

This instrument prepared by and after recording should be returned to:

Edward Copeland, Esq.  
Schuyler, Roche & Zwirner  
130 East Randolph St., Suite 3800  
Chicago, IL 60601  
312-565-8327

Laurie McPhillips 26P R 2004227436  
Will County Recorder Page 1 of 26



JAD Date 12/17/2004 Time 12:16:03  
Recording Fees: 40.00

**FIVE OAKS OF FRANKFORT  
SUBDIVISION,**  
a Subdivision of Frankfort, Illinois

COPY

(For Recorder's Use Only)

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
FIVE OAKS OF FRANKFORT SUBDIVISION HOMEOWNERS AND LAKEOWNERS**

DECLARATION made by JB WF Holdings, LLC, an Illinois limited liability company (hereinafter referred to as the "Developer"), the title holder of record and developer of the real estate located in the Village of Frankfort, Illinois, commonly known as **FIVE OAKS OF FRANKFORT** (hereinafter referred to as "Five Oaks"), and legally described in Exhibit A attached hereto, which is hereby incorporated herein and made a part hereof.

**ARTICLE I**

**PURPOSES AND DECLARATION**

1.1 *Subdivision.* The Developer of the real estate described hereinabove and known as Five Oaks desires to subdivide and develop the subject real estate as a single-family residential Subdivision, including lake-front residences (hereinafter referred to as the "Development").

1.2 *General Purpose.* The Developer desires to establish the highest quality, character, and use of the property, and to provide for the harmonious development of a residential community and the recreational use and enjoyment of Five Oaks Lake, and to preserve such values, by subjecting the Subdivision to the covenants and restrictions hereinafter set forth, each and all of which are for the benefit of the property and all future Owners and residents of Five Oaks.

1.3 *Intent.* The Developer, by the imposition of covenants and restrictions, and the reservation of certain powers unto itself, intends to hereby provide a plan for development, which is intended to enhance and protect the values and natural amenities of the Five Oaks Lake and residential development.

1.4 *Declaration.* To further these purposes, the Developer hereby declares that the real estate described in Exhibit A and known as Five Oaks, and any additions thereto made subject to this Declaration as hereinafter provided, is hereby made subject to, and shall hereafter be held, improved, used, occupied, transferred, sold and conveyed subject to the following covenants and restrictions, each and all of which shall be deemed appurtenant to and shall run with the land and shall be binding upon and inure to the benefit of the Developer, the Owners, the Lakeowners, the Association, and their respective grantees, successors and assigns, and all persons claiming by, through and under them. The provisions of this Declaration are intended to create mutual equitable servitudes upon each Lot subject hereto in favor of each and all other such Lots; to create privity of contract and estate between the grantees of such Lots, and their respective heirs, personal representatives, successors and assigns; and to operate as covenants and restrictions running with the land for the benefit of each and all such Lots subject hereto, the respective Owners of such Lots, present and future.

## ARTICLE II

### DEFINITIONS

2.1 *Definitions.* Unless otherwise expressly provided herein, when used in this Declaration the following words and terms shall have the following meanings:

(a) "Accessory Building" shall mean a subordinate building, out-building, or a portion of a dwelling, the use of which is incidental to the dwelling and customary in connection with that use.

(b) "Association" shall mean the Five Oaks Homeowners and Lakeowners Association, an Illinois not-for-profit corporation, organized and operated in accordance with Article IX hereof, its successors and assigns.

(c) "Committee" shall mean the Architectural Review Committee, organized and operated in accordance with Paragraph 4.2 hereof.

(d) "Development" shall mean the Subdivision known as Five Oaks Subdivision, according to the final plat of Subdivision.

(e) "Dwelling" shall mean any building located on a residential Lot and intended for the shelter and housing of a single family.

(f) "Five Oaks Lake" shall mean and refer to the lake area comprised of the Outlot according to the plat of Subdivision.

(g) "Lakeowner" shall mean each Owner of a Lot lying immediately adjacent and contiguous to Five Oaks Lake, according to the plat of Subdivision.

(h) "Living Area" shall mean that portion of a dwelling which is enclosed and customarily used for dwelling purposes and having not less than six (6) feet headroom, but shall not include open porches, open terraces, breezeways, attached garages, carports or Accessory Buildings.

(i) "Lot" shall mean any plot of land established by and depicted upon the final recorded plat of Subdivision of the subject property.

(j) "Lot Area" shall mean the area of a horizontal plane, bounded by the vertical plane through front, side and rear Lot lines.

(k) "Maintenance" shall mean the exercise of reasonable care to keep buildings, structures, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original developed condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted lawn and garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

(l) "Owner" shall mean the record Owner (whether one or more persons or entities), of the fee simple title to or the contract purchaser for any Lot situated within the Subdivision but, notwithstanding any applicable theory of mortgage or deed to secure debt, shall not mean or refer to any holder thereof unless and until such holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(m) "Residence" shall have the same meaning as "dwelling" set forth hereinabove, and said terms may be used interchangeably herein.

(n) "Residential Lot" shall mean any Lot intended for improvement with a single-family dwelling.

(o) "Single Family" shall mean one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related maintaining a common household in a dwelling.

(p) "Story" shall mean that portion of a dwelling included between the surface of any floor and the surface of a floor next above, or if there is no floor above, the space between the floor and the ceiling next above.

(q) "Structure" shall mean any building or other improvement erected or constructed, the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground.

(r) "Subdivision" shall mean the division of the subject property into separate Lots as established by and depicted upon a final, recorded plat of Subdivision.

(s) "Subject Property" shall mean and refer to the existing property, and all additions to the existing property, subject to this Declaration pursuant to Article III below.

(t) "Village of Frankfort" and "Village" shall mean and refer to the corporate authorities of the Village of Frankfort, an Illinois municipal corporation, and its successor corporate authorities.

### ARTICLE III

#### PROPERTY SUBJECT TO DECLARATION

##### 3.1 *Existing Property*

The real property which is and shall be held, improved, used, occupied, transferred, sold and conveyed subject to the provisions of this Declaration is that portion of the Development known as Five Oaks, Five Oaks Lake and the residential Lots contiguous thereto, located in the Village of Frankfort, Will County, Illinois, legally described in Exhibit A, attached hereto, which is hereby incorporated herein and made a part hereof.

##### 3.2 *Additional Property*

The Developer hereby reserves the right to add any additional properties which are contiguous or adjacent to, or within the immediate vicinity of the existing property described in Paragraph 3.1, and which now are or hereafter may be owned or developed by the Developer, and to subject such additional properties to the covenants, conditions, restrictions, easements and servitudes contained in this Declaration. Any such additional property shall be made subject to the terms and provisions of this Declaration by recorded instrument specifically referring to the right herein reserved.

### ARTICLE IV

#### BUILDING STANDARDS AND USE RESTRICTIONS

##### 4.1 *Single-Family Residential Buildings and Use Only*

(a) Each and every residential Lot in the Subdivision shall be used for single-family residential purposes only, and no building erected on any Lot therein shall be used for any other purpose. Any structure erected, altered, placed or permitted to remain on any residential Lot shall meet all the requirements of this Declaration. Manufactured or prefabricated homes are prohibited.

(b) No business or profession of any nature shall be conducted on any Lot or in any residence constructed on any Lot in the Subdivision, except the business of sale of Lots and residences in the Subdivision constructed by the Developer or its successors or assigns. None of the Lots as originally platted shall be divided or re-subdivided except for the purpose of combining portions thereof with adjoining Lot or Lots, provided that no additional building site is created thereby. Notwithstanding the foregoing, the Developer reserves the right to divide, re-subdivide or consolidate any Lot or Lots while still owned by the Developer, provided that such division, re-subdivision or consolidation shall first be approved by the Village.

(c) No room or rooms in any residence or part thereof may be rented or leased, and no paying guests shall be quartered in any residence. Nothing contained in this Paragraph, however, shall be construed as preventing the renting or leasing of an entire residence as a single unit to a single family.

(d) Nothing herein contained shall be construed to prohibit or prevent the Developer, or its successors or assigns, from erecting a single-family residential building or buildings on any Lot or Lots in the Subdivision and using and maintaining such buildings as a sales office, model home, business office, storage area, or construction area, for the purpose of the development, construction and sale of Lots or dwellings in the Subdivision.

#### 4.2 Architectural Review Process

(a) The objectives of the Architectural Review Committee (hereinafter defined and for convenience sometimes hereinafter referred to as the "Committee") are (i) to carry out the general purposes and intent expressed in this Declaration; (ii) to assure that any improvements or changes upon the Lots will be of good and attractive design, in harmony with the natural setting of the area, and will serve to preserve and enhance the existing natural features of the Subdivision; (iii) to assure that architectural design, materials and workmanship of all improvements are of high quality, comparable and complimentary to other residences and improvements in the Subdivision; and (iv) to assure that the architectural and structural design of all docks and other permitted structures on or adjacent to Five Oaks Lake are in harmony with the uses and purposes thereof, as set forth in this Declaration.

(b) Before anyone shall commence the construction, reconstruction, erection, remodeling, addition to, or alteration of any building, dwelling, fence, wall, pool, dock, structure or other improvement whatsoever on any Lot in the Subdivision, there shall be submitted to the Committee two (2) complete sets of construction plans (which shall include a landscape plan) drawn by a licensed architect for such buildings or structure, which plans shall include drawings, specifications, exterior elevations, construction materials (including samples of all exterior materials), a site plan showing locations of the buildings, fences, gas or electric yard light, docks and other structures upon the Lot (all of which for convenience are herein referred to as the "construction plans"), and no such building, dwelling, fence, wall, post, dock, structure or other improvement shall be erected, constructed, reconstructed, remodeled, added to, altered or placed upon any Lot in the Subdivision unless and until said complete construction plans have received the written approval of the Committee as herein provided. Where a building permit is required by local ordinance, such plans shall be submitted to the Committee, and must receive the approval of the Committee, prior to application to the Village of Frankfort for such building permit.

(c) The Committee shall encourage the use of natural siding materials, such as brick, stone and wood. The use of aluminum, vinyl, plywood, rb & b siding (T-111) reverse board & batten, pressboard, or other similar materials as siding shall result in rejection of the construction plans by the Committee. Architectural designs should include a significant amount of stone or brick. The brick or stone should extend around the entire first floor area, unless the Committee, in its sole discretion, determines this would detract from an exceptional design. Such exceptions should be submitted for approval prior to the purchase of a Lot within the Subdivision.

(d) The Committee shall have the unrestricted right to prevent the building of and to disapprove of any construction plans submitted to it as aforesaid if, in the sole opinion of the Committee:

(i) Such construction plans are not in accordance with all of the provisions of this Declaration; or

(ii) If the design, exterior and interior size, exterior shape, exterior construction materials or color scheme of the proposed building or other structure is not in harmony with the adjacent buildings, structures, or the character of the Subdivision; or

(iii) If such construction plans as submitted are incomplete; or

(iv) If the Committee deems the construction plans, or any part thereof, or of any material proposed to be used on the exterior of the building, to be contrary to the spirit or intent of these conditions and restrictions, or contrary to the interest, welfare or rights of the Developer, or adjacent property Owners, or other present or future property Owners; all in the sole and unlimited discretion of the Committee; or

(v) If the Committee shall, within its sole and unlimited opinion and discretion, deem the construction plans, or any part thereof, or the building or structure, to be unacceptable or of such design or proportions, or to be constructed of such unsuitable materials or exterior color schemes, as shall depreciate or adversely affect the values of other sites or buildings in the Subdivision; or

(vi) The Committee will not approve a raised ranch or common tri-level or any other type of tract house design. Also, it may not approve a three-step ranch, solar-type architecture, or designs that place the majority of the garage in front of the house, all in the Committee's discretion; or

(vii) Approval of the size, dimensions, location, structural design, materials and color of all docks on Five Oaks Lake shall be subject to the sole and unlimited discretion of the Committee.

(e) The decisions of the Committee shall be final. Neither the Developer nor any architect or agent of the Developer, nor any member of the Committee shall be responsible, in any way, for any defects in any construction plans submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such construction plans. In addition, no member of the Committee or the Developer shall be responsible for or have any liability with respect to any mistake in judgment or for any acts or omissions made in good faith in the performance of their duties hereunder. By purchase of a Lot within the Subdivision, the Owner thereof agrees to and shall be bound by all decisions of the Committee made in good faith, and waives any right to seek recovery from or take legal action against the Developer, the Committee, or any member or agent thereof.

(f) From and after the date of this Declaration and until ten (10) years following the date of this Declaration, the number of members of the Committee and the person or persons who comprise it shall be determined from time to time by the Developer, or its successors or assigns, by a designation made by the Developer in writing, a copy of which may be obtained from the Developer, JBWF Holdings, LLC, at P. O. Box 12, Flossmoor, Illinois 60422. From and after ten (10) years following the date of this Declaration, the number and members of the Committee shall be determined by the Board of Directors of the Association, if then existing or otherwise by a majority vote of the Owners of all of the Lots of the Subdivision. If at any time within ten (10) years from the date hereof, the Developer, or its appointee, assignee, or successor, shall expressly relinquish or refuse to exercise its power to determine the number and members of the Committee, the number and members of the Committee shall be determined by the Board of Directors of the Association, if then existing or otherwise by the majority vote of the Owners of all the Lots in the Subdivision.

## ARTICLE V

### MINIMUM BUILDING REQUIREMENTS

#### 5.1 *Minimum Living Area*

In addition to all other requirements in this Declaration, the following shall be the minimum sizes for each residence constructed in the Subdivision. All construction plans submitted to the Committee shall contain a certification by the architect of the square footage of living area (as defined hereinabove) contained in each floor or story.

(a) A one-story residence shall contain at least two thousand five hundred (2,500) square feet of living area, exclusive of garage, porches and basement.

(b) A one and one-half story residence shall contain at least two thousand eight hundred (2,800) square feet of living area, exclusive of garage, porches and basement. (For purposes of this Declaration, a one and one-half story residence shall be defined as a residence with a second floor above the first floor, but not to include those buildings commonly described as multi-level, split-level, bi-level or tri-level.)

(c) A two-story residence shall contain at least two thousand eight hundred (2,800) square feet of living area, of which at least fifteen hundred (1,500) square feet of living area is on the first floor, exclusive of garage, porches and basement.

#### 5.2 *Roofing Standards.*

(a) The minimum roof pitch visible from the front of each residence shall be as follows:

One-story residences: 8/12

All other residences: 7/12

(b) Roofs may be constructed of heavy-weight asphalt, wood, slate or similar materials. Metallic roofing materials are prohibited.

#### 5.3 *Garages*

As appurtenant to the residential building permitted hereunder and to be used exclusively in connection with such residential building, a private garage of sufficient size to house not less than two and one-half (2½), nor more than four (4), standard size automobiles shall be constructed or erected. Such garage shall not be used at any time as a residence, whether temporary or permanent. Such garage shall, in architectural design and in proportionate construction cost, conform to said residential building. Garages greater than three (3) cars in size must be side-loaded. The purpose of this is to prevent a streetscape dominated by garage doors. If an Owner wishes to construct a garage greater than three (3) cars in size, the garage must be oriented away from the street, typically visible on a side elevation of the home.

#### 5.4 Driveway Requirements

No residence or building erected or placed on any Lot in the Subdivision shall be occupied in any manner at any time prior to the installation and construction thereon by the Owner thereof (at the Owner's sole expense), of a concrete, asphalt or bituminous paved driveway extending from the street to the garage, provided, however, that this requirement may be extended by the Committee for a period not to exceed one hundred twenty (120) days in the event such building shall be ready for occupancy during a time when inclement weather or labor strike shall prevent the construction and installation of such driveway. No driveway, sidewalk, walkway, private road or drive shall be constructed or allowed to exist on any Lot in the Subdivision unless it shall be surfaced with brick, concrete, asphalt or bituminous concrete; provided, however, that slabs of stone, exposed aggregate concrete or like materials may be used only upon the prior written approval of the Committee.

#### 5.5 Construction Site Maintenance

(a) It shall be the responsibility of each Lot Owner to maintain, or cause to be maintained, his or her Lot during the period of construction of a building thereon. No construction or service vehicle shall be parked upon a Lot, street or right-of-way for any period in excess of the time such vehicle is actually being utilized for supplying labor, materials or service to the Lot. Each Lot shall be kept free from all manner of construction refuse and debris, which shall be removed from the Lot on a regular basis. Under no circumstance shall an Owner, or anyone acting by, through or under an Owner, allow any construction materials, debris, refuse, earthen materials, or other materials of any kind, to be placed, spilled, kept or left upon any street in the Subdivision.

(b) In the event any Lot Owner fails to comply with any provision of subparagraph (a), and such condition is not corrected or persists for more than three (3) days following written notification to said Owner by the Developer (or Village of Frankfort), the Developer or the Village of Frankfort shall have the right (but not the obligation) to remove such construction refuse and debris, and to clean the street, and charge the responsible Owner for the costs thereof, in which case the Developer, or the Village of Frankfort, as applicable, shall have a lien against such Owner's Lot to secure the payment of all costs and expenses incurred by Developer or the Village of Frankfort, hereunder, in accordance with Paragraph 11.2 hereinbelow. For purposes of this Paragraph, each Owner shall be conclusively presumed to be responsible for any and all contractors, materialmen and suppliers providing labor, materials or supplies to such Owner's Lot.

#### 5.6 Timely Completion

The work of constructing, altering or remodeling any building or dwelling on any Lot shall be prosecuted diligently from its commencement and until the completion thereof. The complete exterior structure or shell, not including finished exterior wall materials (e.g. brick, stone or other approved material), must be erected, constructed and completed within ninety (90) days after the date construction of any residence shall have been commenced. The completed exterior structure or shell (including the roof and all exterior walls) shall be completed within six (6) months after the date of commencement of such building. The effect of this provision shall be to require that each structure shall be complete in all exterior details



within six (6) months from commencement. Reasonable extensions of time periods expressed above shall be granted in the event that delays are caused by weather, unavailability of materials and/or laborers, and/or labor strikes.

### ***5.7 Finished Lot Grading***

Each Lot Owner shall be responsible for finished Lot grading of his or her Lot. All grading shall be in accordance with the Grading Plan for the Subdivision, as approved by the Village of Frankfort. No Owner shall in any way alter or modify, or permit to be altered or modified, any grade or elevation within the Subdivision (as originally established by the Subdivision plans approved by the Village of Frankfort), without the prior written consent of the Developer and the Village of Frankfort.

### ***5.8 Lawn and Landscaping***

(a) Within ninety (90) days after issuance of an occupancy permit, or such additional time as the Committee may allow due to seasonal requirements, the Owner of each Lot shall establish a lawn (sod only) and complete the landscaping plan. Each Lot shall conform to the Village's approved street tree master plan. Each Lot parkway shall contain a minimum of three (3) trees, with a minimum 2.5-inch diameter each, provided, however, that in the case of a corner Lot, the requirements of Paragraph 5.8(b) shall control. Said trees shall be planted at the Lot Owner's sole expense within ninety (90) days following issuance of an occupancy permit for a residence upon such Lot. Such trees shall conform in all respects to the requirements of the Village of Frankfort. The outdoor use of artificial vegetation is prohibited.

(b) Each Lot shall contain a minimum of six (6) trees in the front yard at all times; provided, however, that in the case of a corner Lot, such Lot shall have two (2) trees in each of the parkways, with a minimum of 2.5-inch diameter each.

Notwithstanding anything to the contrary herein, the street tree master plan shall dictate the number, size, location, and specific species of parkway trees to be planted on a given Lot. In the event any Lot Owner fails to plant said trees in accordance herewith and within the time specified herein, the Developer shall have the right (but not the obligation) to plant such trees and charge the Owner for the costs thereof, in which case the Developer shall have a lien against such Owner's Lot to secure the payment of all costs and expenses incurred by Developer hereunder, in accordance with Paragraph 11.2 herein below.

### ***5.9 Sidewalk Installation and Curb Repair***

(a) All sidewalks, regardless of construction schedules, shall be constructed within one (1) year issuance of eighty (80%) percent of occupancy permits for all Lots in the Subdivision. Such sidewalk shall conform in all respects to the requirements and specifications of the Village of Frankfort. In the event any Lot Owner fails to install or cause to be installed such sidewalk in accordance herewith and within the time specified herein, the Developer shall have the right (but not the obligation) to install the sidewalk and charge the Owner for the costs thereof, in which case the Developer shall have a lien against such Owner's Lot to secure the payment of all costs and expenses incurred by Developer hereunder, in accordance with Paragraph 11.2 herein below. In no event shall an occupancy permit be issued for a residence until the Lot's sidewalk has been installed.

(b) All excavating and construction equipment and machinery which is not rubber tired shall only be loaded and unloaded within the boundary lines of the Lot upon which such excavating or construction is to be performed. In the event the Village of Frankfort shall require the replacement or repair of damaged curbing or sidewalks upon or adjacent to a Lot within one (1) year following construction of a residence thereon, the Owner of such Lot shall, at the Owner's expense, repair or replace such sidewalks or curb in accordance with the requirements of said Village. It shall be the responsibility of each Lot Owner to prevent such damage from occurring by adequately protecting the curb and sidewalk during construction of his or her residence. In the event any Lot Owner fails to make such replacement or repairs, the Developer shall have the right to charge the Owner and record a lien against the Owner's property for all costs incurred by Developer in making such repairs or replacement, in accordance with Paragraph 11.2 herein below.

(c) Each Lot Owner shall place at closing with Developer a refundable security deposit in the amount of \$1,500.00 to guarantee the installation of the sidewalk and the completion of any repairs for said Lot in accordance with the provisions of this Paragraph 5.9. The deposit shall be refunded to Lot Owner within forty-five (45) days of the date of completion of the residence or the date of the installation of the sidewalk, whichever is later.

#### 5.10 *Buried Utilities*

All public utility, cable television and radio wires, pipes, mains, tiles, conduits, cables, lines and other appurtenances constructed, laid or installed in the Subdivision must be buried beneath the ground, except the necessary pedestals and transformers required to serve the underground facilities in the Subdivision.

### ARTICLE VI

#### GENERAL RESTRICTIONS

##### 6.1 *Accessory Buildings*

One Accessory Building may be erected on each Lot improved with a residence only upon prior written approval of the Committee. No Accessory Buildings or structures shall be erected, constructed, installed, or maintained on any Lot in the Subdivision except as approved pursuant to Paragraph 4.2 hereof. In no event shall any Accessory Building exceed three hundred (300) square feet, nor shall such Accessory Building's overhead door height exceed eight feet six inches (8' 6"). In no event shall any Accessory Building be erected within twenty-five (25) feet of the shoreline of Five Oaks Lake, as said shoreline would be established on the date hereof if the water elevation in the Lake were at an elevation one vertical foot above normal pool water elevation, as indicated in the Plat of Subdivision, and as the shoreline may hereafter be established pursuant to Paragraph 8.3 herein below. Such Accessory Building shall not be used at any time as a residence, whether temporary or permanent. Such Accessory Building shall, in architectural design, exterior construction materials and color scheme, conform to the residence. In addition, Village approval of an accessory structure is required. The right to construct an accessory structure is limited to the Lakcowners only. Through residential annexations, generally the Village has prohibited accessory

structures, but as the Five Oaks of Frankfort Subdivision is unique in that a boat dock will be necessary, the Village has agreed that accessory structures were appropriate for this setting.

### 6.2 Fences and Dog Runs

(a) A fence permit must be obtained from the Village prior to construction and/or installation. Fences must be located along the boundary lines of the Lot, at the rear of the residence of the Lot, or in the case of a Lake Lot, fences must be located outside of all easements, except that a fence for a swimming pool need only encompass the area necessary to enclose the swimming pool. In the event the shape of a Lot makes the requirements of this Paragraph 6.2 prohibitive, Lot Owner, upon written approval of and at the sole discretion of the Committee and the Village, may locate the fence along a portion of the sides of the Lot. No fence or enclosure shall be erected or constructed on any Lot in the Subdivision without the specific approval of the Committee, and only such type of fence, run or other enclosure as shall be acceptable to and approved by the Committee shall be so erected, constructed or maintained. No solid, chain link, wood, or plastic fences will be approved, nor shall fences be constructed enclosing the entire rear areas of the Lots, except as approved by the Committee.

(b) For purposes of establishing uniformity of style, height, color and construction material of fences throughout the Subdivision, all fences must conform to the following specifications:

A fence of wrought iron or aluminum, black in color and five (5) feet in height.

(c) Notwithstanding the foregoing, the Developer may, in its discretion, erect or construct a decorative or ornamental fence of its choosing along the perimeter of the Subdivision. Such fence shall be maintained by Developer for so long as Developer owns the Lot(s) upon which the fence is located and, thereafter, such fence shall be maintained and kept in good repair and condition by the respective Owner(s) of the Lot(s) upon which the fence is located, at the Owner(s) sole expense, for the benefit of the entire Subdivision. Said fence is subject to Village approval. An easement shall run to the Developer and/or the Association to adequately maintain the perimeter fence. This easement shall also be accessible by the Village should the Village need to take maintenance action in the future.

(d) All fences shall be maintained in a condition that is comparable to the condition when new and shall not be permitted to deteriorate or become unsightly due to weathering or neglect.

### 6.3 Signs

(a) No advertising or signs of any type or character, including "for sale" signs, shall be erected, placed, permitted or maintained on any Lot, or on or in any building, except that one name plate of the occupant and street address not exceeding 2' x 1' in size may be affixed to each residence. Notwithstanding the foregoing, the Developer may erect such temporary signs as it deems appropriate for the purpose of identifying and/or advertising the Subdivision, or any model home(s), which may be erected and maintained by the Developer. Such signs shall be erected and maintained solely by the Developer.

(b) In addition, the Developer may erect two (2) permanent signs for purposes of identifying the Subdivision and permanent street signs for purposes of identifying the streets located therein. Such

permanent signs shall be maintained by the Developer for so long as Developer owns the Lot(s) upon which the sign(s) are located, and thereafter, such sign(s) shall be maintained and kept in good repair and condition by the respective Owner(s) of the Lot(s) upon which said sign(s) are located, at such Owner(s) sole expense, for the benefit of the entire Subdivision; provided, however, that the Association created pursuant to Article IX hereof, may elect to assume maintenance responsibility for such sign(s) in accordance with its Articles and by-laws.

#### **6.4 Pools**

No above-ground pool shall be permitted within the Subdivision. One in-ground pool may be installed in the rear yard of each Lot improved with a residence only upon prior written approval of the Committee. As set forth in the provisions of Paragraph 6.2 above, fences enclosing pools shall be allowed, but any such fence must first be approved as to design and materials by the Committee.

#### **6.5 No Temporary Buildings, Out Buildings, Campers, Trailers, Etc.**

No temporary house, campers, habitable motor vehicles, trailers, tents, stands, recreational vehicles, shacks, sheds, or other structures or buildings of a temporary character shall be constructed, placed, allowed to exist or used on any Lot as a residence, either temporarily or permanently, and no residence erected on any Lot shall be occupied in any manner at any time prior to its full completion in accordance with approved plans as hereinabove provided.

#### **6.6 Outdoor Play Facilities**

All outdoor play facilities shall be maintained in a "like-new" manner. The installation of batting cages is prohibited. There shall be no outdoor storage of furniture or toys.

#### **6.7 No Trucks, Campers, Etc. To Be Kept On Any Lot Or On Any Street**

No trucks, truck-mounted campers, motor homes, trailers, house trailers, buses, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles of any kind shall be maintained, repaired, stored or parked on any dedicated or undedicated street or right-of-way in the Subdivision. No trucks, truck-mounted campers, motor homes, trailers, house trailers, buses, boats, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles of any kind shall be maintained, repaired, stored or parked on any of the Lots in the Subdivision unless housed or garaged completely within a structure which complies with this Declaration, and which has been architecturally approved by the Committee, so as to fully screen them from view from the streets and from neighboring yards. Notwithstanding the foregoing provisions, trucks used by service or construction companies or trades may be parked upon a street, right-of-way or Lot while providing services to the Owner of the Lot.

#### **6.8 Antennae and Satellite Dishes**

No exterior television antennae, radio antennae, or other communication antennae or receiver of any type whatsoever shall be erected, installed or maintained, whether temporarily or permanently, on any Lot or on the exterior of any residence within the Subdivision. All such antennae shall be placed and maintained

within and under the roof of the residence. Notwithstanding the foregoing, one satellite dish, not to exceed eighteen inches (18") in diameter, shall be permitted upon each Lot, provided that the location of such dish (and screening thereof) must first be approved in writing by the Committee.

#### **6.9 Curbside Mailbox**

In the event curbside mailboxes (boxes not attached to a residence) are required for delivery of the U.S. Mails in the Subdivision, the Owner of each Lot upon which a residence shall be constructed shall install, erect or place on such Lot only such a mailbox or receptacle and such a post holding such mailbox or receptacle as the Committee shall approve. Under no circumstances shall non-decorative, rural curbside mailboxes (sometimes referred to as U.S. 1, 1 1/2 or 2, etc.), or "theme" mailboxes (e.g. a sports theme) be installed anywhere in the Subdivision.

#### **6.10 Animals**

No more than three (3) dogs, cats, or other bona fide household pets may be kept in each residence, provided that such pets are not kept, bred or maintained for any commercial purposes, and provided they do not make any objectionable noises and do not otherwise create a nuisance or inconvenience to any of the residents of the Subdivision. Livestock, pot-bellied pigs and poultry of any kind are prohibited. Any pets which cause objectionable noises or otherwise constitute a nuisance or inconvenience in the judgment of the Committee, shall immediately following notice by the Committee be removed from the premises by the person having custody of the same.

#### **6.11 Condition of Property**

No implements, machinery, lumber or building materials shall be permitted to remain exposed upon any Lot so that they are visible from the streets or any neighboring Lot, except as necessary during the period of construction of a building thereon. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any residential Lot, whether vacant or improved, and no refuse pile or unsightly object shall be allowed to be placed or maintained upon any Lot. Trash, garbage, or other waste shall not be kept except in sanitary containers, which must be properly maintained. No trash, garbage, or other waste containers shall be stored, kept or maintained anywhere except within the residence or garage on each Lot, except on such days as such trash, garbage, or other waste material is to be collected and removed. Outdoor clothes drying is prohibited.

#### **6.12 Docks**

One dock per Lot shall be permitted within the Lake boundaries opposite the Lot's Lake frontage provided same is approved as set forth in Paragraph 4.2 above. Lakeowners so privileged shall be responsible for maintaining the structures erected hereunder in a durable and attractive condition. No dock shall exceed fifteen (15) feet in length from the shoreline. No floating docks or seawalls shall be permitted. All docks shall be mounted perpendicular to the shoreline and all boats shall be docked in the same manner.

### 6.13 Compliance with Applicable Laws and Ordinances

The provisions of all applicable laws, regulations and ordinances, whether federal, state or local, including but not limited to all applicable provisions of the zoning ordinance, Subdivision regulations, building code, electrical code, plumbing regulations and other applicable ordinances of the Village of Frankfort, as may be in effect from time to time, shall be strictly adhered to at all times, except as permitted pursuant to the terms of the Annexation Agreement and except as otherwise permitted by law. All Homeowners and Lakeowners hereby acknowledge that the noise levels resulting from boat activity on the lake may impact property within the Subdivision and may exceed Village noise limits. This provision shall not limit the applicability or enforceability of any covenant herein contained which is or may be more restrictive than a similar provision of any of said laws, regulations or ordinances.

## ARTICLE VII

### LAKE USE AND RESTRICTIONS

Five Oaks Lake shall, in addition to the covenants and restrictions set forth elsewhere herein, be subject to the following covenants, conditions, restrictions, and easements:

**7.1 General Restrictions.** In the interest of preserving the recreational, aesthetic, and ecological quality of the Lake, the following restrictions are hereby imposed:

(a) No activities shall be conducted or permitted in the Lake that shall impair the water or adversely affect the elevations or flow of water or otherwise adversely affect the quality of the water within the Lake; and no private water supply system or other removal of water from the Lake shall be permitted;

(b) No docks or other structure shall be constructed or permitted to be constructed within, along, or upon the Lake, except in accordance with Paragraph 6.12 and then only with the prior written approval of the Committee.

(c) No excavation or fill shall be conducted or permitted within the Lake, and no Owner shall in any way alter or modify, or permit to be altered or modified, any Lake embankment, shoreline or island;

(d) No structure, planting or other material shall be placed or permitted to remain, or other activities undertaken, which in any way damage or interfere with established slopes, shorelines or elevations, create erosion or sliding problems, or which may change the direction of flow of drainage channels, or obstruct or retard the flow of water; and

(e) No activities shall be conducted, or permitted to be conducted, upon the Lake, which would constitute a nuisance, or interfere with the concurrent rights and privileges of all other Owners abutting the Lake.

**7.2 Recreational Boating & Fishing.** The use of the Lake by licensees for recreational boating and by Lakeowners for fishing shall be permitted subject to the following rights, privileges, restrictions and easements:

(a) All Lakeowners shall have the right to catch and take fish from the waters thereon by conventional means for recreational purposes only; provided, however, only such fish as meet the size requirements of the Illinois Department of Natural Resources and Department of Conservation regulations shall be removed from the Lake.

(b) Licensees shall have the right to boat upon the Lake, subject to the restrictions contained in subparagraph (d) below. Only those Lakeowners possessing a Boating License, as set forth in Paragraph 7.3 below, shall be permitted to boat upon the Lake.

(c) For this purpose, and subject to the conditions and restrictions contained in this Paragraph 7.2, each Lakeowner shall have a non-exclusive easement to travel in and along such water and to utilize the Lake for recreational purposes, subject to the restrictions and conditions set forth herein. Said non-exclusive easement shall be in common among all Lakeowners. Said rights shall be deemed appurtenant to and run with the land of each Lakeowner, to have and to hold unto such Lakeowners, and their respective heirs, personal representatives, successors and assigns, forever, subject however to all of the conditions and restrictions contained herein.

(d) Factory stock boats, which do not exceed twenty-two (22) feet in length, shall be permitted upon the Lake for recreational purposes; provided, however, that no out-board engine-powered boat shall be permitted upon the Lake, but only those powered by in-board engine. Water-skiing shall be permitted, subject to the terms and conditions of the Boat License and the rules and regulations pertaining thereto. No jet-skis, wave runners, or other similar personal watercraft shall be permitted upon the Lake. No licensee shall be permitted to pull persons behind power boats by way of tube or other such flotation device, to wit: what is commonly referred to as "tubing" shall absolutely be prohibited upon the Lake.

(e) All use and enjoyment of the Lake shall further be subject to all rules and regulations duly promulgated and adopted by the Association in accordance with Article IX. Prior to the establishment of the Association, and turnover by the Developer to the Association, the Developer shall adopt, implement and enforce such rules and regulations governing the use and enjoyment of the Lake as the Developer deems appropriate, in its sole discretion, and all Lakeowners shall be bound thereby, provided that such rules and regulations shall not be contrary to or inconsistent with the provisions hereof.

### **7.3 Boat License.**

(a) There shall be available fifteen (15) unrestricted boating licenses for a fee to be set by Developer and/or the Association which shall be subject to all conditions and restrictions set forth herein and/or the Association from time to time. Each unrestricted boating license shall entitle the holder thereof to operate one (1) ski-boat on Five Oaks Lake. All the other Lakeowners, that is each Owner of a Lot lying immediately adjacent and contiguous to Five Oaks Lake, shall be entitled to have a restricted boating license. A restricted boating license shall not entitle the holder thereof to operate a ski-boat on Five Oaks Lake. Except for this, the rights and privileges shall be the same for a restricted and unrestricted boating license. Licenses may not be shared or split with others.

(b) Licensees may transfer their unrestricted license to another Lakeowner. All of the restrictions herein set forth are applicable to such transferee.

(c) The renting of boats for hire or carrying passengers for hire on the Lake is prohibited.

(d) Persons using or operating any boat on the Lake shall do so in such manner as not to create any unsanitary condition in or about such Lake and shall not pollute such Lake by the discharge, in any material amount, of oil or other polluting liquid or solid tending to make such Lake unwholesome or injurious to the aquatic life thereof. No boat used or operated on the Lake shall be equipped with toilet facilities. No boat shall be used, or operated, nor any horn or sound device sounded so as to create a nuisance or disturb the peace or quiet of any neighborhood.

(e) The Association shall at all times have power and authority to prohibit, restrict or otherwise limit or regulate the keeping, maintenance or operation of any or all boats on the Lake should it become necessary to do so in the interest of public health or safety, or the protection or improvement of the Lake or other cause. The Association shall be required to limit the use of the Lake if so reasonably required by the Village in the interest of public health or safety, or the protection or improvement of the Lake.

(f) Boats may not be stored anywhere on the Lot unless located on the Five Oaks Lake at an approved dock site or housed entirely within the garage.

(g) The length of individual boat docks is restricted to thirty (30) feet.

**7.4 Assumption of Risk/Indemnification.** The use of the Lake shall be undertaken at the sole risk of each Owner. No responsibility or liability shall attach to the Developer, the Village, the Association, or any other Owner for any bodily injury, loss of life, or property damage suffered or sustained by an Owner, or any other person, in the use of such Lake. In furtherance thereof, each Lakeowner does for themselves, and their respective heirs, personal representatives, successors, and assigns, hereby indemnify and hold harmless each and every other Owner, the Developer, the Association, the Village, and their respective heirs, personal representatives, successors and assigns, from and against any and all liability in connection with the use of such lake as provided herein, to the fullest extent permitted by applicable law.

**7.5** The Lake Use and Restrictions contained in this Article VII may not be amended without the prior written approval of the Village, except that the Developer and/or the Association may make and enforce these and other Lake Use and Restrictions consistent with this Article VII, including the time for ski-boating on Five Oaks Lake, which shall not extend beyond the hours of 7:00 a.m. or sunset, and noise and safety rules on Five Oaks Lake.

## ARTICLE VIII

### EASEMENTS

#### **8.1 Storm Water Detention and Drainage Easements**

(a) The plat of subdivision referenced hereinabove establishes certain easements within the Subdivision for purposes of storm water detention and drainage for the mutual benefit of all Owners of Lots within the entire Subdivision. With respect to all such easements, each Owner shall be responsible for compliance with the following covenants and restrictions to the extent such easement is located upon the



Owner's Lot: (i) No Owner shall in any way alter or modify, or permit to be altered or modified, the elevations within any such easement (as originally established by the Subdivision plans approved by the Village of Frankfort); (ii) No Owner shall construct or place, or permit to be constructed or placed, any structures, Accessory Buildings, fencing (except in accordance with Paragraph 6.2), dock (except in accordance with Paragraph 6.12), fill, landscaping, waste material or trash, within any such easement; and (iii) No Owner shall otherwise take any action, or permit any action to be taken, which would adversely affect the elevations or flow of water within any designated storm water detention or drainage easement.

(b) It shall be the responsibility of each Owner to maintain that portion of any and all such easements located upon the Owner's Lot, and to keep the easement(s) in good order and condition. The Village of Frankfort shall have the right to enforce the provisions of this Paragraph 8.1, including the right to institute legal proceedings to enforce compliance with the terms hereof, in which event the Village shall be entitled to recover from any party found to be in violation hereof its expenses, including court costs, expert witness fees, and reasonable attorney's fees, incurred in connection with such proceedings. This shall be in addition to the rights of, and remedies available to, all other Owners, the Association, and the Developer, as provided in Paragraph 11.2 herein below.

### **8.2 Easements In General**

The Developer reserves and grants, as hereinafter provided, certain easement rights in the real estate that constitutes the Development, which easement rights are declared to be of a commercial character. No permanent building shall be placed on such easements, but the same may be used for gardens, shrubs, landscaping and other purposes; provided that such use or uses do not interfere with the use of said easement for their intended purposes; and further provided that docks may be constructed and maintained upon said easements in accordance with Paragraph 6.12. No easement hereby or subsequently reserved or granted by the Developer shall prohibit any other utility from crossing any such easement with its facilities for the purpose of extending, repairing or maintaining utility service to any property or properties. The easements so reserved by the Developer are described as follows:

(a) **Shoreline Easement.** Developer reserves for itself, the Association, and their respective successors, assigns and licensees, a perpetual easement over, along and upon the area of each Lot lying contiguous to Five Oaks Lake a width of ten (10) feet from the shoreline, for the purpose of lake and shoreline maintenance and control along that shoreline maintenance and control.

(b) **Flowage Easement.** Every Lot in the Development that lies contiguous to the Lake shall be subject to a perpetual flowage easement to an elevation on the Lot equal to the high water elevation of such Lake as stated in the approved plans of the Subdivision.

(c) **Slope Control Easement.** Each Lot shall further be subject to a perpetual easement for the maintenance and permanent stabilization control of slopes and shoreline.

(d) The landscape and detention easements indicated on the final plat of subdivision shall be accessible to the Developer and/or the Association and the Village for maintenance purposes.

### 8.3 Provisions in Respect of Five Oaks Lake and Lots Contiguous Thereto

(a) **In General.** The water in, and the land under, Five Oaks Lake are and shall remain owned by the Developer until subsequently conveyed to the Association. Said Lake is depicted in the recorded plat of subdivision, and the normal pool water elevation and the high water elevation of said Lake is, or will be, also indicated thereon. The title that will be acquired by the grantees of the Developer's title to any of said contiguous Lots (and by the successors and assigns of such grantees), namely the Lakeowners, will and shall extend only to the shoreline of the Lake to which such Lot is contiguous, as said shoreline would be established on the date hereof if the water elevation in the Lake were at an elevation one vertical foot above normal pool water elevation indicated in said Development plans and as the shoreline may hereafter be established by the water, at an elevation one vertical foot above normal pool water elevation, by erosion from said shoreline. No such grantee, nor any of such grantee's successors or assigns, shall have any right with respect to any stream that is a tributary to said Lake, or with respect to said Lake, the land thereunder, the water therein, or its or their elevations, use or condition, and none of said Lots shall have any riparian rights or incidents appurtenant; provided further that title shall not pass by reliction or submergence or changing water elevations. The Developer, the Association, and their respective successors and assigns, shall have the right at any time to dredge or otherwise remove any accretion or deposit from any of said Lots in order that the shoreline of the Lake to which the Lot is contiguous may be moved toward, or to, but not inland beyond, the location of said shoreline as it would exist as of the date hereof if the water elevation in said Lake was at an elevation one vertical foot above the normal pool water elevation indicated in said Development plans, and title shall pass with such dredging or other removal as by erosion.

(b) **Reservation of Easement in Developer & Association for Operation of Lake.** The Developer reserves to itself, the Association, and their respective successors and assigns, such perpetual easement upon, across and through each of said Lots contiguous to the Lake as is necessary in connection with operation and maintenance thereof. Notwithstanding the foregoing, neither the Developer, nor the Association, shall be responsible for the alteration of the shoreline or water elevations, whether resulting from natural cause, normal wear and tear, or otherwise. Without limiting the generality of the immediately preceding sentence, it is declared that neither the Developer, the Association, nor any successor or assign of the Developer or the Association, shall be liable for damages caused by ice, erosion, washing, receding, or other action of the water.

(c) **Reservation of Right in Developer to Change Water Elevation in Lake.** The Developer reserves to itself, the Association, and their respective successors and assigns, the right to raise and lower the elevation of the Lake, but neither the Developer, the Association, nor any successor or assign of the Developer or the Association, shall have an easement to raise (by increasing the height of any dam or spillway, or otherwise) the high water elevation of the Lake to an elevation above that indicated on said Development plans. Any such change in the water level is subject to Village engineering approval; provided, however, that in the case that the raising or lowering of the lake level is necessitated by an emergency, the prior approval of the Village engineer shall not be necessary.

## ARTICLE IX

### HOMEOWNERS' AND LAKEOWNERS' ASSOCIATION

#### 9.1 *Creation and Purposes*

There shall be formed an Illinois not-for-profit corporation to be known as the **FIVE OAKS HOMEOWNERS' AND LAKEOWNERS' ASSOCIATION** (herein referred to as the "Association"), whose purposes shall be to insure high standards of maintenance, operation and enjoyment of Five Oaks Lake and of all property in the Subdivision and to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. The Association shall be organized and operated subject to and in accordance with the following provisions:

#### 9.2 *Membership and Voting*

Every record Owner of a Lot in the Subdivision shall become and be a member of the Association and such member shall be entitled to one vote on each matter submitted to a vote of members for each Lot owned by such Owner; provided, that where title to a Lot is in more than one person, such Co-Owners acting jointly shall be entitled to but one vote. The trustee of a title-holding land trust shall be entitled to one vote for each Lot for which it holds title.

#### 9.3 *Powers and Duties of the Association*

The Association shall have the following powers and duties, in addition to those provided elsewhere in this Declaration or by law:

(a) To elect a Board of Directors to carry out the purposes of the Association, as set forth in this Declaration and the Association's Articles of Incorporation, and to adopt such by-laws and rules for the proper administration of the Association from time to time.

(b) To take title to, own and hold such real estate as may be reasonably necessary in order to carry out the purposes of the Association, including but not limited to the areas designated as common areas upon the final, recorded plat of Subdivision, and to pay any applicable taxes on such real estate as may be owned by it.

(c) To care for and maintain the lawns, trees, shrubs and other plantings in, and remove rubbish from, the street landscape islands, have the responsibility to maintain the landscaping along the perimeter (from the top of the berm to the street), or other designated common areas, and to do any other things necessary or desirable in the judgment of the Board of Directors of the Association to keep such areas neat in appearance and in good order, and to otherwise facilitate the proper maintenance and upkeep thereof.

(d) With respect to the storm water retention areas (as designated upon the final, recorded plat of Subdivision), to operate, maintain, repair, and replace the central structures for such water retention areas, and to utilize the easements established for such purposes, and to otherwise facilitate the proper maintenance and upkeep of such control structures; provided, however, that the responsibility for maintenance and upkeep

of the storm water retention areas themselves lies with the respective Lot Owners pursuant to Paragraph 8.1 above.

(e) To administer the architectural review process set forth in Article IV above, and to appoint the members of the Architectural Review Committee; provided, however, that the Association's authority to carry out this provision shall commence only upon relinquishment of such power and authority reserved unto the Developer pursuant to Paragraph 4.2(f).

(f) To care for and maintain the Lake and any islands within said Lake, and to do any other things necessary or desirable in the judgment of the Board of Directors of the Association to keep the Lake neat in appearance and in good order, and to otherwise facilitate the proper maintenance and upkeep thereof.

(g) To stock the Lake with fish at such times and with such types, sizes and numbers of fish as the Board of Directors deems appropriate and desirable, giving due regard to good fish management; and to take such action as is necessary and appropriate to foster, preserve and enhance the fish within said Lake.

(h) To promulgate, adopt and implement such further rules and regulations governing the use and enjoyment of the Lake as the Board of Directors deems appropriate; provided, however, that no such rule or regulation shall be adopted which is inconsistent with the provisions of Article VII or any other provision of this Declaration.

(i) To purchase, obtain and maintain a policy or policies of general liability insurance covering the Association and its members against liability associated with the ownership and use of the Lake, said policy or policies of insurance to be in such forms; with such company or companies, and in such amounts as the Board of Directors shall determine from time to time. Insurance shall be required to be in continuous effect.

(j) To take any such actions deemed necessary or appropriate, in the sole discretion of the Board of Directors, to enforce any provision, term, condition, restriction, or covenant contained in this Declaration, or other rule duly established by the Developer, Association or its Board of Directors.

(k) To provide such other facilities and services as may be authorized from time to time by the affirmative vote of not less than one-half (1/2) of the members of the Association acting in accordance with its by-laws; provided, however, that any such action so authorized shall always be for the expressed purpose of administering and maintaining the Subdivision as a highly desirable and exclusive residential community, and shall in no event be inconsistent with the terms and provisions of this Declaration.

#### *9.4 Method of Providing General Funds*

(a) For the purpose of providing a general fund to enable the Association to exercise the powers, fulfill the duties, make and maintain the improvements and render the services herein provided for, the Board of Directors of the Association shall determine for each year the total amount required of such fund for such year and shall levy an annual assessment against each Lot in the Subdivision, payable annually or in such other installments as the Board of Directors may deem proper.

(b) In the event of failure of any Owner to pay any assessment on or before thirty (30) days following notice to such Owner of such assessment or the scheduled due date thereof, if later, then such assessment shall become delinquent and shall bear interest at the rate of twelve percent (12%) per annum from the due date thereof to the date of payment, and the Association shall have a lien on each Lot against which such assessment is levied to secure payment thereof, plus interest. When delinquent, payment of both principal and interest may thereafter be enforced against the Owner personally, or as a lien on said real estate. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may, at its discretion, record certificates of non-payment of assessments in the office of the Recorder of Deeds of Will County, Illinois (the "Recorder of Deeds") whenever any such assessments are delinquent, and the Association shall be entitled to collect from the Owner or Owners of the real property described therein the costs of such recording, including reasonable attorney's fees, which are hereby declared to be a lien upon the real estate so described in said certificate. Such costs shall be collectible in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

(c) The liens herein provided shall be subject and subordinate to the lien of any valid mortgage or deed of trust now existing or which may hereafter be placed on said real property.

(d) Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such time suit shall have been filed for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment in such suit.

*9.5 Common Area Security Deposit Due at Closing*

As a security for the maintenance of the common areas, Owner/Developer has established an interest-bearing "maintenance reserve fund" to provide additional assurance to the Village that the common areas, detention pond; ski lake, and cul-de-sac islands will be maintained in the manner in which they were designed. Each Lot Owner shall make a one time reimbursement to Owner/Developer at closing for same in the amount of \$400.00. At no time shall the monies held in the maintenance reserve fund exceed the sum of Fifty Thousand (\$50,000) Dollars. In the event the fund reaches this sum the excess shall be turned over to the Five Oaks Homeowners and Lakeowners Association as set forth in this section. The fund shall remain in effect for the term of this Declaration (20 years), after which the funds plus interest will be released to the Association upon their request for purposes of common area maintenance. In the event the funds held in the maintenance reserve fund are insufficient to reimburse the Village for any and all of its costs associated with its required maintenance, each Lot Owner shall be liable and responsible for the shortfall. The Village shall have the right to place a lien on any or all of the Lots in the Subdivision and to foreclose on said lien as if said lien is a mechanic's lien as defined by Illinois Statute, provided such lien shall be subordinate to the lien of a mortgage. The Owner/Developer, or upon establishment of the Association, shall provide an accounting of the Maintenance Fund on an annual basis by November 30 of each year for the life of the annexation agreement. Such accounting shall identify the fund balance, including interest and any withdrawals from the account.

**9.6 Expenditures Limited to Assessment for Current Year**

The Association shall not expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatever binding the assessment of any future year, except for contracts for maintenance and utilities, and no such contract shall be valid or enforceable against the Association.

**ARTICLE X**

**NOTICES TO ALL HOMEOWNERS**

**10.1 Future Road Extensions**

There is a future road extension of Road "C" to the south and to the west, Road "F" to the west and road "H" to the east of the Subdivision.

**10.2 No Filing of Objections to Noise Levels From Boating**

All Homeowners and Lakeowners are prohibited from filing any objection to the noise levels resulting from boat activity on behalf of any property within the Subdivision that impacts any property, provided that such boat activity is conducted in conformance with the rules and regulations outlined in the covenants and restrictions set forth herein and promulgated hereunder.

**10.3 Jabaay Outdoor Creations – 23320 S. LaGrange Road**

All Homeowners and Lakeowners are informed that Jabaay Outdoor Creations operates a commercial business on their property, located at 23320 S. LaGrange Road (generally east of Lots 69 – 81), which includes banquet gatherings and live outdoor music.

**ARTICLE XI**

**GENERAL PROVISIONS**

**11.1 Acceptance by Grantees**

Acceptance of a deed conveying any Lot in this Subdivision subject to this Declaration shall be deemed acceptance by the grantee(s) of title thereto upon and subject to each and all of the covenants, conditions, restrictions, easements and servitudes herein contained, and by such acceptance each grantee covenants and agrees for himself, herself, or itself, his or her heirs, personal representatives and their successors, assigns, subsequent grantees and lessees, to keep, observe, comply with and perform all of said covenants, conditions and restrictions.

**11.2 Enforcement**

(a) The covenants, conditions, restrictions, easements and servitudes herein contained shall be

considered as appurtenant to and running with the land, and shall operate for the benefit of the Developer, the Association and all Owners of the Lots in the Subdivision subject to this Declaration, and may be enforced by the Owner or Owners of any such Lot, the Village, the Association, or by the Developer, and their respective successors or assigns. In the event of a violation of any of the provisions herein contained, the Village, the Developer, the Association, or any other Lot Owner(s) benefiting thereby shall have the right to apply to any court of law or equity having jurisdiction for an injunction to prevent such violation or for damages or other proper relief; and if such relief be granted, the Owner in violation hereof shall pay all court costs and reasonable attorney's fees incurred by the Village, Developer, the Association, or Owner(s) in enforcement hereof. The foregoing shall not be the sole and exclusive remedy, but shall be in addition to all other remedies available to the Village, Developer, the Association, or Owner(s), as provided elsewhere in this Declaration, or as otherwise provided by law.

(b) In the event the Developer, the Association, or the Village undertakes to enforce any term or restriction contained herein (whether by suit or otherwise), or to correct any violation hereof, all costs and expenses incurred by the Developer, the Association, or the Village, including reasonable attorney's fees (whether suit is filed or not), shall be charged to and paid by the Owner in violation hereof, and the Developer, the Association, or the Village shall have a lien against such Owner's Lot to secure the payment thereof.

(c) No delay or omission on the part of the Village, the Developer, the Committee, the Association, or the Owner or Owners of any other Lots in the Subdivision in exercising any right, power or remedy herein provided for in the event of any breach of any of the restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue, nor shall any action be brought or maintained, by or on account of the failure or neglect of the Village, the Developer, the Committee, or the Association or other Owner to exercise any right, power or remedy herein provided for in the event of any such breach, or for asserting or enforcing any of the restrictions herein contained. In the event any lawsuit is filed by an Owner against the Village, Developer, the Association, or Committee, the person so filing the lawsuit shall be liable for all costs and attorney's fees and other expenses incurred by the Village, Developer, the Association, or Committee, including the expense of any expert witnesses.

### 11.3 Duration/Amendment

The covenants, conditions and restrictions set forth herein shall remain in full force and effect for a term of twenty (20) years from the date of recording this Declaration; after which time these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of not less than two-thirds (2/3) of the Lots which are subject to this Declaration is recorded agreeing to revoke or amend them in whole or in part. No such agreement to amend or revoke this instrument shall be effective unless written notice of the proposed agreement is given to every Lot Owner not less than thirty (30) days prior to recording. Notwithstanding anything herein contained to the contrary, the provisions of this instrument may be amended by the Developer, in whole or in part, by recording an instrument specifying the amendment, at any time and for so long as the Developer owns not less than one-half (1/2) of the Lots subject hereto. Any amendments to the covenants, conditions and restrictions set forth herein must be submitted to the Village in writing for review. The Village shall approve or deny the amendment within 30 days of the request; provided, however, Village approval shall not be required to amend provisions that relate to membership in the Association or the internal operations of same.

Any amendment, modification, or revocation hereof made in accordance with this Paragraph shall become effective upon recordation of such instrument in the office of the Recorder of Deeds of Will County, Illinois. In taking any action authorized in this Paragraph, each Lot as originally platted in the plat of subdivision shall be deemed one Lot and the Owner or Owners of each Lot, irrespective of the number of such Owners, shall be considered as one Owner in determining the number of Owners taking part in such action:

#### **11.4 Lot Ownership in Trust**

In the event title to any Lot is conveyed to a title-holding or land trust, under the terms of which the powers of management, operation and control of the property remain vested in the trust beneficiary or beneficiaries, the beneficiary or beneficiaries there under shall be responsible for performance of and compliance with all the covenants, conditions, restrictions and undertakings set forth herein.

#### **11.5 Liberal Construction**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a residential community of high quality and character.

[Remainder of the page intentionally left blank.]



IN WITNESS WHEREOF, the Developer and title holder of record has caused this Declaration to be executed by its legally authorized Manager, whose signature is hereunto subscribed.

Dated: DECEMBER 15, 2004

**JBWF HOLDINGS, LLC,**  
an Illinois limited liability company

By: *John D. Fordon*  
John D. Fordon, Manager

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that John D. Fordon, Manager of JBWF HOLDINGS, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15 day of DECEMBER, 2004.

*Edward J. Copeland*  
Notary Public

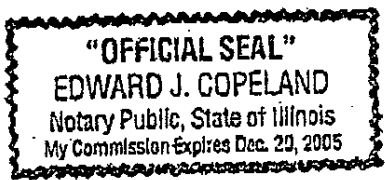


EXHIBIT A

PARCEL I:

THE SOUTHWEST FRACTION OF THE SOUTHEAST FRACTION OF THE NORTHEAST FRACTIONAL 1/4 SOUTH OF THE INDIAN BOUNDARY LINE AND THE EAST 105.76 ACRES OF SAID NORTHEAST FRACTIONAL 1/4 NORTH OF THE INDIAN BOUNDARY LINE, EXCEPT 3/4 OF AN ACRE OF LAND OFF THE EAST SIDE THEREOF, AS DESCRIBED IN DEED RECORDED MINUTES BOOK 67, PAGE 500, AND ALSO EXCEPT THOSE PARTS THEREOF CONVEYED TO CHICAGO DISTRICT PIPELINE COMPANY BY DEEDS RECORDED AS DOCUMENTS 840846 AND 840851, ALL OF SAID LAND BEING IN SECTION 6, TOWNSHIP 34 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WILL COUNTY, ILLINOIS.

PARCEL II:

THAT PART OF THE NORTHEAST FRACTIONAL 1/4 OF SECTION 6, NORTH OF THE INDIAN BOUNDARY LINE, IN TOWNSHIP 34 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN WILL COUNTY, ILLINOIS; DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST FRACTIONAL 1/4 OF SAID SECTION 6; THENCE NORTH 88 DEGREES 44 MINUTES 38 SECONDS EAST ALONG THE NORTH LINE OF SAID NORTHEAST FRACTIONAL 1/4 A DISTANCE OF 564.04 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 88 DEGREES 44 MINUTES 38 SECONDS EAST ALONG SAID NORTH LINE A DISTANCE OF 49.69 FEET TO THE WEST LINE OF THE EAST 105.76 ACRES OF SAID NORTHEAST FRACTIONAL 1/4; THENCE SOUTH 01 DEGREES 30 MINUTES 34 SECONDS EAST ALONG SAID WEST LINE A DISTANCE OF 2662.64 FEET TO THE SOUTH LINE OF SAID NORTHEAST FRACTIONAL 1/4; THENCE SOUTH 88 DEGREES 44 MINUTES 29 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 61.69 FEET; THENCE NORTH 00 DEGREES 58 MINUTES 05 SECONDS WEST A DISTANCE OF 1270.70 FEET; THENCE NORTH 01 DEGREES 30 MINUTES 34 SECONDS WEST A DISTANCE OF 1391.94 FEET TO THE POINT OF BEGINNING, IN WILL COUNTY, ILLINOIS.

P.I.N.: 13-06-200-001-0000 and  
13-06-100-005-0000

Property Address: South Steger Road, West of Route 45  
Frankfort, Illinois

This instrument prepared by and after  
recording should be returned to:

Edward Copeland, Esq.  
Schuyler, Roche & Zwirner  
130 East Randolph St., Suite 3800  
Chicago, IL 60601  
312-565-8327

414928\_2.DOC