

Declaration Of Covenants, Conditions And Restrictions For Orchard Valley Homeowners' Association

This Declaration (the "Declaration") is made this 2nd day of May, 1991, by MERCHANTS NATIONAL BANK OF AURORA, not personally but solely as Trustee under trust agreement dated November 28, 1989 and known as Trust No. 4251 (hereinafter referred to as "Declarant").

PREAMBLES

- A. Declarant owns fee simple title to or is the developer of, certain parcels and lots of real estate located in the City of Aurora, County of Kane, State of Illinois, legally described in Exhibit "A" attached hereto and made apart hereof known as Parcels 5 and 18 of ORCHARD VALLEY SUBDIVISION, such Units being a resubdivision of Parcels 2, 14, and 15 of ORCHARD VALLEY SUBDIVISION UNIT-1 (the "Property"); and
- B. Declarant and Developer (hereinafter defined in Article I) desire to develop single family residential communities on the Property and to establish the Orchard Valley Homeowners' Association ("Association"); and
- C. Declarant is desirous of submitting the Property to the provisions of this Declaration, which include, but are not limited to, the obligation of the Association to (i) install, maintain, improve, repair and replace the subdivision entrance monuments; (ii) landscape all areas around the monuments and signage; (iii) landscape all areas located in cul-de-sac islands in the dedicated roads or streets which are within the Property; (iv) install, maintain, improve, repair and replace any signage and lights located on the Property; and (v) maintain, improve, repair and replace the storm water sewer system installed, or to be installed, on the Property.

NOW, THEREFORE, Declarant hereby declares that the Property is, and shall be held, transferred, sold, conveyed and occupied, subject to the covenants, conditions and restrictions hereinafter set forth.

ARTICLE I

DEFINITIONS

When used in this Declaration, the following words and terms shall have the following meanings:

Section 1.1. "Association" shall mean and refer to Orchard Valley Homeowner's Association, an Illinois not-for profit corporation, its successors and assigns.

Section 1.2. "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.3. "By-Laws" shall mean those by-laws duly enacted by the Association which govern the Association in the form attached hereto as Exhibit B.

Section 1.4. "Declarant" shall mean and refer to Merchants National Bank of Aurora, not personally but solely as Trustee under a trust agreement dated November 28, 1989 and known as a Trust No. 4251, and its successors and assigns. Any such successor or assign shall be deemed a Declarant and entitled to

exercise all or any rights of Declarant provided herein if designated as such by Declarant in any instrument recorded for such purposes as provided in Section 7.10.

Section 1.5. "Deed" shall mean the deed of Declarant conveying a Lot or Parcel to and Owner.

Section 1.6. "Developer" shall mean and refer to the owner or owners, from time to time, of one hundred percent (100%) of the beneficial interest in, to and under the Declarant, or its successors or designated assigns.

Section 1.7. "Development" shall mean and refer to any single-family residential subdivision in the Orchard Valley Subdivision Unit-1, as the same has been or shall be created by the recording of the Subdivision Plat or any subsequent re-subdivisions. The Development includes the Property.

Section 1.8. "Dwelling" shall mean any structure intended for the shelter and housing of a Single Family.

Section 1.9. "Improvement" or "Improvements" shall mean and include Dwellings, any and all buildings, building accessories, driveways, pedestrian walkways, fences, mailboxes, lighting, decks, patios, hedges, lawns, sidewalks, planted trees, shrubs and all other structures or landscaping improvements of every kind and description.

Section 1.10 "Lot" shall mean each part of the Property, the size and dimension of which shall be established by the legal description in the Deed conveying such Lot. A Lot may also be established pursuant to the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Declarant which designates a part of the Property as a Lot for the purposes of the Declaration. Whatever a particular Lot is specified herein, the same shall be deemed to refer to that Lot identified as such on the Subdivision Plat.

Section 1.11. "Member" shall mean and refer to every Person who holds membership in the Association and "Members" shall mean and refer to all Persons who hold membership in the Association.

Section 1.12. "Mortgage" shall mean either a mortgage or deed of trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

Section 1.13. "Municipality" shall mean the City of Aurora, State of Illinois.

Section 1.14. "Owner" or "Owners" shall mean and refer to the record owner or owners, whether one or more Persons, of fee simple title to any Lot or Parcel, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Developer to the extent Declarant owns Lots or Parcels and also includes the interest of Developer or of Declarant as contract seller of any Lot or Parcel.

Section 1.15. "Parcel" shall mean each part of the Property established pursuant to the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Declarant which designates a part of the Property as a Parcel for the purposes of the Declaration. Whatever a particular Parcel is specified herein, the same shall be deemed to refer to that Parcel identified as such on the Subdivision Plat.

Section 1.16. "Person" or "Persons" shall mean all natural individuals, corporations, partnerships, trustees or other legal entities capable of holding title to real property.

Section 1.17. "Property" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto and made a part hereof.

Section 1.18. "Single Family" shall mean one or more persons, related by blood, marriage or adoption, or a group of not more than three persons (excluding servants) who need not be related by blood, marriage or adoption living together and maintaining a common household in a Dwelling but not including sororities, fraternities or similar organizations.

Section 1.19. "Subdivision Plat" shall mean the Plat of Subdivision for Orchard Valley Unit-1, recorded on November 28, 1990, in the Office of the Recorder of Deeds of Kane County, State of Illinois, as document number 90k62092, or any re-subdivision of any portion thereof, as recorded in the Office of the Recorder of Deeds of Kane County, State of Illinois, as the same may be amended or modified from time to time.

ARTICLE II DECLARATION PURPOSES AND PROPERTY SUBJECTED TO DECLARATION

Section 2.1. To further the general purposes herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions set forth in this Declaration.

Section 2.2.

- (a) By the imposition of covenants, conditions and restrictions set forth herein and the reservation of certain powers as herein contained Declarant intends to provide a plan for development and maintenance of the Property which is intended to enhance and protect the values of Declarant's Single-Family residential communities.
- (b) The Declarant desires to (i) install, maintain, improve, repair and replace each Single Family community subdivision entrance monuments; (ii) landscape all areas around the monuments and signage; (iii) landscape all areas located in cul-de-sac islands in the dedicated roads or streets which are within the Property; (iv) install, maintain, improve, repair and replace any

signage and lights located on the Property; and (v) maintain, improve, repair and replace the storm water sewer system installed, or to be installed, on the Property.

ARTICLE III

GENERAL RESTRICTIONS AND DUTY TO MAINTAIN

Section 3.1. No wall or fence shall be erected or maintained which in any manner shall interfere with, or block the view of, any entry way monument or signage.

Section 3.2. The Association shall determine the necessity of and (i) install, maintain, improve, repair and replace each Single Family community Subdivision entrance monuments; (ii) landscape all areas around the monuments and signage; (iii) landscape all areas located in cul-de-sac islands in the dedicated roads or streets which are within the Property; (iv) install, maintain, improve, repair and replace any signage and lights located on the Property; and (v) maintain, improve, repair and replace the storm water sewer system installed, or to be installed, on the Property (collectively, the "Maintenance"). Such Maintenance shall be in a first class manner in order to create an attractive, beautiful and clean living environment for the entire Property. Additionally, the cost of such Maintenance shall be borne by the Association.

ARTICLE IV

HOMEOWNER'S ASSOCIATION

Section 4.1. The Developer shall form and Illinois not-for profit corporation to be known as the Orchard Valley Homeowners' Association which shall provide for the Maintenance as described in Article III.

Section 4.2.

- (a) The Association shall have a Board of up to five (5) but not less than three (3) directors who shall be elected by the Members of the Association at such intervals as the articles of incorporation and By-Laws of the Association shall provide, except (i) that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the articles of incorporation or By-Laws and (ii) that the first Board and subsequent Boards (until the Turnover Date) shall be appointed by the Developer. Except for directors of the Board appointed by the Developer, all directors shall be Members of the Association. The 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 directors of the Board until the Turnover Date. All matters requiring action by the Board shall be decided by a majority vote.
- (b) The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the articles of incorporation

or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The directors and officers of the Association shall not be liable to the Owners or any others for any mistake of judgment or any acts or omissions made in good faith as such directors or officers.

Section 4.3. The Developer shall, through the Board appointed by it in accordance with Section 4.2, exercise control over all Association matters, until the first to occur of the following: (a) the date which is twenty (20) years from the date of the Declaration, (b) the date of the sale and conveyance of legal title to all of the Lots or Parcels to Owners other than Declarant or an assignee of Declarant as provided in Section 7.10, or (c) the date Developer elects voluntarily to turn over to the Members, which may include Declarant, the authority to appoint the board, which election shall be made by directing the Recorder of Deeds of Kane County, Illinois an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date".

Section 4.4.

(a) Every Owner of a Lot or Parcel is hereby declared to be a member of the Association. Membership is appurtenant to and shall not be separated from ownership of a Lot or Parcel. Each Owner by acceptance of a deed or other conveyance of a Lot or Parcel thereby becomes a Member, whether or not this Declaration or such membership is made a part of or incorporated by reference or expressed in said deed or conveyance. There shall be one membership per Lot or Parcel. If the record ownership of a Lot or Parcel is a Trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the membership attributable thereto shall be designated by such Owner or Owners in writing to the Association at the time the Lot or Parcel becomes subject to assessment by the Association. Ownership of a Lot or Parcel shall be the sole qualification for membership in the Association.

(b) The Association shall have two classes of voting membership:

Class A: Class A Members ("Class A Member") shall be all Owners with the exception of the Declarant and shall be entitled to one vote for (i) each Lot owned, or/and (ii) with respect to Owners of a Parcel, each Lot designated within the Parcel owned.

Class B: The Class B Member ("Class B Member") shall be the Declarant and shall be entitled to five (5) votes for (i) each Lot owned, and/or (ii) with respect to any Parcel, each Lot designated within the Parcel owned; whether or not a dwelling has been completed thereon. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (2) On January 1, 1994, or
- (3) Declarant elects to convert Class B membership to Class A membership by written notice of such election to the Association, but such election may be revoked or withdrawn at any time

or from time to time without cause, so long as Declarant otherwise has the right to designate those persons who will be the directors of the Board as provided in this paragraph 4.2 and 4.3 hereof.

- (c) Whenever a vote of Members of the Association is required, at any meeting of such Members or otherwise, such votes shall be cast in person or by proxy and unless otherwise provided in the Declaration, the By-Laws, or by law a majority vote by Members present in person or by proxy shall determine all matters voted upon. Where there is more than one Owner of a Lot or Parcel, such co-owners shall only be entitled to one vote. Prior to the conversion of the Class B Member to Class A membership, the Class B Member, present in person or by proxy, shall constitute a quorum at a meeting of the Members. After conversion of the Class B Member to Class A membership, a majority of Class A Members entitled to vote, present in person or by proxy, shall constitute a quorum at a meeting of the Members.

Section 4.5. The Association, through the Board, shall have the power and duty to:

- (a) Contract with independent contractors to perform all or any part of the duties and responsibilities of the Association.
- (b) Establish and maintain a Contingency and Replacement Reserve in an amount to be determined by the Board;
- (c) Provide for the Maintenance and other maintenance of landscaping, signs, monuments, fencing, lighting and other improvements located on the Property;
- (d) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, the articles of incorporation or the By-Laws.

Section 4.6. The Board shall also have the authority and responsibility to obtain and maintain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, each member, the Association, its officers, the Board, the Declarant, and their respective employees and agents from liability and insuring the officers of the Association and the Board from liability for any good faith actions taken beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties by having a severability of interest endorsement. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with Article V. The Association shall also have the authority and responsibility to obtain and maintain insurance policies covering the landscaping, signs, monuments, fencing, lighting and other improvements located on the Property against loss or damage by fire and such other hazards contained in customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable. The Association shall also have the authority to obtain such other kinds of insurance as the Association shall from time to time deem prudent.

Section 4.7. Declarant, the Board, officers of the Association, members of any committee thereof and the employees and agents of any of them shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs and expenses, including without

limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in connection herewith. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Article V hereof. To the extent possible, the Board's and Association's liability hereunder and the Owner's indemnification obligation shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

Section 4.8.

- (a) Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board.
- (b) Until the Turnover Date, Developer shall have the right, but not the obligation, to perform the Maintenance.

ARTICLE V ASSESSMENTS

Section 5.1. Each Owner, by taking title to a Lot or a Parcel, shall be deemed to have covenanted and agreed to pay to the Association annual assessments or charges and special assessments for capital improvements and unforeseen, expenses, to be collected from time to time as hereinafter provided. Except as otherwise provided herein, the Declarant shall not be responsible to pay to the Association such annual or special assessments as pertain to Lots or Parcels which it still owns. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a lien on the Lot or the Parcel against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees shall be the personal obligation of the person who was the Owner of such Lot or Parcel at the time when the assessment fell due. The personal obligation of an Owner shall not pass to his successors in title unless expressly assumed by them.

Section 5.2. The assessments levied by the Association shall be used exclusively for the purpose of defraying the cost of all of the Maintenance, insurance, repair, replacement and maintenance and other charges required or permitted by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation the establishment and maintenance of a Contingency and Replacement Reserve.

Section 5.3. Each year on or before November 1, the Board will estimate the total amount of expenses necessary to pay the cost of wages, materials, taxes, insurance, services, supplies and any other necessary or desirable items which will be required during the ensuing calendar year (January 1-December 31) for services authorized by the Board, together with a reasonable amount necessary to fund the Contingency and Replacement Reserve, and shall, on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line-item basis. The Estimated Cash Requirement shall be assessed equally among all of the Owners, excluding the Declarant, on the basis of the number of Lots (with respect to any Parcel, the number of Lots designated within the Parcel) owned by them and the total number of Lots owned. On or before January 1, of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 5.3; provided, however, that prior to the Turnover Date, the annual assessment to be imposed shall not

exceed the sum of \$60 per Lot per annum. On or before the date of the annual meeting of each calendar year, the Board shall furnish to all Owners an itemized accounting of the expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected from the Owners pursuant to assessments made during such year and showing the net amount over or short of the actual expenditures, plus reserves. The Board shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot or Parcel have been paid, provided that the Board shall have the right to establish and shall receive a reasonable fee for furnishing such certificate. Such certificates shall be conclusive evidence of payment of nonpayment or any assessment thereon.

Section 5.4.

- (a) The Board shall build up and maintain a reserve for the replacement of capital improvements, other authorized capital expenditures and for unforeseen expenditures (the "Contingency and Replacement Reserve"). Capital improvements and expenditures which may become necessary during the year shall be charged first against the Contingency and Replacement Reserve. After the Turnover Date, any expenditure for a single improvement from the Contingency and Replacement Reserve having a cost in excess of Five Thousand Dollars (\$5,000) shall require the prior approval of the Members holding two-thirds (2/3) of the votes of the Association.
- (b) If the Contingency and Replacement Reserve proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may, at any time, levy a special assessment, which shall be assessed equally among the Owners, excluding Declarant, on the basis of the number of Lots (with respect to any Parcel, the number of Lots designated within the Parcel) owned by them and the total number of Lots owned. The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefore, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of any such notice of assessment.
- (c) Developer shall collect, from each initial purchaser of a Lot at the closing of the sale of any such Lot, the sum of One Hundred Dollars (\$100.00) which amount shall be deposited in the Contingency and Replacement Reserve. On the Turnover Date, the Developer shall transfer all funds remaining in the Contingency and Replacement Reserve account to the Association and the Association shall hold and apply such funds for the purposes set forth in this Section 5.4.

Section 5.5. When the first Board takes office, it shall determine the Estimated Cash Requirement for the period ending on December 31, of the calendar year in which it takes office. The initial Estimated Cash Requirement shall be assessed equally among all Owners, excluding the Declarant, on the basis of the number of Lots or Parcels owned by them and the total number of Lots or Parcels.

Section 5.6. The failure or delay of the Board to prepare or serve notice of the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay his share of such Estimated Cash Requirement as herein provided, as and when the Estimated Cash Requirement as herein provided, as and when the Estimated Cash Requirement shall be determined, and, in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.

Section 5.7. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Maintenance and any other property with respect to which it may

have rights hereunder, specifying and itemizing the maintenance and repair expenses of such property and any other expenses so incurred. Such records and the vouchers authorizing the payments described therein shall be available for inspection by an Owner duly authorized in writing, or any holder of a Mortgage at such reasonable time or times during normal business hours when requested by an Owner or by the holder of a Mortgage. Upon five (5) days' prior written notice to the Board, any Owner shall be furnished a statement of his account, which statement shall set forth the amount of any unpaid assessments or other charges due and owing from such Owner.

Section 5.8. All funds collected hereunder shall be held and expended for the purposes designated herein, and are hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed 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 5.9. Any assessments or other charges which are not paid when due shall be delinquent and subject to a late fee of One Hundred Dollars (\$100.00) per delinquency. If the assessment or charge is not paid within thirty (30) days after the due date, the assessment shall bear interest from and after the due date at the lesser of the rate of eighteen percent (18%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot or Parcel, and interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of any such overdue assessment. 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 interest, costs and fees as above provided, shall be and become a lien or charge against the Lot or Parcel of any such Owner when due and payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of mortgage liens against real estate. The directors of the Board and their successors in office acting on behalf of the other Owners shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his interest at such foreclosure sale.

Section 5.10 In addition to the rights and remedies set forth in Section 5.9, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Dwelling from any defaulting Owner, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the circumstances and, in addition, to exercise any other rights or remedies provided in the Forcible Entry and Detainer Act, Chapter 57, Illinois Revised Statutes.

Section 5.11. The lien of assessments provided for herein shall be subordinate to the lien of any Mortgage now or hereafter placed on any Lot or Parcel. In the event of the issuance of a deed pursuant to the foreclosure of such prior Mortgage or in lieu of such foreclosure, the grantee of such deed shall take title free and clear of any lien for assessment authorized by this Declaration so long as any such lien shall have arisen prior to the date of recording of any such deed.

ARTICLE VI

EASEMENTS

Section 6.1. The Declarant, Developer, Association and any of their respective agents, employees and independent contractors shall have the non-exclusive right to enter upon the Property and any Lot or Parcel to the extent necessary for the purpose of the Maintenance. In any such case, the Declarant, Developer, Association or any of their agents, employees or independent contractors shall not be guilty of any trespass. Provided, however, Declarant, Developer, Association and any of their respective agents, employees and independent contractors shall, at the expense of the Association, be responsible to replace and restore the Property and any Lot or Parcel to the extent necessary to put such Property and/or Lot or Parcel in the same or similar condition prior to the Maintenance.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1. The covenants, conditions and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Board, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded in the Office of the Recorder of Deeds of Kane County, Illinois, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinabove provided.

Section 7.2. If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration or any part hereof in the Office of the Recorder of Deeds of Kane County, Illinois, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained under any of the provisions of Chapter 83 of the Illinois Revised Statutes presently in force and commonly known as the Marketable Title Act, or any other law or statute of similar purport, it shall submit the matter to a meeting of the Members of the Association called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of said Members shall vote against such rerecording, the Board shall have, and is hereby granted, power to so rerecord this Declaration or such part thereof, and such rerecording shall be binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the rerecorded document executed and acknowledged by each of them.

Section 7.3. Each grantee of Declarant by taking title to a Lot or Parcel, and each purchaser under any contract for a deed of conveyance pursuant to which said grantee will take title, accepts said title subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section 7.4 or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Lot or Parcel as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents.

Section 7.4. Developer and each Owner from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them in addition to the right to bring a legal action for damages. In no event shall the failure of Developer and the Owners to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation.

Section 7.5. Subject to the provisions of Section 7.7, the Owners may revoke, modify, amend or supplement in whole or in part any or all of the covenants, obligations and conditions contained in this Declaration and may release all or any part of the Property from all or any part of this Declaration. Any such revocation, modification, amendment or supplement may be made effective at any time upon the vote of at least three-fourths (3/4) of Owners of the Lots (including the number of Lots designated within any if Parcel) and the Developer consent thereto, the consent of the Developer being required so long as the Declarant owns any Lot or Parcel. Any such revocations, modifications, amendments or supplements shall be effective only if expressed in a written instrument or instruments executed and acknowledged by each of the consenting Owners, certified by the Secretary of the Association and recorded in the Office of the Recorder of Deeds of Kane County, Illinois.

Section 7.6. The provision of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development of the Property.

Section 7.7. In the event title to any Lot or Parcel is conveyed to a titleholding trust, under the terms of which all powers of management, operation and control of the Lot or Parcel remain vested in the trust beneficiary or beneficiaries, then the 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, obligations, liens, undertakings chargeable or created under this Declaration against any such Lot or Parcel. No claim shall be made against any such titleholding trustee personally for payment of any lien or obligation 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 said Lot or Parcel and the beneficiaries of such trust, notwithstanding any transfers of title to any such Lot or Parcel.

Section 7.8. All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine, the feminine and neuter and vice versa.

Section 7.9. If a court of competent jurisdiction shall hold invalid or unenforceable any part of this Declaration, such holding shall not impair, invalidate or otherwise affect the remainder of this Declaration which shall remain in full force and effect.

Section 7.10. Notwithstanding anything herein to the contrary, either or both of Declarant and Developer, as Declarant and Developer in their sole discretion may determine, hereby reserve the right to transfer, assign mortgage or pledge any and all of either's respective privileges, rights, title and interest hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of Kane County, Illinois. Upon such assignment, either or both of Declarant and Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment.

No such successor assignee of the rights of either or both of Declarant and Developer, as the case may be, shall have or incur any liability for the obligations or acts of any predecessor in interest.

Section 7.11. Each Owner of a Lot or Parcel shall file the correct mailing address of such Owner, an lessee or contract purchasers, with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that if any Owner shall fail to so notify the Association, the mailing address for such Owners shall be the street address of the Lot or Parcel owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mails, postage prepaid, and addresses to any Owner at the last address filed by such Owner with Declarant shall be sufficient and proper notice to such Owner and shall be deemed delivered on the third (3rd) day after deposit in the United States mails.

This Declaration is executed by Merchants National Bank of Aurora, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and such trustee hereby warrants that it possesses full power and authority to execute this instrument), and solely for the purpose of subjecting the Property to the terms of this Declaration. It is expressly understood and agreed by every person, firm, corporation, trust or the entity hereafter claiming any interest under this Declaration that any and all obligations, duties, covenants and agreements of every nature herein set forth by Merchants National Bank of Aurora personally, and not personal liability hereunder whatsoever is assumed by nor shall be asserted or enforced against said Trustee, all such liability, if any, being expressly waived; and further, that no duty shall rest upon Merchants National Bank of Aurora, either personally or as such Trustee, to sequester trust assets, rentals, avails or proceeds of any kind, or otherwise to see to the fulfillment or discharge of any obligation, express or implied, arising under the terms of this Declaration. In the event of a conflict between the provisions of this paragraph and any other provision of this Declaration with respect to any question of apparent liability or obligation resting upon said Trustee, the exculpatory hereof shall be controlling.

In witness whereof, Merchants National Bank of Aurora, as Trustee as aforesaid, and not individually, has caused its corporate seal to be affixed hereunto and has caused its name to be signed to this Declaration by its Trust and attested by its Vice-President & Trust Officer, as of the day and year first above written.

MERCHANTS NATIONAL BANK OF AURORA,
as trustee as aforesaid

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

THIS DOCUMENT WAS PREPARED BY:

STATE OF ILLINOIS)

) SS

COUNTY OF _____)

I, _____, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that _____, the _____, of Merchants National Bank of Aurora, and _____, _____ of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ and _____, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth. Given under my hand and notarial seal this _____ day of _____, 20_____.

Notary Public

CONSENT

The undersigned, hereby acknowledges and consents to the execution and recordation of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ORCHARD VALLEY HOMEOWNERS' ASSOCIATION dated _____, 20____.

CONTINENTAL BANK N.A.

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

STATE OF ILLINOIS)

) SS

COUNTY OF (_____)

I, _____, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that _____, the _____, President of Continental Bank N.A., and _____, _____ Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20____.

Notary Public

CONSENT

The undersigned, hereby acknowledges and consents to the execution and recordation of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ORCHARD VALLEY HOMEOWNERS' ASSOCIATION dated _____, 20_____.

FIRST ILLINOIS BANK OF EVANSTON, N.A.

ATTEST: By: _____

Its: _____

By: _____

Its: _____

STATE OF ILLINOIS)

) SS

COUNTY OF (_____)

I, _____, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that _____, the _____, President of First Illinois Bank of Evanston, N.A., and _____, _____ Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20_____.

Notary Public

CONSENT

The undersigned, hereby acknowledges and consents to the execution and recordation of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ORCHARD VALLEY HOMEOWNERS' ASSOCIATION dated _____, 20____.

HARRIS TRUST AND SAVINGS BANK

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

STATE OF ILLINOIS)

) SS

COUNTY OF (_____)

I, _____, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that _____, the _____, President of Harris Trust and Savings Bank, and _____, _____ Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20____.

Notary Public

CONSENT

The undersigned, hereby acknowledges and consents to the execution and recordation of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ORCHARD VALLEY HOMEOWNERS' ASSOCIATION dated _____, 20____.

HARRIS BANK/NAPERVILLE, not

personally, but solely as

Trustee under Trust Nuber 5341

See Trustee's Rider Attached Hereto And Made A Part Hereof

ATTEST:

By: _____

Its: _____

By: _____

Its: _____

STATE OF ILLINOIS)

) SS

COUNTY OF (_____)

I, _____, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that _____, the _____, President of Continental Bank N.A., and _____, _____ Secretary of said Bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth; and said _____ then and there acknowledged that he, as custodian of the corporate seal of said Bank, did affix the corporate seal of said Bank to said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20____.

Notary Public

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

HARRIS BANK NAPERVILLE, not personally
but as Trustee under L/T # _____

By: _____

Attest:

By: _____

STATE OF ILLINOIS

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, of Harris Bank Naperville, and _____ thereof, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of Harris Bank Naperville, for the uses and purposes therein set forth; and the said _____ did also then and there acknowledge that _____, as custodian of the corporate seal of said Harris Bank Naperville did affix the said corporate seal of said Harris Bank Naperville to said instrument as _____ own free and voluntary act, and as the free and voluntary act of said Harris Bank Naperville for the uses and purposes therein set forth.

Date

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

- A. PARCELS 5 AND 18 OF ORCHARD VALLEY SUBDIVISION UNIT 1,
IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.
- B. ALL LOTS OF UNITS 2, 3 AND 6 OF ORCHARD VALLEY
SUBDIVISION, SUCH UNITS BEING A RESUBDIVISION OF
PARCELS 2, 14 AND 15 OF ORCHARD VALLEY SUBDIVISION
UNIT 1, IN THE CITY OF AURORA, KANE COUNTY, ILLINOIS.

Permanent Real Estate Index Number:

PIN: 14-13-300-002 14-13-400-004 14-13-200-003
14-13-177-005 14-24-226-002 14-12-400-007

Address of Real Estate: A portion of Orchard Valley Subdivision located in Aurora, Illinois.