has obtained insurance coverage, the Association may (but shall not be required to) perform such repairs and replacements and the Association shall be entitled to reimbursement in full from the Owner for its costs of every kind incurred in connection therewith, including the right to any insurance proceeds. Subject to the rights of the first mortgagee, if any, in the event of loss, all insurance proceeds recovered shall be applied to effect such repairs and replacements. In the event the Owner shall fail to perform any of the maintenance exclusions for which the Association has no responsibility as provided above, or to effect such repairs and replacements, the Association may elect upon reasonable notice (but shall not be required) to

do so, and in such event, the expenditures incurred by the Association (including those in excess of any available insurance proceeds) shall become the personal obligation of the Owner and a continuing lien on the Lot, recoverable with interest, costs and reasonable attorneys' fees in the same manner and to the same extent as provided under ARTICLE SIX, Section 1 and shall give rise to the remedies available to the Association provided in ARTICLE SEVEN.

The Owner of each Lot shall be solely responsible for all repair and replacement of lawn, plants, shrubs and other landscaping, which were damaged or died due to the failure of the Owner to adequately water his Lot. The Association may (but shall not be required to) effect such repairs and replacements and the Association shall be entitled to reimbursement in full from the Owner for its costs of every kind incurred in connection therewith. In the event the Owner shall fail to effect such repairs and replacements, the Association may elect upon reasonable notice (but shall not be required) to do so, and in such event, the expenditures incurred by the Association shall become the personal obligation of the Owner and a continuing lien on the Lot, recoverable with interest, costs and reasonable attorneys' fees in the same manner and to the same extent as provided under ARTICLE SIX, Section 1 and shall give rise to the remedies available to the Association provided in ARTICLE SEVEN.

## **ARTICLE TWELVE**

### **USE RESTRICTIONS**

**SECTION 1. Residential Use.** The Properties are hereby restricted to residential dwellings, and ancillary and accessory uses and buildings in connection therewith (except for model homes and sales offices which may be operated by Declarant or its designees during the construction or sales period). All buildings or structures erected on the Properties shall be of new construction and no buildings or structures shall be moved from other locations to the Properties and no subsequent buildings or structures other than townhouses shall be built on any Lot where the Declarant has theretofore constructed a townhouse. No building or structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be placed on or used on any Lot at any time as a residence either temporarily or permanently.

**SECTION 2. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except for dogs and cats kept as household pets.

**SECTION 3. Commercial Activities, Nuisances.** No advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb the residents of the Properties except that no more than one (1) "for sale" sign or "for rent" sign of not more than five (5) square feet shall be maintained on any Lot. No commercial activities of any kind whatever shall be conducted on any building or on any portion of the Properties except activities intended primarily to service residents in the Properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its designees, or the use or operation of sales offices or model units on any Lots by the Declarant or its designees during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, By-Laws and Rules and Regulations, as the same may be amended from time to time. The Declarant and its successors and assigns shall have the right to rent any or all units.

**SECTION 4. Screening, Trash Removal.** All woodpiles shall be screened by adequate planting so as to conceal them from view of neighboring Lots and streets. All rubbish, trash and garbage shall be regularly removed from the Properties and shall not be allowed to accumulate thereon. There shall be no trashpiles or storage piles on the Properties. The foregoing restrictions shall not apply to the activities of Declarant, its designees and those working for or on behalf of Declarant during the construction and sales period.

**SECTION 5. Changes or Improvements.** Additions, changes or improvements to any building, changes in the colors of exterior building surfaces or any part thereof (including roofs, siding, doors, storm doors, windows or trim), the placement of any patios or decks on the rear portion of any Lot by any Owner other than Declarant or the planting of any trees, decorative shrubs or other landscaping will be allowed only with the approval of the Appearance Control Committee referred to herein; provided, however, that there shall be no awnings constructed or added to any building.

**SECTION 6. Derricks, etc.** No derrick or other structure designed for use in boring, mining, or quarrying for oil or natural gas, precious minerals, shall be erected, maintained or permitted upon any Lot in the Properties, provided that nothing in this Declaration shall be construed to restrict a public utility from erecting, maintaining, and operating upon any Lot owned by it within the Properties, a well, housing, and equipment for the purpose of extracting from the sub-surface and/or the treatment, storage and distribution of water through the system of such public utility.

**SECTION 7. Radio, T.V. Antennae.** No radio or television receiving or transmitting antennae or external apparatus shall be installed on any Lot. Normal radio and television installations wholly within a building are excepted.

**SECTION 8. Maintenance of Easement Areas.** Easements for installation and maintenance of the utilities, sewer pipelines and facilities and drainage facilities over each of said Lots, and in the Parking Areas and the Common Area are reserved as shown on the recorded Plat of Subdivision or as created in accordance with this Declaration of Covenants, Conditions and Restrictions or any amendments hereof. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction in the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, a private or public utility company or the Association is responsible. The easement area of the Parking Areas and the Common Area shall be maintained continuously by the Association.

**SECTION 9. Leases of Lots.** Any Owner may lease his Lot, but no lease may be for a period of less than thirty (30) days. All leases must be made expressly subject to the terms of this Declaration. In the event any Owner leases his Lot, he shall at all times keep the Association advised in writing of the address of his own current residence and any changes thereto, and of the name(s) of his tenant(s).

**SECTION 10. Prohibition of Fences, Clotheslines, Storage Sheds, Boats, Trailers and Recreational Vehicles.** There shall be no fences, clotheslines, service sheds, or storage sheds constructed or placed on any Lot within the properties, nor shall any boat, trailer or recreational vehicle be parked or stored on the Properties.

**SECTION 11. Limitation on Number of Lots Owned By One Owner.** Except ownership of Lots by Declarant and except for ownership of Lots by a mortgagee who has foreclosed on a mortgage or who has accepted a deed in lieu of foreclosure with respect to Lots, no Owner may own more than three (3) Lots within the Properties at any one time and no Owner may own more than one (1) Lot constituting a part of a townhouse building at any one time.

## **ARTICLE THIRTEEN**

### **OWNER'S OBLIGATION TO MAINTAIN**

Each Owner, his successors and assigns, hereby covenants and agrees at all times to maintain his Lot and the townhouse constructed thereon in a neat and proper condition and to perform all necessary repairs thereto, to the extent not provided for by the Association pursuant to this Declaration.

## **ARTICLE FOURTEEN**

### **JOINT CONNECTION OF SEWER, WATER,**

### **ELECTRICAL, GAS, TELEPHONE LINES AND CABLE TELEVISION**

The rights and duties of the Owners of Lots within the Properties with respect to sewer, water, gas, telephone and cable television shall be governed by the following:

- (a) Wherever joint house connections of sanitary and storm sewer, water, electricity, gas, telephone or cable television lines are installed within the Properties, and the connections, or any portion thereof, lie in or upon Lots owned by others than the Lot Owners served by said connections, the Association and other Owners of any Lots served by said connection shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon Lots or have the utility companies enter upon the Lots within the Properties in or upon which said connection, or any portion thereof, lies to read meters, repair, replace and generally maintain said connection as and when the same may be necessary as set forth below, and further, if a majority of the Board of Directors of the Association deems the repair, replacement or maintenance of such connection to be an emergency, the Association shall have the right to repair, replace or maintain such connection and assess the costs thereof against the Lots served by such connection in the amounts the Owners would otherwise be responsible for under subsections (c) and (d) herein, and each Owner, for himself, his heirs, successors and assigns, covenants that he will pay the Association (or its collecting agent) said assessment upon demand or in such periodic payments as may be determined by the Board of Directors, and that said assessment, if not paid on the date when due, shall become delinquent, shall become a continuing lien on the Lot and the personal obligation of the Owner and shall be subject to

collection, enforceability, foreclosure and remedies of the Association in the manner set forth in ARTICLES SIX and SEVEN hereof for other assessments by the Association.

- (b) Wherever joint house connections of storm and sanitary sewer, water, electricity, gas, telephone or cable television lines are installed within the Properties and the connections serve more than one Lot, the Owners of each Lot serviced by said connection shall be entitled to the full use and enjoyment of such portions of said connection as services his Lot.
- (c) In the event any portion of said connection or line is obstructed, damaged or destroyed through the act of an Owner of a Lot being served by said connection, or any of his agents, guests, or members of his family, whether or not such act is negligent or otherwise culpable, so as to deprive the other Owners being served by said connection of the full use and enjoyment of said connection, then the Owner shall forthwith proceed to replace or repair the same to as good condition as formerly, without cost to the other Owners served by said connection.
- (d) In the event any portion of said connection or line is obstructed, damaged, or destroyed by some cause other than the act of any Owner being served by said connection, his agents, guests, or members of his family (including ordinary wear and tear and deterioration from lapse of time), then in such event if said obstruction, damage or destruction shall prevent the full use and enjoyment of such connection by the other Owners served by said connection, all such Owners who are thereby deprived of said use and enjoyment shall proceed forthwith to replace or repair said connection to as good a condition as it was formerly at their joint and equal expense.

## **ARTICLE FIFTEEN**

### **AVAILABILITY OF RECORDS**

Any Owner or first mortgagee of any Lot shall be entitled, upon reasonable request, to receive for inspection from the Association current copies of the Declaration, Articles of Incorporation, By-Laws, records and financial statements of the Association. Furthermore, any holder of a mortgage given on any Lot within the Properties and any phases annexed thereto, shall be entitled to receive from the Association, without cost, a copy of the Association's financial statement, if any, and if any mortgagee shall so request in writing prior to the preparation of the annual financial statement of the Association, such financial statement shall be audited.

## **ARTICLE SIXTEEN**

### **RIGHTS OF FIRST MORTGAGEES**

Upon written request, any first mortgagee of a Lot shall be entitled to and shall receive from the Association notices of any of the following as shall be requested:

- (a) Any condemnation loss or casualty loss which affects a material portion of the Properties and any phases annexed thereto or the Lot on which its mortgage is held;
- (b) Delinquency of assessments which remain incurred for a period of sixty (60) days or more;
- (c) Any lapse, cancellation, or modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any restoration or repair of the Properties and any phases annexed thereto after partial condemnation or damage; and
- (e) Any termination of the legal status of the Properties and any phases annexed thereto.

Any termination of legal status as provided in Subsection (e) above, shall require the consent of the holders of the mortgages on at least 51% of the Lots contained in the Properties and any phases annexed thereto at the time thereof.

## **ARTICLE SEVENTEEN**

### **MUNICIPAL ORDINANCES**

**SECTION 1. City Ordinances Prevail.** None of the covenants, conditions, restrictions or provisions of the Declaration are intended to supersede or prevail over the ordinances of general applicability of the City of Aurora, and in the event of any conflict, the applicable ordinances of said City shall supersede and prevail over the covenants, conditions, restrictions and provisions of this Declaration.

**SECTION 2. Standards of Maintenance.** The Standards of Maintenance of the Lots and the residences and improvements located thereon, the Parking Areas, the Entrance Gates and the Common Area, as adopted by the Association from time to time shall be at least equal to those set forth in the ordinances of general applicability of the City of Aurora, in effect from time to time which govern and control the maintenance of private property.

## **ARTICLE EIGHTEEN**

### **INSURANCE**

**SECTION 1. Casualty Insurance for Townhomes.** The Association shall obtain and maintain a policy or policies of insurance covering the townhouses (other than the contents thereof) constructed on the Lots within the Properties or any phases of the Additional Land annexed thereto, excluding those items which are the responsibility of the Owner, as specified in Section 2 hereof, including, without limitation, all alterations and additions thereto, against damage or destruction by the perils of fire, lightning and those casualties contained in an all risk form, and such other perils as the Board of Directors of the Association from time to time may determine should be included in such coverage, in an amount equal to 100% of the insurable replacement cost thereof, without depreciation, with an agreed amount provision, and with such reasonable deductibles as the Board may determine.

Such insurance shall name as the insured, and the proceeds thereof shall be payable to the Association, as trustee for the Owners of any townhouses damaged or destroyed. The proceeds from such insurance shall be made available, as the Board of Directors of the Association shall reasonably determine, for the repair, reconstruction, and restoration of such townhouses, subject to the right of first mortgagees. The Owner shall be responsible for payment of any deductibles. To the extent feasible, all such policies of insurance shall (i) provide that the insurance shall not be invalidated by the act or neglect of the Declarant, the Association, its Board of Directors, its officers, any Owner or occupant, or any agent, employee, guest or invitee of any of them, and (ii) shall contain an endorsement that such policies shall not be cancelled without at least thirty (30) days prior notice to the Association, the Owners, and all first mortgagees of the Lots. The policies obtained by the Association shall be deemed to be the primary insurance coverage for any townhouse.

**SECTION 2. Owner's Insurance for Liability and Contents of Townhouses.** Each Owner shall maintain at his own cost and expense such insurance coverage as he may desire with respect to (i) personal liability for acts and occurrences upon his Lot and within his townhouse and (ii) physical damage losses for personal property and the contents of his townhouse and any improvements, additions or betterments installed either by a person or entity other than as a part of initial construction, whether made inside or outside his townhouse, and shall further maintain at his cost and expense, any special flood hazard insurance as may be required by the first mortgagee of his Lot. The Association shall have no obligation in connection therewith.

**SECTION 3. Casualty Insurance: Common Area.** The Association may, but shall not be required to, carry insurance with respect to the damage or destruction to Fences and Entryways. The Association shall obtain and maintain a policy or policies of insurance with respect to the damage or destruction of the Common Area and any of the improvements thereon, and to any other tangible assets of the Association including coverage against damage or destruction by the perils of fire, lightning and those perils contained in an all risk form, and such other perils as the Board of Directors of the Association from time to time may determine should be included in such coverage, in an amount equal to 100% of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall name as the insured, and the proceeds thereof shall be payable to the Association, as trustee. The proceeds of such insurance shall be made available, as the Board of Directors of the Association shall reasonably determine, for the repair, reconstruction, and restoration of such Common Area and Parking Areas subject to the rights of the first mortgagees. To the extent feasible, all such policies of insurance shall (i) provide that the insurance shall not be invalidated by the act or neglect of the Declarant, the Association, its Board of Directors, its Officers, any owner or occupant, or any agent, employee, guest or invitee of any of them, and (ii) shall contain an endorsement that such policies shall not be cancelled without at least thirty (30) days prior notice to the Association, the Owners, and all first mortgagees of the Lots.

**SECTION 4. Liability Insurance; the Association.** The Association shall obtain and maintain a policy or policies of comprehensive general liability insurance insuring on a claims-made basis the Association, its Directors, officers, the Owners, and their agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in connection with the ownership, occupancy, use, supervision, operation, repair, maintenance or restoration of the Common Area, Parking Areas, Pedestrian Pathways, Park Pathways, Pathway Lights, Community Fences, Cul-de-Sac Landscaping, or Right-of-Way Landscaping in connection with any act or omission of or in behalf of the Association, its Board of Directors, agents or employees within the Properties. Such policies shall be in the amount of \$1 Million for bodily injury, including death, and



property damage arising out of a single occurrence, and shall contain a provision that they may not be cancelled without at least a thirty (30) day prior notice to the Association, the Owners, and the first Mortgagees of the Lots.

**SECTION 5. Workmen's Compensation and Fidelity Insurance; Other Insurance.** The Association shall obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage:

- (a) Workers Compensation and employers liability insurance in such form and in such amounts as may be necessary to comply with applicable laws;
- (b) Fidelity insurance or bonds in reasonable amounts for all officers and employees having fiscal responsibilities, naming the Association as obligee; and
- (c) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.

**SECTION 6. Waiver of Subrogation.** To the extent feasible, all policies of insurance obtained by the Association shall contain provisions that no act or omission of any named insured shall affect or limit the obligation of the insurance company to pay the amounts of any loss sustained. So long as the policies of insurance provided for herein shall provide that a mutual release as provided for in this Section shall not affect the right of recovery thereunder, and further provide coverage for the matters for which the release herein is given, all named insureds and all parties claiming under them shall, and do by these presents mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard or source covered by any insurance procured by the Association, regardless of the cause of damage or loss.

**SECTION 7. Insurance Premium Expense.** The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

## **ARTICLE NINETEEN**

### **GENERAL PROVISIONS**

**SECTION 1. Enforcement.** The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Breach of any of the covenants shall not defeat or render invalid the lien or any mortgage or trust deed made in good faith and for value as to said Lots or property, or any parts thereof, but such provisions, restrictions or covenants shall be binding and effective against any Owner of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

**SECTION 2. Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

**SECTION 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by Lot Owners comprising not less than sixty-seven percent (67%) of the total votes collectively held by all classes of Members with the written consent of mortgagees holding at least fifty-one percent (51%) of the outstanding mortgages on the Properties; provided, however, that so long as Declarant is a Lot Owner, Declarant must join into such instrument. Any such amendment that has the effect of (i) terminating this Declaration or (ii) terminating the legal status of the Association shall require the written consent of mortgagees holding at least sixty-seven percent (67%) of the outstanding mortgages on the Properties and any phases annexed thereto. Notwithstanding the foregoing, in the event the Declarant desires to amend this Declaration: (x) to correct a technical or typographical error or to clarify any provisions herein which are otherwise vague, or (y) for the sole purpose of causing the Declaration to comply with form and substance as may be required by either the Federal Housing Authority (FHA) or the Veterans Administration (VA) to enable the sales of Lots from the Properties to qualify for the insurance by either such agency of end mortgage loans made to Owners of such Lots, or as may be required to conform to the published manuals or guidelines of any governmental, quasi-governmental or private agency engaged in the business of the purchase of mortgage loans, including, but not limited to Federal Home Loan Mortgage Corporation

(FHLMC) and the Federal National Mortgage Association (FNMA) for the purchase of mortgage loans made on Lots in the Properties, in (z) for the sole purpose of causing the Declaration to comply with the requirements of any statutes, ordinances, laws or regulations applicable thereto, it may do so by an instrument signed by Declarant without the consent of Owners, mortgagees, FHA, or VA, but shall give notice of any such amendments to all Owners, the FHA, the VA, and all mortgagees of Lots who have requested the same in writing. The failure to give such notice shall not affect the validity or effectiveness of such amendment. In furtherance of the foregoing, a power coupled with an interest is hereby reserved to Declarant, as Attorney-in-Fact to so amend the Declaration as provided in this Section 3, and each deed, mortgage or other instrument with respect to a Lot and acceptance thereof shall be deemed a grant and acknowledgment of and a consent to such power to said Attorney-in-Fact. Any amendment must be recorded with the DuPage County Recorder.

**SECTION 4, Quorum.** Unless otherwise specified to the contrary in any provision of this Declaration, the presence of Members or of proxies entitled to cast ten (10%) percent of the votes of each class of membership shall constitute a quorum for any meeting of the Members of the Association. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in the By-Laws of the Association and the required quorum at such subsequent meeting shall be fifty percent (50%) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 5, FHA/VA Approval.** As long as there is a Class B Member, the following actions will require the prior approval of the Federal Housing Administration (FHA) or the Veterans Administration (VA):

Annexation of Additional Land, or  
Amendment of this Declaration of Covenants, Conditions and Restrictions, except for amendments made pursuant to Section 3(x), (y) or (z) above.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on the date first written above.

PULTE HOME CORPORATION

CORPORATE SEAL

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



\_\_\_\_\_  
Reville A. Curtis

Its: Attorneys-in-Fact

STATE OF ILLINOIS

COUNTY OF DuPage } SS.

I, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel L. Star and Neville Alperstein personally known to me to be the Attorneys-in-Fact of PULTE HOME CORPORATION, a Michigan corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as Attorneys-in-Fact of said Corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of May, 1991.

Anne DeFreece  
Notary Public

My Commission Expires:

April 1, 1993

**"Official Seal"**  
**Anne DeFreece**  
**Notary Public, State of Illinois**  
**DuPage County**  
**My Commission Expires 4/1/93**

This instrument was prepared by  
and upon recording mail to:

Charles L. Byrum  
Gardner, Carton & Douglas  
321 North Clark Street  
Suite 3100  
Chicago, Illinois 60610

## **EXHIBIT "A"**

### **Legal Description of Properties to be Bound by the Declaration**

Lots 1 through 114 and Outlots B, C, D, E, F, G, H and J in Diamond Bay Units I and II being a Resubdivision of part of Lot 92 in Willow Shores, being a Subdivision of part of the Southeast Quarter of Section 20 and part of the East Half of Section 29, Township 38 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document No. R79-72361, in DuPage County, Illinois.

## EXHIBIT "B"

### Legal Description of Additional Land which may be added to the Declaration

#### Parcel 1:

Lot 2 in Fox Valley East, Region 1, unit number 15, being a subdivision of part of the South East 1/4 of Section 20 and part of the South West 1/4 of Section 21, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded August 6, 1981 as Document R81-42992, in DuPage County, Illinois.

#### Parcel 2:

That part of Lot 5 in Fox Valley East, Region 1, unit number 15, being a subdivision of part of the South East 1/4 of Section 20 and part of the South West 1/4 of Section 21, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded August 6, 1981 as Document R81-42992 described as follows: "Commencing at the most Easterly corner of said Lot 5; thence Southwesterly along a Southeasterly line of said Lot 71.85 feet to an angle in said Southeasterly line; thence Westerly along a Southerly Line of said Lot forming an angle of 152 Degrees 15 Minutes 15 Seconds with the last described course (measured counter-clockwise therefrom) 250.11 feet to an angle in said southerly line; thence southwesterly along a Southeasterly line of said Lot forming an angle of 207 Degrees 06 Minutes 26 Seconds with the last described course (measured counter-clockwise therefrom) 60.18 Feet to an angle in said Southeasterly Line; thence Southerly along an Easterly Line of said Lot forming an angle of 141 Degrees 15 Minutes 17 Seconds with the last described course (measured clockwise therefrom) 20.41 feet for a point of beginning; thence continuing Southerly along the prolongation of the last described course 40.0 feet to an angle in said Easterly Line; thence Southeasterly along a Northeasterly line of said Lot forming an angle of 216 Degrees 01 Minutes 46 Seconds with the last described course (measured counter-clockwise therefrom) 230.21 feet to an angle in said Northeasterly Line; thence Southwesterly along a Southeasterly Line of said Lot forming an angle of 131 Degrees 44 Minutes 44 Seconds with the last described course (measured counter-clockwise therefrom) 96.0 feet to an angle in said Southeasterly Line; thence Westerly along a Southerly Line of said Lot forming an angle of 136 Degrees 37 Minutes 46 Seconds with the last described course (measured counter-clockwise therefrom) 96.0 feet to an angle in said Southerly Line; thence Westerly along a Southerly Line of said Lot forming an angle of 159 Degrees 55 Minutes 53 Seconds with the last described course (measured counter-clockwise therefrom) 171.58 feet to an angle in said Southerly Line; thence Southwesterly along a Southeasterly Line of said Lot forming an angle of 208 Degrees 26 Minutes 57 Seconds with the last described course (measured counter-clockwise therefrom) 100.0 feet to an angle in said Southeasterly Line; thence Southwesterly along a Southeasterly Line of said Lot forming an angle of 222 Degrees 00 Minutes with the last described course (measured counter-clockwise therefrom) 100.0 feet to an angle in said Southeasterly Line; thence Southerly along an Easterly Line of said Lot forming an angle of 214 Degrees 22 Minutes 44 Seconds with the last described course (measured counter-clockwise therefrom) 279.20 feet to an angle in said Easterly Line; thence Southwesterly along a Southeasterly line of said Lot forming an angle of 134 Degrees 30 Minutes 24 Seconds with the last described course (measured counter-clockwise therefrom) 40.57 feet to an angle in said Southeasterly Line; thence Southwesterly along a Southeasterly Line of said Lot forming an angle of 169 Degrees 06 Minutes 46 Seconds with the last described course (measured counter-clockwise therefrom) 68.28 feet to an angle in said Southeasterly Line; thence Southwesterly along a Southeasterly Line of said Lot forming an angle of 164 Degrees 40 Minutes 45 Seconds with the last described course (measured counter-clockwise therefrom) 88.17 feet to a Northeasterly Line of Frontenac Street; thence Northwesterly, Northerly and Northeasterly along the Northeasterly, Easterly and Southeasterly Lines of said Frontenac Street 1555.22 feet to the most Westerly corner of Lot 4 in said unit number 15; thence Southeasterly along the Southwesterly Line of Sandpiper Drive 581.37 feet to the most Southerly corner of said Lot 4; thence Northeasterly and Northerly along the Southeasterly and Easterly lines of Shadybrook Lane 652.32 Feet to the Southerly Line of Sandpebble Lane; thence Easterly along the Southerly Line of said Sandpebble Lane 35.36 Feet; thence Southeasterly 207.33 feet to the point of beginning, in DuPage County, Illinois.

#### Parcel 3:

That part of Lot 92 in Willow Shores, being a subdivision of part of the South East 1/4 of Section 20 and part of the East 1/2 of Section 21, Township 38 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document R79-72361, described as follows:

Beginning at the North West corner of Lot 31 in said Willow Shores; thence Northerly along a West Line of said Lot 92, 696.06 feet; thence Southeasterly along a line forming an angle of 75 Degrees, 45 Minutes, 09 Seconds

with the last described course (measured counter-clockwise therefrom) 61.0 feet; thence Easterly along a line forming an angle of 192 Degrees, 55 Minutes, 31 Seconds with the last described course (measured counter-clockwise therefrom) 76.0 feet; thence Northeasterly along a line forming an angle of 205 Degrees, 54 Minutes, 12 Seconds with the last described course (measured counter-clockwise therefrom) 105.0 feet; thence Easterly along a Line forming an angle of 158 Degrees, 14 Minutes, 26 Seconds with the last described course (measured counter-clockwise therefrom) 31.0 feet; thence Southeasterly along a line forming an angle of 115 Degrees, 35 Minutes, 36 Seconds with the last described course (measured counter-clockwise therefrom) 59.0 feet; thence Southeasterly along a line forming an angle of 163 Degrees, 39 Minutes, 19 Seconds with the last described course (measured counter-clockwise therefrom) 113.0 feet; thence Southeasterly along a line forming an angle of 191 Degrees, 13 Minutes, 41 Seconds with the last described course (measured counterclockwise therefrom) 90.0 feet; thence Southeasterly along a line forming an angle of 216 Degrees, 13 Minutes, 02 Seconds with the last described course (measured counter-clockwise therefrom) 71.50 feet; thence Southeasterly along a line forming an angle of 197 Degrees, 57 Minutes, 30 Seconds with the last described course (measured counter-clockwise therefrom) 66.0 feet; thence Northeasterly along a line forming an angle of 212 Degrees, 10 Minutes, 18 Seconds with the last described course (measured counter-clockwise therefrom) 132.0 feet; thence Northeasterly along a line forming an angle of 221 Degrees, 38 Minutes, 56 Seconds with the last described course (measured counter-clockwise therefrom) 157.50 feet; thence Northeasterly along a line forming an angle of 200 Degrees, 49 Minutes, 30 Seconds with the last described course (measured counter-clockwise therefrom) 111.0 feet; thence Northwesterly along a line forming an angle of 227 Degrees, 50 Minutes, 33 Seconds with the last described course (measured counter-clockwise therefrom) 125.0 feet; thence Northwesterly along a line forming an angle of 201 Degrees, 48 Minutes, 20 Seconds with the last described course (measured counter-clockwise therefrom) 107.0 feet; thence Northwesterly along a line forming an angle of 167 Degrees, 39 Minutes, 53 Seconds with the last described course (measured counter-clockwise therefrom) 220.0 feet; thence Northwesterly along a line forming an angle of 148 Degrees, 42 Minutes, 18 Seconds with the last described course (measured counter-clockwise therefrom) 63.0 feet; thence Northeasterly along a line forming an angle of 155 Degrees, 33 Minutes, 34 Seconds with the last described course (measured counter-clockwise therefrom) 82.50 feet; thence Northeasterly along a line forming an angle of 168 Degrees, 09 Minutes, 25 Seconds with the last described course (measured counter-clockwise therefrom) 76.0 feet; thence Northeasterly along a line forming an angle of 157 Degrees, 37 Minutes, 00 Seconds with the last described course (measured counter-clockwise therefrom) 74.0 feet; thence Northeasterly along a line forming an angle of 158 Degrees, 40 Minutes, 22 Seconds with the last described course (measured counter-clockwise therefrom) 43.0 feet; thence Northeasterly along a line forming an angle of 163 Degrees, 36 Minutes, 38 Seconds with the last described course (measured counter-clockwise therefrom) 80.0 feet; thence Northeasterly along a line forming an angle of 196 Degrees, 06 Minutes, 39 Seconds with the last described course (measured counter-clockwise therefrom) 130.51 feet to the South East corner of Lot 90 of said Willow Shores; thence Southerly, Southeasterly, Southerly and Southwesterly along the Easterly Line of said Lot 92, 1468.49 feet to the South East corner of said Lot 92; thence Westerly along the South Line of said Lot 92, 573.24 feet to the point of beginning, in DuPage County, Illinois.

Except therefrom that portion constituting Lots 1 through 114 and Outlots B, C, D, E, F, G, H and J in Diamond Bay Units I and II being a Resubdivision of part of Lot 92 in Willow Shores, being a Subdivision of part of the Southeast Quarter of Section 20 and part of the East Half of Section 29, Township 38 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document R79-72361, in DuPage County, Illinois.

PIN: 07-20-402-014  
07-20-405-021  
07-29-203-005

THIS DOCUMENT WAS PREPARED BY AND AFTER RECORDING, PLEASE RETURN TO:

Charles L. Byrum  
Gardner, Carton & Douglas  
321 North Clark Street  
Suite 3400  
Chicago, Illinois 60610

ARTICLES OF INCORPORATION

(Do Not Write in This Space)

**SUBMIT IN DUPLICATE**  
 Payment must be made by Certified Check, Cashiers' Check, Illinois  
 Attorney's Check, Illinois C.P.A.'s Check or Money Order, payable  
 to "Secretary of State."  
**DO NOT SEND CASH!**

Date Paid \_\_\_\_\_  
 Filing Fee \$50  
 Clerk \_\_\_\_\_

TO: JIM EDGAR, Secretary of State

Pursuant to the provisions of "The General Not For Profit Corporation Act of 1986", the undersigned incor-  
 porator(s) hereby adopt the following Articles of Incorporation.

Article 1. The name of the corporation is: Diamond Bay Homeowner's Associates

Article 2. The name and address of the initial registered agent and registered office are:

Registered Agent	<u>Orest</u>	<u>Chryniwsky</u>
	First Name	Last Name
Registered Office	<u>2500 W. Higgins Road</u>	
	Number	Street (Do Not Use P.O. Box)
	<u>Hoffman Estates</u>	<u>IL 60195</u>
	City	Zip Code
		<u>Cook</u>
		County

Article 3. The first Board of Directors shall be 3 4 in number, their names and addresses being as follows:  
 (Not less than three)

Directors' Names	Number	Street	Address City	State
<u>Orest Chryniwsky</u>	<u>2500 W. Higgins Road, Suite 770,</u>	<u>Hoffman Estates,</u>	<u>IL</u>	
<u>Edward Dwier</u>	<u>2500 W. Higgins Road, Suite 770,</u>	<u>Hoffman Estates,</u>	<u>IL</u>	
<u>Anne DeFreece</u>	<u>2500 W. Higgins Road, Suite 770,</u>	<u>Hoffman Estates,</u>	<u>IL</u>	
<u>W. Michael Rhoads</u>	<u>2500 W. Higgins Rd., Suite 770,</u>	<u>Hoffman Estates,</u>	<u>IL 60195</u>	

Article 4. The purposes for which the corporation is organized are:

Is this corporation a Condominium Association as established under the Condominium Property Act?  Yes  No (Check one)

Is this corporation a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954?  Yes  No (Check one)

Is this a Homeowner's Association which administers a common-interest community as defined in sub-section (c) of Section 9-102 of the Code of Civil Procedure?  Yes  No

le 5. Other provisions (please use separate page):

**NAMES & ADDRESSES OF INCORPORATORS**

The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.  
 Dated May 17, 19 91.

Signatures and Names		Post Office Address		
1.	<u><i>Orest Chyniowski</i></u> Signature Orest Chyniowski Name (please print)	1.	<u>2500 W. Higgins Road, Suite 770</u> Street Hoffman Estates, IL 60195 City/Town State Zip	
2.	<u><i>Edward Dwier</i></u> Signature Edward Dwier Name (please print)	2.	<u>2500 W. Higgins Road, Suite 770</u> Street Hoffman Estates, IL 60195 City/Town State Zip	
3.	<u><i>Anne DeFreece</i></u> Signature Anne DeFreece Name (please print)	3.	<u>2500 W. Higgins Road, Suite 770</u> Street Hoffman Estates, IL 60195 City/Town State Zip	
4.	<u><i>W. Michael Rhoads</i></u> Signature W. Michael Rhoads Name (please print)	4.	<u>2500 W. Higgins Rd., Suite 770</u> Street Hoffman Estates, IL 60195 City/Town State Zip	
5.	_____ Signature Name (please print)	5.	_____ Street City/Town State Zip	

*(Signatures must be in ink on original document. Carbon copy, xerox or rubber stamp signatures may only be used on the true copy.)*  
 NOTE: If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by its President or Vice-President and verified by him, and attested by its Secretary or an Assistant Secretary.  
 The registered agent cannot be the corporation itself.  
 The registered agent may be an individual, resident in this State, or a domestic or foreign corporation, authorized to act as a registered agent.  
 The registered office may be, but need not be, the same as its principal office.  
 A corporation which is to function as a club, as defined in Section 1-3.24 of the "Liquor Control Act" of 1934, must insert in its purpose clause a statement that **it will comply with the State and local laws and ordinances relating to alcoholic liquors.**  
**FOR INSERTS - USE WHITE PAPER - SIZE 8½ x 11**

File # \_\_\_\_\_  
 Form NP-102.10  
**ARTICLES OF INCORPORATION**  
 under the  
**GENERAL NOT FOR PROFIT  
 CORPORATION ACT**  
 of  
Diamond Bay Homeowner's Association

**SECRETARY OF STATE  
 DEPARTMENT OF BUSINESS SERVICES  
 CORPORATION DIVISION  
 SPRINGFIELD, ILLINOIS 62756  
 TELEPHONE (217) 782-6961**

(These Articles Must Be Executed and Filed in Duplicate)  
 Filing Fee \$50



4. The purposes for which the corporation is organized are:

This corporation does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for the maintenance and preservation of the Common Area, the maintenance and repair of the Entryways, Cul-de-Sac Landscaping, Parking Areas, Pedestrian Pathways, Right-of-Way Landscaping and Community Fences, and the architectural control of residential areas, within that certain property described as:

**The Properties**

Lots 1 through 114 and Outlots B, C, D, E, F, G, H and J in Diamond Bay Units I and II being a Resubdivision of part of Lot 92 in Willow Shores, being a Subdivision of part of the Southeast Quarter of Section 20 and part of the East Half of Section 29, Township 38 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document No. R79-72361, in DuPage County, Illinois.

and any lands as are annexed thereto (the "Properties") pursuant to the terms of a Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration", executed by Pulte Home Corporation (the "Declarant") and recorded with the Recorder of Deeds of DuPage County, Illinois as Document No. , said Declaration being incorporated herein as if set forth at length

and to promote the health, safety and welfare of the residents within the above-described Properties and any additional land as may hereafter be brought within the jurisdiction of this corporation for these purposes to:

- (a) exercise all of the powers and privileges and to perform all of the duties and obligations of the corporation as set forth in the Declaration applicable to the Properties;
  - (b) by any lawful means fix, levy, collect and enforce payment of all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the corporation;
  - (c) acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;
  - (d) borrow money, and with the authorization of sixty seven percent (67%) of each class of Members voting at a meeting duly called for such purpose, at which a quorum is present, mortgage, pledge, deed in trust, or hypothecate any or all of its real estate or personal property, as security for money borrowed or debts incurred;
  - (e) dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed proper by the Members. No such dedication or transfer shall be effective unless authorized by sixty seven percent (67%) of each class of Members voting at a meeting duly called for such purpose, at which a quorum is present;
  - (f) participate in mergers and consolidations with other not-for-profit corporations organized for the same purposes or annex additional residential property and Common Area, in accordance with the Declaration, provided that any such merger, consolidation or annexation must be authorized by sixty seven percent (67%) of each class of Members voting at a meeting duly called for such purpose at which a quorum is present;
  - (g) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized; and
  - (h) have and exercise all powers, rights and privileges which a corporation organized under the General Not for Profit Corporation Act of the State of Illinois by law may now or hereafter have or exercise.
5. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in the Properties or an land annexed thereto shall be a Member of the corporation.

There shall be two classes of voting membership:

**Class A:** Class A Members shall be all those owners of Lots within the Properties with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, all such persons shall be Members and 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.

**Class B:** The Class B Member shall be the Declarant. The Class B Member (or its beneficiary in the case where Declarant is a land trust) shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership, provided that the Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, which occurs earliest:

- (a) Seven (7) years from the date of the Declaration;
  - (b) One hundred twenty (120) days after seventy five percent (75%) of the Lots which have been submitted to the Declaration shall have been conveyed by Declarant to Owners; or
  - (c) The date on which Declarant voluntarily withdraws as the Class B Member by executing and recording with the Recorder of Deeds of DuPage County, Illinois a written declaration of intent to withdraw, which shall become effective in the manner specified in such declaration of intent.
6. The affairs of this corporation shall be managed by a Board of six (6) Directors, who need not be Members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. At the first annual meeting the Members shall elect two (2) Directors for a term of one (1) year, two (2) Directors for a term of two (2) years and two (2) Directors for a term of three (3) years; and at each annual meeting thereafter the Members shall elect two (2) Directors for a term of three (3) years. Notwithstanding the foregoing, until the first annual meeting of Members, the Board of Directors shall be three (3) in number.
  7. The corporation may be dissolved with the assent given in writing and signed by not less than sixty seven percent (67%) of each class of Members and by mortgagees holding at least sixty-seven percent (67%) of the outstanding mortgages on the lots within the Properties; provided, however, that any such dissolution must be approved by the Declarant while the Declarant is a Member of the corporation and, so long as there is a Class B Member, may be vetoed by the Federal Housing Authority (FHA) or the Veterans Administration (VA). Upon dissolution of the corporation, other than incident to a merger or consolidation, the assets of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any not-for-profit corporation, association, trust or other organization to be devoted to such similar purposes.
  8. These Articles may be amended by a vote of sixty-seven (67%) percent of the total votes collectively held by all classes of Members present in person or by proxy entitled to vote at a meeting duly called for such purposes, at which a quorum is present, written notice of which is mailed to all Members not less than five (5) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting, together with the written approval of the holders of fifty one percent (51%) of the mortgages on Lots within the Properties; provided, however, that so long as Declarant is a Member of the corporation, Declarant must vote for such amendment for it to pass and so long as there is a Class B Member, the Federal Housing Authority (FHA) or Veterans Administration (VA) may veto any such amendment. Notwithstanding the foregoing, in the event the Board of Directors desires to amend these Articles (i) to correct a technical or typographical error or to clarify any provisions herein which are otherwise vague, or (ii) for the sole purpose of causing the Declaration or these Articles to comply with form and substance as may be required by either the FHA or the VA to enable the sales of Lots from the Properties to qualify for the insurance by either such agency of end mortgage loans made to Owners of such Lots, or as may be required to conform to the published manuals or guidelines of any governmental, quasi-governmental or private agency engaged in the business of the purchase of mortgage loans, including, but not limited to Federal Home Loan Mortgage Corporation (FHLMC) and Federal National Mortgage Association (FNMA) for the purchase of mortgage loans made on Lots in the Properties, or (iii) for the sole purpose of causing the Declaration or these Articles to comply with all applicable laws, it may do so by the vote of a majority of the Directors at a meeting duly called at which a quorum is present, without the consent of Members, mortgagees, the FHA or the VA, but shall serve notice of any such amendment upon all Members, the VA, the FHA and all mortgagees of Lots who have requested the same in writing.

**BY-LAWS  
OF  
DIAMOND BAY  
HOMEOWNER'S ASSOCIATION**

**ARTICLE I.**

**NAME AND LOCATION.** The name of the corporation is DIAMOND BAY HOMEOWNER'S ASSOCIATION, an Illinois not-for-profit corporation, hereinafter referred to as the "Association." Until the first annual meeting of members the principal office of the corporation shall be located within the State of Illinois, County of Cook. Thereafter, the principal office shall be located in the County of DuPage. Meetings of members and directors may be held at such places within the State of Illinois, County of Cook or DuPage, as may be designated by the Board of Directors.

**ARTICLE II.**

**DEFINITIONS**

**SECTION 1. "ASSOCIATION"** shall mean and refer to Diamond Bay Homeowner's Association, an Illinois not-for-profit corporation, its successors and assigns.

**SECTION 2. "OWNER"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 3. "PROPERTIES"** shall mean and refer to that certain real property hereinafter described on Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**SECTION 4. "LOT"** for the purposes of this By-Laws shall mean and refer to any plot of land shown upon any Plat of Subdivision of the Properties and upon which one individual townhouse dwelling unit is constructed or to be constructed.

**SECTION 5. "MEMBER"** shall mean and refer to every person or entity who holds a membership in the Association.

**SECTION 6. "DECLARANT"** shall mean and refer to Pulte Home Corporation, its successors and assigns if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**SECTION 7. "DECLARATION"** shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties, recorded with the Recorder of Deeds of DuPage County, Illinois as Document No.

**SECTION 8. "PLAT OF SUBDIVISION"** shall mean a plat of the Properties, or any part thereof, subdividing or resubdividing the same into Lots, and recorded with the Recorder of Deeds of DuPage County, Illinois.

**SECTION 9. "COMMON AREA"** shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners and designated as such on any Plat of Subdivision or on any supplement or amendment to this Declaration.

Outlots B, C, D, E, F, G, H and J in Diamond Bay Units I and II being a Resubdivision of part of Lot 92 in Willow Shores, being a Subdivision of part of the Southeast Quarter of Section 20 and part of the East Half of Section 29, Township 38 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document No. R79-72361, in DuPage County, Illinois.

**SECTION 10. "COMMUNITY FENCES"** shall mean those fences initially installed by Declarant on any land within the Properties but excluding privacy fences installed between townhouses.

**SECTION 11. "CUL-DE-SAC LANDSCAPING"** shall mean that landscaping initially installed by Declarant within the cul-de-sac islands or eyebrows on the streets located within the Properties. Such cul-de-sac islands or eyebrows, like the streets, shall be dedicated to the City of Aurora.

**SECTION 12. "ENTRYWAYS"** shall mean such portions of the Properties as may be identified on any Plat of Subdivision thereof or as Declarant may determine, on which Declarant, prior to conveyance of the same to a third party, has constructed or has commenced construction of a sign or monument identifying the Diamond Bay Development or any portion thereof.

**SECTION 13. "PARKING AREAS"** shall mean (a) any areas designated as "Parking Areas" on any Lot or Common Area, by a plat of subdivision, a deed, a declaration of easement or a grant of easement executed and recorded by Declarant with the Recorder of Deeds of DuPage County, Illinois, or (b) any areas constructed by Declarant for use as parking areas within any rights-of-way within the Properties, or (c) any areas within a Lot or Common Area on which Declarant has commenced construction for use as Parking Areas at the time such Lot is conveyed by Declarant to a third party. Areas designated as "Parking Areas" may (but shall not be required to) be deeded to the Association as Common Area.

**SECTION 14. "PATHWAY LIGHTS"** shall mean those lights installed by Declarant on any Lot or Common Area for purposes of lighting the Pedestrian Pathways or Park Pathways. Pathway Lights shall be owned and maintained by the Association.

**SECTION 15. "PEDESTRIAN PATHWAYS"** shall mean those asphalt pathways installed by Declarant on any Lot or Common Area within the Properties, which are five (5) feet in width, designed to accommodate pedestrian traffic within the Properties, over, upon, and across Common Areas and Lots, (a) designated on the Plat of Subdivision, a deed, declaration of easement, or grant of easement executed and recorded by Declarant with the Recorder of Deeds of DuPage County, Illinois or (b) which Declarant has installed or has commenced the installation of for use as a Pedestrian Pathway prior to the time such Lot or Common Area is conveyed by Declarant to a third party. Pedestrian Pathways may be located in the Common Area or within Lots. Pedestrian Pathways located on any Lot shall be owned by the owner of the Lot, but shall be maintained by the Association.

**SECTION 16. "PLAT OF SUBDIVISION"** shall mean a plat of the Properties, or any part thereof, subdividing or resubdividing the same into Lots, and recorded with the Recorder of Deeds of DuPage County, Illinois.

**SECTION 17. "RIGHT-OF-WAY LANDSCAPING"** shall mean landscaping initially installed by Declarant within the right-of-way along the dedicated streets within or abutting the Properties.

## **ARTICLE III.**

### **MEETING OF MEMBERS**

**SECTION 1. Annual Meetings.** The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:30 o'clock, P.M. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

**SECTION 2. Special Meetings.** Special meetings of the Members may be called at any time by the president or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of each class of membership.

**SECTION 3. Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five (5) days but not more than forty (40) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**SECTION 4. Quorum.** The presence at the meeting of Members entitled to cast, or proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, another meeting may be called, subject to the notice requirements set forth above, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 5. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

## **ARTICLE IV.**

### **BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE**

**SECTION 1. Number.** The affairs of this Association shall be managed by a Board of six (6) directors, who need not be Members of the Association; provided however, until the first annual meeting of Members, the Board of Directors may be less than six (6) in number, but not less than three (3).

**SECTION 2. Term of Office.** At the first annual Meeting, the Members shall elect two (2) directors for a term of one (1) year, two (2) directors for a term of two (2) years and two (2) directors for a term of three (3) years; and at each annual meeting thereafter, the Members shall elect two (2) directors for a term of three (3) years.

**SECTION 3. Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of both classes of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

**SECTION 4. Compensation.** No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

**SECTION 5. Action Taken Without A Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## **ARTICLE V.**

### **NOMINATION AND ELECTION OF DIRECTORS**

**SECTION 1. Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting.

The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

**SECTION 2. Election.** Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VI.**

### **MEETINGS OF DIRECTORS**

**SECTION 1. Regular Meetings.** Periodic regular meetings of the Board of Directors may be held without notice, on such dates and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**SECTION 2. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

**SECTION 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII.

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**SECTION 1. Powers.** The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights of an Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 30 days for any single infraction of published rules and regulations;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association by virtue of the Declaration or the Articles of Incorporation of the Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration; and
- (d) declare the office of a director of the Board of Directors to be vacant in the event such director shall be absent from three (3) consecutive regular meetings of the Board of Directors.
- (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; provided, however, that any such employment arrangement shall be terminable by the Association without cause and without penalty on not more than 90 days notice; and
- (f) procure and maintain errors and omissions insurance coverage for the Board of Directors, the officers, and such of the agents of the Association as the Board, in its discretion, deems appropriate.

**SECTION 2. Duties.** It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof, in such form as the Board shall deem appropriate, to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration:
  - (1) fix the amount of the annual assessment, if any, against each Lot at least thirty (30) days in advance of each annual assessment period;
  - (2) send written notice of each assessment, if any, to every Owner subject thereto in advance of each annual assessment period;
  - (3) call special meetings of the Members for the purposes of voting on any increase in annual assessments on which Members must vote or voting on any special assessments;
  - (4) at its option, foreclose the lien against any Lot for which assessments are not paid after due date or to bring an action at law against the Owner personally obligated to pay the same;
  - (5) own, maintain and repair the Common Area (including, but not limited to, parks and landscaping and detention areas thereon), pay real estate taxes thereon, to adopt rules and regulations in connection with the use thereof, and to remove snow from the Common Area when determined by the Board to be necessary or convenient;
  - (6) maintain, repair and replace the Entryways, Community Fences and Cul-de-Sac Landscaping;
  - (7) maintain, repair and replace the Right-of-Way Landscaping and Pedestrian Pathways to the extent deemed by the Board to be beneficial and convenient;
  - (8) snowplow, repair and replace the Parking Areas;
  - (9) water the Common Area, including grass, landscaping and plant materials located thereon;
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain liability, casualty, hazard and other insurance in the manner provided in the Declaration; and
- (f) grant and create easements for public utilities for the benefit of the Owners or the Association.

## ARTICLE VIII.

### OFFICERS AND THEIR DUTIES

**SECTION 1. Enumeration of Officers.** The officers of this Association shall be a president and vice-president, who shall at all times be Members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

**SECTION 2. Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

**SECTION 3. Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

**SECTION 4. Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**SECTION 5. Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**SECTION 6. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**SECTION 7. Multiple Offices.** The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

**SECTION 8. Duties.** The duties of the officers are as follows:

#### President

- (a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments and shall co-sign all checks and promissory notes.

#### Vice-President

- (b) The vice-president shall act in the place and instead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### Secretary

- (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal, serve notice of meetings of the Board and of the Members; keep appropriate current records showing the names of the Members of the Association together with their addresses and shall perform such other duties as required by the Board.

#### Treasurer

- (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association; shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of the accounts; prepare or cause to be prepared an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

## ARTICLE IX.

### COMMITTEES

The Association shall appoint an Appearance Control Committee, as provided in the Declaration, and a Nominating Committee, as provided by these By-laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

## **ARTICLE X.**

### **DECLARANT'S RIGHTS**

Anything to the contrary contained in these By-Laws notwithstanding, so long as Declarant is a Class B Member, it shall have the absolute and exclusive right to fill any vacancies on the Board of Directors (including any vacancy caused by an increase in the number of directors) and to appoint any officers, assistant officers and agents of the Association.

## **ARTICLE XI.**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Each director and each officer of the Association and any director or officer of any other corporation serving as such at the request of the Association because of the Association's interest as a shareholder or creditor of such other corporation, shall, to the extent not protected by insurance procured by the Association, be indemnified by the Association against all expenses, as hereinafter defined, which shall necessarily or reasonably be incurred by him in connection with any action, suit or proceeding to which he is or shall be a party, or with which he may be threatened, by reason of his being or having been a director or officer of the Association or of such other corporation, whether or not he continues to be a director or officer at the time of incurring such expenses. Expenses, as used herein, shall include, but not be limited to: amounts of judgments against, or amounts paid in settlement by, such director or officer, other than amounts payable or paid to the Association, but shall not include any (a) expenses incurred in connection with any matters as to which such director or officer shall be adjudged in such action, suit or proceeding, without such judgment being reversed, to be liable by reason of his negligence or willful misconduct in the performance of his duties as such director or officer, or (b) expenses incurred in connection with any matters which shall have been the subject of such action, suit or proceeding disposed of otherwise than by adjudication on the merits, unless in relation to such matters such director or officer shall not have been liable for negligence or willful misconduct in the performance of his duties as a director or officer. In determining whether a director or officer was liable for negligence or willful misconduct in the performance of his duties as such director or officer and is for that reason not entitled to reimbursement pursuant to the foregoing provisions, the Board of Directors may conclusively rely upon an opinion of legal counsel selected by the Board of Directors. The right of indemnification hereinabove provided shall not be deemed exclusive of any other right to which such director or officer may now or hereafter be otherwise entitled and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any such director or officer in any such action, suit or proceeding to have assessed or allowed in his favor, against the Association or other corporation or otherwise, his costs and expenses incurred therein or in connection therewith or any part thereof.

## **ARTICLE XII.**

### **BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member or by any mortgagee holding a mortgage on any Lot within the Properties. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection at the principal office of the Association, where copies may be purchased at reasonable cost.

## **ARTICLE XIII.**

### **ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association the initial capital contribution, annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within fifteen (15) days after the due date, the Association may at its election, require the Owner to pay a "late charge" in an amount to be determined by the Association and applied uniformly, and if such assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate permitted by Illinois law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against his Lot. Interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.



**ARTICLE XIV.  
CORPORATE SEAL**

The Association shall have a seal in circular form having within the circumference the words: "Corporate Seal, Illinois."

**ARTICLE XV  
AMENDMENTS**

**SECTION 1.** These By-Laws may be amended by a vote of sixty-seven per cent (67%) of the total votes collectively held by all classes of Members present in person or by proxy, entitled to vote at a meeting duly called for such purpose, at which a quorum is present, written notice of which is mailed to all Members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purpose of the meeting, together with the written approval by the mortgagees holding at least fifty one percent (51%) of the outstanding mortgages on the Lots within the Properties; provided, however, that so long as Declarant is a Member of the Association, Declarant must vote for such amendment for it to pass and so long as there is a Class B Member, the Federal Housing Administration (FHA) or the Veterans Administration (VA) may veto any amendment. Notwithstanding the foregoing, in the event the Board of Directors desires to amend these By-Laws (i) to correct a technical or typographical error or to clarify any provisions herein which are otherwise vague, or (ii) for the sole purpose of causing the Declaration or these By-Laws to comply with form and substance as may be required by either the Federal Housing Authority (FHA) or the Veterans Administration (VA) to enable the sales of Lots from the Properties to qualify for the insurance by either such agency of end mortgage loans made to Owners of such Lots, or as may be required to conform to the published manuals or guidelines of any governmental, quasi-governmental or private agency engaged in the business of the purchase of mortgage loans, including, but not limited to Federal Home Loan Mortgage Corporation (FHLMC) and Federal National Mortgage Association (FNMA) for the purchase of end mortgage loans made on Lots, or (iii) for the sole purpose of causing the Declaration or these By-Laws to comply with all applicable laws, it may do so by the vote of a majority of the directors at a meeting duly called at which a quorum is present, without the consent of Members, mortgagees, the FHA or the VA, but shall serve notice of any such amendment upon all Members, the VA, the FHA and all mortgagees of Lots who have requested the same in writing.

**ARTICLE XVI  
CONTROLLING PROVISION**

In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

**ARTICLE XVII  
MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of Diamond Bay Homeowner's Association, have hereunto set our hands this 17TH day of May, 1991.

  
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## CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of Diamond Bay Homeowner's Association, an Illinois not-for-profit corporation, and,

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 17th day of May, 1991.

*Amy DeFreese*

Secretary

## **EXHIBIT "A"**

### **The Properties**

Lots 1 through 114 and Outlots B, C, D, E, F, G, H and J in Diamond Bay Units I and II being a Resubdivision of part of Lot 92 in Willow Shores, being a Subdivision of part of the Southeast Quarter of Section 20 and part of the East Half of Section 29, Township 38 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded August 14, 1979 as Document No. R79-72361, in DuPage County, Illinois.