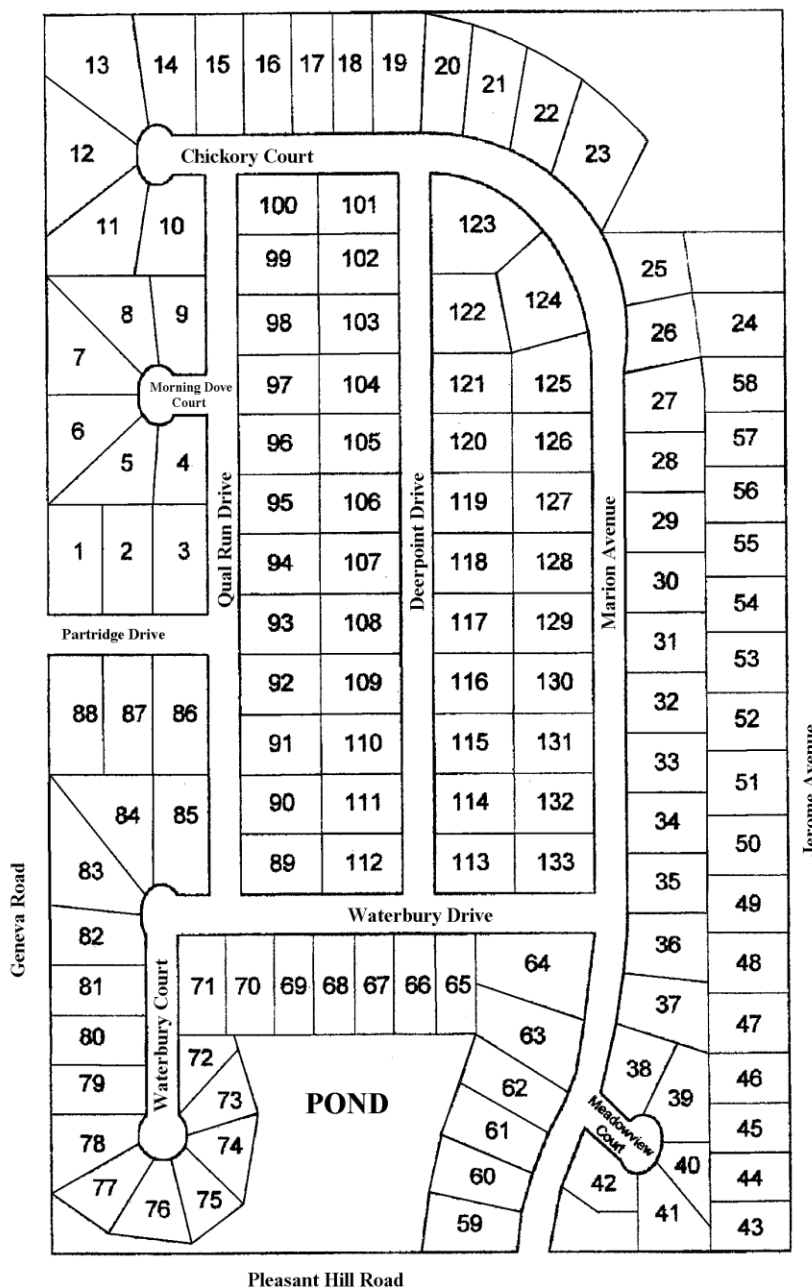


# WHEATON



# WHEATON CROSSING DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION is made and entered into by American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated August 5, 1994, and known as Trust Number 118610-02 (hereinafter referred to as "Declarant").

## WITNESSETH:

WHEREAS, Declarant is the owner and legal title holder of certain real estate in unincorporated DuPage County, State of Illinois, which real estate is legally described in Exhibit A attached hereto and by this reference made part hereof; and

WHEREAS, Windham Homes, Inc., an Illinois limited liability corporation and Concord Development Corporation of Illinois, a Delaware corporation, through a partnership named Wheaton Crossing Joint Venture, an Illinois general partnership, its successors and assigns, ("Developer"), presently intend to develop a parcel of land containing Dwelling Units, as hereinafter defined, together with certain common areas which will require uniformity and continuing care and maintenance for the privacy, benefit and enjoyment of all persons owning and residing in the Dwelling Units on the Property, as hereinafter defined ("Development"); and

WHEREAS, the Developer has deemed it desirable for the efficient preservation of values and amenities of the proposed development to create an entity to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Area, as hereinafter described and defined, and administering and enforcing the covenants and restrictions hereinafter contained and created; and

WHEREAS, there has been incorporated under the laws of the State of Illinois, as a not-for-profit corporation, Wheaton Crossing Homeowners Association for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant desires to establish for its own benefit and the mutual benefit of all future owners, tenants and occupants of the aforesaid development and real estate and any part thereof, certain easements or rights in, over, under, upon and along said development and real estate and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof:

NOW, THEREFORE, the Declarant hereby declares that only the real estate described in Exhibit "A" and such additions thereto as may hereinafter be made is and shall be transferred, held, sold, conveyed and accepted subject to this Declaration of Covenants, Conditions, Restrictions and Easements. The Declarant does hereby further declare that the following easements, covenants, restrictions, conditions and burdens, uses, privileges, charges and liens shall: (1) exist at all times hereafter amongst all parties having or acquired right, title or interest in any portions of the real estate; (2) be binding upon and inure to the benefit of each Owner (as hereinafter defined); and (3) run with the land subjected to this Declaration, to be held, sold and conveyed subject thereto.

## **ARTICLE I** **DEFINITIONS**

**SECTION 1.01.** "Association" shall mean and refer to Wheaton Crossing Homeowners' Association, an Illinois not-for-profit corporation. Said corporation shall be the governing body for all the Owners with respect to the administration, maintenance, repair and replacement of the Common Area as provided by this Declaration and By-Laws.

**SECTION 1.02.** "Property" shall mean and refer to that certain real estate described in Exhibit "A".

**SECTION 1.03.** "Common Area" shall mean: (1) those areas designated on the final plat of subdivision of the Property as retention and/or detention and wetland areas, including, but not limited to, Outlots A, B, C and D designated on the recorded plat of subdivisions of the Property, and all storm water management area structures and

wetlands located within said Outlots and (ii) all cul-de-sac islands, landscaping and planting easements and signage, landscaping and fencing located within said landscape easements, cul-de-sac islands, and Outlots A, B, C and D. The Common Area shall be maintained by the Association until such time as any portion of the Common Area is conveyed to a unit of local government or a Township Highway Commission ("Grantee") at which time the Grantee shall maintain that portion of the Common Area conveyed to Grantee and the Association shall have no further responsibility for said portion of the Common Area. An easement is hereby granted to the Association for ingress and egress over such portions of the Property reasonably necessary for the maintenance and repair of the Common Area. After conveyance of the retention/detention and wetland areas by the Declarant, the legal title to the detention/retention/wetland areas, including Outlots A, B, C, and D shall be owned either by a unit of local government, by a Township Commission or be conveyed to each Owner as an undivided equal interest in the respective Outlots. Outlot C, which contains wetland areas, may be conveyed to the Wheaton Park District.

**SECTION 1.04. " Dwelling Unit "** shall mean a residential housing unit on the Property consisting of a group of rooms and which are designated or intended for the exclusive use as living quarters for one Family, as hereinafter defined.

**SECTION 1.05. " Owner "** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as hereinafter defined, 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 of the number of Lots owned by Declarant and also includes the interest of the Developer or of the Declarant as contract seller of any Lot.

**SECTION 1.06. " Member "** shall mean and refer to any person or entity who holds membership in the Association.

**SECTION 1.07. " Declarant "** shall mean and refer to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated August 5, 1994, and known as Trust Number 118610-02, and its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**SECTION 1.08. " Lots "** shall mean and refer to a platted lot or a portion of a platted lot designated as such upon any recorded subdivision plat of the Property or any portion thereof upon which an individual Dwelling Unit is constructed or to be constructed. Portions of the Property referred to in the recorded plat of subdivision for the Property as Outlots used for storm water management shall not be deemed " Lots " for the purpose of this Declaration even if so designated on any such recorded subdivision plat.

**SECTION 1.09. " Board "** shall mean the Board of Directors of the Association as constituted at any time or from time to time, in accordance with the applicable provision of Article III.

**SECTION 1.10. " Occupant "** shall mean any person or persons other than the Owner in possession of a Dwelling Unit.

**SECTION 1.11. " Family "** shall mean one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, together with his or their domestic servants, maintaining a common household in a Dwelling Unit.

**SECTION 1.12. " By-Laws "** shall mean the By-Laws of Wheaton Crossing Homeowners' Association, a copy of which is attached as Exhibit " B " hereto and by this reference made part hereof.

**SECTION 1.13. " Declaration "** shall mean this Wheaton Crossing Declaration of Covenants, Conditions, Restrictions and Easements.

**SECTION 1.14. " Transfer Date "** shall mean the date which is the earlier of: (I) the date on which seventy-five (75%) of the Lots have been conveyed to Owners other than the Declarant or (ii) five (5) years after the first Lot is conveyed to an Owner other than the Declarant, or (iii) upon written notice of election by Developer to the Association as of the date specified in said notice.

**SECTION 1.15.** “Developer” shall mean Wheaton Crossing Joint Venture, an Illinois general partnership, its successors and assigns.

**SECTION 1.16.** “County” shall mean the County of DuPage, Illinois, its elected and appointed officials, officers, agents and employees.

**SECTION 1.17.** “Structure” shall mean any building or other improvement erected and 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.

## **ARTICLE II** **MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall automatically be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Lots. Voting rights with regard to each Member are set forth in Article III hereof.

## **ARTICLE III** **VOTING RIGHTS AND BOARD OF DIRECTORS**

**Section 3.01.** The Association shall have two classes of voting membership:

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

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article II, provided that the Class B membership shall cease and be converted to Class A membership on the Transfer Date.

**Section 3.02.** The provisions of section 3.01 hereof shall be mandatory. No owner of any interest in any Lot shall have right or power of disclaim, terminate or withdraw from membership in the Association or any of his obligations as such Member, and no purported disclaimer, termination or withdrawal thereof or there-from on the part of any such owner shall be of any force or effect for any purpose.

**Section 3.03.** The Association shall have a Board of not less than three (3) Directors who shall be elected by the Members of the Association at such intervals as the corporate charter and By-Laws of the Association shall provide, except that vacancies in the Board occurring between regularly scheduled meetings of the Members may be filled by the Board by majority vote if so provided by the articles of incorporation or By-Laws and that the first Board may be appointed by the Declarant (or its beneficiary or designee) and shall be three (3) in number. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the Association’s articles of incorporation, this Declaration or the By-Laws, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board from time to time and its officers under the direction of the Board, and shall be subject to any requirement of approval on the part of its Members. The articles of incorporation and By-Laws of

the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

**Section 3.04.** The Association, being a not-for-profit corporation, shall not distribute to its Members any sums in the nature of dividends upon its shares. To the extent that funds shall not be required for current expenditures or for such reserves, the next monthly assessments may, in the discretion of the Board, be eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required.

**Section 3.05.** Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Property or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

**Section 3.06.** The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Lots and Common Area and the use thereof provided, however, that no rule or regulation shall conflict with the Declaration or any applicable laws, ordinances or codes.

**Section 3.07.** A copy of this Declaration, the By-Laws and the Association's books, records and financial statements to be kept by the Board shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, the County, or any holder, insurer or guarantor of a first mortgage lien on a Lot at such reasonable time or times during the normal business hours as may be requested by the Owner or by the holder of said first mortgage lien.

#### **ARTICLE IV**

#### **PROVISIONS RELATING TO THE COMMON AREA**

**Section 4.01.** As part of the overall program of development of the Property and annexed land into a residential community and to encourage the marketing and construction thereof, the Developer and its contractors, subcontractors, and their respective agents and employees shall, for sales and construction purposes only, have the right to use certain Lots without charge during the sales and construction period on the Property to aid I its construction and marketing.

**Section 4.02.** There may be upon the Common Area such landscaping, fencing and entry monuments as the Declarant or the Association or Board shall from time to time determine and shall be in compliance with such governmental laws, ordinances and regulations as shall be in effect during the development of the Property.

**Section 4.03.** An irrevocable license and easement is hereby granted to the County and police, fire, water, health and other authorized officials, employees and vehicles of the County, to go upon the Common Area at any time and from time to time for the purpose of performance of official duties and for the purpose of enforcing this Declaration and all County ordinances, rules and regulations, and the statutes of the State of Illinois and the United States. Except in the event of emergency situations, the County shall serve written notice upon the Association setting forth the manner in which the Association has failed to comply with its obligations under this Declaration under any source of law. The County shall be under no obligation to exercise the rights herein granted except as it shall determine to be in its best interest. No failure to exercise any right herein granted to the County shall be construed as a waiver of that or any other rights.

**Section 4.04.** Declarant and/or developer, their respective agents, employees, guests and invitees, shall have the right and easement of ingress and egress in, over, upon, under and across the Property, except for those portions of the Lots outside of the Common Area that have been conveyed to purchasers, for sales and construction purposes until Declarant has conveyed all of the Lots to the purchasers thereof.

**Section 4.05.** (a) The Association shall have the right and duty to build, repair and maintain the Common Area.

(b) The Association shall have the right of ingress and egress over and upon the Common Area for any and all purposes in connection with the use, maintenance, construction, operation, repair and reconstruction of the Common Area including but not limited to maintenance of landscaping, fencing, monumentation, storm water management areas and wetlands if any contained within the Common Area.

(c) The Association, through resolutions of the Board, shall have the right to adopt rules and regulations governing the use, maintenance and administration of the Common Area and for the health, comfort, safety and general welfare of persons using the Common Area.

**Section 4.06.** Outlot C is subject to a Permanent Wetland Conservation Easement Agreement recorded with DuPage County Recorder's Office on August 31, 1994 as Document Number R94-211407. In the event Outlot C is not properly maintained, the County of DuPage, Illinois or any other unit of local government having jurisdiction over Outlot C, upon ten (10) days prior written notice to the owner thereof, reserves the right to perform, or have performed on its behalf, any maintenance work to or upon Outlot C necessary to insure the restoration, mitigation, and maintenance required for the intended purpose of Outlot C.

## **ARTICLE V**

### **MAINTENANCE OF DWELLING UNITS**

**Section 5.01.** Each Owner shall have the obligation to maintain in good condition and repair his Dwelling Unit, driveway, patio walkways and fences, if any, located on his Lot except those fences along Geneva and Pleasant Hill Road falling within the Common area which shall be maintained by the Association. Each Owner shall also maintain in good and functional condition the surface water drainage facilities located on such Owner's Lot and each Lot shall be subject to an easement for the benefit of any adjoining Lot for maintenance and preservation of any such water flow created by such facilities. No Owner shall obstruct, alter or in anyway modify the established drainage pattern from or over any Lot.

## **ARTICLE VI**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 6.01.** The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments to be fixed, established and collected from time to time as hereinafter provided, and (2) special assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due

**Section 6.02.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents in the Property and in particular for the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of such Common Area, and of the Dwelling Units situated upon the Property. Such uses shall include, but are not limited to, the cost to the Association of all taxes, insurance, repair, replacement and maintenance of the Common Area including, but not limited to, the storm water management areas and wetlands on Outlots A, B, C and D. If any other charges required by this Declaration or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve fund for repair, maintenance, replacements, taxes, and other charges as specified herein which benefit the Common Area are directly charged to any Owner, the Association will reimburse such Owner for any such expense. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner or any utility service, the expense of which is charged to the maintenance fund. At the time of closing of the sale of each Lot by the Declarant, the Owner shall pay an amount if any, set forth in such Owner's Purchase Agreement with Developer, which amount shall be used and applied as a working capital fund in the manner herein provided. If the Board determines in its sole discretion that such amount is not sufficient, then and only then, may the Board exercise its right to collect assessments as provided herein. No provision of this Declaration shall be construed to require payment by the Association of real estate taxes in any Lot upon which a Dwelling Unit is constructed and a portion of the Common Area is located.

**Section 6.03.** The Board, at its option, shall be authorized to fix the annual assessment in an amount sufficient to meet the costs and expenses as contained in Section 6.02 hereof.

**Section 6.04.** In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, maintenance or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, if any.

**Section 6.05.** Both annual and special assessments, if any, must be fixed at a uniform rate for all Lots, except for certain Lots as provided in Section 6.09 hereof, and shall be collected on a monthly basis or as otherwise directed by the Association.

**Section 6.06.** The annual assessments provided for herein, at the option of the Board, shall commence for all Lots within the Property on the first day of the month following the conveyance of the first Lot, by the Declarant, except as otherwise provided in Section 6.09 hereof. The Board shall fix the amount of the annual assessment, if any, against each Lot at least thirty (30) days in advance of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of annual assessment shall be due on the first day of the month immediately preceding the effective date of the changed assessment. An Owner shall first be liable for payment of the full monthly assessment, if any, on the 1<sup>st</sup> day of the month following conveyance of title to him. The Association 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 have been paid and, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein.

**Section 6.07.** Any assessments which are not paid when due shall be delinquent. Such assessments, interest and all costs of collection shall be a continuing lien upon the Lot against which each such assessment was made. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate allowed by law, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the respective Lot and interest, costs and reasonable attorneys fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property.

**Section 6.08.** Any lien which has been or will be created pursuant to the terms and conditions of this Declaration shall (a) be subordinate to the lien of any first mortgage which is placed upon the Property or a Dwelling Unit, and (b) not be effective unless said lien is recorded in the Office of the Recorder of DuPage County, Illinois and (i) shall set forth who or whom is claiming the lien, (ii) the address of the lienor, (iii) the amount of the lien, and (iv) the Section of the Declaration under which the lienor is claiming the lien. Any sale or transfer of all or any portion of the Property or Dwelling Unit pursuant to a mortgage foreclosure or other proceedings in lieu thereof regarding any first mortgage affecting any portion of the Property or Dwelling Unit shall extinguish any existing lien or the right to lien which arose prior to the sale or transfer. Notwithstanding any other terms and conditions of this Declaration, this Section may not be amended or deleted without the written approval of all first mortgage lien holders, which consent shall be recorded in the Office of the Recorder of DuPage County, Illinois.

**Section 6.09.** With regard to any Lots upon which Dwelling Units are being constructed or have been completed and title has not been conveyed by Declarant, the assessment respecting any such Lot shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Lot provided, however, that in the event Declarant enters into a lease or installment contract for any Lot, then the Declarant shall, as of the first day of such lease or contract, be responsible for the payment of all assessments on those Lots on the same basis as any other Owner as provided in this Article. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Property and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, repair items or inventory items to the extent attributable to subsequent periods. The Declarant hereby agrees to satisfy any deficit or shortage in the Association's operating budget for any period in which the Declarant has paid reduced assessments pursuant to this Section 6.09, provided, however, that the

Declarant's liability hereunder shall not exceed the amount by which the Declarant's assessments have been reduced below the assessments of each other Owner by reason of this Section 6.09. Until such time as the Transfer Date has occurred, the assessments covering the Lots which have not been sold by the Declarant may be paid on a monthly basis or, at its option, paid to the Association at the close of each calendar year without interest.

## **ARTICLE VII** **INSURANCE**

**Section 7.01.** The Association shall be responsible for procuring and maintaining comprehensive public liability insurance, including liability for injuries to and death of persons in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring the Association from liability in connection with the use of the Common Area. The Association shall be further responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in a customary "all risk" policy provided that such policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days written notice to the Association, provide for coverage in the amount of one hundred (100%) percent of current full replacement value. Replacement costs shall be determined annually by an independent appraiser or by a method acceptable to the insurance company providing such coverage. The liability policy shall also name as insured the Association's agents, officers, and directors, and such additional parties as the Association shall determine.

**Section 7.02.** The Association shall be responsible for procuring and maintaining a fidelity bond insuring the Association, the Board and the Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Owners in such amounts as the Board shall deem necessary.

**Section 7.03.** The Association may also obtain such other kinds of insurance as the Association shall from time to time deem prudent in such amounts as the Association shall deem desirable including, but not limited to, the following: Earthquake and Flood Risk; Directors and Officers Liability; Workman's Compensation and Employer Liability; and Non-Owned or Hired Automobile Insurance.

## **ARTICLE VIII** **INTERIM PROCEDURE**

**Section 8.01.** Until each of the various Lots shall have been conveyed by the Declarant to the first Owner thereof (or to such Owner's nominee), the Developer shall, with respect to each such unsold Lot, have all the rights granted to and obligations imposed upon the Owners.

**Section 8.02.** Until the initial meeting of the Members, the Declarant (or its designees) may appoint the Board which shall have the same powers and authority as given to the Board generally.

**Section 8.03.** The powers granted to the Developer by Section 8.02 hereof shall include, without limitation, the power to assess upon and collect from the individual Owners, their respective proportionate shares of the funds required for the carrying out of all the duties and obligations of the Association.

## **ARTICLE IX** **RESTRICTIONS RELATING TO PROPERTY**

**Section 9.01.** No Structure, landscaping or other improvement shall be commenced or allowed on any portion of the Property unless it complies with the provisions of this Declaration. All structures on the Property shall be of new construction.



**Section 9.02.** The Lots shall be used only for residential purposes, as a private residence, and no professional, business or commercial use shall be made of the same or any portion thereof, nor shall any resident's use of a Lot endanger the health or disturb the reasonable enjoyment of any other Owner or resident, except that professional and quasi-professional persons may use their residence as an ancillary or secondary facility to an office elsewhere. The foregoing restrictions as to residence shall not, however, be construed in such a manner as to prohibit a resident from: (a) maintaining his personal professional library; (b) keeping his personal business or professional records or accounts; or (c) handling his personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restrictions.

**Section 9.03.** No Structures other than a detached residence for a single family occupancy shall be constructed on each Lot. There shall be no construction on any Lot which results in a building or structure inconsistent with the general architectural design and aesthetic flavor of either (a) the Dwelling Unit on such Lot or (b) the remainder of the Dwelling Units on Property. In addition, any construction undertaken upon any Lot must be completed within one (1) year of the date of commencement of said construction.

**Section 9.04.** All Structures shall be constructed in accordance with applicable governmental building codes and zoning ordinances of the County. If and to the extent there is any conflict between this Declaration and the provisions of any ordinances, codes, rules and regulations of the County, such conflict shall be resolved by the application of the more stringent provision as between this Declaration and such ordinance, code, rules and regulations of the County.

**Section 9.05.** No Structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used as a residence or for any other purpose, either temporarily or permanently.

**Section 9.06.** No advertising sign (except one "For Rent" or "For Sale" sign of not more than five square feet), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any Dwelling Unit or Lot, except as provided in Section 9.07 hereof.

**Section 9.07.** The Developer may maintain, while engaged in construction and sales activities, in or upon such portions of the Property as Developer shall determine, such temporary facilities as in its sole discretion may be necessary or convenient including, but without limitation, offices, storage areas, model units, signs, temporary fencing, monuments and sales and construction trailers.

**Section 9.08.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other common household pets (not to exceed a total of two (2) pets) may be kept, provided that they are not kept, bred, or maintained for any commercial purposes.

**Section 9.09.** All rubbish, trash, or garbage shall be kept so as not to be seen from neighboring Dwelling Units and Streets, and shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Garbage may not be burned on the Lots.

**Section 9.10.** Drying of clothes shall be confined to the interior of the Dwelling Units.

**Section 9.11.** An Owner of a Lot shall do no act nor allow any condition to exist which will adversely affect the other Lots or their Owners.

**Section 9.12.** There shall be no change in any exterior color of any Dwelling Unit which is inconsistent with the general harmony and design of the Dwelling Units on the Property.

**Section 9.13.** No nuisance, noxious or offensive activity shall be carried on in the Property nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of any Dwelling Units on the Property.

**Section 9.14.** No plants, seeds, or other things or conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of the Property.

**Section 9.15.** Parking areas and driveways shall be used for parking operable automobiles only and shall not be used for storage use, or parking of mobile homes, trailers, commercial vehicles, snowmobiles, boats or for any other purpose. No repair or body work of any motorized vehicle shall be permitted except within the confines of the garage. Any violation of this provision shall be deemed a nuisance under Section 9.13 hereof. Passenger motor vehicles in non-operative condition shall not be parked, except in garages.

**Section 9.16.** The operation of “ham” or other amateur radio stations or the erection of any communication antenna, receiving dish or similar devices (other than simple mast antennae located on the roof of a Dwelling Unit) shall not be allowed.

**Section 9.17.** No lines or wires for communication or the transmission of electric current or power shall be constructed, placed or permitted to be placed anywhere in the Property other than within buildings or structures or attached to their walls, unless the same shall be contained in conduits or approved cables constructed, placed and maintained underground.

**Section 9.18.** All areas of the Lots covered with ground cover shall be mowed and trimmed regularly. All areas of the Lots designed or intended for the proper drainage or detention of water including swale lines and ditches shall be kept unobstructed and shall be mowed and maintained regularly so as to keep such areas in good and functional condition. No trees, plantings, shrubbery or other obstructions shall be planted, placed or allowed to remain in any such areas and no Owner shall alter the rate of direction of flow of water from any Lot by impounding water blocking or redirecting swales, drainage ditches or other such drainage areas.

**Section 9.19.** The paint color and architectural style of the Dwelling Units shall not be materially changed from the exterior paint color and architectural style of the Dwelling Units at the time a Certificate of Occupancy was first issued.

**Section 9.20.** Each mailbox shall be maintained in good condition and repair and if necessary replaced with a mailbox of the same height, material and styling as initially installed.

**Section 9.21.** No fences or similar barriers shall be constructed on any Lot unless said fence conforms to any of the following specifications:

(a) Western Red Cedar, board on board (shadow box) fence. Height to comply with County codes. 1 x 6 boards, spaced edge-to-edge and back-to-back to comply with the percent open and closed per County ordinance. 4 x 4 posts with wood (cedar) cap, set 42” into ground and 8 feet +/- on center, with concrete footings. Two 2 x 4 back rails (1-1/2” wide); one at the top of the boards and one 12” up from the bottom of the boards. 1 x 4 top cap, centered on boards;

Or

(b) A black chain link fence. Height and location to be determined by County ordinance

In connection with fences constructed on that portion of the Property which comprises Lots containing a landscape easement, all such fences shall be located one (1) foot inside the landscape easement as depicted on the recorded plat of subdivision of the Property. Notwithstanding anything contained herein to the contrary, only the above-described board-on-board fences can be installed in any Lots abutting Geneva Road or Pleasant Hill Road. The obligation to install such fences in any Lots abutting Geneva and Pleasant Hill Roads shall be the responsibility of the Developer.

**ARTICLE X**  
**INTENTIONALLY OMITTED**

**ARTICLE XI**  
**INTENTIONALLY OMITTED**

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 12.01.** The Association, the County or any Owner, their successors or assigns, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, easements, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Any Owner found to be in violation by a court of competent jurisdiction of any of the foregoing shall also be liable for reasonable attorney's fees incurred by the Association in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, shall constitute an additional lien against the defaulting Owner's lot, enforceable as other liens herein established. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall use its best efforts to assist the County in connection with the enforcement of any provisions hereunder, the violation of which shall also be considered a violation of any applicable County ordinance.

**Section 12.02.** Invalidation of any of these covenants or restrictions by judgment or order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 12.03.** The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, the County, the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinafter set forth. The covenants and restrictions of this Declaration may be amended during the first fifty (50) year period or within any successive ten (10) year period by an instrument signed by those Members (Class A and Class B) entitled to cast seventy-five percent (75%) of the total votes as provided in Article III, Section 3.01 hereof and then properly recorded. Any instrument executed pursuant to the provisions contained in this Section shall be filed for record in the Office of Recorder of DuPage County, Illinois, and a true, complete copy of such instrument shall be transmitted to each Owner promptly.

**Section 12.04.** If and to the extent that any of the covenants would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provision concerned shall continue and endure only after the expiration of a period of twenty-one (21) years after the death of the last to survive of the class of persons consisting of all of the lawful descendants of Bill Clinton, President of the United States, living at the date of this Declaration.

**Section 12.05.** Any notices required under the provisions of this Declaration to be sent to any Owner, shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner as it appears on the records of the Association at the time of such mailing.

**Section 12.06.** All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon Declarant and each subsequent holder of any interest in any portion of the Property and their grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of Property or any part thereof. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

**Section 12.07.** In the event that any part of any Dwelling Unit encroaches or shall hereafter encroach upon any part of any other Lot or the Common Area, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Dwelling Unit of another Owner or if it occurred due to the willful conduct of any Owner.

**Section 12.08.** Declarant reserves to itself the right to rerecord any plats of subdivision of the Property, or this Declaration or certificates of correction to correct any inaccuracies, errors or mistakes contained therein, subject to the prior review and approval of the County.

**Section 12.09.** Any aggrieved Owner may enforce the provisions of this Declaration, the By-Laws, or any rules and regulations promulgated by the Board by an action at law or in equity against the defaulting Owner (or occupant of his Dwelling Unit).

**Section 12.10.** No Owner shall lease or rent his or her Lot or Dwelling Unit for a term less than thirty (30) days. Every lease of a Lot or Dwelling Unit shall be in writing and shall be made expressly subject to the requirements, rights, covenants, conditions, restrictions and easements of this Declaration and of the By-Laws.

**Section 12.11.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a first class housing development.

**Section 12.12.** Declarant reserves the right and power to prepare and record a special amendment (“Special Amendment”) to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran’s Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, ensure, or guarantee first mortgages covering Dwelling Unit or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot, and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to reservation of, the power of the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Declarant no longer holds or controls title to any Lot.

**Section 12.13.** The property located within Wheaton Crossing subdivision is not located within the corporate boundaries of the City of Wheaton, Illinois.

**Section 12.14.** This Declaration is executed by American National Bank and Trust Company of Chicago (“American”), as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and American hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm or corporation hereafter claiming any interest under this Declaration that American, as Trustee as aforesaid, and not personally, had joined in the execution of this Declaration for the sole purpose of subjecting the title holding interest and the trust estate under said Trust No. 118610-02 to the terms of this Declaration; that any and all obligations, duties, covenants, indemnities and agreements of every nature herein set forth by American, as Trustee as aforesaid, to be kept or performed, are indeed to be kept, performed and discharged by the beneficiaries under said Trust No. 118610-02 or their successors, and not by American personally; and further, that no duty shall rest upon American either personally or as such Trustee, to sequester trust assets, rentals, avails, or proceeds of any kind, or otherwise to see to fulfillment or discharge of any obligation, express or implied, arising under the terms of this Declaration, except where said Trustee is acting pursuant to direction as provided by the terms of said Trust No. 118610-02 after the Trustee has been supplied with funds required for the purpose. In event of conflict between the terms of this paragraph and of the remainder of the Declaration on any questions of apparent liability or obligation resting upon said Trustee, the exculpatory provision hereof shall be controlling.

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago, 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 these presents by its \_\_\_\_\_ and attested by its \_\_\_\_\_,  
This \_\_\_\_ day of \_\_\_\_\_, 200\_.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee as Aforesaid and not individually

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

ATTEST:

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

EXHIBIT A

PROPERTY

Lots 1 through 133, both inclusive, and Outlots A, B, C and D, all in Wheaton Crossing Subdivision, being a subdivision in Sections 7 and 8, Township 39 North, Range 10 East of the Third Principal Meridian, DuPage County, Illinois according to the plat thereof recorded in the Office of the Recorder of DuPage County, Illinois as Document No. R95-002948.

VACANT LAND UNINCORPORATED DUPAGE COUNTY  
AT S.E. CORNER GENEVA RD & PLEASANT HILL ROAD

UNDERLYING PIN

05-07-204-001

05-07-204-003

05-07-204-004

05-08-100-012

05-08-117-018

R95 - 02949

**EXHIBIT B**

**BY-LAWS OF**

**WHEATON CROSSING HOMEOWNERS' ASSOCIATION**

**ARTICLE I**

**PURPOSES AND POWERS**

The Association shall be responsible for the general management and supervision of the Common Area and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not For Profit Corporation Act of the State of Illinois, which shall be consistent with the purposes, specified herein and in the Declaration.

**ARTICLE II**

**OFFICES**

**2.01 Registered Office.** The Association shall have and continuously maintain in this State a Registered Office and a Registered Agent whose office shall be identical with such Registered Office. The Association may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

**2.02 Principal Office.** The principal office of the Association shall be maintained in Palatine, Illinois.

**ARTICLE III**

**MEMBER**

**3.01 Voting Members.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot, which is subject by covenants of record to assessment by the Association, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to an assessment, by the Association. Ownership of such Lot shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one or more Lots. Voting rights with regard to each Member are set forth in Section 3.02 hereof.

**3.02 Classes of Membership.** The Association shall have two classes of voting membership.

**Class A.** Class A Members shall be all those Owners as defined in Section 3.01, provided that Declarant shall not be a Class A Member until the Transfer Date. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 3.01. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. All Members holding any interest in a single Lot shall be together be entitled to cast only one vote for the Lot.

**Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 3.01; provided that the Class B membership shall cease and be converted to Class A membership on the Transfer Date.

**3.03 Meetings.**

(a) **Quorum: Procedure.** Meetings of the Members shall be held at the principal office of the Association or at such other place in DuPage County, Illinois as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.02 above shall constitute a quorum. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the Members at

which a quorum is present upon the affirmation vote of the Members having a majority of the total votes present at such meeting. Any Member in writing may waive notice of a meeting, or consent to any action of the Association without a meeting.

(b) **Initial and Annual Meeting.** The initial meeting of the Members shall be held at such time as may be designated upon thirty (30) days written notice given by Declarant, provided that such initial meeting shall be held no later than the first to happen of (i) one hundred and twenty (120) days after the date the Declarant has sold and delivered its deed for at least seventy five percent (75%) of the Lots or (ii) three (3) years from the date of recording of this Declaration. For purposes of Section 3.03b, the term "Lot" shall include all platted lots contained within the Property. Thereafter, there shall be an annual meeting of the Members on the first Tuesday of May of each succeeding year, at 7:30 p.m. If the date for the annual meeting of Members is a legal holiday, the meeting will be held at the same hour on the first day succeeding such date, which is not a legal holiday.

(c) **Special Meetings.** Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purposes. Said meetings shall be called by written notice authorized by a majority of the Board or by the Members having one-half (1/2) of the total votes entitled to be cast by Class A Members as provided in Section 3.02 above, and delivered not less than five (5) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

**3.04 Notices of Meeting.** Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Dwelling Unit of the Owner with respect to which such voting right appertains, if no address has been given to the Board. The notices required herein shall state the specific purpose and the nature of the business for which the meeting is called. At any meeting, no business may be transacted other than that specified in the notice.

**3.05 Proxies.** At any meeting of Members, a Member entitled to vote may either vote in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

#### **ARTICLE IV BOARD OF DIRECTORS**

**4.01 Board of Directors.** The direction and administration of the Property in accordance with the provisions of the Declaration shall be vested in the Board of Directors, consisting of five (5) persons who shall be elected in the manner hereinafter provided, except for the first Board of Directors appointed by the Declarant (or its designee) which shall be three (3) in number. The Members having at least two-thirds (2/3) of the total votes may from time to time increase or decrease the number and term of office of the Board members at any annual meeting, provided that such number shall not be less than five (5), and that the terms of at least two fifths (2/5) of the persons on the Board shall expire annually. Each member of the Board, with the exception of the Board members initially appointed by the Declarant (or its designee) shall be one of the Owners (including the Declarant); provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, partner of such partnership, individual trustee or beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a member of the Board and provided further that in the event a member of the Board has entered into a contract to sell his Dwelling Unit and vacates the Dwelling Unit prior to the consummation of that transaction, such member shall no longer be eligible to serve on the Board and his term of office shall be deemed terminated.

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

**4.03 Election of Board Members.** At the initial meeting of the Members and at all subsequent annual meetings of the Members there shall be elected a Board of Directors. In all elections for members of the Board of Directors, each Member shall be entitled to vote on a non-cumulative basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. The initial Board of Directors designated by the Declarant pursuant to Section 4.01 hereof shall serve for a period commencing on the date the Declaration is executed and

ending upon the qualification of the Directors elected at the initial meeting shall serve until the first annual meeting. Five (5) Board Members shall be elected at the initial meeting for a term of one (1) year. Upon the expiration of the terms of office of the Board members so elected at the initial meeting, and thereafter, successors shall be elected for a term of two (2) years each. Notwithstanding the aforesaid election procedure, the Declarant or its designee may appoint a Board which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members is held.

**4.04 Compensation.** Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Members having two-thirds (2/3) of the total votes. However, any director may be reimbursed for reasonable expenses incurred in the performance of his duties.

**4.05 Vacancies in Board.** Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.07 hereof, including vacancies due to any increase in the number of persons on the Board, shall be filled by the remaining members of the Board or by the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

**4.06 Election of Officers.** The Board shall elect from among its members a President who shall preside over both its meetings and those of the Members, and who shall be the chief executive officer of the Board and Association, a Secretary who will keep minutes of all meetings of the Members and of the Board who shall, in general, perform all the duties incident to the office of Secretary, and a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. All officers shall be elected at each annual meeting of the Board and shall hold office at the pleasure of the Board.

**4.07 Removal of Board.** Any Board member may be removed from office by affirmative vote of the Members having at least two-thirds (2/3) of the total votes, at any special meeting called for the purpose in the manner aforesaid. A successor to fill the unexpired term of a Board member removed may be elected by the Members at the same meeting or any subsequent meeting called for that purpose.

**4.08 Meeting of Board.** The initial meeting of the Board shall be held immediately following the initial meeting of the Members and at the same place. At such meeting the Board shall elect its officers to serve until the first annual meeting of the Board which shall be held immediately following the first annual meeting of the Members and at the same place. All subsequent annual meetings of the Board shall be held without other notice than the By-Law immediately after, and at the same place, or other place, as the annual meeting of Members. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each member, delivered personally or by mail or telegram. Any member may in writing waive notice of a meeting, or consent to the holding of a meeting without notice, or consent to any action of the Board without a meeting. A majority of the number of Board members shall constitute a quorum for the transaction of business. Unless otherwise expressly provided herein, any action may be taken by the Board upon the affirmative vote of those present at its meetings when a quorum is present.

**4.09 Execution of Investments.** All agreements, contracts, deeds, leases, vouchers for payment of expenditures, and other instruments shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President and countersigned by the Secretary.

## **ARTICLE V**

### **POWERS OF THE BOARD**

**5.01 General Powers of the Board.** Without limiting the general powers which may be provided by law, the Declaration or these By-Laws, the Board shall have the following general powers and duties:

- (a) to elect the officers of the Association as herein above provided;
- (b) to administer the affairs of the Association and the Common Area;
- (c) subject to Section 5.04(b) below, to engage in services of a manager or managing agent who shall manage and operate the Common Area including, but not limited to the maintenance of storm water management areas, related structures and wetlands;
- (d) to formulate policies for the Administration, management and operation of the Common Area;
- (e) to adopt administrative rules and regulations governing the administration, management, operation and use of the Common Area, and to amend such rules and regulations from time to time;



- (f) to provide for the maintenance, repair and replacement of the Common Area and payments thereof, and to approve payment vouchers or to delegate such approval to the officers or the manager or managing agent;
- (g) to provide for the designation, hiring and removal of employees and other personnel, including accountants and legal counsel, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Common Area and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be the employees of the managing agent);
- (h) to estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners of such lots which have been occupied for residential purposes, their respective shares of such estimated expenses, as hereinafter provided; and
- (i) to exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Owners by the Articles of Incorporation, the Declaration or these By-Laws.

**5.02 Capital Additions and Improvements.** The Board's powers hereinafter enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any structural alterations, capital additions or capital improvements to the Common Area (other than for purposes of replacing or restoring portions of the Common Area, subject to all the provisions of the Declaration) or to those portions of the Common Area, subject to all the provisions of the Declaration) or to those portions of the Dwelling Units as set forth in Section 5.01 of the Declaration having a total cost in excess of Five Thousand Dollars - (\$5,000.00), without in each case the prior approval of the owners holding two-thirds (2/3) of the total votes.

**5.03 Tax Relief.** In connection with the Common Area, the Board shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision thereof, or any other lawful taxing or assessing body, which are authorized by law to be assessed and levied on real property and to charge all expenses incurred in connection therewith to the maintenance fund.

**5.04 Rules and Regulations: Management**

(a) **Rules.** The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of Property, and for the health, comfort, safety and general welfare of the Owners and Occupants. Written notice of such rules and regulations shall be given to all Owners and Occupants, and the entire Property shall at all times be maintained subject to such rules and regulations.

(b) **Management.** The Declarant or the Board of Directors shall engage the initial management organization under contracts expiring no later than ninety (90) days after the initial meeting of Members is held. Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board provided however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Property before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Any management fees incurred pursuant to this Section 5.04(b) shall be paid from the assessments collected pursuant to Article VI hereof.

(c) Nothing hereinabove contained shall be construed to give the Board the authority to conduct an active business for profit on behalf of all the Owners or any of them.

**5.05 Liability of the Board of Directors.** The members of the Board and the officers of the Association shall not be personally liable to the Owners or others for any mistake of judgment or for any facts or omissions made in good faith by such officers or Board members. The Owners shall indemnify and hold harmless each of the members of the Board and each of the officers against all contractual liability to others arising out of contracts made by the Board or Officers on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration. The liability of any Owner arising out of any such contract made by the Board or Officers or out of the aforesaid indemnity in favor of the members of the Board or officers, to the extent not covered by insurance, shall be limited to his proportionate share of the total liability there under.

**ARTICLE VI**  
**ASSESSMENTS – MAINTENANCE FUND**

**6.01 Preparation of Estimated Budget.** Each year on or before December 1, the Board, shall, if necessary, estimate the total amount necessary to pay the cost of wages, materials, taxes, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services authorized by the Board, together with the reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, if applicable, on or before December 15, notify each Owner in writing as to the amount of such estimate (“Estimated Cash Requirement”), with reasonable itemization thereof. The Estimated Cash Requirement, if any, shall be assessed equally among all of the Owners other than the Declarant as provided in Section 6.09 of the Declaration. On or before January 1 of the ensuing calendar year, and the first of each and every month of said year, each Owner, other than Declarant, shall be obliged to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this Section 6.01. On or before the date of the annual meeting of each calendar year, the Board shall supply to all Owners an itemized accounting of the maintenance 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 (including amounts collected from Declarant) 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 have been paid. Such certificates shall be conclusive evidence of payment of any assessments therein.

**6.02 Extraordinary Expenditures.** The Board shall build up and maintain a reasonable reserve fund to authorized capital expenditures, contingencies, replacements and deficits in the Association’s operating account (“Extraordinary Expenditures”) not originally included in the annual estimate. Extraordinary Expenditures which may become necessary during the year shall be charged against such reserve fund. If such reserve fund proves inadequate for any reason, including non-payment of any Owners assessment, the Board may, at any time, levy a further assessment, which shall be divided pro-rata among the remaining installments such fiscal year and assessed equally among the Owners. In the event, however, that the Board determines that there exists a surplus in the reserve for Extraordinary Expenditures, the Board shall have the authority to transfer such funds into the operating account to fund any deficit in said account. The Board shall serve notice of further assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All such Owners shall be obligated to pay the adjusted monthly amount. At the time of closing of the sale of each Lot by the Declarant, the Owner shall pay to the Association, or as otherwise directed by the Board, an amount equal to Two Hundred (\$200.00) Dollars, which shall be used and applied for start-up costs and as a working capital fund in connection with initial operating expenses for the Common Area and held for future working capital needs.

**6.03 Budget for First Year.** When the first Board elected hereunder (or appointed by the Declarant) takes office, it shall determine the Estimated Cash Requirement, as hereinabove defined, for the period commencing on the first day of the month following the conveyance of the first Lot and ending on December 31 of the calendar year following said conveyance. The initial Estimated Cash Requirement, at the option of the Board, shall be divided among the remaining monthly installments of such calendar year and assessed equally to all Owners, other than the Declarant.

**6.04 Failure to Prepare Annual Budget.** The failure or delay of the Board to prepare or serve the annual or adjusted estimate on an Owner shall not constitute a waiver or release in any manner of such Owner’s obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the monthly maintenance charge, if any, at the existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

**6.05 Books and Records.** The Board shall keep full and correct book account in chronological order of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses to the Common Area and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or representative of an Owner duly authorized in writing or any holder, insurer or guarantor of a first mortgage secured by any portion of the Property at such reasonable time or times during normal business hours as may be requested by such Owner or his representative or such holder, insurer or guarantor. Upon ten (10) days notice to the Board, any Owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessment or other charges due and owing from such Owner. In addition, the Board shall provide for the preceding fiscal year upon the written request of any holder, insurer or guarantor of a first mortgage secured by any portion of the Property any annual audited or un-audited financial statements which are prepared and distributed by the Association to the Owners at the end of each of its

respective fiscal years, by the Association to the Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, 51% or more of the First Mortgagees (by number) shall upon request, be entitled to have such an audited statement prepared at their expense.

**6.06 Status of Collected Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held in trust for the benefit, use and account of all the Owners, other than the Declarant. 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.

**6.07 Remedies for Failure to Pay Assessments.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate then allowed by law, and the Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such 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 interests, costs and fees as above provided, shall be and become a lien or charge against the Lot of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against the real estate. Unless otherwise provided in the Declaration, the members 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 the same. The lien of the assessments provided for herein shall subordinate to the lien of any first or prior recorded mortgage now or hereafter placed on the Lots provided, however, that such prior recorded mortgage shall be subject to the lien of all unpaid assessments with respect to such Lot which became due and payable subsequent to the date the holder of said mortgage takes possession of the Lot, accepts a conveyance of any interest in the Lot or has a receiver appointed in a suit to foreclose his lien.

**6.08 Exempt Lots.** With regard to any Lots upon which Dwelling Units are being constructed or have been completed and title has not been conveyed by Declarant, the assessment respecting any such Lot shall be limited to the aggregate amount of actual operating expenses from time to time required to be paid with respect to such Lot, provided, however, that in the event Declarant enters into lease or installment contract for any Lot, then Declarant shall be responsible for the payment of assessments on those Lots on the same basis as any other Owner as provided in Section 6.01 hereof. Actual operating expenses shall mean those ordinary expenses attributable only to the period in question covering the maintenance and operation of the Property and shall not include capital expenditures, amounts set aside as a reserve for contingencies or replacements, prepaid items or inventory items to the extent attributable to subsequent periods. Until such time as the Transfer Date has occurred, the assessments covering the Lots which have not been sold by the Declarant may be paid on a monthly basis or, at its option, paid to the Association at the close of each calendar year without interest.

**6.09 Right to Collect Assessments.** If the Board determines in its sole discretion that the amount deposited by the Owners at the time of closing of the sale from Developer is not sufficient, then the Board may exercise its right to collect assessments as provided herein.

## **ARTICLE VII**

### **COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY**

All Owners shall maintain, occupy and use their Dwelling Units and Common Area only in accordance with the terms of the Declaration and any additional rules and regulations adopted by the Board or by the Members.

The Board shall have full authority to enforce all such rules and regulations by taking action as may be necessary.

## **ARTICLE VIII**

### **COMMITTEES**

**8.01 Board Committees.** The Board, by resolution adopted by a majority of the directors in office, may designate one (1) or more committees. Each of which shall consist of one (1) or more directors; said committees, to the extent consistent with law and as provided in said resolution, shall have and exercise the authority of the Board in the management of the Association; but the designation of such committees and the declaration thereof of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it or him by law.

**8.02 Special Committees.** Other committees not having and exercising the authority of the Board in the management of the Association may be designated by a resolution adopted by a majority of the directors present at a meeting at which quorum is present. Except as otherwise provided in such resolution, members of each committee shall be Members, and the President of the Association shall appoint the members thereof. Any member thereof may be removed whenever in the Board's judgment the best interests of the Association shall be served by such removal.

**8.03 Term.** Each member of the committee shall continue as such until the next annual meeting of the Board and until his successor is appointed and shall have qualified, unless the committee shall be sooner terminated, or unless such a member shall cease to qualify as a member thereof.

**8.04 Chairman.** One (1) member of each committee shall be appointed chairman.

**8.05 Vacancies.** Vacancies in the membership of any committee may be filled by appointment made in the same manner as provided in the case of the original appointments.

**8.06 Quorum.** Unless otherwise provided in the resolution of the Board designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

**8.07 Rules.** Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board.

#### **ARTICLE IX INTERIM PROCEDURE**

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

#### **ARTICLE X AMENDMENTS**

These By-Laws may be amended or modified from time to time in accordance with the provisions of Section 12.03 of the Declaration. Such amendments shall be recorded in the Office of the Recorder of DuPage County, Illinois.

#### **ARTICLE XI DEFINITION OF TERMS**

The terms used in these By-Laws shall have the same definition as set forth in the Declaration to which these By-Laws are attached to the extent such terms are defined therein.



**FIRST AMENDMENT TO THE WHEATON CROSSING DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

**WITNESSETH**

WHEREAS, the Wheaton Crossing Homeowner's Association, hereinafter referred to as the "Association", is an Illinois Not-For-Profit Corporation exercising certain jurisdiction and control over the following described real estate situated in the County of DuPage, State of Illinois, to wit:

Lots 1 through 133, and Outlots A, B, C and D in Wheaton Crossing Subdivision, Sections 7 and 8, Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded January 6, 1995, as Document Number R95-002948, in DuPage County, Illinois PIN: 05-07-204-001, 05-07-204-004, 05-08-100-012, 05-08-117-018 and 05-07-204-003 (underlying property) which property is located at the Southeast corner of Pleasant Hill Road and Geneva Road, Wheaton, DuPage County, Illinois, and which property is hereinafter collectively referred to as the "subject property"; and

WHEREAS, the Association obtains its authority, jurisdiction, and control over the aforesaid subject property pursuant to a Declaration of Covenants, Conditions, Restrictions and Easements, which Declaration was recorded in the Office of the DuPage County Recorder of Deeds on January 6, 1995, as a Document Number R95-002949, said document hereinafter Referred to as the "Declaration"; and

WHEREAS, by the terms and provisions of Article XII, Section 12.03 of the Declaration, the Members of the Association, as therein provided and defined, have the authority to make certain amendments to the Declaration; and

WHEREAS, the Members of the Association have determined that it would be in the best interests of the Members and the Association if certain amendments to the Declaration were promulgated as hereinafter set forth; and

WHEREAS, a meeting and vote of the Members of the Association was held to consider the amendments as hereinafter set forth, all as required by the terms and provisions of Article III, Section 3.01 and Article XII, Section 12.03 of the Declaration, and that at said meeting the amendments were approved in the form and manner as therein required.

NOW, THEREFORE, in consideration of the aforesaid premises, it is hereby declared by the Members of the Wheaton Crossing Homeowner's Association as follows:

**1. that Article IX of the Declaration is hereby amended by adding the following additional language:**

**"Section 9.22.** Above ground swimming pools shall not be permitted, constructed or maintained on any Lot. For the purpose of this Section, a swimming pool shall be considered to be "above ground" if the deck, or any portion of the pool, rests above the finished grade level of a Lot, as that grade was originally established and approved by the DuPage County Building Department at the time the building permit was issued to construct a Dwelling Unit thereon, and as further determined by the grading plans and specifications then approved by the County of DuPage Development Department."

**2. that Article IX, Section 9.21 is hereby amended by deleting said Section 9.21 in its entirety, and substituting in lieu thereof the following:**

**"Section 9.21.** No fences or similar barriers shall be constructed on any Lot unless said fence conforms to the following specifications:

(a). Western Red Cedar, board on board (shadow box) fence, height to comply with DuPage County Codes, constructed of 1 x 6 boards, spaced edged-to-edge and back-to-back to comply with percent open and closed criteria as required by the DuPage County Ordinance, with 4 x 4 posts with wood (cedar) cap, set 42" into the ground and 8 feet, +/-, on center, installed in concrete footings, along with two 2 x 4 back rails (1 1/2" wide), one at the top of each post and one 12" up from the bottom of each post.

(b). In connection with any fences constructed on that portion of the Property which comprises lots containing a landscape easement, fences running parallel to said landscape easement on Lots 1, 6, 7, 11, 12, 13, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 88 shall be located one (1) foot inside the property line as depicted on the recorded Plat of Subdivision of the Property. The obligation to install such fences in the rear of Lots 1, 6, 7, 11, 12, 13, 78, 79, 80, 81, 82, 83 and 88 shall be the responsibility of the Developer.

(c). Notwithstanding anything contained in this Section to the contrary, any fence to be constructed on Lots 1, 6, 7, 11, 12, 13, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 88 must be of the same composition and style as the perimeter fence running along the rear of each such Lot, and adjacent and parallel to, respectively, Geneva Road and Pleasant Hill Road.

(d). Any fences constructed on Lots 1, 6, 7, 11, 12, 13, 75, 76, 77, 78, 79, 80, 81, 82, 83 and 88 shall only be located on, or up to, the southerly and easterly lines of the landscape easement as, respectively, depicted on the recorded Plat of the Subdivision of the property. Furthermore, the height of said fences on said Lots shall not exceed four (4) feet tall from the grade to the top of the fence.

It is hereby declared to be the intent of this subparagraph (d) that no fences shall be permitted to run over, upon or across the top, or any part of, the landscape berm, any such fences being hereby strictly "prohibited."

IN WITNESS WHEREOF, the required number of Members of the Wheaton Crossing Homeowner's Association, an Illinois Not-For-Profit Corporation, has executed this First Amendment to the Wheaton Crossing Declaration of Covenants, Conditions, Restrictions and Easements, consisting of two (2) pages, this page included, on this 19<sup>th</sup> day of October, 1995.

American National Bank and Trust Company of Chicago, Not Individually, But As Trustee Under Trust Number 118610-02 Dated August 5, 1994 (Representing At Least 75% of Total Votes).

By: Trust Officer - Eva Higi  
Prepared by Attorney John J. Grotto

**SECOND AMENDMENT TO THE WHEATON CROSSING DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

**W I T N E S S E T H**

WHEREAS, the Wheaton Crossing Homeowner's Association, hereinafter referred to as the "Association", is an Illinois Not-For-Profit Corporation exercising certain jurisdiction and control over the following described real estate situated in the County of DuPage, State of Illinois, to wit:

Lots 1 through 133, and Outlots A, B, C and D in Wheaton Crossing Subdivision, Sections 7 and 8, Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded January 6, 1995, as Document Number R95-002948, in DuPage County, Illinois which property is located at the Southeast corner of Pleasant Hill Road and Geneva Road, Wheaton, DuPage County, Illinois, and which property is hereinafter collectively referred to as the "subject property"; and

WHEREAS, the Association obtains its authority, jurisdiction, and control over the aforesaid subject property pursuant to a Declaration of Covenants, Conditions, Restrictions and Easements, which Declaration was recorded in the Office of the DuPage County Recorder of Deeds on January 6, 1995, as a Document Number R95-002949, said document hereinafter Referred to as the "Declaration"; and

WHEREAS, by the terms and provisions of Article XII, Section 12.03 of the Declaration, the Members of the Association, as therein provided and defined, have the authority to make certain amendments to the Declaration; and

WHEREAS, the Members of the Association have determined that it would be in the best interests of the Members and the Association if certain amendments to the Declaration were promulgated as hereinafter set forth; and

WHEREAS, the Membership wished to allow permanent basketball backboard sets; and,

WHEREAS, the Membership wished to restrict the placement and use of communication antenna; and,

WHEREAS, a vote of the Members of the Association was held to consider the amendments as hereinafter set forth, all as required by the terms and provisions of Article III, Section 3.01 and Article XII, Section 12.03 of the Declaration, and that said vote approved the amendments in the form and manner as therein required; and,

NOW, THEREFORE, in consideration of the aforementioned premises, it is hereby declared by the Members of the Wheaton Crossing Homeowner's Association as follows:

1. **That Article IX Section 16 of the Declaration** is hereby amended by deleting said Section 9.16 in its entirety, and substituting in lieu thereof the following:

**"Section 9.16.** The operating of "ham" or other radio stations or the erection of any communication or television antennas shall not be allowed, with the exception of receiving or satellite dishes that are 18 inches in diameter or less, and are not located on the front of the roof, or any front portion of the dwelling.

2. **That Article IX Section 9.23 of the Declaration** is hereby amended by the following additional language:

**"Section 9.23.** Notwithstanding any other section of Article IX, each lot may have one (1) basketball backboard set, consisting of a basketball hoop, net, and backboard attached to a single vertical support set in a concrete footing. Each basketball backboard set shall be maintained in good condition and repair, or be moved at the owner's expense. No lot shall be allowed to have both a removable and permanent basketball backboard set erected at the same time."



IN WITNESS WHEREOF, the President of the Wheaton Crossing Homeowner's Association, an Illinois Not-For-Profit Corporation, has executed this Second Amendment to the Wheaton Crossing Declaration of Covenants, Conditions, Restrictions and Easements, consisting of two (2) pages, this page included, on this 9<sup>th</sup> day of September, 1998.

James E. Ziganto, President, Wheaton Crossing Homeowner's Association

THIS INSTRUMENT PREPARED BY: KUHNS & HEAP  
552 South Washington, Suite 100  
Naperville, IL 60540

**THIRD AMENDMENT TO THE WHEATON CROSSING DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

**W I T N E S S E T H**

WHEREAS, the Wheaton Crossing Homeowner's Association, hereinafter referred to as the "Association", is an Illinois Not-For-Profit Corporation exercising certain jurisdiction and control over the following described real estate situated in the County of DuPage, State of Illinois, to wit:

Lots 1 through 133, and Outlots A, B, C and D in Wheaton Crossing Subdivision, Sections 7 and 8, Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded January 6, 1995, as Document Number R95-002948, in DuPage County, Illinois which property is located at the Southeast corner of Pleasant Hill Road and Geneva Road, Wheaton, DuPage County, Illinois, and which property is hereinafter collectively referred to as the "subject property"; and

WHEREAS, the Association obtains its authority, jurisdiction, and control over the aforesaid subject property pursuant to a Declaration of Covenants, Conditions, Restrictions and Easements, which Declaration was recorded in the Office of the DuPage County Recorder of Deeds on January 6, 1995, as a Document Number R95-002949, said document hereinafter Referred to as the "Declaration"; and

WHEREAS, by the terms and provisions of Article XII, Section 12.03 of the Declaration, the Members of the Association, as therein provided and defined, have the authority to make certain amendments to the Declaration; and

WHEREAS, the Members of the Association have determined that it would be in the best interests of the Members and the Association if certain amendments to the Declaration were promulgated as hereinafter set forth; and

WHEREAS, a vote of the Members of the Association was held to consider the amendments as hereinafter set forth, all as required by the terms and provisions of Article III, Section 3.01 and Article XII, Section 12.03 of the Declaration, and that at said meeting the amendments were approved in the form and manner as therein required: and,

NOW, THEREFORE, in consideration of the aforesaid premises, it is hereby declared by the Members of the Wheaton Crossing Homeowner's Association as follows:

1. **That Article VI of the Declaration** is hereby amended by adding as Section 6.10 the following:

**"Section 6.10.** At the time of transfer in ownership of a lot, where the transfer retains no interest or beneficial interest in the property, the Purchaser shall pay to the Association Two Hundred Dollars (\$200.00), which amount shall be used and applied to the working capital fund in connection with initial operating expenses for the Common Area and held for future working capital needs. This payment shall be non-refundable to the Purchaser on any subsequent transfer of the property.

IN WITNESS WHEREOF, the President of the Wheaton Crossing Homeowner's Association, an Illinois Not-For-Profit Corporation, has executed this Third Amendment to the Wheaton Crossing Declaration of Covenants, Conditions, Restrictions and Easements, consisting of one (1) page, this page included, on this 2<sup>nd</sup> day of July, 1999.

James E. Ziganto, President, Wheaton Crossing Homeowner's Association

THIS INSTRUMENT PREPARED BY:    KUHNS & HEAP  
552 South Washington, Suite 100  
Naperville, IL 60540

**FOURTH AMENDMENT TO THE WHEATON CROSSING DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS AND  
AMENDMENT TO BY-LAWS**

**WITNESSETH**

WHEREAS, the Wheaton Crossing Homeowners Association hereinafter referred to as the "Association," is an Illinois corporation exercising certain jurisdiction and control over the following described real estate situate in the County of DuPage, State of Illinois, to wit:

Lots 1 through 133, and Outlots A, B, C and D in Wheaton Crossing Subdivision, In Sections 7 and Township 39 North, Range 10, East of the Third Principal Meridian, according to the Plat thereof recorded January 6th 1995, as Document Number R95-002948, in DuPage County, Illinois

Pin: See attached list "Exhibit A"

Which property is located at the Southeast corner of Pleasant Hill Road and Geneva Road, Wheaton, DuPage County, Illinois and which property is defined in the Declaration as the "Property;" and,

WHEREAS, the Association obtains its authority, jurisdiction and control over the aforesaid Property pursuant to Declaration of Covenants, Conditions, Restrictions and Easements which Declaration was recorded in the Office of the DuPage County Recorder of Deeds on January 6, 1995, as Document Number R95-002949, as amended from time to time, said document hereinafter referred to-as the "Declaration;" and,

WHEREAS, by the terms and provisions of Article XII, Section 12.03 of the Declaration, the Members of the Association as therein provided and defined, have the authority to make certain amendments to the Declaration; and,

WHEREAS, the Members of the Association have determined that it would be in the best interests of the Members: and the Association if certain amendments to the Declaration were promulgated as hereinafter set forth; and,

WHEREAS, the Membership desires to change the number of members required for a quorum; and,

WHEREAS, the Membership desires to change the date of the annual meeting; and

WHEREAS, the Membership desires to increase the funding of the capital account by changing the fee assessed to a Purchaser of property in the Association,

WHEREAS, a vote of the Members of the Association was held to consider the amendments as hereinafter set forth, all as required by the terms and provisions of Article III, Section 3.01 and Article XII, Section 12.03 of the Declaration, and that said vote approved the amendments in the form and manner as therein required; and

NOW, THEREFORE, in consideration of the aforesaid premises, it is hereby declared by the Members of the Wheaton Crossing Homeowners Association, as follows:

1. **That Article III of the By-Laws, Section 3.03(a)**, attached as "Exhibit B" to the Declaration of Covenants, Conditions, Restrictions and Easements, is hereby amended by substituting the second sentence, which currently reads "The presence at any meeting, in person or by proxy, of a majority of the total votes- determined pursuant to Section 3.02 above shall constitute a quorum." with the following:

"The presence at any meeting, in person-or by proxy, of 30% of the total votes determined pursuant to Section 3.02 above shall constitute a quorum and the act of a majority of the total votes present at a meeting at which a quorum is present shall be the act of the members. However any vote undertaken by said quorum shall not replace or supercede the two-thirds (2/3s) total vote requirement needed to make capital additions or improvements in excess of \$5000.00 pursuant to Section

5.02 herein, nor the seventy five (75%) total vote requirement needed to amend the Declaration pursuant to Section 12.03 of the Declaration of Covenants, Conditions, Restrictions and Easements.”

2. **That Article III of the By-Laws, Section 3.03(b)**, attached as “Exhibit B” to the Declaration of Covenants, Conditions, Restrictions and Easements, is hereby amended by substituting the third sentence, which currently reads “thereafter, there shall be an annual meeting of the Members on the first Tuesday of May of each succeeding year at 7:30 PM” with the following:

:  
“Thereafter, beginning in the year 2003, there shall be an annual meeting of the Members on the first Tuesday of March of each succeeding year at 7:30 PM.”

3. **That Article VI of the Declaration, Section 6.10** of the Declaration of Covenants, Conditions, Restrictions and Easements, is hereby amended by substituting the entire section, which currently reads “At the time of transfer in ownership of a lot, where the transferor retains no interest or beneficial interest in the property, the Purchaser shall pay to the Association Two Hundred Dollars (\$200.00), which amount shall be used and applied to the initial working capital fund in connection with operating expenses for the Common Areas and held for future working capital needs. This payment shall be non-refundable to the Purchaser on any subsequent transfer of the property” with the following:

“At the time of transfer in ownership of a lot, where the transferor retains no interest or beneficial interest in the property, the Purchaser shall pay to the Association an amount not less than \$200 and not greater than \$400, which amount shall be used and applied to the working capital in connection with the operating expenses for the Common Area and held for future working capital needs. This payment shall be non-refundable to the Purchaser on any subsequent transfer of the property.

Further, the Board of Directors shall, in conjunction with the preparation of the Annual Budget for the Association, determine the amount of the Purchaser’s contribution to the working capital fund. It shall be the responsibility of the Treasurer to announce to the Members the capitalization lee for the upcoming fiscal year in the Treasurer’s Annual Report.”

IN WITNESS WHEREOF, the President of the Wheaton Crossing Homeowners Association, Illinois Not-For-Profit Corporation, has executed this Fourth Amendment to the Wheaton Crossing Declaration of Covenants, Conditions, Restrictions and Easements, consisting of three (3) pages, this page included on the 15<sup>th</sup> day of July 2003.

Geri Balow, President, Wheaton Crossing Homeowner’s Association

## Rules and Regulations for Use of the Retention Pond and Adjacent Common Area Property

The retention pond located along Pleasant Hill Road is the primary component of Wheaton Crossing's storm water management system. Its purpose is to permanently store a given volume of storm water runoff, biologically treat organic waste runoff from the community and detain and release excess storm water in a controlled manner to DuPage County's storm water system.

On June 19, 2005, the Board of Directors of the Wheaton Crossing Homeowners Association ("WCHA") approved by a vote of 3-2 a resolution to allow WCHA residents and their guests to participate in shoreline fishing and other limited recreational activities ("Permitted Recreational Activities") around the retention pond and the adjacent common area property.

Any Permitted Recreational Activities must be in accordance with the following rules and regulations implemented by the Wheaton Crossing Board of Directors for safe use and enjoyment by Wheaton Crossing residents and their guests ("Authorized Users").

### **The pond and adjacent common area property:**

- May only be used by Authorized Users.
- Is available and open for the use and enjoyment only from May 1<sup>st</sup> through November 1<sup>st</sup> of every calendar year.
- Is available for the safe use and enjoyment only during daylight hours.
- Requires all children under the age of 14 to be under the immediate supervision, care and protection of a resident adult (18 years or older) at all times while on the common area property.
- Permitted Recreational Activities are limited exclusively to:
  - Shoreline/bank fishing
  - Nature viewing
  - Walking
  - Sitting and laying on the grass

### **Additional rules and regulations:**

- Access to the pond through adjacent homeowner's private property is prohibited unless permission from such homeowner is granted.
- Residents using the pond are expected to keep the area clean and free from litter.
- Alcohol is strictly prohibited.
- Playing loud music or making disturbing noises is prohibited.
- No one is ever allowed to be in the water or on the ice.

## Rules and Regulations for Use of the Retention Pond and Adjacent Common Area Property

Noncompliance with these rules will involve corrective action ranging from verbal notice to loss of use. The Board of Directors reserves the right to prohibit all recreational pond activity at any time.

All activity around the retention pond and adjacent common area property is done at the Authorized User's own risk.

**WCHA SHALL NOT BE RESPONSIBLE FOR ANY LOSS, DAMAGE OR INJURY OCCURRING ON OR ARISING OUT OF THE USE OF THE POND OR ADJACENT COMMON AREAS BY ANY AUTHORIZED USER, WHETHER ARISING FROM OR RELATED TO A PERMITTED RECREATIONAL ACTIVITY OR OTHERWISE.**

Each Authorized User using the retention pond area for Permitted Recreational Activities acknowledges and agrees that WCHA assumes no responsibility for any type of damage, injury or accident involving any Authorized User. Such injuries and damage include, **but are NOT limited to** injuries, including death, arising from or related to: (1) entering the water, voluntarily or involuntarily; (2) the level or type of bacteria in the water; (3) the slope of the shoreline; and (4) the suitability of the retention pond for Permitted Recreational Activities.

Each Authorized User agrees to assume full responsibility for their own safety and well being while using the retention pond area for Permitted Recreational Activities and waives any and all rights to bring any action based on such use of the retention pond area against WCHA.