

**ORDINANCE NO. F-1929**

**AN ORDINANCE GRANTING REZONING AND PLANNED UNIT DEVELOPMENT  
APPROVAL TO ALLOW THE CONSTRUCTION AND USE OF FIVE SINGLE-FAMILY  
RESIDENCES ON THE PROPERTY LOCATED AT 208 NORTH WEST STREET - AIRHART  
CONSTRUCTION**

**WHEREAS**, written application has been made requesting a rezoning from the R-7 Residential District to the R-6 Residential District and approval of a Planned Unit Development ("PUD") to allow the construction and use of five single-family residences following the demolition of the existing office building on the property located at 208 North West Street, Wheaton, IL ("Subject Property"); and

**WHEREAS**, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Planning and Zoning Board on November 10, 2015 to consider the rezoning and PUD request.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

**Section 1:** The following described property shall be rezoned and reclassified from the R-7 Residential District to the R-6 Residential District zoning classification:

LOT 2 IN BLOCK 4 IN COUNTY CLERK'S ASSESSMENT DIVISION BEING A  
SUBDIVISION IN THE SOUTH ½ OF THE NORTHEAST ¼ OF SECTION 17, TOWNSHIP  
39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO  
THE PLAT THEREOF RECORDED SEPTEMBER 29, 1890 AS DOCUMENT 43592, IN  
DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-17-232-013

The Subject Property is commonly known as 208 North West Street, Wheaton, IL 60187.

**Section 2:** The City Council hereby makes and determines the following Findings of Fact:

1. The establishment, maintenance, or operation of the special use will not be detrimental to the public health, safety, morals, comfort, convenience, and general welfare.
2. The special use will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor will it substantially diminish property values within the neighborhood.
3. The establishment of a special use will not impede the normal and orderly development and improvement of the surrounding property for uses already permitted.
4. Adequate utilities, access ways, drainage, and other necessary facilities have been provided.
5. The proposed development complies with the Comprehensive Plan.
6. The proposed planned unit development is consistent with the general character of the neighborhood.

**Section 3:** Pursuant to the Findings of Fact made and determined by the Mayor and City Council, a special use permit for a PUD is hereby issued on the subject property allowing the construction and use of five single-family residences in full compliance with the following plans: "Preliminary Engineering Plan - Wesley Place", prepared by Vantage Point Engineering, Tinley Park, IL, sheet 1-1, dated September 24, 2015, "Landscape Plan - Wesley Place", prepared by Airhart Construction, West Chicago, IL", sheet 1-1, dated December 29, 2015 and revised February 19, 2016 and "Floor Plans and Elevations", prepared by Airhart Construction, West Chicago, IL", sheet 1-5, dated September 24, 2015, incorporated herein as fully set forth as Group Exhibit 1, and subject to the following mandatory conditions and requirements:

1. Snow Removal

- A. All snow removal shall be in accordance with Section 58-26 of the Wheaton City Code which prohibits the depositing of snow upon the public right of way or private property of others.
- B. When the amount of snow on the Motor Court would interfere with reasonable ingress and egress to the Subject Property, it shall be removed to a lawful off-site location.
- C. No paved area on the Subject Property shall be used to store snow.
- D. The Board of the Homeowner's Association shall be responsible for insuring that its snow contractor complies with the conditions set forth herein.

2. Stormwater Maintenance

- A. The Board of the Homeowner's Association shall maintain the Subject Property's stormwater detention facilities in accordance with the development plans and specifications approved by the City of Wheaton.
- B. The Board of the Homeowner's Association shall maintain the Subject Property's stormwater detention facilities in accordance with generally accepted maintenance practices for stormwater detention systems and sewers as well as the following. It shall provide for:
  - 1. Annual inspection of the Subject Property's stormwater facilities by qualified personnel with a written report submitted to the City of Wheaton no later than June 1<sup>st</sup> of each year after issuance of the first occupancy permit for the Subject Property.
  - 2. Annual cleaning, flushing and removal of sediment or other materials that are causing or may cause the Subject Property's stormwater facilities to not function as intended.
  - 3. A video assessment every five (5) years of the overall condition of the Subject Property's stormwater detention facilities which shall be submitted to the City of Wheaton no later than June 1<sup>st</sup> of each five year anniversary after the issuance of the first occupancy permit for the Subject Property.
- C. The Board of the Homeowner's Association shall perform necessary maintenance of the property stormwater detention facilities upon notification by the City of Wheaton of any deficiency of those stormwater detention facilities.
- D. The Board of the Homeowner's Association, shall provide for funding for all stormwater detention facility maintenance as required or is necessary according to these maintenance

provisions in the annual the homeowner's association budget collected from the homeowner's association member's association fees, dues or assessments.

3. Solid Waste/Recycling Removal

- A. Solid waste/recycling removal shall be in accordance with Section 54-42 and 43 of the Wheaton City Code which requires the Subject Property to participate in the residential curbside solid waste and recycling program.
- B. On the night before or, on the designated day of waste collection, each homeowner shall place their garbage and recycling containers on the private Common Area depicted for such purpose on the Final Plat of subdivision along the alley east of the entrance to the Motor Court. This area shall not be used for any other purpose and, other than placement for pick up, this area shall not be used for the storage of garbage or recycling containers. Empty garbage and recycling containers shall be removed from the designated pick up area no later than 7 p.m. on the date of pickup.

4. Homeowners Association Document and Ordinance

The Declarations of Covenants, Conditions, Easements and Restrictions ("Declarations") for the Subject Property, attached hereto and incorporated herein as Group Exhibit 2, are hereby approved as a condition of this grant of PUD.

**Section 4:** The owner or developer has submitted a draft plat of subdivision prepared by Vantage Point Engineers, bearing a latest revision date of March 30, 2016, which is incorporated herein as if fully set forth as Exhibit 3. Prior to the issuance of any development permits for the Subject Property the owner or developer shall submit a legally compliant final plat of subdivision, conforming with Exhibit 3, which shall not become effective until approved by resolution of the City Council.

**Section 5:** The owner or developer of the Subject Property shall maintain all landscaping and plantings on the Subject Property so that the number, quality and character of the landscaping shall not be less than that which is illustrated on the final approved landscape plan. In the event any landscaping, plantings or vegetations on the property dies, in whole or in part, at any time, the owner or developer shall, forthwith, replace the non-viable landscaping vegetation and/or plantings with reasonably similar substitutes of original planting size or larger as directed by the City. Once control of the Homeowner's Association is turned over to the Homeowners as set forth in Exhibit 2 the conditions of this section be binding upon the Board of the Homeowner's Association.

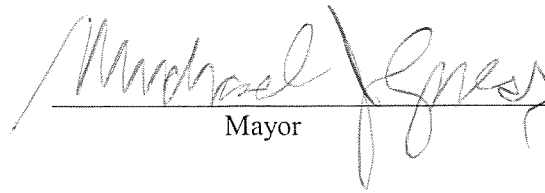
**Section 6:** The demolition of the existing structure located on the Subject Property shall be authorized by this Ordinance. Demolition of said structure, however, shall be carried out in conformance with Wheaton City Code Chapter 22, Article XIV, with the exception that the owner or developer shall not be required to wait 30 days prior to commencing demolition from the date of submitting a demolition permit application to the Building and Code Enforcement Department, and shall not be required to hold a "neighbor meeting" at least thirty (30) days prior to submitting an application for building demolition. The owner or developer shall provide seven (7) days written notice to all property owners located within 100 feet of the Subject Property prior to the building demolition.

**Section 7:** All ordinances or parts of ordinances in conflict with these provisions are repealed.

**Section 8:** This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

ATTEST:

  
City Clerk

  
Mayor

Roll Call Vote

Ayes: Councilman Scalzo  
Councilman Suess  
Councilman Rutledge  
Mayor Gresk  
Councilman Saline

Nays: Councilman Prendiville

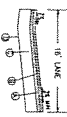
Absent: Councilwoman Fitch

Motion Carried

Passed: April 4, 2016  
Published: April 5, 2016

Group Exhibit 1

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION IN ILLINOIS, LATEST EDITION, AND THE SUPPLEMENTARY SPECIFICATIONS FOR THE CITY OF CHICAGO.
2. ALL STORM SEWERS SHALL BE 15" DIA. PRECAST CONCRETE PIPE (PCCP) WITH 15" DIA. MANHOLES.
3. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
4. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
5. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
6. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
7. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
8. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
9. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
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11. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
12. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.



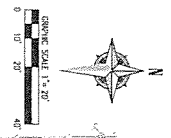
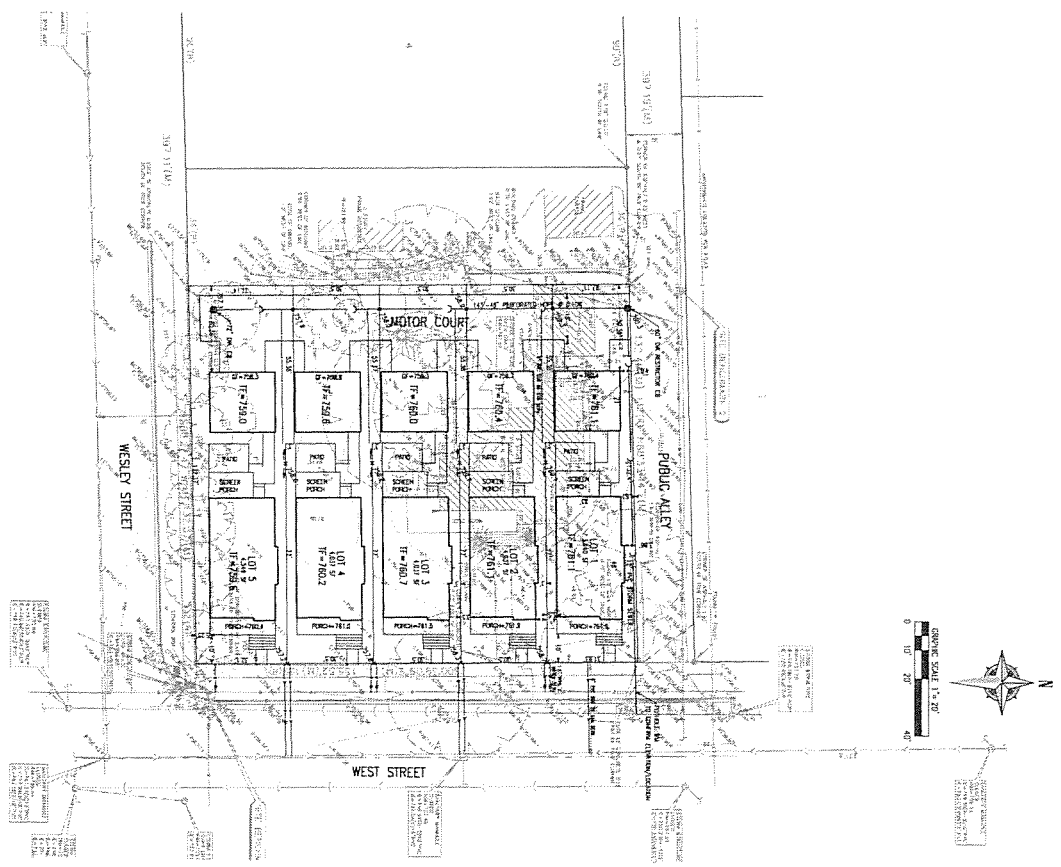
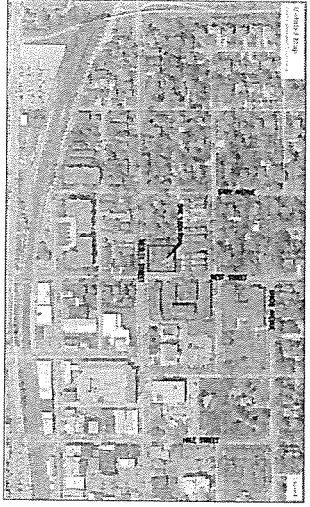
TYPICAL PAVEMENT SECTION - MOTOR COURT

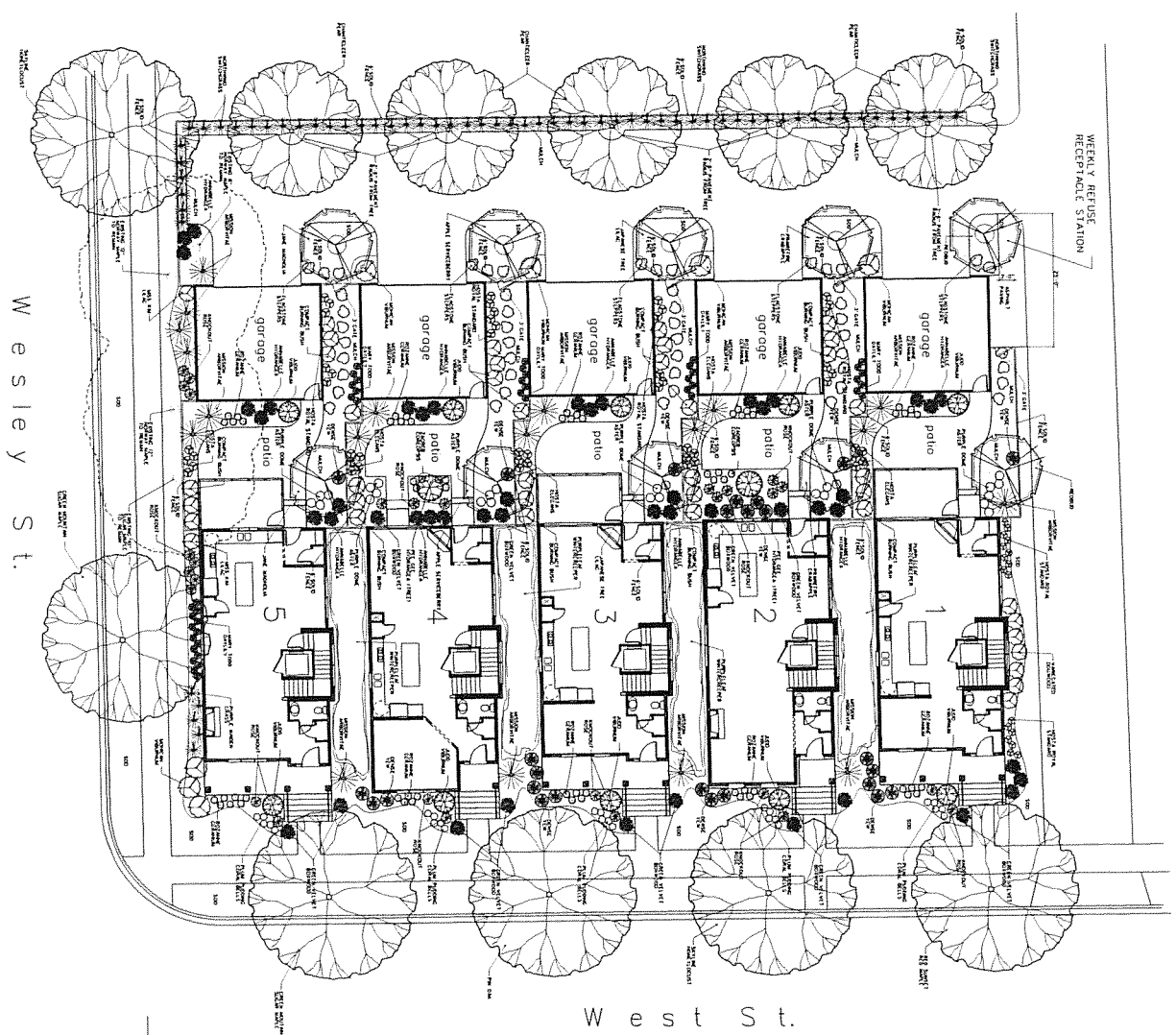
1. 1.5" MINIMUM CONCRETE SURFACE COURSE, SURFACE, AND C. AND
2. 3" MINIMUM CONCRETE BASE COURSE, SURFACE, AND C. AND
3. 3" MINIMUM CONCRETE SUB-BASE, SURFACE, AND C. AND

**NOTES:**

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION IN ILLINOIS, LATEST EDITION, AND THE SUPPLEMENTARY SPECIFICATIONS FOR THE CITY OF CHICAGO.
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6. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
7. ALL STORM SEWERS SHALL BE REINFORCED CONCRETE PIPE (RCCP) WITH 15" DIA. MANHOLES.
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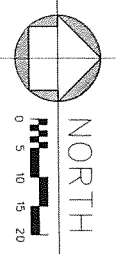
SITE LOCATION MAP





Wesley St.

West St.



### Lot 1 "The Redbud"

PLANT MATERIAL LIST

PLANT	QUANTITY	NOTES
Redbud (C. florida)	1	1" x 1" x 1"
...	...	...

### Lot 2 "The Crabapple"

PLANT MATERIAL LIST

PLANT	QUANTITY	NOTES
Crabapple (Malus)	1	1" x 1" x 1"
...	...	...

### Lot 3 "The Tree Lilac"

PLANT MATERIAL LIST

PLANT	QUANTITY	NOTES
Tree Lilac (Syringa)	1	1" x 1" x 1"
...	...	...

### Lot 4 "The Amelanchier"

PLANT MATERIAL LIST

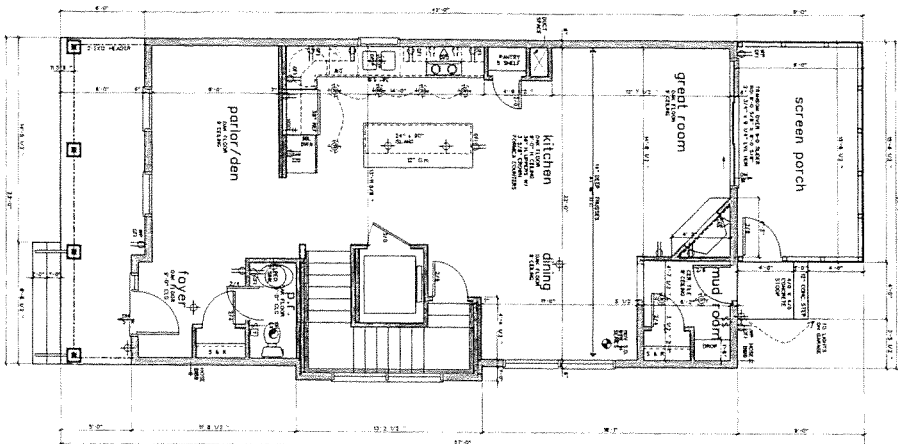
PLANT	QUANTITY	NOTES
Amelanchier (Viburnum)	1	1" x 1" x 1"
...	...	...

### Lot 5 "The Magnolia"

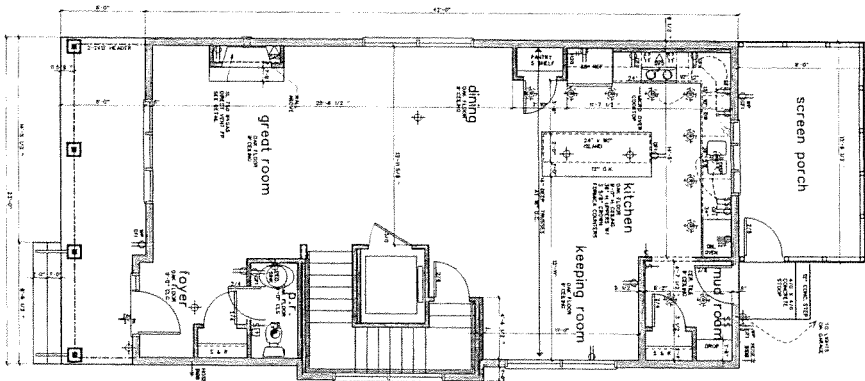
PLANT MATERIAL LIST

PLANT	QUANTITY	NOTES
Magnolia (Magnolia)	1	1" x 1" x 1"
...	...	...

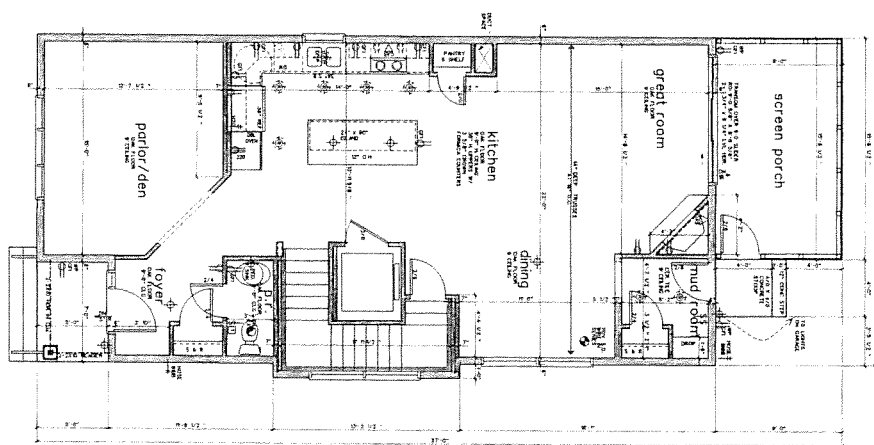
**AIHART CONSTRUCTION**  
 140 E. ROOSEVELT AVE. WEST CHICAGO, IL 60659  
 DATE: 12-20-13  
 DRAWN BY: J. C.  
 PROJECT: Wesley Place  
 LANDSCAPE PLAN  
 SCALE: 1" = 10'



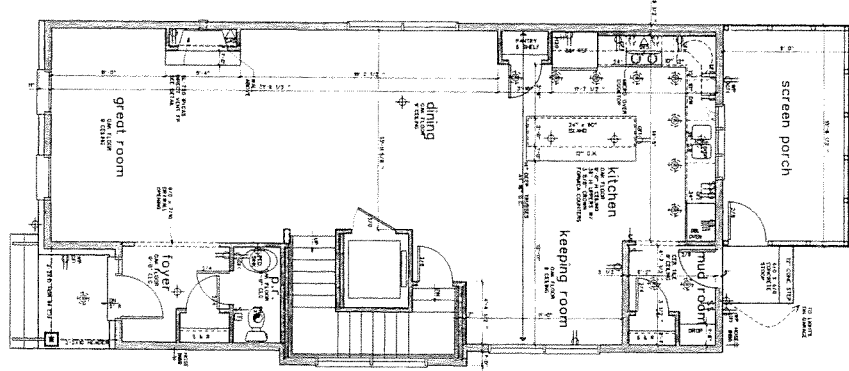
MAIN LEVEL  
CENTER KITCHEN




MAIN LEVEL  
REAR KITCHEN



MAIN LEVEL  
CENTER KITCHEN WITH  
OPTIONAL PUNCH OUT



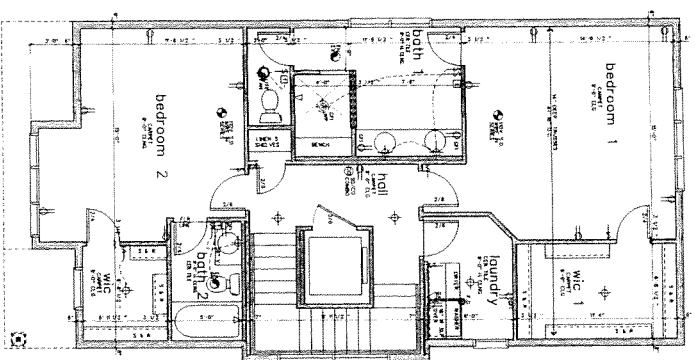
MAIN LEVEL  
REAR KITCHEN WITH  
OPTIONAL PUNCH OUT


**AIRHART CONSTRUCTION**  
 INC. 2000 W. 10TH ST. SUITE 100  
 CHICAGO, IL 60640-1000  
 TEL: 773.326.1000 FAX: 773.326.1001  
 WWW.AIRHARTCONSTRUCTION.COM

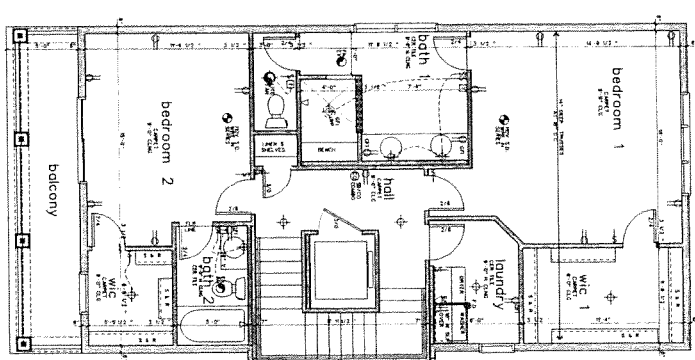
**FLOOR PLANS**  
 SHEET NO. 101  
 DATE: 10/1/10

DRAWN: J. HART  
 CHECKED: J. HART  
 APPROVED: J. HART

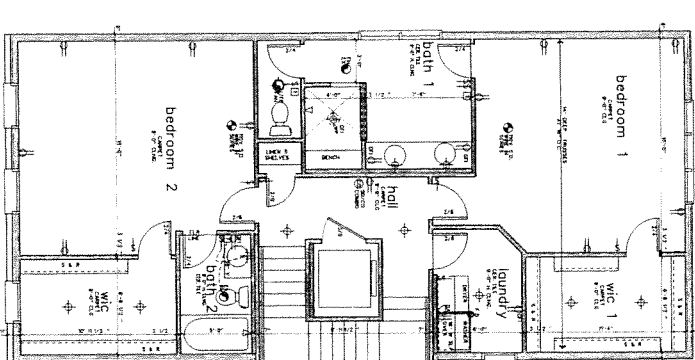




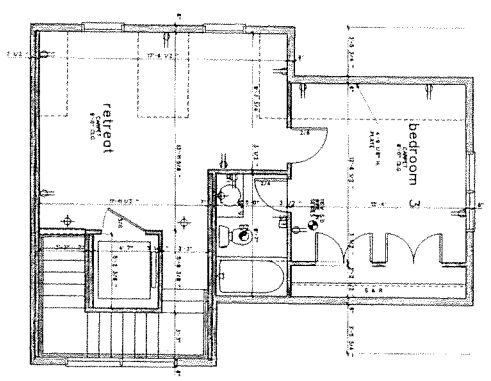
UPPER LEVEL



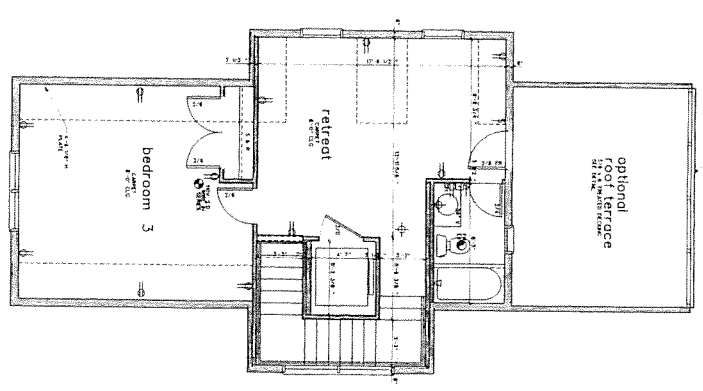
UPPER LEVEL  
OPTIONAL BALCONY




UPPER LEVEL  
OPTIONAL PUNCH OUT

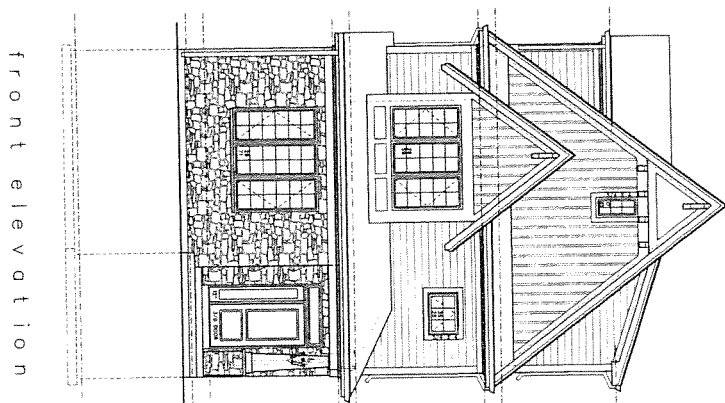
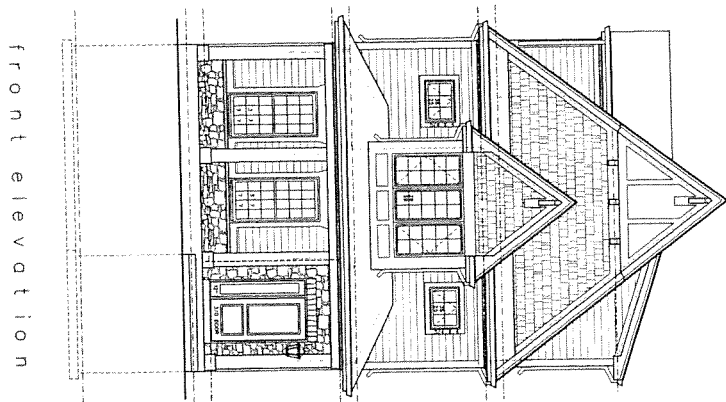
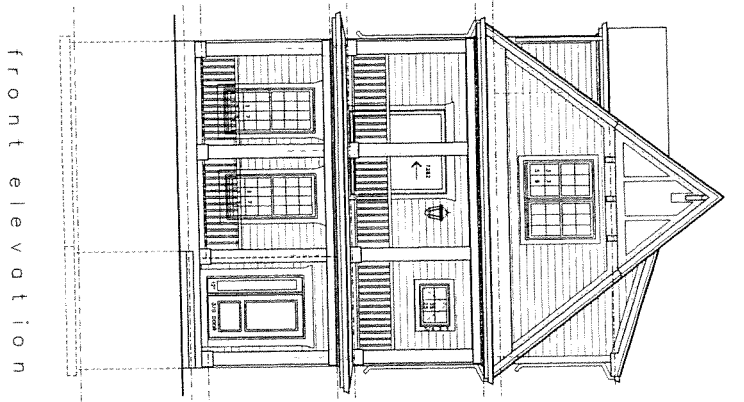


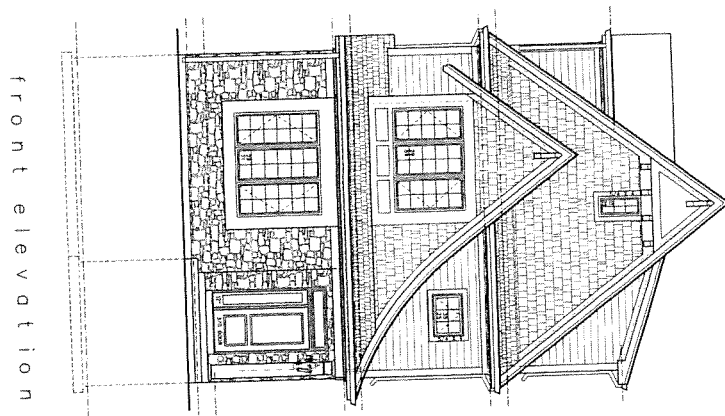
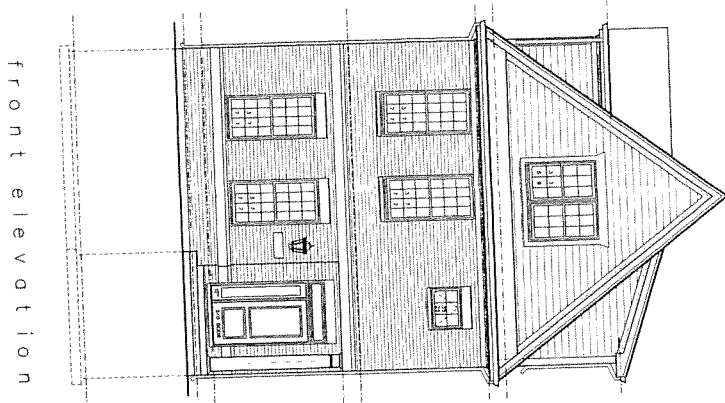
RETREAT LEVEL




RETREAT LEVEL  
OPTIONAL PUNCH OUT

 <b>AIRHART CONSTRUCTION</b> 1400 E. ROBERTS BLVD. SUITE 100, CHANDLER, AZ 84904 (480) 948-1000			
DATE:	7-1-00	DESIGN:	7-1-00
SCALE:	1/4" = 1'-0"	REVISION:	1-1-00
FLOOR PLANS		PROJECT:	PP-3





 <b>AIRHART CONSTRUCTION</b> 100 E. RIVERVIEW BLVD. WEST CINCINNATI, OH 45226	
SCALE: 1/4" = 1'-0" DATE: 12-18-18	PROJECT: Wesley Place DRAWN: [blank] CHECKED: [blank]
ELEVATIONS	
SHEET: EL-2	

Group Exhibit 2

**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR  
WESLEY PLACE**

**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR  
WESLEY PLACE**

THIS Declaration of Covenants, Conditions, Easements and Restrictions for **WESLEY PLACE HOMEOWNER ASSOCIATION** (the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by AIRHART CONSTRUCTION, CORP., an Illinois corporation, ("Declarant:

RECITALS

A. Declarant is the record Owner of certain real estate commonly known as WESLEY PLACE in the City of Wheaton, County of DuPage, State of Illinois. The development will consist of Dwelling Units and of common area to be dedicated and deeded to the **WESLEY PLACE HOMEOWNER ASSOCIATION**. (Outlots designated on the Final Plat of Subdivision for Wesley Place). Declarant submits the property legally described in Exhibit A, attached hereto and made a part hereof (and such further property pursuant to 10.02 herein), to this Declaration of Covenants, Conditions, Easements and Restrictions for Wesley Place.

B. Airhart Construction Corporation, an Illinois corporation ("Developer") intends to develop and improve the property described in Exhibit A (the "Subject Property") (and such further property pursuant to 10.02 herein) with Dwelling Units together with private streets, roadways, parking areas, landscaping and other improvements for the common use and enjoyment of the Owners, occupants and invitees of the said Dwelling Units.

C. Declarant intends to submit the Subject Property to the provisions of this Declaration and to form an Illinois not-for-profit corporation known as **WESLEY PLACE HOMEOWNER ASSOCIATION** for the purpose of owning, maintaining and administering

certain portions of the Subject Property (as defined herein) and the improvements thereon as hereinafter provided.

NOW, THEREFORE, Declarant hereby declares that the plat of subdivision of the Subject Property dated \_\_\_\_\_ and recorded \_\_\_\_\_ as Document \_\_\_\_\_ and all of the Subject Property (defined in Exhibit A and referenced as the "Plat") shall be held, sold and conveyed subject to the terms of the following covenants, conditions, easements and restrictions, all of which shall run with the land and be binding on all parties having or acquiring any right, title or interest therein or any part thereof, and shall inure to the benefit of each Owner thereof and is binding upon their respective heirs, successors, assignees and grantees. The Association shall have the powers now or hereafter granted by the General Not-For Profit Corporation Act of the State of Illinois and the Illinois Common Interest Community Association Act.

#### ARTICLE I Definitions

The following words when used in this Declaration or in any Supplementary Declaration (as defined herein) shall, unless the context shall prohibit, have the following meanings:

1.01 Access Area. The unenclosed sidewalks from time to time or at any time located or constructed upon the Lots and utilized for ingress, egress and access to, from and through the property.

1.02 Association. **WESLEY PLACE HOMEOWNER ASSOCIATION**, an Illinois not-for-profit corporation, its successors and assigns.

1.03 Common Area. That portion of Subject Property which is depicted as Common Area, including OUT LOT A, on the Final Plat of subdivision prepared by Vantage Point Engineering dated [insert], and any property conveyed to the Association and designated as Common area by this Agreement, together with all improvements thereon, title to which shall be held by **WESLEY PLACE HOMEOWNER ASSOCIATION**.

1.04 Declarant. Airhart Construction Corp., an Illinois corporation, its successors and assigns.



1.05 Developer. Airhart Construction Corp., an Illinois corporation, its successors and assigns.

1.06 Development Area. The real estate described in Exhibit "A" hereto with all improvements thereon and rights appurtenant thereto. The Development Area may also be referred to as "Parcel".

1.07 Dwelling Unit. Shall mean one residential Dwelling Unit attached to a Lot.

1.08 Lot. A portion of the Parcel conveyed to an Owner. The Lot (unless otherwise hereafter provided by the Developer) shall be conveyed by means of a deed describing the same which may be by a metes-and-bounds legal description.

1.09 Majority. "Majority" or "majority of the unit Owners" mean the Owners of more than 50% in the aggregate in interest of the undivided Ownership of the common elements. Any specified percentage of the unit Owners means such percentage in the aggregate in interest of such undivided Ownership. "Majority" or "majority of the members of the Board of the Association" means more than 50% of the total number of persons constituting such Board pursuant to the bylaws. Any specified percentage of the members of the Association means that percentage of the total number of persons constituting such Board pursuant to the bylaws.

1.10 Member. Every Owner of a Lot which is subject to the Declaration shall be a member of the Association, as provided in Section 2.01. Ownership of such Lot shall be the sole qualification for membership.

1.11 Owner. A record Owner, whether one or more persons, individuals or entities, of fee-simple title to any Lot or Dwelling Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The Developer shall be deemed to be an Owner with respect to each Lot or Dwelling Unit owned by the Developer.

1.12 Parcel. The real estate described in Exhibit 'A' hereto with all improvements thereon and rights appurtenant thereto. The Parcel may also be referred to as "Development Area".

1.13 Subject Property. The real estate described in Exhibit A, attached hereto.

1.14 Plat. The plat of subdivision recorded against the Subject Property in the Office of the Recorder of DuPage County, Illinois and any amendments or additions thereto.

1.15 Transfer Date. Shall mean the date upon which the authority to appoint the Board passes to the Members, which shall be the first to occur of the following: (a) the date which is three (3) years after the recording of this Declaration, (b) the date that is no later than sixty (60) days after the conveyance by the Declarant of legal title to seventy-five percent (75%) of the Lots to Owners other than Declarant or an assignee of Declarant occurs, or (c) the date Declarant elects voluntarily to turn over to the Members the authority to appoint the Board.

ARTICLE II  
Membership and Board of Directors

2.01 Membership. Every person or entity, including the Declarant, who is a record Owner of a fee interest or an undivided fee interest in any lot which is the subject of this Declaration, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot or Dwelling Unit. Ownership of a Lot or Dwelling Unit shall be the sole qualification for membership. Each Owner of any Lot by acceptance of a deed therefore, covenants and agrees to be a Member of the Association whether or not it shall be so expressed in any deed or other conveyance.

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

Class A. Class A Members shall be all those Owners as defined in Section 2.01, provided that the Declarant shall not be a Class A Member until the Transfer Date. Class A Members shall be entitled to one vote for each Lot or Dwelling Unit in which they hold the interest required for membership by Section 2.01. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot or Dwelling Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Dwelling Unit. All Members holding any interest in a single Lot or Dwelling Unit shall together be entitled to cast only one vote for the Lot or Dwelling Unit.

Class B. The Class B Member shall be the Declarant, its successors and assigns. The Class B Member shall be entitled to three (3) votes for each Lot or Dwelling Unit in which it holds the interest required for membership by Section 2.01; provided that the Class B membership shall cease and be converted to Class A membership on the transfer date described in Section 3.7 of this Declaration.

If more than one person is the record Owner of any Lot or Dwelling Unit, or if an Owner is a trustee, corporation, partnership or other legal entity, the vote for such Lot or Dwelling Unit shall be exercised as such Owner of that Lot or Dwelling Unit shall designate. Such designation shall be made in writing to the Board (as defined herein) or in such other manner as may be provided in the by-laws of the Association attached hereto as Exhibit B (the "By-laws"). Declarant shall designate the person who shall exercise the voting rights with respect to the Lots or Dwelling Units owned by Declarant.

2.03 Board of Directors. The Association shall be governed by a Board of Directors (the "Board") comprised of not less than three (3) persons, duly appointed or elected as provided herein and in the By-laws; provided, however, that the number of persons comprising the Board may be increased, in the discretion of Developer, by written notice to the Association, at the time or times that any part of the Subject Property is annexed; provided, further, that in no event shall the number of persons comprising the Board exceed five (5). Except for directors appointed by Developer, all directors shall be members of the Association. The Board shall govern the Association in the exercise of the rights of the Association and performance of the Association's

obligations in accordance with the terms and provisions of this Declaration and the By-laws, as amended from time to time. Prior to the appointment of the first Board, the Developer shall exercise all rights, powers and privileges and act in the capacity of the Board and may perform all its functions as set forth in this Declaration and in the By-laws.

2.04 Appointment of Directors by Developer. Notwithstanding anything in this Declaration or the By-laws to the contrary, the first and each subsequent Board shall consist of, and vacancies on the Board shall be filled by, such persons as Developer shall from time to time appoint, who may but need not be members of the Association, until the first to occur of any one of the following events: a) 60 days after the conveyance by the developer of 75% of the units, b) or 3 years after the recording of the Declaration; or (c) Developer, by written notice to the Association, voluntarily elects to release its right to appoint all members of the Board. Without the prior written consent of Developer, neither the Articles of Incorporation of the Association nor the By-laws shall be amended, modified or changed to in any way diminish the authority of the Board while the Developer has the right to appoint any members of the Board. Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more directors, and continue to exercise its right to appoint the remaining members of the Board for the period hereinabove specified. All directors not appointed by Developer shall be elected as hereinafter provided in the Declaration and By-laws.

2.05 Election of Directors by Members. Upon termination of Developer's right to appoint any or all of the directors as provided in the preceding paragraph, those directors not subject to appointment by Developer shall be elected by the members of the Association at a meeting called by the President of the Association or by the Developer, or by any three (3) members of the Association. Such meeting shall be called by notice sent in accordance with the By-laws.

2.06 Director and Officer Liability. Neither the directors nor the officers of the Association shall be personally liable to the Owners of the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever while acting in the capacity of such directors or officers, except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the directors and officers, their heirs and legal representatives, against all contractual and other liabilities to third parties arising out of the contracts made by other acts of the directors and officers on behalf of the Owners or the Association or arising out of their status as directors or officers unless any such contract or act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matters as to which any such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director or officer; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable

ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such director or officer.

2.07 Governing Law. Except as otherwise provided in this Declaration, the Association, its Board, the officers and members of the Association shall be governed by the Illinois General Not-For-Profit Corporation Act and the Illinois Common Interest Community Association Act.

### ARTICLE III Easements and Property Rights

3.01 Easements of Use and Enjoyment. Declarant hereby grants a perpetual, non-exclusive easement, over and upon the Common Area for the benefit of the Association and the Owners, and every Owner shall have a right and easement of use and enjoyment and a right of access to and of pedestrian and vehicular ingress and egress on, over, across, in, upon and to the Common Area, and such right and easement shall be appurtenant to and shall pass with title to every Lot or Dwelling Unit, subject to the rights of Declarant and Developer reserved in this Declaration, and the rights of other granted in this Declaration and the following rights of the Association exercised in the manner provided in the By-laws:

(a) To adopt rules and regulations governing the use, operation and maintenance of the Common Area.

(b) To borrow money for the purpose of improving the Common Area provided that such improvement is approved by the Board, or by a majority of the members of the Association voting at a general or special meeting duly called and held in accordance with the By-laws.

(c) To petition to dedicate or transfer all or any part of the Common Area, or any utility system thereon, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that so long as the Developer has the power to appoint any director of the Association, such instrument must also be signed by Developer. No such petition for dedication or transfer shall be valid unless an instrument authorized by three-fourths (3/4) of the Members, having the right to vote, has been filed with the public agency, authority or utility requesting such dedication or transfer. Written notice shall be given to every Member at least ninety (90) days in advance of any action taken.

(d) To pay for, out of the assessment funds, all taxes and assessments and other liens and encumbrances which shall be properly assessed or charged against the Common Area.

### 3.02 Easements of Access.

(a) Every Owner is hereby granted and reserved a perpetual non-exclusive easement for the purpose of reasonable ingress and egress from his or her Lot or Dwelling Unit to, through and from all public and private sidewalks and roadways (including specifically Outlot A, the Motor Court as identified on the Plat) which adjoin the Subjectproperty through, over and across the Access Area; provided, however, that no Owner may remove, relocate or cause to be removed or relocated, any portion of the Access Area now or hereafter located upon his Lot.

(b) The Association, Declarant and Developer, and each of them, is hereby granted and reserved perpetual non-exclusive easements to, through, over and across the Subject Property for the purpose of exercising the rights, performing the functions, and discharging the responsibilities, permitted or required to be performed or discharged by any of them pursuant to any provision of this Declaration; including but not limited to easements to maintain all storm, sewer and watermain systems installed on the Subject Property.

3.03 Implied Easements. Declarant hereby acknowledges that, due to the length and complexity of this Declaration, certain omissions may have occurred in connection with the grants of various easements, including, but not limited to, those for access, ingress and egress, use and enjoyment, utilities, light and air, support and maintenance. Declarant therefore hereby grants any easement omitted herein which easement is reasonably implied from and by the provisions and scheme of this Declaration and is reasonably necessary for the purpose of furthering the beneficial purposes and intentions of Declarant as expressed in this Declaration.

### 3.04 Omitted

3.05 Encroachments. In the event that (a) by reason of design, construction, location, repair, settlement, shifting or movement, any dwelling or other improvement as originally constructed by Developer on any Lot or Dwelling Unit or upon the Common Area overhangs or otherwise encroaches or shall hereafter encroach upon any other Lot or Dwelling Unit or upon the Common Area, or (b) by reason of such design, construction, location, repair, settlement, shifting or movement it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Area for any reasonable use appurtenant thereto which will not unreasonably interfere with the use or enjoyment of the Common Area by other Owners, or (c) by reason of the design or construction of utility, ventilation and exhaust systems, as originally constructed by Developer, any mains, pipes, ducts, or conduits servicing any Lot or Dwelling Unit or more than one Lot or Dwelling Unit, encroach or shall hereafter encroach upon any part of any Lot or Dwelling Unit, or the Common Area, then, in any such case, valid easements for the maintenance of such encroachment and for such use of the Common Area, together with the right to enter upon such other Lot or Dwelling Unit or Common Area to maintain, repair and replace such encroachment are hereby established and shall exist for the benefit of such Lot or Dwelling Unit or the Common Area, as the case may be, so long as such dwelling or other improvement shall remain standing; provided, however, that if any such dwelling or other improvement is partially or totally destroyed

and thereafter repaired or rebuilt, the same encroachment may be re-established and the easements herein granted for the maintenance, repair and replacement thereof shall continue in force; provided further that in no event shall a valid easement for any encroachment or use of the Common Area be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Common Area by others or if it occurred due to the willful conduct of any Owner.

3.06 Transfer of Common Area to Association. Declarant shall convey to the Association, free and clear of all encumbrances and the Association shall accept, the Common Area herein described and any additions thereto, together with such facilities and improvements as the Developer may elect to install thereon and subject to such easements as the Developer may cause to be placed thereon, and at such time or times as the Developer shall determine. At the time of such conveyance to the Association, the Association shall assume and agree to perform the obligations of Declarant, Developer and the Association under this Declaration with respect to the property so conveyed.

3.07 Agreement for Grant of Easements. In the event, at any time after the recording of this Declaration, Declarant or Developer shall deem it necessary to do so, Declarant may (i) reserve or grant easements for the benefit of the Subject Property in, over, under, to and across the Subject Property for the installation, construction and maintenance of any and all public and private utility conduits, wires, ducts, pipes, cables and other lines, and all associated equipment for the provision of utilities services for the Subject Property, including without limitation, those for the transmission and distribution of water, electricity, gas, telephone, sewage, drainage, cable or satellite television, and (ii) dedicate any portion of the Subject Property to any public or quasi-public utility or to any governmental authority for the installation, construction and maintenance of any such utilities and for ingress and egress thereto. For so long as Declarant or Developer or, their successors or assigns owns a Lot or Dwelling Unit subject to the terms hereof, they shall have the right to connect to all utilities serving the Subject Property.

3.08 Rights of Occupants. All persons who reside on a Lot or Dwelling Unit shall have the same rights to use and enjoy the Common Area and all improvements situated thereon as the Owner of that Lot or Dwelling Unit.

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

3.10 No Dedication to Public Use. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Subject Property to or for any public use or purpose whatsoever.

ARTICLE IV  
Obligations of Association and Owners With Respect to  
Maintenance and Administration of the Property

4.01 Association's Obligations. In addition to all other rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-laws of the Association, the Association shall have the following rights, powers and duties with regard to the Common Area and Lots or Dwelling Units respectively, the cost and expense of which shall be paid for by the Association from assessment funds:

(a) Common Area. The Association shall maintain, repair, replace and manage the Common Area and all facilities, sidewalks, private roadways and streets, and improvements thereon and within the Access Area, provide for lawn mowing and landscaping and maintenance thereof and, without limiting the generality of the foregoing, provide for snow removal of the common area and private roadways including removal of excess snow by truck when necessary to provide reasonable ingress and egress; maintain continuously in force comprehensive liability, hazard, and other insurance; maintain all underground utilities located in the Common Area and Access Area serving the Subject Property (including water pipes, sanitary and storm sewer lines, telephone and electrical cables and gas mains) to the extent that the responsibility to maintain such utilities has not been assumed by any public utility, the City of Wheaton, or other governmental authority or agency, or any Owner; pay all taxes, assessments and other liens and encumbrances which are assessed to or charged against the Common Area or other property owned by the Association; pay all sums due the City of Wheaton for the enforcement of local laws; and provide such other services for the Common Area as the Board deems to be in the best interests of the Association and its members.

(b) Lots. The Association, at its cost and expense, shall provide for the lawn mowing of the Lots and snow removal on the private roadways, driveways, sidewalks, front steps and stoops of the Dwelling Units and shall maintain, repair and/or replace on all Lots the following: landscaping and the replacement of lawns, shrubs, trees, grass, fencing, and other landscaping; repair and replacement of driveways, sidewalks and walkways on each Lot (unless the repair or replacement is caused by the Owner's negligence); refuse removal from each Dwelling Unit by access from the Motor Court to the refuse pick up area depicted on the Final Plat of Subdivision.

#### 4.02 Owner's Obligations – Exterior of Dwelling Unit.

(a) Each Owner, at his or her sole cost and expense, shall provide for, maintain, repair and replace the following on his or her individual Dwelling Unit: shutters, screens, doors, glass surfaces, window washing, tuckpointing of the exterior surfaces of the dwelling, garage door and exterior lighting, roofing, siding, gutters, exterior painting, staining, and the maintenance of all underground utilities serving his Lot or Dwelling Unit, to the extent that the responsibility to maintain such utilities has not been assumed by any public utility agency, the City of Wheaton, or other governmental authority or agency, or the Association.

(b) The above exterior repairs and/or replacements must be repaired and maintained by the Owner as reasonably and necessarily required by the Owner and/or the Association. The Association shall approve any exterior addition, repair and replacement by any Owner prior to the Owner initiating same. No Owner shall make any exterior modifications and/or additions to his Lot or Dwelling Unit without the express approval of the Association, which additions and/or modifications shall include, but are not limited to, the following: installation of fencing, construction of shed, installation of pools, exterior modification to the Dwelling Unit, (including but not limited to, changing the type of surface material on the exterior of the dwelling, changing the type, color or quality of the staining and/or painting, change to the type, quality, color or style of the garage door; change to the type, quality or color of the roofing material, changing the landscaping within the Owner's Lot or Dwelling Unit), or any other addition and/or modification to the exterior of the Owner's Lot or Dwelling Unit.

(c) In the event any Owner shall fail to perform any of foregoing obligations, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternate remedies, shall have the right (but not the obligation), through its employees and agents or through independent contractors, upon reasonable notice or, in the case of an emergency, without notice, to enter upon any Lot or Dwelling Unit, and, if required, into any dwelling, to repair and maintain the Lot or Dwelling Unit and the improvements situated thereon. Each Owner, by acceptance of a deed for his Lot or Dwelling Unit hereby covenants and agrees to pay the Association the cost of such repairs and maintenance, upon demand, and the Association shall have a lien upon said Lot or Dwelling Unit enforceable in the manner and to the extent herein set forth in this Declaration, and the failure of such Owner to pay such costs shall carry with it the same consequences as if the failure to pay any assessments levied hereunder when due, as herein provided. The Association shall be responsible for and shall repair any damage caused by it in the exercise of its rights hereunder.

4.03 Maintenance of the Common Area Prior to Conveyance to Association. Notwithstanding the retention by Declarant of title to all or any portion of the Subject Property designated as Common Area, the Association shall pay or reimburse the Developer for all real



estate taxes and all other costs and expenses arising out of or incident to the Ownership, maintenance and repair of such portion of the Common Area that is available for use by the Owners to the same extent as such costs and expenses would be the obligation of the Association if it were the record Owner thereof.

4.04 Repair and Reconstruction. In the event of damage to or destruction of any dwelling or other improvement installed by Developer on any Lot or Dwelling Unit, the Owner or Owners from time to time of any such improvement covenant and agree that they will, within a reasonable time after such destruction, repair or rebuild the same in a substantial and workmanlike manner with materials comparable to those used in the original structure, and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as and of architectural design in conformance with the exterior of such structure immediately prior to such damage or destruction. If any Owner or Owners fail to make the necessary repairs or reconstruction within a reasonable time after such damage or destruction occurs, the Board may cause the same to be done and the cost thereof shall be charged to such Owner or Owners as his or their personal obligation and shall be a lien on his Lot or Dwelling Unit.

4.05 Condemnation. In the case of a condemnation or taking by eminent domain (a "taking") by competent authority of any part of the Common Area, the Association shall, if necessary, restore the improvements in the remaining portion of the Common Area to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking. Any proceeds or awards made to the Association in connection with any such taking shall be applied first to the cost of any restoration, with the balance to be used by the Association to carry out its obligations under this Declaration.

## ARTICLE V – COVENANTS FOR CITY

5.0 Covenants for the Benefit of the City. The covenants set forth in this Article V are for the benefit of the Association as well as the City of Wheaton. The City shall have the right but not the duty to enforce them. Failure of the City of Wheaton to enforce one or more of these covenants at any time shall not be considered in any manner to constitute a waiver or release of the covenants which shall remain in full force and effect so long as the Subject Property remains improved as set forth in Ordinance Number (insert number of approving PUD ordinance). The City of Wheaton in its sole discretion may elect to enforce these covenants if the Association fails to enforce or in any manner breaches these covenants. Any and all costs, including reasonable attorney's fees and costs, including expert witness fees, incurred by the City of Wheaton in the enforcement of this Article shall be payable by the Association to the City of Wheaton and shall be enforceable as a lien against the common elements of the Subject Property. Where any of these covenants are inconsistent with other provisions of this Declaration these covenants shall control.

5.01 Municipal Inspection Easement. Declarant hereby grants a perpetual, non-exclusive easement to the City of Wheaton to inspect all Common Areas of the Subject Property.

## 5.02 Snow Removal.

(a) All snow removal shall be accordance with Section 58-26 of the Wheaton City Code which prohibits the depositing of snow upon the public right of way or private property of others.

(b) When the amount of snow in the Motor Court would interfere with reasonable ingress and egress to the development, it shall be removed to a lawful off-site location.

(c) No paved area of the Subject Property shall be used to store snow.

(d) The Board of the Homeowner's Association shall be responsible for insuring that its snow contractor complies with the conditions set forth herein.

## 5.03 Stormwater Maintenance.

(a) The homeowner's association by its board shall maintain the stormwater detention facilities in accordance with the development plans and specifications approved by the City of Wheaton.

(b) The homeowner's association by its board shall maintain the stormwater detention facilities in accordance with generally accepted maintenance practices for stormwater detention systems and sewers, as well as the following, It shall provide for:

(c) Annual inspection of the stormwater facilities by qualified personnel with a report submitted to the City of Wheaton no later than June 1<sup>st</sup> of each year after issuance of the first occupancy permit for the PUD; and

1. Annual cleaning, flushing and removal of sediment or other materials that are causing or may cause the stormwater facilities to not function as intended; and
2. A video assessment every five (5) years of the overall condition of the stormwater detention facilities which shall submitted to the City of Wheaton no later than June 1<sup>st</sup> of each five year anniversary after the issuance of the first occupancy permit for the PUD.

(d) The homeowner's association by its board shall perform maintenance of the property stormwater detention facilities upon notification by the City of Wheaton of any deficiency of those stormwater detention facilities.

(e) The homeowner's association, by its board , shall provide for funding for all stormwater detention facility maintenance as required or is necessary according to these

maintenance provisions in the annual the homeowner's association budget collected from the homeowner's association members association fees, dues or assessments.

5.04 Solid Waste/Recycling Removal.

(a) Solid waste/recycling removal shall be in accordance with Section 54-42 and 43 of the Wheaton City Code which requires the development to participate in the curbside waste and recycling program.

(b) On the night before or, on the designated day of waste collection, each homeowner shall place their garbage and recycling containers on the private Common Area depicted for such purpose on the Final Plat of subdivision along the alley east of the entrance to the Motor Court. This area shall not be used for any other purpose and, other than placement for pick up, this area shall not be used for the storage of garbage or recycling containers. Empty garbage and recycling containers shall be removed from the designated pick up area no later the 7 p.m. on the date of pick-up.

ARTICLE VI

Covenant for Assessments

6.01 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, including Developer, acting on behalf of Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Lot owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Lot or Dwelling Unit against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the person who was the Owner of such Lot Unit at the time when such assessment fell due.

6.02 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and, in particular, without limiting the foregoing, for maintenance, repair, replacement, improvement and additions of and to the Common Area and the improvements thereon; for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the Ownership of the Common Area and all facilities and improvements thereon; for certain maintenance, repair and replacement of portions of the Lots or Dwelling Units and the exterior surfaces of certain improvements thereon, as hereinbefore provided, and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-laws.

6.03 Assessment Procedure-Annual Assessments.

(a) Each Owner shall receive, at least 30 days prior to the adoption thereof by the Board, a copy of the proposed annual budget together with an indication of which portions are intended for reserves, capital expenditures or repairs or payment of real estate taxes.

(b) The Board shall annually supply to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with an indication of which portions were for reserves, capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

(c) If an adopted budget or any separate assessment adopted by the Board would result in the sum of all regular and separate assessments payable in the current fiscal year exceeding 115% of the sum of all regular and separate assessments payable during the preceding fiscal year, the Association, upon written petition by Owners with 20% of the votes of the Association delivered to the Board within 14 days of the Board action, shall call a meeting of the Owners within 30 days of the date of delivery of the petition to consider the budget or separate assessment; unless a majority of the total votes of the Owners are cast at the meeting to reject the budget or separate assessment, it shall be deemed ratified.

(d) Any common expense not set forth in the budget or any increase in assessments over the amount adopted in the budget shall be separately assessed against all Owners.

(e) Separate assessments for expenditures relating to emergencies or mandated by law may be adopted by the Board without being subject to Owner approval or the provisions of subsection (c) or (f) of this Section. As used herein, "emergency" means an immediate danger to the structural integrity of the common areas or to the life, health, safety, or property of the unit Owners.

(f) Assessments for additions and alterations to the common areas or to Association-owned property not included in the adopted annual budget, shall be separately assessed and are subject to approval of two-thirds of the total votes of all Owners.

(g) The Board may adopt separate assessments payable over more than one fiscal year. With respect to multi-year assessments not governed by subsections (e) and (f) of this Section, the entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

(h) The Board of the Association shall have the authority to establish and maintain a system of master metering of public utility services to collect payments in conjunction therewith, subject to the requirements of the Tenant Utility Payment Disclosure Act.

(i) The Board shall prepare a budget for the Association for the ensuing calendar year which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area and those portions of the Lots or Dwelling Units for which the Association is responsible, and for such other contingencies as the Board may deem proper with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before January 1 of the ensuing year, each Owner, jointly and severally, shall be personally liable for and obligated to pay the Board or as it may direct, one-fifth ( $1/5^{\text{th}}$ ) of the assessment made pursuant to this Section. On or before April 15 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting of actual expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves may be retained by the Association in reserve. In the event of a shortage after exhausting such reserve, then in that event one-third ( $1/3$ ) of any net shortage shall be added to the installments due in each of the succeeding three (3) months after rendering of the account. Such adjustment shall be allocated among the Lots that were subject to assessment during the prior year in the proportion that the annual assessment against each Lot during that year bears to the annual assessment against all the Lots during that year.

(j) If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves, charge the deficiency against existing reserves, or may levy a further assessment which shall be assessed equally against all Lots subject to assessment. The Board shall serve notice of such further assessment on all Owners by a statement in writing showing the amount due and reasons therefore, and such further assessments shall become effective with the monthly installment which is due more than ten (10) days after delivery or mailing of such notice of further assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly assessment.

(k) When the first Board elected hereunder takes office, it shall prepare a budget for the period commencing thirty (30) days after said election and ending on December 31 of the year in which said election occurs. Monthly assessments shall be levied against all Lots subject to assessment during said period as provided in Section 5.01 hereof.

(l) The failure or delay of the Board to prepare or serve the annual or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the assessments and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay his monthly installment at the then existing rate established for the previous period until the monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area, and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-laws, any such assessments which in one year exceed \$1,000.00 shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by members at a general or special meeting duly called for that purpose or, in lieu of such members' meeting, by an instrument signed by the members owning two-thirds (2/3) of the Lots. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members and shall be used only for the specific purpose for which such assessment was levied.

6.05 Capital Reserves. To the extent the annual budget includes an amount specifically designated as a capital reserve, each Owner shall, as to each installment of the annual assessment paid by him, be deemed to have made a non-refundable capital contribution to the Association in the proportion that the amount of such designated capital reserve bears to the total annual budget. Such proportion of each annual assessment installment paid to the Association shall be segregated and maintained by it in a special capital reserve account to be used solely for making major repairs and replacements to the Common Areas, to those portions of the Lots and the improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder.

6.06 Initial Capital Contribution. At each closing of the sale of a Lot by the Declarant after the recording of this Declaration, the Owner purchasing such Lot will be required to make a capital contribution to the Association in the amount of \$500.00. Such payment shall be held and used by the Association as a working capital reserve and will not be returned to the Owner.

6.07 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which require approval of the members shall be sent as provided in the By-laws. At the first such meeting called, the presence of voting members, in person or by proxy, having sixty percent (60%) of the votes entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the

required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.08 Uniform Assessment. Both annual and special assessments must be fixed as a uniform rate for all Lots, provided that, notwithstanding anything to the contrary herein, no Lot Unit owned by the Declarant shall be subject to assessment unless the Dwelling Unit thereon is completed and is occupied.

6.09 Commencement of Annual Assessments. Annual assessments shall commence upon conveyance of the first Lot by Declarant after the recording of this Declaration.

6.10 Assessments in First Year. Notwithstanding the foregoing, for the period ending one year from the date annual assessments commence, the monthly assessment for each Lot or Dwelling Unit subject to assessment hereunder shall be as determined by Developer. The Developer shall pay to the Association the amount, if any, by which actual operating expenses during that one year period exceed the aggregate of the assessments, established and received from Owners pursuant to this paragraph. Actual operating expenses means those expenses actually incurred that are reasonably necessary for normal maintenance and operation of the Common Area and of those portions of the Lots or Dwelling Units and the improvements thereon which the Association is to provide pursuant to this Declaration, and does not include capital expenditures, reserves, prepaid items, inventory items or similar expenses to the extent attributable to any subsequent period.

6.11 Collection of Assessment. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to such Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the rate of eighteen (18%) percent per annum. The Association may bring an action against the Owner personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Lot when payable and may be foreclosed by any action brought in the name of the Association.

6.12 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by any act or omission, including without limitation, non-use of the services provided by the Association, the Common Area or abandonment of his Lot or Dwelling Unit.

6.13 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona

lender. Each holder of a first mortgage on a Lot who obtains title or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment in lieu of foreclosure), or any purchase at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which have accrued prior to such acquisition of title or possession.

## ARTICLE VII

### Covenants and Restrictions as to Use and Occupancy

The Lots or Dwelling Units and Common Area shall be occupied and used only as follows:

7.01 Residential Use. No part of the Development Area shall be used for purposes other than housing, parking and related common purposes for which the Development Area was designed. Each Dwelling Unit shall be used as a residence for a single family and for no other purposes, subject to such reasonable rules and regulations as may be adopted by the Board.

7.02 Parking. The driveways immediately behind the garage doors on each Lot shall be used for the parking of passenger automobiles and pick-up trucks, subject to such rules and regulations as the Board may prescribe. There shall be no parking in the 16 wide Motor Court, so the drive aisle is kept open. No boats, trailers, trucks, motorcycles, motor scooters or other vehicles or personal property may be kept on the driveways unless permitted by such rules and regulations. Every Owner, occupant and other person shall be responsible for his personal property located or kept on the driveways. Neither the Board nor the Association shall be considered the bailee of any such personal property, nor shall either be responsible for any loss or damage thereto, whether or not due to the negligence of the Board and/or the Association.

7.03 Obstructions. There shall be no obstruction of the Common Area, nor shall ready access to any Lot or Dwelling Unit be obstructed or impeded in any manner.

7.04 Waste. No Owner shall permit anything to be done or kept on his Lot or Dwelling Unit or in the Common Area which will increase the rate charged for or the cancellation of insurance carried by the Association on the Common Area improvements or contents thereof, or which would be in violation of any law, nor shall any waste be committed on any Lot or Dwelling Unit or in the Common Area.

7.05 Window Accessories. The covering of windows and other glass surfaces, whether by shades, draperies or other items visible from the exterior of any dwelling, including canopies or awnings, and antennas, shall be subject to the rules and regulations of the Board.

7.06 Animals. No animals of any kind shall be raised, bred or kept on any Lot or Dwelling Unit or Common Area, except that dogs, cats, or other customary household pets may be kept subject to rules and regulations adopted by the Board, provided they are not kept, bred or maintained for any commercial purpose; and provided, further, that any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property upon ten (10) days' written notice from the Board.



7.07 Noxious Activities. No noxious or offensive activity shall be conducted on any Lot or Dwelling Unit or in the Common Area, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or a nuisance to other Owners or occupants.

7.08 Conduct of Business. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any Lot or Dwelling Unit or common Area; provided, however, that nothing herein shall preclude an Owner from (i) maintaining a personal professional library on his Lot or Dwelling Unit; (ii) keeping his personal business records or accounts on his Lot or Dwelling Unit, or (iii) handling his personal business or professional calls or correspondence therefrom.

7.09 Alterations. Except as constructed or altered by or with the permission of the Developer, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.

## ARTICLE VIII Architectural Control

8.01 General Review and Approval. No building, fence, wall, deck, porch, antenna, awning or other structure shall be commenced, erected or maintained upon the Subject Property or upon any Lot or Dwelling Unit or other improvement thereon, nor shall any exterior addition to or change or alteration therein be made, except such as are erected or approved by the Developer, unless written plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of the same and the approximate cost thereof shall have been submitted to and approved in writing in the sole discretion of the Board or an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated committee fails to act to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

8.02 Fences. No fences are allowed except as originally installed by Developer.

## ARTICLE IX Lease of Lots

9.01 Leases. Any lease agreement between an Owner and a lessee shall be in writing, shall be for a term of not less than one year, and shall provide that the terms of such lease are subject to, and such lessee shall comply with, the provisions of this Declaration and the Articles of Incorporation, By-laws and rules and regulations of the Association, and that failure by the lessee to comply with the terms of such documents, rules and regulations shall be a default under said lease. Owner will provide a copy of the lease to the Board for review prior to commencement of the lease term to determine whether the lease complies with the terms of this Article 9.01. Board

will notify Owner within five (5) days of receipt as to whether lease is acceptable or unacceptable and failure to respond within five (5) days will mean the lease is deemed acceptable.

## ARTICLE X General Provisions

10.01 Management and Other Contracts. The Developer hereby reserves the right, from time to time, for and on behalf of the Association, to engage a manager for the Association and its property during all or any portion of the period Developer has the right to appoint directors to the Board. Thereafter, the Board may engage the services of an agent to manage the Association and the Subject Property to the extent deemed advisable by the Board. Any management agreement shall be terminable by either party for cause upon thirty (30) days written notice, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one year periods. Any other contract providing for services by the Developer must provide for termination on ninety (90) days written notice and be for a maximum contract term of two (2) years.

10.02 Additional Property, Construction of Dwellings. The Declarant or Developer may subject any other property to this Declaration. In addition, the Declarant or Developer reserves the right to change, alter or modify its plans for the type, placement and/or density of the dwellings to be erected upon the subject parcel or any other property subject to this Declaration, including the right to construct Townhome Dwellings. The Declarant or Developer may take such action at any time and shall be solely at its discretion.

In order to subject additional property to this Declaration, the Declarant or Developer shall execute and record a supplementary declaration which shall indicate the action being taken and which shall contain a legal description of the property which is the subject of the supplementary declaration.

Upon execution and recordation of a supplementary declaration, the property covered therein shall be subject to the covenants, conditions, easements, restrictions, charges and liens set forth in this Declaration. Said covenants, conditions, easements, restrictions, charges and liens shall run with and bind the property covered by the supplementary declaration and shall inure to the benefit of and be the personal obligation of the Owner of said property in the same manner and to the same extent and with the same force and effect as this Declaration. In all respects, all of the provisions of this declaration shall apply to the property covered in any supplementary declaration and to the Owners thereof with equal meaning and of like force and effect.

10.03 Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration and the Articles of Incorporation, By-laws and rules and regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively, or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceeding,

including court costs and attorneys' fees, together with interest thereon at eighteen (18%) percent per annum, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his assessment and constitute a lien on his or her Lot and be enforceable as provided in Article VII.

10.04 Severability. If any term, restriction or covenant of this instrument is deemed illegal or unenforceable, all other terms, restrictions or covenants and the application thereof shall remain unaffected to the extent permitted by law.

10.05 Title in Land Trust. In the event title to any Lot or Dwelling Unit is conveyed to a title-holding trust, under the terms of which all powers of management, operation and control of the Lot or Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, and undertakings chargeable or created under this Declaration against such Lot or Dwelling Unit. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot or Dwelling Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot or Dwelling Unit.

10.06 Amendment. Except as provided herein, the provisions of this Declaration may be amended by an instrument executed by Owners of not less than seventy-five (75%) percent of the Lots or Dwelling Units then subject to the provisions of this Declaration, except that prior to the turnover by the Developer to the Association no amendment shall be effective without the written consent of Developer; and (ii) no provision which affects or relates to the rights, privileges or interest of the Declarant or Developer may be amended without their respective consents; (iii) no amendment shall be made with respect to any provision required by or for the benefit of the City of Wheaton (including but not limited to storm water management drainage, and all easements), without the written approval and consent of the City of Wheaton.

10.07 Dissolution of Association. The Association may not be dissolved except by an instrument executed by the Owners of not less than seventy-five (75%) percent of the Lots or Dwelling Units and approval of such dissolution being agreed to in writing by the City of Wheaton.

10.08 Notices. Any notice required or desired to be given under the provisions of this Declaration to any Owner shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the person who appears as the Owner at his or her last known address, as shown in the records of the Association at the time of such mailing, or as otherwise provided in the By-laws.

10.09 Binding Effect. The easements created by this Declaration shall be of perpetual duration. 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 Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns. . There shall be no amendment to Article V of this Declaration, or abolition of the Association and its governing Board as set forth in Article II, without the express approval of the Corporate Authorities of the City.

10.10 Successors and Predecessors of Declarant or Developer. No party exercising rights as Declarant or Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

10.11 Successors and Assigns. This Declaration shall inure to the benefit of and be binding upon the successors and assigns of Declarant, Developer and all persons which may have or hereafter obtain any interest in the existing Subject Property or the additional property.

IN WITNESS WHEREOF, AIRHART CONSTRUCTION CORPORATION, as Declarant, hereto has caused this Declaration to be executed by their legally authorized officers, whose signatures are hereunto subscribed, and to affix their corporate seals on the day first above written.

[Signature Page Follows]

AIRHART CONSTRUCTION CORPORATION

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF ILLINOIS        )

)

COUNTY OF DUPAGE        )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify COURT M. AIRHART, President, and MARK D. GLASSMAN, Secretary, 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 acknowledged that said officers of said Association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Notary Public

EXHIBIT A TO HOMEOWNER ASSOCIATION DECLARATION  
LEGAL DESCRIPTION

Enter Legal Description here.

LOT #	ADDRESS	PARCEL #
1		
2		
3		
4		
5		

EXHIBIT B TO HOMEOWNER ASSOCIATION DECLARATION

**BY-LAWS**  
**OF**  
**WESLEY PLACE HOMEOWNER ASSOCIATION**

**ARTICLE I**  
**THE ASSOCIATION**

**Section 1.** The name of this Association shall be **WESLEY PLACE HOMEOWNER ASSOCIATION**.

**Section 2.** The Owners of record and the beneficiaries of land trusts holding title to the real property legally described in Exhibit "A", which is attached hereto and made a part hereof, shall be Members.

**Section 3.** The Association shall be incorporated under the Illinois General No-for-Profit Corporation Act. The Association shall have the powers now or hereafter granted by the General Not-For Profit Corporation Act of the State of Illinois and the Illinois Common Interest Community Association Act.

**Section 4.** Additional property Owners and beneficiaries of land trusts may become Members of the Association as provided in the Declaration of Covenants and Restrictions.

**ARTICLE II**  
**PURPOSES**

The purposes of the Association, as stated in the Articles of Incorporation, are:

- A. To act as the governing body for all the Owners and beneficiaries of title-holding land trusts of Lots in Wesley Place;
- B. To provide for high standards of maintenance of the Subject Property and to make and promote the desired character of Wesley Place;
- C. To receive property of every kind, whether real or personal, and to administer and apply such property and the income therefrom exclusively for the purposes of the Association;

D. To receive any gift, bequest, or devise of any property for any purpose specified by the donor or testator within any of the purposes of the Association;

E. To maintain, repair, and replace the following in Wesley Place:

- a. any property owned or leased by the Association;
- b. any and all fencing and/or retaining walls placed along or within Wesley Place by Declarant;
- c. all landscaping within the Lots planted by the Developer or the Association;
- d. private roadways (the Motor Court) and sidewalks (the Access Areas);
- e. Common Areas, and all property on them.
- f. on-site storm water detention;

F. To provide for a general fund to enable the Association to exercise its powers, duties, and responsibilities as delineated in the Declaration, its Articles of Incorporation, and its By-Laws by levying an annual assessment or special assessments.

G. To enforce any lien for non-payment of any assessment; and

H. To take any action necessary to effectuate the purposes of the Declaration of Covenants and Restrictions and the By-Laws of the Association.

### **ARTICLE III**

#### **OFFICES**

The Association shall maintain in the State of Illinois a registered office and a registered agent at such office and may have other officers within or without the State.

### **ARTICLE IV**

#### **MEMBERS**

Section 1. Members. As provided in the Declaration, every Owner of a Lot which is subject to the Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to the Declaration. Ownership of such Lot shall be the sole qualification for Membership.

Section 2. Membership Subject to Assessment. The rights of Membership are subject to the payment of annual and special assessments levied by the Association as set forth in the Declaration.



Section 3. Voting Rights. Except as otherwise stated in Section 4 of these By-laws, each Member shall be entitled to one vote on each matter submitted to a vote of the Members. Where there is more than one Owner of a Lot, such co-Owners shall be entitled to one vote. In no event shall more than one vote per Lot be permitted. The provisions of the Declaration, these By-laws and rules and regulations that relate to the use of an individual Dwelling Unit or the Common Areas shall be applicable to any person leasing a Dwelling Unit and shall be deemed to be incorporated in any lease. With regard to any lease, the Dwelling Unit Owner leasing the Dwelling Unit shall deliver a copy of the signed lease to the Association in conformance with Section 8.01 of the Association's Declarations of Covenants, Conditions, Easements and Restrictions.

Section 4. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1, provided that the Declarant shall not be a Class A Member until the Transfer Date. Class A Members shall be entitled to one vote for each Lot or Dwelling Unit in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot or Dwelling Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Dwelling Unit. All Members holding any interest in a single Lot or Dwelling Unit shall together be entitled to cast only one vote for the Lot or Dwelling Unit.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot or Dwelling Unit in which it holds the interest required for membership by Section 1; provided that the Class B membership shall cease and be converted to Class A membership on the Transfer Date as defined in the Declaration.

## **ARTICLE V**

### **MEETING OF MEMBERS**

Section 1. Annual Meeting. An annual meeting of the voting Members shall be held on the first Monday of December of each year or at such other reasonable time or date not more than thirty days before or after said date as may be designated by written notice of the Board of Directors delivered to the Membership no less than fifteen (15) days prior to the date fixed for said new

meeting. Said meeting shall be for the purpose of conducting the business of the Association, electing directors, and transacting such other business as may come before the meeting. If such day be a legal holiday, the meeting shall be held on the following day.

Section 2. Special Meetings. Special meetings of the Members may be called by the president, the Board, or by 20% of the voting Members.

Section 3. Notice of Meeting. Written notice stating the place, day and hour of any meeting of Members shall be delivered to each Member entitled to vote at such meeting not less than ten (10) nor more than thirty (30) days before the date of such meeting, by or at the direction of the President, the Secretary, or persons calling the meeting.

In the case of a special meeting, such notice shall also include the purpose of which the special meeting is being called.

If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the records of the Association, with postage thereon prepaid.

Section 4. Place of Meeting. The Board of Directors may designate any place as the place of meeting for any annual meeting or for any special meeting. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Association in the State of Illinois.

Section 5. Voting. Voting on any question or in any election may be by voice unless the presiding officer shall order or any Member shall demand that voting be by ballot.

Section 6. Voting Rights. The Board may prescribe reasonable rules and procedures for the conducting of all elections. A candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of ballots at such election.

In all elections, a Member may vote:

- (a) by proxy executed in writing and dated by the Member or by his or her duly authorized attorney in fact. All proxies shall be filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Member of his or her Lot. Unless the proxy itself provides otherwise, a proxy will not be valid for more than 11 months after the date of its execution; or
- (b) by submitting an Association-issued ballot in person at the election meeting; or

(c) by submitting an Association-issued ballot to the Association or its designated agent by mail or other means of delivery specified in the Declaration, these By-laws, or the Notice of Election as approved by the Board.

Section 7. Quorum. The Members holding at least twenty percent of the votes which may be cast at any meeting, by proxy or otherwise, shall constitute a quorum at such meeting. If a quorum is not present at any meeting of Members, a majority of the Members present may adjourn the meeting from time to time without further notice. Upon proof of purchase, the purchaser of a Lot pursuant to an installment contract for purchase shall, during such times as he or she resides in the Dwelling Unit on said Lot, be counted toward a quorum for purposes of election of Members of the Board at any meeting of the Membership called for purposes of electing Members of the Board, and shall have the right to vote for the Members of the Board of the Association and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights.

## **ARTICLE VI**

### **BOARD OF DIRECTORS**

Section 1. General Powers. The affairs of the Association shall be managed by its Board of directors (the "Board"). There shall be an election of the Board of directors from among the Members of the Association. The Board shall have standing and capacity to act in a representative capacity in relation to matters involving the common areas or more than one Dwelling Unit, on behalf of the Dwelling Unit Owners as their interests may appear.

Section 2. Number, Tenure and Qualifications. Each director, with the exception of the Board Members initially appointed by the Declarant, shall be one of the voting Owners; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director, officer, employee, agent or representative of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a Member of the Board and provided further that in the event a Member of the Board has entered into a contract to sell his Lot and vacates the Dwelling Unit on the Lot prior to the consummation of that transaction, such Member shall no longer be eligible to serve on the Board and his term of office shall be deemed terminated. If there are multiple Owners of a single Lot, only one of the multiple Owners shall be eligible to

serve as a Member of the Board at any one time. The terms of at least one-third of the Members of the Board shall expire annually and all Members of the Board shall be elected at large. No Member of the Board or officer shall be elected for a term of more than 3 years, but officers and Board Members may succeed themselves. If there is a vacancy on the Board, the remaining Members of the Board may fill the vacancy by a two-thirds vote of the remaining Board Members until the next annual meeting of Lot Owners or until Lot Owners holding 20% of the votes of the Association request a meeting of the Lot Owners to fill the vacancy for the balance of the term. A meeting of the Lot shall be called for purposes of filling a vacancy on the Board no later than 30 days following the filing of a petition signed by Lot Owners holding 20% of the votes of the Association requesting such a meeting.

Section 3. Removal of Directors. Any Director may be removed from office by a two-thirds vote of the Membership at a duly called and noticed special meeting of the Members.

Section 4. Regular Meetings. "Meeting of the Board" or "Board meeting" means any physical gathering of a quorum of the Members of the Board held for the purpose of conducting Board business. A quorum of the Board may, however, meet for planning purposes as a workshop session without such gathering constituting a Board meeting provided that no formal Board action is taken. The Board shall meet at least four times annually. A regular annual meeting of the Board shall be held without notice other than these By-laws, immediately after, or concurrent with, and at the same place as, the annual meeting of Members.

Meetings of the Board shall be open to any Dwelling Unit Owner, except for any portion held (i) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent, (ii) to consider third party contracts or information regarding appointment, employment, or dismissal of an employee, or (iii) to discuss violations of Rules and Regulations of the Association or a Dwelling Unit Owner's unpaid share of common expenses. Any vote on these matters shall be taken at a meeting or portion thereof open to any Dwelling Unit Owner.

The Board shall reserve a portion of the Board meeting for the comments by Dwelling Unit Owners; provided however, the duration and meeting order of the Dwelling Unit Owner comment period is within the sole discretion of the Board.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the president or by 25% of the Members of the Board. The person or persons authorized to call special meetings of the Board of Directors may fix any place as the place for holding any special meeting of the Board of Directors called by them.

Section 6. Notice of Board Meetings. Notice of any meeting of the Board shall be given at least 48 hours previously thereto either (A) by posting of a notice in a conspicuous place, designated by the Board, in the Common Areas, or (B) by written notice to all Lot Owners either (i) delivered personally, (ii) sent by mail to each Owner at his or her address as shown by the records of the Association, or (iii) if the Owner has consented in writing to receipt of notices electronically, sent electronically to that Owner. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. Any Owner may waive notice of any meeting. The attendance of an Owner or his or her representative at any meeting shall constitute a waiver of notice of such meeting, except where the Owner attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-laws. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-laws.

Section 7. Action by Consent. Unless specifically prohibited by the Articles of Incorporation or By-Laws, any action required to be taken at a meeting of the Board of Directors, or any other action which may be taken at a meeting of the Board of Directors, or of any committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors entitled to vote with respect to the subject matter thereof, or by all Members of such committee, as the case may be. Any such consent signed by all the directors or all the Members of the committee shall be the same effect as a unanimous vote, and may be stated as

such in any document filed with the Secretary of State or with anyone else. Written approval shall be deemed to include electronic transmittals by the Directors. It is expected, although not required, that any actions taken without a meeting of the Board will be identified and ratified at the next practicable Board meeting.

Section 8. Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, provided, that if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 9. Vacancies. In the event of death, resignation or removal of a Director, his or her successor shall be selected by a two-thirds vote of the remaining Directors and shall serve (i) for the unexpired term of the replaced Director or until the next annual meeting of the Members, whichever occurs earlier, or (ii) until 20% of the Members of the Association request a meeting of the Members to fill the vacancy for the balance of the term. In the event the number of Directors constituting the Board is reduced through a vote of the Board, the seated Directors shall serve out their terms but the next empty Board seats shall not be filled.

Section 10. Compensation. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the voting Members having sixty-six percent of the total votes. Directors as such shall not be compensated for their services, but by resolution of the Board, a fixed sum and expenses of attendance, if any, may be allowed for attendance at any special meeting or educational event on behalf of the Association.

Section 11. Board Contracts. A Member of the Board of the Association may not enter into a contract with a current Board Member, or with a corporation or partnership in which a Board Member or a Member of his or her immediate family has 25% or more interest, unless notice of intent to enter into the contract is given to Lot Owners within 20 days after a decision is made to enter into the contract and the Lot Owners are afforded an opportunity by filing a petition, signed by 20% of the Lot Owners, for an election to approve or disapprove the contract; such petition shall be filed within 20 days after such notice and such election shall be held within 30 days after filing the petition. For purposes of this subsection, a Board Member's immediate family means the Board Member's spouse, parents, and children.

Section 12. Executive Committee. The Board of Directors by resolution adopted by a majority of the number of directors fixed by the By-Laws or otherwise, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and exercise all of the authority of the Board of Directors in the management of the Association except as otherwise required by law. Vacancies in the Membership of the committee shall be filled by the Board of Directors at a regular or special meeting of the Board of Directors. The executive committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 13. Board Liability. The Directors from time to time constituting the Board shall not be liable to the Members for any mistake or judgment or for any acts made, or omissions to act committed in good faith as such Directors.

Section 14. Indemnification. Each person who at any time is or shall have been a Director, officer, employee or agent of this Association shall be indemnified by this Association in accordance with and to the full extent permitted by the Illinois Not-For-Profit Corporation Act of 1986 as in effect at the time of adoption of these By-laws or as amended from time to time. The foregoing right of indemnification shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any agreement, vote of Members or disinterested Directors or otherwise according to any other law. If authorized by the Board, the Association may purchase and maintain insurance on behalf of any person to the full extent permitted by the Illinois Not-for-Profit Corporation Act as in effect at the time of the adoption of these By-laws or as amended from time to time. If the Association pays indemnity or makes an advance of expenses to a Director, officer, employee or agent, the Association shall report the indemnification or advance in writing to the Members with or before the notice of the next meeting of Members.

Section 15. Powers and Duties of the Board of Directors.

Powers - The Board shall have power to:

- (a) Adopt and publish reasonable rules and regulations governing the use by and the personal conduct of the Members and their guests therein, and to establish penalties for the infraction thereof; provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members;

(b) Suspend the voting rights of a Member during any period in which such Member 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 60 days, for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these By-laws, or the Declaration;

(d) Declare the office of a Member of the Board to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board;

(e) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

(f) Employ legal counsel to advise the Association and enforce the provisions of the Declaration, By-laws, or other rights of the Association.

(g) Fix the amount of the annual or special assessments against each Lot at least thirty (30) days in advance of each annual assessment period;

(h) Foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after due date or to bring any other action against the Owner obligated to pay the same;

(i) Issue, or to cause an appropriate officer to issue, upon demand by an Owner, a certificate setting forth whether or not any assessment on the Owner's Lot has been paid. A reasonable charge may be made by the Board for the issuance of these certificates.

(j) Procure and maintain adequate liability and hazard insurance on property owned by the Association;

Duties - It shall be the duty of the Board to maintain the following records of the Association and make them available for inspection and copying at convenient hours of weekdays by any Dwelling Unit Owner, subject to the authority of the Board and its agents or attorneys:

- i. Copies of the Declaration, Bylaws, Articles of Incorporation, annual reports, and Association Rules and Regulations;
- ii. Detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair



- expenses of the Common Areas and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Board;
- iii. Minutes of all meetings of the Board for the last seven years;
  - iv. With a written statement of a purpose, ballots and proxies related thereto for any matters voted on by the Dwelling Unit Owners within the last twelve months;
  - v. With a written statement of a purpose, such other records of the Board as are available for inspection by the Members of an Illinois Not-for-Profit Corporation;
  - vi. Copies of all designations filed with the Board by the trustees of Dwelling Units owned by Illinois land trusts designating the person authorized to cast votes on behalf of the trustee.

Section 16. Developer. Until the election of the initial Board the same rights, titles, powers, privileges, trusts, duties, and obligations that are vested in or imposed upon the Board by the Common Interest Community Association Act or in the Declaration or other duly recorded covenant shall be held and performed by the Developer.

Section 17. Determination of Board Binding. All matters of dispute or disagreement among Owners with respect to interpretation or application of the provisions of the Declaration or these By-Laws shall be determined by the Board as hereinafter provided, which determination shall be final and binding on the Association and on all Owners subject, however, to the jurisdiction of any applicable court of law.

## **ARTICLE VII**

### **OFFICERS**

Section 1. Officers. The Board shall elect among its Members the following officers:

- a. A president who shall preside over both its meeting and those of the voting Members who shall be the chief executive officer of the Board.
- b. One or more vice-presidents (if the number of directors on the Board allows) shall assume the duties of the president if the president is unable to fulfill his duties.
- c. A secretary who shall keep the minutes of all meetings of the Board and of the voting Members and who shall perform all the duties incident to the office of the secretary.
- d. A treasurer who shall keep the financial records and books of account.

Section 2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the regular annual meeting of the Board or as soon as practicable thereafter. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his successor shall have been duly elected and shall have qualified.

Section 3 - Removal/Resignation. Any officer or agent elected or appointed by the Board may be removed by the Board whenever, in its judgment, the best interests of the Association would be served thereby. Any officer may resign at any time by giving written notice to the Board. Such resignation shall be effective 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 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 5. President. The president shall be the principal executive officer of the Association. Subject to the direction and control of the Board of Directors he shall be in charge of the business of the Association; he shall see that the resolutions and directions of the Board of Directors are carried into effect except in those instances in which that responsibility is specifically assigned to some other person by the Board of Directors; and, in general, he shall discharge all duties incident to the office of the president and such other duties as may be prescribed by the Board of Directors from time to time. He shall preside at all meetings of the voting Members and of the Board of Directors. Except in those instances in which the authority to execute is expressly delegated to another office or agent of the Association or a different mode of execution is expressly prescribed by the Board of Directors or these By-Laws, he may execute for the Association certificates for its shares, and any contracts, deeds, mortgages, bonds, or other instrument which the Board of Directors has authorized to be executed, and he may accomplish such execution either under or without the seal of the Association and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument. He may vote all securities which the Association is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Association by the Board of Directors.

Section 6. Vice-President. The vice-president (or in the event there are more than one vice-president, each of the vice-presidents) shall assist the president in the discharge of his duties as the president may direct and shall perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated by the Board of Directors, or by the president if the Board of Directors has not made such designation, or in the absence of any designation, then in the order of seniority of tenure as vice-present) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Association or a different mode of execution is expressly prescribed by the Board of Directors or these By-Laws the vice-president (or each of them if there are more than one) may execute for the Association certificates for its shares and any contracts, deeds, mortgages, bonds or other instruments which the Board of Directors has authorized to be executed, and he may accomplish such execution either under or without the seal of the Association and either individually or with the secretary, any assistant secretary, or any other officer thereunto authorized by the Board of Directors, according to the requirements of the form of the instrument.

Section 7. Secretary. The secretary shall (a) record the minutes of the voting Members and the Board of Directors' meetings in one or more books provided for that purpose, (b) see that all notices are duly given in accordance with the provision of these By-Laws or as required by law, (c) be custodian of the Association records and of the seal of the Association, (d) keep a register of the pose-office address of each voting Member which shall be furnished to the secretary by such voting Member, (e) sign with the president, or a vice-president, or any other officer thereunto authorized by the Board of Directors, any contracts, deeds, mortgages, bonds or other instruments which the Board of Directors has authorized to be executed, according to the requirements of the form of the instrument, except when a different mode of execution is expressly prescribed by the Board of Directors or these By-Laws and (f) perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

Section 8. Treasurer. The treasurer shall be the principal accounting and financial officer of the Association. He shall (a) have charge of and be responsible for the maintenance of adequate books of account for the Association, (b) have charge and custody of all funds and securities of the Association and be responsible therefore and for the receipt and disbursement thereof, and (c) perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the Board of Directors. If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors may determine.

## **ARTICLE VIII**

### **COMMITTEES**

Section 1. Committees. The Board of Directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, which committees, to the extent provided in said resolution and not restricted by law, shall have and exercise the authority of the Board of Directors in the management of the Association, by the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by law. The Members of the committees may either be directors or Members of the Association. Any Member thereof may be removed by the person or persons authorized to appoint such Member whenever in their judgment the best interests of the Association shall be served by such removal.

Section 2. Committee Term. Each Member of the committee shall continue as such until the next annual meeting of the Members of the Association and until his successor is appointed, unless the committee shall be sooner terminated, or unless such Member be removed from such committee, or unless such Member shall cease to qualify as a Member thereof.

Section 3. Chairman. One Member of each committee shall be appointed chairman.

Section 4. Vacancies. Vacancies in the Membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 5. Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of

a majority of the Members present at a meeting at which a quorum is present shall be the act of the committee.

Section 6. Committee Rules. Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board of Directors.

## **ARTICLE IX**

### **ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association 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 thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate specified in the Declaration or the By-laws, and the Association may bring any action against the Owner obligated to pay the same or foreclose the lien against the Lot, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessments provided for herein.

## **ARTICLE X**

### **WAIVER OF NOTICE**

Whenever any notice is required to be given under the provisions of these By-laws or under the provisions of the Articles of Incorporation or under the provisions of the Illinois General Not-for-Profit Corporation Act, a waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

## **ARTICLE XI**

### **AMENDMENTS**

These By-laws may be altered, amended or repealed and new By-laws may be adopted by two-thirds of the Directors present at any regular meeting or at any special meeting or by a majority vote of the Members at a meeting called for that purpose, provided that notice of any such meeting shall be given as provided in these By-laws or as otherwise required by law.

## **ARTICLE XII**

### **TERMS**

This Agreement and the easements, rights, obligations, and liabilities created hereby shall be perpetual to the fullest extent permitted by law.

## **ARTICLE XIII**

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the treasurer or an assistant treasurer and counter-signed by the President or Vice President of the Association.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Association any contribution, gift, bequest or devise for general purposes or for any special purpose of the Association.

Section 5. Delivery of Property. Upon the completion of his term, each officer or Director of the Association, and every other office holder, shall deliver to his successor, or to the Board, all funds, records, properties and effects of the Association in his possession.

Section 6. Fidelity Insurance. The Association shall obtain and maintain fidelity insurance covering persons who control or disburse funds of the Association for the maximum amount of coverage that is commercially available or reasonably required to protect the funds in the custody or control of the Association. All management companies which are responsible for the funds held or administered by the Association shall maintain and furnish to the Association a fidelity bond for the

maximum amount of coverage that is commercially available or reasonably required to protect funds in the custody of the management company at any time. The Association shall bear the cost of the fidelity insurance and fidelity bond, unless otherwise provided by contract between the Association and a management company.

**ARTICLE XIV**  
**BOOKS AND RECORDS**

The Association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office of record giving the names and addresses of the Members entitled to vote. All books and records of the Association may be inspected by any Member, or his agent or attorney for any proper purpose at any reasonable time.

**ARTICLE XV**  
**FISCAL YEAR**

The fiscal year end of the Association shall be December 31.

**ARTICLE XVI**  
**ORDER OF BUSINESS**

Robert's Rules of Order shall decide all questions of order.

**ARTICLE XVII**  
**INTERIM PROCEDURE**

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

IN WITNESS WHEREOF, AIRHART CONSTRUCTION CORP., as Declarant, hereto has caused this Declaration to be executed by their legally authorized officers, whose signatures are hereunto subscribed, and to affix their corporate seals on the day first above written.

AIRHART CONSTRUCTION CORP.

BY: \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF ILLINOIS        )  
                                      )  
COUNTY OF DUPAGE        )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify COURT M. AIRHART, President, and MARK D. GLASSMAN, Secretary, 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 acknowledged that said officers of said Association signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Notary Public



## EXHIBIT A TO HOMEOWNER ASSOCIATION BY-LAWS

Enter legal description here.

<b>LOT #</b>	<b>ADDRESS</b>	<b>PARCEL #</b>
1		
2		
3		
4		
5		

Group Exhibit 3



