

Final 1/20/04

THIS INSTRUMENT PREPARED

BY:

Kennedy Homes Limited Partnership

14 Executive Court

South Barrington, IL 60010

Attn: Randy Carls

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
BRAYTON KNOLLS HOMEOWNERS ASSOCIATION**

THIS DECLARATION (the "Dedaration") made this ____ day of _____, 200__, by **KENNEDY HOMES LIMITED PARTNERSHIP**, an Illinois limited partnership, (hereinafter referred to as the "Declarant").

PREAMBLES:

A. Declarant is the owner in fee simple of a certain parcel of real estate in the City of Marengo, County of McHenry, State of Illinois, legally described in Exhibit "A", attached hereto and incorporated herein (the "Property");

B. Declarant and Developer (hereinafter defined) desire to develop a single family residential development on the Property to be known as Brayton Knolls (the "development"); and

C. Declarant is desirous of submitting the Property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, transferred, occupied and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property, and be binding on all parties having or acquiring anyright, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1

**DECLARATION PURPOSES AND
PROPERTY SUBJECT TO DECLARATION**

1.1. The Declarant desires to create on the Property a single family development for future owners of Lots (as hereinafter defined) for the following general purposes:

- a. The Declarant, by the imposition of covenants, conditions and restrictions and the reservation of certain powers unto itself, does intend to provide for the Property a plan for development which is intended to enhance and to protect the values of Declarant's single-family residential community; and
- b. The Declarant desires to provide for the maintenance of the Common Area (as hereinafter defined) portions of which may be owned by the Association (as hereinafter defined) and used in common by the Owners (as hereinafter defined) of the Property.

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

ARTICLE 2

DEFINITIONS

The following words, when used in this Declaration or in any supplemental Declaration shall, unless the context shall prohibit, have the following meanings:

2.1. "Association" shall mean and refer to Brayton Knolls Homeowners Association, an Illinois not-for-profit corporation, and a Common Interest Community as defined in Chapter 735 ILCS 5/9-102(a)(b), Illinois Compiled Statutes, as from time to time amended, its successor and assigns.

2.2. "Board" shall mean and refer to the Board of Directors of Brayton Knolls Homeowners Association, an Illinois not-for-profit corporation; said entity shall govern and control administration and operation of the Property.

2.3. "By-Laws" shall mean and refer to the By-Laws of Brayton Knolls Homeowners Association, which is attached hereto and made a part hereof as Exhibit "C". The By-Laws are incorporated herein by this reference.

2.4. City shall mean and refer to the City of Marengo, Illinois.

2.5. "Common Area" shall mean and refer to all real property and improvements installed by Developer, thereon to be owned or maintained by the Association for the common use and enjoyment of all members of the Association. This shall include the Lot 71, 72 & 73 as described on the Subdivision Plat (as hereinafter defined), attached hereto and made a part hereof as Exhibit "B."

2.6. "Declarant and/or Developer" shall mean and refer to Kennedy Homes Limited Partnership, an Illinois limited partnership.

2.7. "Lot" shall mean and refer to that portion of the Property indicated upon the recorded subdivision plat or plats of the Property improved or intended to be improved as set forth on Exhibit "B", attached hereto.

2.8. "Owner" shall mean and refer to the record owner, whether one or more persons, individuals or entities, of a fee simple title to any Lot, which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

2.9. "Member or Membership" shall mean and refer to every person or entity who holds Membership in the Association.

2.10. "Mortgage" shall mean and refer to either a Mortgage or Deed of Trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

2.11. "Person" shall mean and refer to a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

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

2.13. "Subdivision Plat" shall mean and refer to the Plat of Subdivision for Brayton Knolls Subdivision, as recorded with the office of the Recorder of Deeds of McHenry County, Illinois, attached hereto and made a part hereof as Exhibit "B."

2.14. "Single Family" shall mean and refer to one or more persons, each related

to other by blood, marriage or adoption, or a group of not more than three (3) persons not all so related, maintaining a common household.

2.15. "Turnover Date" shall mean and refer to the meaning referred to and set forth in Section 4.6 hereof.

ARTICLE 3

ARCHITECTURAL STANDARDS AND GENERAL RESTRICTIONS

3.1 Anti-Monotony Code.

- A. No new single family detached dwelling of the same plan and appearance (defined as exterior colors and/or elevation) shall be built on either side of the dwelling or across the street facing it. This includes dwellings directly across the street and each Lot adjacent to it.
- B. A dwelling on a corner Lot may be considered dissimilar to another if the two dwellings face different streets.
- C. On cul-de-sac turnarounds, no dwelling shall be of the same plan and appearance within one lot on either side.

3.2 Architectural Standards

- A. Consistent use of building materials and color shall be complimentary with the style and design of community.
- B. Colors shall be chosen for compatibility with neighboring area; appropriate colors shall be subdued colors such as beige, brown, gray, etc. and should be selected to blend with the natural landscape.
- C. Fronts of buildings should have a variety of setbacks and elevation variations.
- D. The use of front porcos, porches and/or architectural detail at entry is encouraged.
- E. All driveways to be constructed shall have compacted gravel/crushed stone base per code with a wearing surface of

asphalt or concrete.

- F. All roofs shall be designed with or a combination of gables, hips, sheds, etc. (no flat roofs are allowed). Minimum roof pitch shall be 4:12.
- G. Minimum dwelling size on each Lot shall be 1800 sq. ft. (not including the garage or basement space).
- H. A minimum of three elevation designs per plan.
- I. No fence or fences shall be installed or maintained upon the Property unless such fence or fences are constructed in accordance with the laws and the ordinances of the City of Marengo.
 - a. The construction of chain link fences within the Property is prohibited.
 - b. Any and all fence or fences must be 48 in height and constructed of cedar.
 - c. Lots 1, 2, 3, 10, 11, 12, 16, 17, 18, 27, 28, 29, 30, 32, 33, 34 and 35 may only contain fence or fences, which do not obstruct the views of wetland, detention or open areas. Such fence or fences must have an opacity of not greater than 50%.
- J. All Lots shall be used for residential dwelling purposes only. Each Owner shall maintain or cause to be maintained its Lot and all improvements located thereon, including, but not limited to, the exterior of any building or buildings, pedestrian walks, driveways and landscaped areas, in a clean, sightly and safe condition, and each Owner shall at all times cause the prompt removal of all papers, debris, junked vehicles, refuse and other unsightly objects and materials therefrom and the removal of snow and ice from paved areas, when and as required. Garbage shall be placed in receptacles provided therefore, and if outside, shall be properly screened.
- K. No trailer, temporary building or structure of any kind shall be permitted except temporary buildings or structures located upon a Lot used during construction of a permanent improvement, which shall be removed as promptly as practicable and in any event no later than thirty (30) days after the issuance by the City of an occupancy permit for such permanent improvement. In addition, no signage of any kind (except for a single real estate for sale sign as

permitted by the City) shall be permitted upon any Lot or residence. Anything contained herein to the contrary notwithstanding, Declarant hereby reserves for itself and Developer the right to maintain sales offices and trailer, parking areas, sales facilities, including but not limited to model homes, signs, construction and storage trailers, structures and facilities on any portion of the Property, except on improved Lots subsequent to sale to an Owner, as Declarant and Developer see fit, without payment of any charge or fee to any Owner or the Association. Garden sheds shall be allowed, not exceeding a floor area of 80 square feet, overall height of 9 feet, in a residential style and color comparable to the existing residence, and otherwise in compliance with City of Marengo regulations regarding accessory uses.

- L. All Improvements shall be constructed in accordance with applicable governmental building codes and zoning ordinances of the City and, in the case of Developer's approval, the approved Plans and Specifications.

3.3. General Restrictions.

- A. No noxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No plants or seed or other conditions, harboring or breeding infectious plant diseases or noxious insects shall be introduced or maintained upon any part of a Lot.
- B. Vacant Lots shall not be used for the purpose of raising crops thereon.
- C. Commercial trucks, boats, recreational vehicles or trailers shall at all times be parked in the garage of a dwelling located on a Lot. The repair or maintenance of any motorized vehicle shall not be permitted except within the confines of the garage of a dwelling.
- D. There shall be no obstruction in the driveways or other portions of the Common Area nor shall ready access to a garage or entrance to a Lot be obstructed or impeded in any manner.
- E. No animals other than inoffensive common domestic household pets such as dogs and cats shall be kept on any Lot. The breeding or keeping of dogs or cats for sale or profit is expressly prohibited.

- F. The operation of a "ham" or other amateur radio stations or the erection of any communication antennae or similar devices (other than simple mast antennae located on the roof of a Dwelling) shall not be allowed. Subject to Article 9, no communications discs, except television satellite dishes smaller than 24 in diameter, shall be permitted on any Lot.
- G. All areas of the Lots designed or intended for the proper drainage or retention of storm water, including swale lines and ditches, shall be kept unobstructed and shall be mowed regularly. Trees, plantings, shrubbery, fencing, patios, structures, landscaping treatment or other like improvements may be planted, placed or allowed to remain in any such areas so long as they do not substantially obstruct or alter the rate or direction of flow of storm water from any Lot. No Owner shall alter the rate or direction of flow of storm water from any Lot by impounding water, changing grade, blocking or redirecting swales, ditches or drainage areas or otherwise. Each Owner acknowledges, by acceptance of a deed to a Lot, that each drainage or detention area is for the benefit of the entire Property.
- H. No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will increase the rate charged for or cause the cancellation of insurance carried by the Association on the Common Area improvements or contents thereof, or which would be in violation of any law, nor shall any waste be discarded in the Common Area.
- I. The restriction in Article 3.2 L. shall not, however, be construed in such a manner as to prohibit an Owner from: a) maintaining his personal professional library therein; b) keeping his personal business records or accounts therein; or c) handling his personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said paragraph.

- J. There is also reserved to the Developer, its agents and prospective purchasers and lessees, the right of ingress and egress in and through the Common Area and to park in the outdoor parking areas incident to such sales or leasing purposes designated by Developer and, during construction by the Developer, the right of ingress and egress in and through the Common Area in connection with such construction.
- K. Nothing shall be altered in or removed from the Common Area except upon the written consent of the Board.
- L. In the event of damage to or destruction of any dwelling, garage or other improvement installed by Developer on any Lot, the Owner or Owners from time to time of any such improvement covenant and agree that they will, within a reasonable time after such destruction, repair or rebuild the same in a substantial and workmanlike manner with materials comparable to those used in the original structure, and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as and of architectural design conformable with the exterior of such structure immediately prior to such damage or destruction. If an Owner fails to make the necessary repairs or reconstruction within thirty (30) days after written notice is sent, the Board may cause the same to be done and the cost thereof shall be charged to such Owner as his personal obligation and shall be a lien on his Lot.
- M. No Owner shall cause or allow any activity which shall cause air, water, soil, or noise pollution which would violate any applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Property. Without limiting the generality of the foregoing, no Owner shall willingly or knowingly drain or dump any refuse, sewage or other materials into storm drains or into the detention or open space areas. No building shall be erected or maintained on any Lot for manufacturing, industrial or business purposes, except pursuant to those building rights reserved to Developer.
- N. All planted or landscaped areas in the public right-of-way shall be the maintenance responsibility of fronting Property Owners.
- O. All planted or landscaped areas on a Lot shall be the responsibility

of the individual Lot owners for maintenance purposes.

- P. Subject to the consent of the holder of any Mortgage, in the event construction of any building on a Lot ceases for a period of six months prior to the enclosure of such improvement, the Owner, upon written demand of Developer or its successors and assigns, shall raze and remove such building and landscape the Lot in a sightly manner. All expenses shall be paid by the Owner of the Lot. In the event construction of any such building ceases for a period of six (6) months after said Improvement is enclosed, the Owner, upon written demand of the Developer or City, shall landscape the Lot in a sightly manner.
- Q. No Owner shall conduct, or permit any Person to conduct, any unlawful activity on the Lot owned by such Owner.
- R. No commercial trucks or commercial vehicles shall be permitted upon any Lot except when such truck or commercial vehicle is actually delivering or unloading personal property to and from the Lot and except any truck or commercial vehicle which is restricted to the interior confines of the private garage. No private vehicles shall be continuously parked on the streets or roadways, but shall be kept in the driveway of the Lot or in the private garage, it being the intention to prevent obstruction of the street by continuous parking thereon. Anything contained herein to the contrary notwithstanding, the provisions of this Section shall not apply to initial construction by Developer.

ARTICLE 4

MEMBERSHIP AND BOARD OF DIRECTORS

4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

4.2. Voting Rights. The Association shall have one class of membership and each member shall have one vote for each Lot such member owns, provided that in no event shall more than one (1) vote be cast with respect to any one (1) Lot. If more than one (1) person is the record owner of any Lot, or if an Owner is a trustee, corporation, partnership or other legal entity, the vote for such Lot shall be exercised as such Owner or Owners of that Lot shall designate. Such designation shall be made in writing to the

Board or in such other manner as maybe provided in the By-Laws.

4.3. Board of Directors. The Association shall be governed by a Board of Directors comprised of three (3) persons, or such greater number as may be determined by Board resolution. The Board shall maintain and administer the Common Area and improvements thereon in accordance with the terms and provisions of this Declaration and the By-Laws.

4.4. Officers. The Association shall have such Officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the Articles of Incorporation or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board, from time to time, and its officers under the direction of the Board and shall not be subject to the approval of the Members. The Articles of Incorporation and By-Laws of the Association may include such added provisions for the protection and indemnification of its Officers and Directors as shall be permissible by law. The Directors and Officers of the Association shall not be liable to the Owners or others for any mistake of judgment or any acts or omissions made in good faith as such Directors or Officers.

4.5. Director and Officer Liability. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors and Officers on behalf of the Owners or the Association or arising out of their status as Directors or Officers unless any such contract or such act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director or Officer may be involved by virtue of being or having been such Director or Officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such Director or Officer, or (ii) any matter settled or compromised unless, in the opinion of independent counsel selected by or in a manner determined by the Board there is no reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his/her duties as such Director or Officer.

4.6. Turnover. The Developer shall, through the Board appointed by it in accordance with Section 4.3, exercise control over all Association matters, until the first to occur of the following events: a) twenty (20) years from the date of this Declaration, b) the sale and conveyance of legal title to all of the Lots to Owners other than Declarant or an assignee of Declarant as provided in Section 11.7 hereof, or (c) Developer elects voluntarily to turnover to the Members the authority to appoint the Board, which election it shall evidence by directing the Declarant to execute and record in the Office of the Recorder of Deeds of McHenry County, Illinois an instrument setting forth its intention to so turnover its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or prior to the Turnover Date, the Developer shall cause Declarant to convey to the Association, and the Association shall accept, the Common Area to be owned by the Association hereunder and the Association shall undertake to maintain the Common Area pursuant to the terms hereof.

4.7. Board Powers. The Association, through the Board, shall have the following powers and duties:

- a. Own, maintain and otherwise manage the Common Area and all Improvements thereon in accordance with the final landscape development plan and own, maintain and otherwise manage all other property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain any landscaping located in concrete islands, cul-de-sac and median strips in the dedicated streets which are adjacent to or within the Property and to maintain any signage and lighting located thereon;
- b. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same not later than ninety (90) days after the date of the initial meeting of the Members of the Association is held as provided by the By-Laws;
- c. Establish and maintain a working capital and contingency fund in an amount to be determined by the Board;
- d. Provide for the maintenance of landscaping, signs, monuments, fencing, retaining walls, water systems, brick pavers, lighting and other improvements (if any) located within the Common Areas

and/or at the entrance ways to the Property.

- e. At its option, mow, care for, maintain vacant and unimproved portions of the Property and remove rubbish from same and to do any other things necessary or desirable in the judgment of the Board to keep any vacant portions of the unimproved portions of the Property neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Declarant;
- f. Make such improvements to the Common Area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its Articles of Incorporation and By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping Brayton Knolls Subdivision a highly desirable residential community; and
- g. Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by this Declaration, the Articles of Incorporation or the By-Laws.

4.8. Insurance. The Board shall also have the authority to and shall obtain comprehensive liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers, members of the Board, the Declarant, and their respective employees and agents from liability and insuring the Officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses payable out of the proceeds of the Assessments required by and collected in accordance with Article 6. 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 the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable and may also obtain such other kinds of insurance as the Association shall from time to time deem prudent. The coverage shall contain an endorsement to the effect that said coverage shall not be terminated for non-payment of premiums without at least 30 days prior written notice for the Association. The Insurance policies shall contain waivers of subrogation with respect to the Board, its employees, agents, owners and mortgagees.

4.9. Developer Rights.

- a. Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized and empowered to take as herein provided.
- b. Until the Turnover Date, Developer may elect to maintain the Common Area and all signs and monuments located thereon and shall pay all expenses and costs in connection with the Common Area, including without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area. To the extent that any real property taxes payable after the Turnover Date are attributable to the period prior to the Turnover Date, Developer shall reimburse the Association, on a pro rata basis, for such real property taxes. Declarant shall, not later than the Turnover Date, convey to the Association that portion of the Common Area to be owned by the Association.
- c. Developer shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests, invitees, to utilize roads, streets, Common Area and all other portions of the Property, excluding sold Lots, for such purposes until all Lots are sold. Developer may at all times utilize signage, lighting and establish temporary construction and sales offices, buildings and trailers and construct model homes to conduct its construction, sales and marketing of the Property.

ARTICLE 5

EASEMENTS AND PROPERTY RIGHTS

5.1. Easements and Use and Enjoyment. An Easement is hereby declared and created over and upon the Common Area for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access to and of ingress and egress on, over, across, in, upon and to the Common Area, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- a. The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Area.
- b. The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Area unless such mortgage is approved by the Board and by a majority of the Members, voting at a general or special meeting duly called and held in accordance with the By-Laws.
- c. The right of the Association to dedicate or transfer all or any part of the Common Area or any utility system thereon to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of the Members of the Board of Directors, has been recorded.

5.2. Rights of Occupants. All persons who reside on a Lot shall have the same rights to use and enjoy the Common Area and all improvements situated thereon as the Owner of that Lot, as provided in the By-Laws.

5.3. Utility Easements. The authorized telephone company, Commonwealth Edison Company, the authorized cable television company, Northern Illinois Gas Company, McHenry County Public Works Department, City of Marengo, Illinois, and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housings for such equipment, into, over, under, on and through the Property for the purpose of providing utility services to the Property. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Lot for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Lot.

5.4. Encroachments. In the event that (a) by reason of settlement, shifting or movement, any dwelling, garage or other improvement as originally constructed by the Developer on any Lot or upon the Common Area overhangs or otherwise encroaches or shall hereafter encroach upon any other Lot or upon the Common Area, or (b) by reason of such settlement, shifting or movement it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Area for any reasonable use appurtenant thereto which will not unreasonably interfere with the use or enjoyment of the Common Area by other Owners, or (c) by reason of settlement, shifting or movement

of utility, ventilation and exhaust systems, as originally constructed by Developer, any mains, pipes, ducts or conduits servicing any Lot or more than one Lot, encroach or shall hereafter encroach upon any part of any Lot or the Common Area, then, in any such case, valid easements for the maintenance of such encroachment and for such use of the Common Area, together with the right to enter upon such other Lot or Common Area to maintain, repair and replace such other Lot or Common Area to maintain, repair and replace such encroachment, are hereby established and shall exist for the benefit of such Lot or the Common Area, as the case may be, so long as such dwelling, garage or other improvement shall remain standing, provided, however, that if any such dwelling, garage or other improvement is partially or totally destroyed and thereafter repaired or rebuilt, the same encroachment may be re-established and the easements herein granted for the maintenance, repair and replacement thereof shall continue in force; provided further that in no event shall a valid easement for any encroachment or use in the Common Area be created in favor of any Owner if such encroachment or use was created by the intentional, willful or negligent conduct of any Owner or that of his agent.

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

ARTICLE 6

COVENANT FOR ASSESSMENTS

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

6.2. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and, in particular, without limiting the foregoing, for maintenance, repair, replacement, improvement and additions of and to the Common Area and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Area and all facilities and improvements thereon, for certain maintenance, and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-Laws.

6.3. Assessment Procedure - Annual Assessments.

- a. Each year, on or before December 1, the Board shall prepare a budget for the Association for the ensuing twelve (12) months which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before the next January 1, following the preparation of the budget, and on the first day of each and every month for the next twelve (12) months, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before May 1 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding twelve (12) months together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, of income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association and shall be placed in a reserve account.
- b. If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves in Paragraph 6.5, charge the deficiency against existing reserves, or levy a further assessment which shall be assessed equally against

all Lots subject to assessment. The Board shall serve notice for such further assessment on all Owners by a statement in writing showing the amount due and reasons therefor, and such further assessment shall become effective with the monthly installment which is due more than ten (10) days after delivery or mailing of such notice of further assessment. All Owners shall be personally liable for and obligated to pay their respective adjusted monthly assessment.

- c. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the 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 his monthly installment at the then existing rate established for the previous period until the monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessments which in one (1) year exceed Five Thousand and No/100 Dollars (\$5,000.00) for all Lots involved shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by the Members present at a general or special meeting duly called for that purpose or, in lieu of such Member's meeting, by an instrument signed by the Members owning two-thirds (2/3) of the Lots. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members, and shall be used only for the specific purpose for which such assessment was levied.

6.5. Capital Reserves. To the extent the annual budget includes an amount specifically designated as a capital reserve, that proportion of each installment of the annual assessments paid to the Association as the amount so designated as a capital reserve bears to the total annual budget shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Area and the improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in

connection with its duties hereunder. At the closing of a sale to an initial Owner of a Lot, said Owner shall deposit with the Association an amount equal to One Hundred Fifty and 00/100 Dollars (\$150.00) as a start up deposit to be applied to capital reserves.

6.6. Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which requires approval of the Members shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of voting Members in person or by proxy having sixty percent (60%) of the votes entitled to be cast shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.7. Uniform Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots.

6.8. Collection of Assessments. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to such Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the maximum rate permitted by law. The Board may determine a late charge not to exceed Fifty and No/100 Dollars (\$50.00) per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, late charges as determined by the Board, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Lot when payable and may be foreclosed by any action brought in the name of the Association. To the extent permitted by statute, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

6.9. No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

6.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona fide lender. Each holder of a first mortgage on a Lot who obtains title or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title, possession, or the filing of a suit to foreclose the mortgage.

ARTICLE 7

EXTERIOR MAINTENANCE BY ASSOCIATION AND OWNERS

In addition to other rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-Laws of the Association, the Association shall have the following rights, powers and duties with regard to the Common Area and the cost and expense of which shall be paid for by the Association from assessment funds:

Common Area. The Association shall maintain, repair, replace and manage the Common Area and all facilities, improvements and equipment thereon, and pay for all expenses and services in connection therewith, including without limiting the generality of the foregoing: landscape maintenance, comprehensive liability, hazard and other insurance, payment of all taxes, assessments and other liens and encumbrances which are assessed to or charged against the Common Area or other property owned by the Association, and such other services for the Common Area as the Board deems to be in the best interests of the Association and its Members.

Landscape Plan. The Association shall maintain, repair, replace and manage the landscaping located within the Property in accordance with the Landscaping Plan, which is attached hereto and made a part hereof as Exhibit D .

ARTICLE 8

RIGHTS OF FIRST MORTGAGEES

8.1. In addition to all other rights of first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary:

Unless at least fifty-one (51) percent of the first mortgagees (based upon one vote for each first mortgage owned) of individual Lots (hereinafter referred to as "First Mortgagees") have given their prior written approval, the Association shall not be entitled to:

- a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvement thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.
- b. Change the method of determining the obligations, assessments, dues, reserves for maintenance, repair and replacement of Common Areas, or other charges which may be levied against a Lot and the Owner thereof as provided in Article 6, subject, however, to the provisions in Paragraph 8.5 hereof.
- c. By act or omission waive, abandon or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any dwelling or garage on a Lot, the exterior maintenance of any such dwelling or garage, the maintenance of common fences and driveways, if any, or the upkeep of lawns and plantings on the Property.
- d. Fail to maintain fire and extended coverage insurance on the insurable improvements in the Common Area in an amount not less than one hundred percent (100%) of the full insurable replacement cost.
- e. Use hazard insurance proceeds for losses to any improvements to the Common Area for other than the repair, replacement or reconstruction of such improvements.
- f. Change the responsibility for maintenance and repairs of the Common Area and/or Lots thereof as provided in Article 7.

- g. Change the interests in the Common Area or rights to their use.
- h. Change the voting rights of any Member of the Association.
- i. Impose any restrictions on a Lot Owner's right to sell or transfer his or her Lot.
- j. By act or omission, seek to terminate the legal status of the Association after substantial destruction or condemnation.

8.2. First Mortgagees shall have the right to examine the books and records of the Association at reasonable times upon reasonable notice.

8.3. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

8.4. Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.

8.5. First Mortgagees are entitled to timely written notice, if requested in writing of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage;
- b. Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- c. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owners' association; and
- d. Any proposed action that requires the consent of a specified percentage or eligible mortgage holders.

The request must include the Owners' Association, stating both its name and address and the Lot address of the Lot it has a mortgage on.

This Article 8 may be amended only with the written consent of seventy-five (75%) of the First Mortgagees (based upon one vote for each first mortgage owned).

ARTICLE 9

DEVICES DESIGNED FOR THE AIR RECEPTION OF TELEVISION BROADCAST SIGNALS.

In compliance with Section 207 of the Telecommunications Act of 1996, and the rules and regulations promulgated thereby, devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution services or direct broadcast satellite services (collectively "Dishes") which promote a viewer's ability to receive video programming services, shall be permitted and may be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot; provided, however, Dishes shall be placed, to the extent feasible, in locations that are not visible from any street, provided, that this placement permits reception of any acceptable quality signal. The location of the Dishes shall be subject to the prior written approval of the Association. In addition, the size of the Dishes shall not exceed twenty four (24) inches in diameter. Any and all Dishes permitted pursuant to this Section shall be installed in full compliance with all health, safety, fire and electrical codes, rules, regulations, ordinances, statutes and laws of the Federal Government, State of Illinois, McHenry County, the City and the Association (collectively "Health and Safety Laws"). All Dishes installed shall be properly grounded and installed in full compliance with all installation requirements of the manufacturer and all Health and Safety Laws. No Dishes shall be installed within the close proximity of any power lines. All Dishes installed, to the extent feasible, shall be painted or of such color so that the Dish blends into the background against which it is mounted, provided, however, said painting requirement does not prohibit or unreasonably interfere with the reception or signal received by the viewer. Notwithstanding anything contained herein to the contrary, the installation of any Dish shall be at the Owner's sole risk and sole cost and expense and, in the event the installation of any Dish causes any damage or destruction to any dwelling or other improvement installed by Developer or any Lot or voids or impairs any warranty which runs for the benefit of the Developer, other Lot Owners or the Association, the Owner installing and owning said Dish shall be liable and responsible for and shall pay for any and all costs, expenses, fees and damages and repair any and all damage or destruction created thereby, including reasonable attorneys' fees and court costs. No Dish shall be affixed to, installed or placed upon the Common Area except upon the prior written consent of the Developer, not to be unreasonably withheld, and shall only be installed, affixed or placed upon the Common Area in conjunction with the Association's duly adopted rules and regulations. Notwithstanding anything contained herein to the contrary, any Owner installing and affixing any Dish to a Lot, improvement, dwelling or the Common Area hereby agrees to and shall indemnify,

defend and hold Developer and the Association harmless from and against any and all costs, expenses, suits, damages, destruction to any real property or any person, including attorneys' fees and court costs, caused by, either directly or indirectly, the installation, affixing and maintaining, whether by said Owner or a third party contractor, of a Dish pursuant to this Declaration. This Article 9 shall be binding upon and inure to the benefit of each Owner and his/her heirs, successors and assigns and shall be effective upon recordation in the Office of the McHenry County Recorder of Deeds.

ARTICLE 10

LEASE OF LOTS

Any lease agreement between an Owner and a lessee shall be in writing and shall provide that the terms of such lease are subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association, and that failure by the lessee to comply with the terms of such documents shall be a default under the lease. To verify this, a Rider, which can be obtained from the Board, must be signed and attached to every lease and returned to the Board. Notwithstanding, no lease is to be less than thirty (30) days. Other than the foregoing, there is no restriction on the right of any Owner, including Declarant or Developer, to lease any Lot it owns.

ARTICLE 11

GENERAL PROVISIONS

11.1. Enforcement In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at the highest interest permitted by law, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 6. If any Owner, or his guests, violates any provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording

the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 6.

In the event the Association fails to maintain the Common Areas or other areas or items the Association is required to maintain in accordance with the terms and conditions of this Declaration, the City of Marengo shall have the right, but not the obligation, to enforce the terms and conditions of this Declaration. Any and all costs incurred by the City of Marengo relating to the enforcement of this Declaration shall be reimbursed to the City of Marengo upon written request to the Association. **In the event the City exercises its rights under Article 11.1 (enforcement), it shall be granted the rights and remedies under Article 6.1.**

11.2. Severability. Invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision hereof, all of which shall remain in full force and effect.

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

11.4. Amendments. The provisions of Article 5 and Paragraph 6.1, and this paragraph may be amended only by an instrument in writing setting forth such amendment signed and acknowledged by all Owners. Subject to Article 8, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment signed and acknowledged by the voting Members having at least fifty-one (51%) percent of the total votes of the Members or that is approved at a duly called and held general or special meeting of Members by the affirmative vote, either in person or by proxy, of the voting Members having a majority of the total votes of the Members and containing a certification by an officer of the Association that said instrument was duly approved as aforesaid. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of McHenry County, Illinois. This Declaration may not be amended or modified without the prior written consent of the City, which consent shall not be unreasonably withheld.

11.5. Special Amendment. Declarant reserves the right and power to 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, insure, or guarantee first mortgages encumbering any Lot, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elect to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. 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 acknowledgment of, and a consent to the reservations of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments.

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

11.7 Assignment by Developer/Declarant. Notwithstanding anything herein to the contrary, Declarant and/or Developer reserve(s) the right to transfer, assign, mortgage or pledge any and all of either respective privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of McHenry County, Illinois. Upon such assignment, Declarant and/or Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of Declarant and/or Developer shall have or incur any liability for the obligations or acts of any predecessor in interest.

11.8 Mailing Address. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in

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

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

11.10 Binding Effect. Except for matters discussed in Article 8 of this Declaration, the easements created by this Declaration shall be of perpetual duration unless cancelled in a written document signed by ninety percent (90%) of the Owners. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

ARTICLE 12

COMMON INTEREST COMMUNITY

The Association shall act and operate as a Common Interest Community as defined in Chapter 735 ILCS 5/9-102, Illinois Compiled Statutes, as from time to time amended. The Declaration and By-laws shall be deemed to be amended as necessary to comply with any statute relating to Common Interest Communities, and the Developer or Board may record such documents as are necessary to effect this compliance.

[SIGNATURE APPEARS ON NEXT PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date and year first above mentioned.

KENNEDY HOMES LIMITED PARTNERSHIP, an Illinois limited partnership

By: Kennedy Construction, Inc.
Its: General Partner

By: _____

Name : _____

Its: _____

STATE OF ILLINOIS)

) SS.

COUNTY OF MCHENRY)

I, _____, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, _____ of **KENNEDY CONSTRUCTION, INC.**, as General Partner of Kennedy Homes Limited Partnership, personally known to me to be the same person whose name is subscribed to the foregoing Declaration of Covenants, Conditions, Easements and Restrictions for Brayton Knolls Homeowners Association, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said Declaration, on behalf of the corporation and as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this _____ day of _____, 200__.

Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 12 and part of lot 13 of the assessor's plat of section 1, and the north half of section 12, township 43 north, range 5 east of the third principal meridian, being part of the southwest quarter and the northwest quarter, part of the southeast quarter of the northwest quarter, part of the northwest quarter of the southwest quarter and part of the northeast quarter of the southwest quarter of section 1, together with part of the southeast quarter of the northeast quarter of section 2, township 43 north, range 5 east of the third principal meridian, being more particularly described as follows: commencing at the northwest corner of said section 1; thence south $00^{\circ}45'28''$ east along the west line of the northwest quarter of said section 1, (a distance of) 2393.16 feet; thence north $85^{\circ}28'40''$ west, 1.27 feet to the centerline of state highway 23 and the point of beginning; thence north $00^{\circ}38'10''$ west along said centerline, 112.47 feet to the kink point; thence continuing along said centerline north $00^{\circ}43'55''$ west, 719.43 feet; thence north $89^{\circ}04'10''$ east, 1020.31 feet; thence south $01^{\circ}04'10''$ east, 719.43 feet; thence north $89^{\circ}03'30''$ east, 1024.77 feet to the centerline of Maple Street; thence south $01^{\circ}10'10''$ east along the centerline of Maple Street, 736.56 feet; thence north $85^{\circ}34'50''$ west, 1521.70 feet; thence north $01^{\circ}12'$ west, 430.93 feet; thence north $85^{\circ}28'40''$ west, 538.91 feet to the centerline of state highway 23 and the point of beginning, (excepting a parcel of land being part of the above described tract, described as follows: beginning at the southwest corner of said parts of lots 12 and 13; thence north $00^{\circ}00'10''$ east (assumed) 832.08 feet along the west line of said section; thence south $89^{\circ}47'09''$ east 45.89 feet along the northerly line of said lot 12; thence south $02^{\circ}32'16''$ east 81.53 feet; thence south $00^{\circ}19'28''$ west 300.00 feet; thence south $03^{\circ}11'13''$ west 100.13 feet; thence south $00^{\circ}19'28''$ west 354.36 feet to the southerly line of said part of lot 13; thence north $84^{\circ}31'47''$ west 40.45 feet along said southerly line to the point of beginning) all in McHenry County, Illinois.

Final 1/20/04

EXHIBIT "B"

(SUBDIVISION PLAT)

RECORDED WITH THE RECORDER OF DEEDS
OF MCHENRY COUNTY, ILLINOIS AS DOCUMENT
NUMBER:

2003R0101843

EXHIBIT "C"

**BY-LAWS OF THE
BRAYTON KNOLLS HOMEOWNERS ASSOCIATION**

ARTICLE I

NAME AND LOCATION

The name of the not-for-profit corporation is Brayton Knolls Homeowners Association ("Association"). The principal office of the Association shall be located at E. Dundee, Illinois, but meetings of members and directors may be held at such places within the State of Illinois, County of McHenry as may be designated by the Board of Directors ("Board").

ARTICLE II

BOARD OF MANAGERS

Section 1. Administration of Property Prior to Election of Initial Board of Managers. Until the election of the initial Board of Managers, the same rights, titles, powers, privileges, trusts, duties and obligations vested in or imposed upon the Board of Managers by law and in the Declaration and By-Laws shall be held and performed by the Declarant. The election of the initial Board of Managers shall be held thirty (30) days after the occurrence of one of the following events:

- (a) Twenty (20) years from the date of the Declaration;
- (b) The sale and conveyance of legal title to all of the lots to owners other than Declarant or an assignee of Declarant; or
- (c) Declarant elects voluntarily to turn over to the members the authority to appoint a Board. Within sixty (60) days following the election of a majority of the Board of Managers other than the Declarant, the Declarant shall deliver to the Board of Managers:

Within sixty (60) days following the election of a majority of the Board of Managers other than the Declarant, the Declarant shall deliver to the Board of Managers:

- (1) All original documents pertaining to the Property (as defined in the Declaration) and its administration such as the Declaration, By-Laws, Articles of Incorporation, minutes and any rules or regulations governing the Property.
- (2) A detailed accounting by the Declarant, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Association;
- (3) Association funds, which shall have been at all times segregated from any other monies of the Declarant;
- (4) A schedule of all personal Property, equipment and fixtures belonging to the Association, including documents transferring the Property;
- (5) Any contracts, leases, or other agreements made prior to the election of a majority of the Board of Managers other than the Declarant by or on behalf of Lot Owners.

Section 2. Board of Managers (Board of Directors).

(a) The Board of Directors, also known as the Board of Managers, shall consist of three (3) persons who shall be appointed or elected in the manner herein provided, or such greater number as may be determined by Board resolution. Each member of the Board shall be a Lot Owner and shall reside on the Property, provided, however, that in the event a Lot Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board, provided such person must reside on the Property unless he is a Board member nominated by the Declarant.

(b) At the initial meeting, the Voting Members shall elect three (3) Board Members. In all elections for members of the Board, each Voting Member shall be entitled to cumulate his votes in the manner provided by law 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. Members of the Board elected at the initial meeting shall serve until the first annual meeting. The two (2) persons receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of two (2) years and the person receiving the next highest number of votes shall be elected to the Board for a term of one (1) year. In the event of a tie vote, the members

of the Board shall determine which members shall have the two (2) year terms and which members shall have the one (1) year term. Upon the expiration of the terms of office of the Board members so elected at the first annual meeting and thereafter, successors shall be elected for a term of two (2) years each, provided, however, Board members may succeed themselves. Members of the Board shall receive no compensation for their services, unless expressly authorized by the Board with the approval of Voting Members having two-thirds (2/3) of the total votes. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the next annual meeting or at a special meeting of the Voting Members called for such purpose. Except as otherwise provided in the Declaration, the Property shall be managed by the Board and the Board shall act by majority vote of those present (at its meetings at which a quorum exists.) A majority of the total number of the members of the Board shall constitute a quorum. Meetings of the Board may be called, held and conducted in accordance with such resolutions as the Board may from time to time adopt.

Section 3. Officers. The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members, and who shall be the chief executive officer of the Board and the Association and who shall execute amendments to the Declaration and By-Laws; a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members, who shall mail and receive all notices, and who shall, in general, perform all the duties incident to the office of Secretary; a Treasurer to keep the financial records and books of account, and such additional officers as the Board shall see fit to elect. Provided, however, no officer shall be elected for a term of more than two (2) years. However, any officer may succeed himself in any office.

Section 4. Removal. Any Board member may be removed from office by affirmative vote of the Voting Members having at least two-thirds (2/3) of the total votes, at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent annual meeting or special meeting called for that purpose, such meeting to be held within thirty (30) days after the special meeting which removed the Board-member.

Section 5. Meetings. The Board shall meet at least four (4) times annually, on the first Monday of February, May, August and November and at such other times as the Board deems necessary. Meetings of the Board shall be open to any Lot Owner, notice of any such meeting shall be received at least forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the person or persons entitled to such notice.

Section 6. General Powers of the Board. In addition to the duties and powers

inherently charged to and possessed by the Association as an Illinois not-for-profit corporation and the duties and powers enumerated herein and in its Articles of Incorporation and Declaration, or elsewhere provided for, and without limiting the generality of the same, the Association shall have the following duties and powers:

(a) preparation, adoption and distribution of the annual budget for the Property;

(b) levying of assessments;

(c) collection of assessments from members;

(d) owning, conveying, encumbering, leasing and otherwise dealing with Lots conveyed to or purchased by it;

(e) keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property;

(f) to have access to each Lot from time to time as may be necessary for the maintenance, repair or replacement of the Common Area therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Area or to other Lot or Lots;

(g) to pay any amount necessary to discharge any mechanic's lien or other encumbrance against the Property or any part thereof which may in the opinion of the Board constitute a lien against the Property or against the Common Area, rather than merely against the interests therein of particular Lot Owners. Where one or more Lot Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred (including attorney's fees, if any) by the Board by reason of said lien or liens shall be specially assessed to said Lot owner or Lot Owners;

(h) to maintain and repair any Lot if such maintenance or repair is necessary, in the discretion of the Board, to protect the Common Area or any other portion of the Property, and a Lot owner of any Lot that has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair mailed or delivered by the Board to said Lot Owner, provided that the Board shall levy a special assessment against such Lot Owner for the cost of said maintenance or repair;

(i) The Board shall have the power to seek relief from or in connection with the assessment or levy of any general real estate taxes, special assessments and any other special taxes or charges of the State of Illinois or any political subdivision

thereof, or any other lawful assessing body, which are authorized by law to be assessed and levied on the Common Area and to charge all expenses incurred in connection therewith to the Association.

(j) the Board's powers hereinabove enumerated and described in the Declaration, shall be limited in that the Board shall have no authority to acquire and pay for any structural alterations, additions to, or improvements of the Lots requiring an expenditure in excess of Five Thousand Dollars **(\$5,000.00)**, without in each case the prior approval of Voting Members having two-thirds (2/3) of the total votes;

(k) 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 Treasurer and countersigned by the President of the Board;

(l) the Board may adopt such reasonable rules and regulations, not inconsistent herewith, as it may deem advisable for the maintenance, administration, management, operation, use, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Lot Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all Lot Owners and Occupants and the Property shall at all times be maintained subject to such rules and regulations;

(m) the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board;

(n) nothing hereinabove contained shall be construed to give the Board, Association, or Lot Owners authority to conduct an active business for profit on behalf of all the Lot Owners or any one of them;

ARTICLE III

COMMITTEES

Section 1. The Board, by resolution adopted by a majority of the Board, may designate one (1) or more committees, each of which shall consist of one (1) or more members of the Board; 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 delegation thereof of authority shall not operate to relieve the Board, or any individual

member of the Board, of any responsibility imposed upon it or him by law.

Section 2. 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 members of the Board present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be Lot owners, and the President of the Association, shall appoint the members thereof. Any member thereof may be removed whenever in the judgment of the Board the best interests of the Association shall be served by such removal.

Section 3. Each member of a committee shall continue as such until the next annual meeting of the Board or until his successor is appointed and shall have qualified or until the Board shall relieve him from his role as a committee member, unless the committee shall be sooner terminated, or unless such member shall cease to qualify as a member thereof.

Section 4. One (1) member of each committee shall be appointed chairman.

Section 5. 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 appointment.

Section 6. 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.

Section 7. Each committee may adopt rules for its own governance not inconsistent with these By-Laws or with rules adopted by the Board.

ARTICLE IV

MEMBERSHIP MEETINGS

Section 1. Meetings of the Lot Owners shall be held at the principal office of the Association or at such other place in the City of **Marengo**, Illinois as may be designated in any notice of a Meeting, any Lot owners in writing may waive notice of a meeting or consent to any action of the Association without a Meeting.

Section 2. Special Meetings of the Lot Owners 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 Lot Owners, or for any other reasonable purpose. Said Meetings shall be called by written notice, authorized by a majority of the Board or by the Lot Owners having one-fourth (1/4) of the total votes, 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.

Section 3. At any Meeting of the Lot Owners, a Lot Owner 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. A proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy.

ARTICLE V

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Lot owner and their mortgagees. The Articles and the Declaration and By-Laws of the Association shall be available for inspection by any Lot Owner at the principal office of the Association, where copies may be purchased at reasonable cost. The Association shall also provide, upon written request by any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the Property, a copy of an audited financial statement for the preceding fiscal year.

ARTICLE VI

AMENDMENTS

These By-Laws may be amended or modified from time to time by action or approval of the Lot Owners entitled to cast two-thirds (2/3) of the total votes computed as provided in Section 4.2 of the Declaration. Such Amendments shall be recorded in the Office of the Recorder of Deeds of McHenry County, Illinois.

ARTICLE VII
INTERPRETATION

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

Final 1/20/04

EXHIBIT "D"

LANDSCAPE PLAN