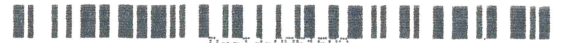


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**THE VILLAS AT LAKEPOINTE
HOMEOWNERS ASSOC., INC.
FOURTH AMENDED AND
RESTATED DECLARATION OF
RESIDENTIAL COVENANTS
AND RESTRICTIONS**

A02809540
MICHAEL CROCKETT
RECORDER OF DEEDS
ST. CLAIR COUNTY
BELLEVILLE, IL
04/03/2024 02:06:36 PM
RHSP FEE: 18.00
TOTAL FEE: 49.00
PAGES: 41

*Prepared by and after
recording return to:*

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THIS FOURTH AMENDED AND RESTATED DECLARATION OF RESIDENTIAL COVENANTS AND RESTRICTIONS (the "Fourth Amended Declaration") is made this 2nd day of April, 2024, by The Villas at Lakepointe Homeowners Assoc., Inc., an Illinois not-for-profit corporation ("Association").

Recitals

A. Whereas, the Villas at Lakepointe (the "Development") is a subdivision located in St. Clair County, Illinois, all as more fully and legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

B. Whereas, a Declaration of Residential Covenants and Restrictions as to the Property, dated August 4, 1998, was recorded with the St. Clair County Recorder's Office on August 18, 1998, in Book 3275 on Page 23 as Document #A01449266 ("Original Declaration"), which Original Declaration allows for amendments; and

C. Whereas, an Amended and Restated Residential Covenants and Restrictions as to the Property was recorded with the St. Clair County Recorder's Office on January 20, 2004, in Book 3976 on Page 1443 as Document #A01818018 ("First Amended Declaration"), a Second Amended and Restated Declaration of Residential Covenants and Restrictions ("Second Amended Declaration") was recorded with the St. Clair County Recorder's Office by the Association on September 23, 2009, as Document #A02181278; and a Third Amended and Restated Declaration of Residential Covenants and Restrictions ("Third Amended Declaration") was recorded with the St. Clair County Recorder's Office by the Association on February 27, 2014, as Document #A02403869; and

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D. Whereas, the Association was established, *inter alia*, to manage the Development and perform the obligations specified in the Original Declaration for the benefit of the Property and the Owners; and

E. Whereas, the Association desires to and does hereby terminate the Original Declaration, the First Amended Declaration, Second Amended Declaration, and Third Amended Declaration, each in its entirety, and to submit the Property to the provisions of this Fourth Amended Declaration in lieu thereof.

NOW, THEREFORE, incorporating the above Recitals, the Association hereby declares that the Property is, and shall be held, transferred, sold, conveyed, and occupied, subject to the covenants, conditions, declarations, restrictions, and easements hereinafter set forth.

ARTICLE 1 ***Definitions***

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

1.1 “Association” shall mean The Villas at Lakepointe Homeowners Assoc., Inc., an Illinois not-for-profit corporation.

1.2 “Board” shall mean and refer to the Board of Directors of the Association.

1.3 “County” shall mean St. Clair County, State of Illinois.

1.4 “Deed” shall mean the deed conveying a Lot to an Owner.

1.5 “Director” shall mean a member of the Board of Directors of the Association.

1.6 “Dwelling” shall mean any building located on a Lot and intended for the shelter and housing of a Single Family (as hereinafter defined) residence. Dwelling shall include any Improvement (hereinafter defined) attached or adjacent to the Dwelling utilized for storage of personal property tools and equipment.

1.7 “Improvement” or “Improvements” shall mean and include any Dwelling, any and all buildings, driveways, pedestrian walkways, fences, decks, patios, sidewalks, and all other structures or improvements of every kind and description.

1.8 “Lot” shall mean each part of the Property, the size and dimension of which shall be established by the legal description in the Deed conveying such Lot. A Lot may also be established pursuant to the Subdivision Plat.

1.9 “Member” shall mean each Owner of a Lot in the Subdivision.

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

1.11 “Municipal Documents” shall mean the Ordinance known as Ordinance No. 1989 passed on May 18, 1998 and recorded on August 18, 1998 in Book 3275 on page 17 as Document #A01449264, and any other ordinance, rule, or regulation duly and validly adopted by the Municipality.

1.12 “Municipality” shall mean the City of O’Fallon, Illinois, an Illinois municipal corporation.

1.13 “Owner” shall mean and refer to the record owner, whether one or more Persons (hereinafter defined), of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.14 “Person” or “Persons” shall mean all natural individuals, corporations, partnerships, trustees or other legal entities capable of holding title to real property.

1.15 “Plans and Specifications” shall have the meaning set forth in Section 4.2.

1.16 “Property” shall mean and refer to the real estate legally described in Exhibit “A” attached hereto and made a part hereof.

1.17 “Single Family” shall mean one or more persons, each related to the other by blood, marriage or adoption, a group of not more than three persons not all so related, maintaining a common household in a Dwelling or as otherwise defined by any fair housing laws in the State of Illinois or by federal law, as amended from time to time, or as allowed by Municipal Documents or the Municipality.

1.18 “Special Amendment” shall have the meaning set forth in Section 8.7 below.

1.19 “Subdivision Plat” or “Subdivision” shall mean the plat of subdivision for The Villas at Lakepointe as recorded in the Office of the Recorder of Deeds of St. Clair County, State of Illinois on August 18, 1998, in Book 97, Page 9 as Document No. A01449265.

ARTICLE II
Declaration Purposes and Property
Subjected to Declaration

2.1 **Purposes.** The Subdivision, Dwellings, and Improvements on the Property create a Single Family villa townhome development for the Owners of Lots, and such Owners and the Association do subject the Property to this Fourth Amended Declaration for (by way of example and not intending to be fully inclusive) the following general purposes:

(a) To provide upon the Property, through planning and layout, the harmonious development of a Single Family community by the imposition of the covenants, conditions, restrictions and easements as hereinafter set forth, for the benefit of the Property and the Owners.

(b) By the imposition of covenants, conditions, restrictions and easements set forth herein and the reservation of certain powers as herein contained, to provide a plan for development of the Property, which is intended to enhance and protect the values of the Single Family residential community.

(c) To (i) prevent improper use of Lots, which may depreciate the value of the Subdivision; (ii) prevent the construction of buildings containing improper or unsuitable materials and colors; (iii) ensure adequate and reasonable development of the Property, including without limitation, adequate maintenance of the exterior of the Dwellings located within the Subdivision by the Association, including, but not necessarily limited to, those items set forth in Article 5.5 hereof; and (iv) encourage the construction of attractive improvements on the Property; and (v) prevent development inconsistent with the planned, cohesive, and harmonious nature of the Subdivision, Dwellings, and Improvements.

2.2 **Submission to Declaration.** To further the general purposes herein expressed, the Owners, for themselves and their successors and assigns, hereby restate and further declare that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions and easements set forth in this Fourth Amended Declaration.

ARTICLE III ***Specific Restrictions***

3.1 **Lot Use, Maintenance, Compliance.** All Lots shall be used only for Single Family Dwellings. Each Owner shall (a) maintain his Lot and all Improvements located thereon in a clean, sightly and safe condition, (b) cause the prompt removal of all papers, debris and refuse therefrom and (c) comply with all applicable governmental codes, including without limitation, the Municipal Documents.

3.2 **Construction and Repair of Improvements.** All Improvements shall be constructed and repaired in accordance with the Plans and Specifications approved in accordance with the terms and conditions in Article IV and in accordance with all applicable governmental building and zoning codes and regulations. Any contractor performing work on any Lot, Dwelling, or Improvement shall be insured and, if required by applicable law or the Municipality, licensed and/or bonded. If, and to the extent any conflict exists between the terms and conditions of this Fourth Amended Declaration and the provisions of any such codes, laws, ordinances, orders, decrees, regulations (collectively "Regulations") then (except for the provisions of the Municipal Documents) such conflict shall be resolved by application of the more stringent provision providing the higher or better-quality result as determined by the Board in its sole discretion and judgment.

3.3 **Limitation on Use.** No noxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done thereon which may constitute or become an annoyance or

nuisance to the Owners. No plants or seeds or other conditions harboring or breeding infectious plant diseases or noxious insects shall be introduced or suffered to exist upon any part of a Lot.

3.4 No Accumulation. No Person shall accumulate on his Lot any derelict vehicles, litter, refuse or other unsightly materials. Garbage shall be placed in receptacles and all garbage receptacles shall be properly screened. No unimproved Lots shall be planted with anything other than grass or other vegetation, and must be mowed and maintained on a regular basis.

3.5 Regulation of Certain Vehicles and Equipment. Trucks (other than personal pickup trucks of 3/4-ton or less having no business or advertising materials on the exterior), boats, recreational vehicles, trailers or other vehicles (other than automobiles) may remain in the driveway for a period of two (2) days only then, thereafter, shall at all times be parked in the garage of the Dwelling, except as may be allowed by Rules and Regulations established by the Board. No repair or maintenance of vehicles or trailers shall be permitted, except within the confines of the garage.

3.6 Restrictions as to Animals. No animals (other than inoffensive common domestic household pets such as dogs and cats) shall be kept on any Lot or within the confines of any Improvement thereon. All animals shall be kept in accordance with the requirements of the Municipality and all applicable law. No dog which has previously bitten any person or which would be considered a vicious or dangerous dog under Illinois law or the ordinances of the Municipality shall be brought to or kept on the Property. The breeding or keeping of dogs or cats for sale on or about the Property or profit is expressly prohibited.

3.7 Radio and Communication Devices and Equipment. The operation of "ham" or other amateur radio stations or the erection of any communication antennae, or similar devices, shall not be allowed unless located in the back yard of the Lot and completely screened from view from all streets, or except as otherwise allowed by federal law. Satellite dishes are governed by Section 3.21 below.

3.8 Drainage, Trees and Other Landscaping. Each Owner shall keep all areas of the Lots designed or intended for the proper drainage or detention of water, including swale lines and ditches, unobstructed and mowed regularly. Except for the trees and plantings existing as of the date of this Fourth Amended Declaration, no other trees, plantings, shrubbery, fencing, patios, structures, or other obstructions of any kind whatsoever shall be allowed in any such areas which would alter the rate or direction of flow of water from any Lot by impounding water, changing grade, blocking or redirecting swales, ditches or drainage areas or otherwise. Each Owner acknowledges that the trees and other landscape items, which presently exist on the Property, are for the benefit of the entire Development and each Owner is prohibited from removing any trees or other natural growth located on the Lot except as approved by the Board as stated in Article IV. Any disagreement between any Owner with respect to this provision shall be determined by the Board in the Board's sole and absolute discretion. Each Owner acknowledges, by acceptance of a Deed to a Lot, that any and all such drainage or detention areas and the trees and other landscape items are for the benefit of the entire Subdivision.

3.9 **Storage.** The storage of tools, landscaping instruments, household effects, empty or filled containers, boxes, bags, trash, firewood, air conditioning equipment, materials or other items that shall in appearance detract from the aesthetic values of the Subdivision shall be so placed and stored to be substantially concealed from view from the public right of way. If concealed with landscaping, the Owner must use evergreen plants.

3.10 **Trash and Garbage.** No rubbish, trash, garbage or other waste material shall be kept or permitted on any Lot, except in sanitary containers located in the garage of the Dwelling or in concealed areas as designated by an rules and regulations of the Association, except on collection days and on the eve thereof, upon which said containers may be placed near the public right of way for collection.

3.11 **Swimming Pools and Hot Tubs.** No swimming pools, swim spas, hot tubs, or similar items may be erected, installed, or located on any Lot.

3.12 **Gardens.** Vegetable gardens shall be permitted only in the rear yard, provided that no portion thereof shall be located within 20 feet of the rear or side Lot boundary and it does not exceed 150 square feet in area. All gardens must be properly maintained and shall not in appearance detract from the aesthetic value of the Subdivision and shall be placed to be substantially concealed from view from the public right-of-way.

3.13 **Motorized Vehicles in General.** Motorized vehicles not requiring registration with the State of Illinois (excluding construction, landscaping, and maintenance equipment) shall be prohibited from using the non-public access roads of the Property. All motorized vehicles shall be used in such a manner so as to avoid loud or disturbing noises emanating therefrom.

3.14 **Mineral Exploration.** No oil or gas drilling, oil or gas development, oil or gas refining, quarrying, coal, coal bed methane, or drilling or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted for use in boring for oil or gas be erected, maintained or permitted on any Lot.

3.15 **Temporary Structures.** No structure of a temporary character, mobile home, pole barn, trailer, tent, shack, barn, shed, log homes, modular or double-wide mobile home, A-frame, underground homes, moveable building or any other outbuilding shall be used on any Lot at any time as a residence or as a storage facility, either temporarily or permanently, without the approval of the Board; provided that an Owner, or an agent or representative of Owner, may, with the written approval of the Board, utilize temporary structures on a Lot that it owns during construction of Improvements on such Lot. All exterior construction and landscaping must be completed within twelve (12) months after commencement.

3.16 **Business Operations.** There shall be no business, either retail or wholesale, trade or professional activity located on or conducted from any Lot or building thereon. Home offices shall be allowed so long as there is only one office in the Dwelling and the Owner does not violate the parking provision. No business vehicles, including trucks (larger than 3/4-ton pick-ups) or any similar vehicles used for business purposes, shall be parked on any public way or any property unless same are parked within an enclosed garage. This prohibition shall not apply to the vehicles

of service or utility establishments, mercantile or construction businesses while engaged in the rendering of services or performance of the business with the inhabitants of the Subdivision or for the Subdivision itself.

3.17 **Signs.** No signs of any kind shall be displayed to the public eye on any Lot except:

(a) One sign of not more than two (2) feet on a side, the purpose of which shall be to advertise the Lot for sale or rent; or

(b) Any size or type of sign the Board chooses to erect at the entrance to the Property, for the purpose of naming or identifying the Property. This sign may be placed upon any Lot which fronts on the Property entrance.

3.18 **Recreational Apparatus and Clothes Lines.** No recreational apparatus, including, but not limited to, boats, trailers, campers, and any recreational vehicles will be permitted to be stored on the Property at any time. No clothes lines are allowed. Swing sets, playground equipment, or similar devices shall only be located in the back yard.

3.19 **Hazardous Materials.** No hazardous materials, gas, oil, fuel tank, or storage device, other than in legal containers as allowed by the Municipality for personal use, shall be permitted on any Lot without the written approval of the Board. Any such containers shall be properly stored and at all times used, maintained, and stored in accordance with applicable law and in such a manner and location as to not create an unsightly, dangerous, or hazardous condition upon any Lot or the Property.

3.20 **Lot Division.** No Lot in the Subdivision may be further divided except upon the express written approval of the Board and any governmental body having jurisdiction thereof.

3.21 **Satellite Dishes.** Other than satellite dishes duly authorized and properly installed prior to the effective date of this Fourth Amended Declaration and in accordance with all laws and regulations as in effect at the time of such installation, satellite dishes shall be limited to one (1) per Dwelling and the location of any such dish shall be approved, in writing, by the Board, prior to installation of such satellite dish.

3.22 **Fire Features.** No fire feature or grill of any type shall be permitted on any portion of a Lot exterior to the Dwelling unless the same shall be (a) utilized in accordance with applicable law and the manufacturer's requirements, (b) located in the rear yard of the Owner's Lot, and (c) fueled by liquified petroleum (LP), natural gas, or other fuel as may be authorized by the Board in writing (with wood, charcoal, pellets, or other similar fuels being prohibited entirely). Fuel shall be provided through a permanently installed line or a personal-use tank in a style and of a type meeting any policy, rule, and/or regulation established by the Board and Municipality. Any disagreement between any Owner with respect to this provision shall be determined by the Board in the Board's sole and absolute discretion.

ARTICLE IV
Architectural Controls

4.1 **Approval Required.** Except for Improvements duly approved and constructed prior to the date of this Fourth Amended Declaration, no Dwelling or Improvement, whether original or replacement, temporary or permanent, shall be constructed, placed or permitted on any Lot without the prior written approval of the Board obtained in the manner hereinafter set forth. Approvals or denials under this Article IV may be withheld in the Board's sole and absolute discretion.

4.2 **Plans and Specifications Required.** Unless waived by the Board in writing, in order to secure the Board's approval of any proposed Improvement or Improvements or any change, amendment, or modification to any Plans and Specifications submitted, the Owner shall submit to the Board Plans and Specifications containing the following:

(a) The Lot site plan, as prepared by the Owner's architect or builder, showing, among other things, the location and dimension of all intended Improvements;

(b) Drawings, plans and specifications, as prepared by the Owner's architect or builder, of all exterior surfaces, the location of the Improvement on the Lot, showing elevations and grade and the damage to any trees or existing landscape items, including without limitation the color, quality and type of exterior construction materials.

(c) All such information as the Board may require to determine the location, scale, design, character, style and exterior appearance (including the color of the exterior surfaces) of Owner's intended Improvements, including without limitation fences, walls or other dividing elements.

(d) The grading plan must show all the trees, which are five (5) inches or more in diameter when measured at three (3) feet above the ground, that will need to be removed during the construction process.

All of the foregoing (hereinafter collectively referred to as the "Plans and Specifications") shall conform to the applicable provisions of this Fourth Amended Declaration and any applicable laws and ordinances and any and all rules, or regulations adopted by the Board and Municipality.

The Board may, in its sole discretion and judgement, and in accordance with past decisions, if any, waive in writing the requirement for the submission of Plans and Specifications and authorize the submission of such other documentation and drawings as the Board shall determine necessary to confirm any Improvement is in keeping with the general intent and purpose of this Fourth Amended Declaration.

4.3 **Submission and Action as to Plans and Specifications.** Within thirty (30) days after the Board's receipt of the Plans and Specifications, or any change, amendment, or modification to any Plans and Specifications submitted, the Board shall notify the Owner in writing

whether such Plans and Specifications are approved or disapproved. Any disapproval by the Board shall set forth the reason or reasons for such disapproval. If the Board fails to respond within thirty (30) days after the Board's receipt of the Plans and Specifications, then the Board's approval shall be conclusively presumed.

4.4 **Appeal Rights.** If the Board shall disapprove all or any portion of the Plans and Specifications submitted as aforesaid, the Owner shall revise the Plans and Specifications to incorporate the changes required by the Board and shall deliver one (1) complete set of revised Plans and Specifications to the Board. The Board shall have thirty (30) days after its receipt of said revised Plans and Specifications to determine whether the Owner has complied with the Board's requested changes. If the Board within said thirty (30) day period fails to advise the Owner in writing whether the Board approves or disapproves any such revised Plans and Specifications, then the Board's approval shall be conclusively presumed. If the Board disapproves all or any portion of said revised Plans and Specifications, the Owner shall revise the Plans and Specifications in the manner set forth in this Section until such time as the Board shall approve or be deemed to have approved said Plans and Specifications.

4.5 **Changes to Plans and Specifications Requiring Approval.** The Owner shall secure the approval of the Board with respect to any material change or revision in any Plans and Specifications approved in accordance with this Article IV in the manner provided in this Article for the approval of Plans and Specifications.

4.6 **Waiver of Liability.** Neither the Board, nor any of its members, agents, attorneys, employees, licensees, or their successors or assigns, shall be liable in damages to any Owner or to any other person submitting Plans and Specifications to any one or more of them for approval by reason of the withholding of consent or by reason of a mistake in judgment, negligence or nonfeasance arising out of or occurring in connection with the approval or disapproval or failure to approve or disapprove any such Plans and Specifications. Each Owner shall, upon becoming an Owner of all or any portion of a Lot or Dwelling, be deemed to have understood and agreed to the waiver hereby provided and made.

4.7 **Acceptance of Certain Prior Improvements.** The provisions of Article IV of this Fourth Amended Declaration shall not apply to any Improvements which were duly and properly approved, authorized, installed, and completed as of the date of this Fourth Amended Declaration.

4.8 **Replacement or Repair of Dwelling or Improvement.** In the event any Dwelling or Improvement on a Lot is substantially damaged by fire, wind, flood, or other action so as to require the replacement of the Dwelling or Improvement or the repair of the exterior of the Dwelling or Improvement, such replacement or repair shall require the submission of Plans and Specifications as herein required and provided. Unless otherwise approved by the Board in writing prior to the initiation of such replacement or repair, be of similar quality, size, color, design, and features so as to continue the consistent, planned, cohesive, and harmonious nature of the Subdivision, Dwellings, and Improvements. The Owner seeking to undertake the repair or replacement shall submit Plans and Specifications which shall meet the following minimum requirements:

(a) The minimum living area of the main structure erected on any Lot shall be no less than one thousand two hundred fifty (1,250) square feet in a one-story structure and shall have a minimum attached two (2) car garage. For computing the allowable minimum floor area specified herein, only floor area used for actual living space shall be allowed. The floor area of basements, porches, breezeways, verandas, terraces, outside steps, platforms, and garages shall not be included in the computation;

(b) The front exterior wall of all Dwellings erected or placed on any Lot shall be constructed of brick. The side and back exterior walls of all Dwellings shall be vinyl siding.

(c) All footings shall be pierced and rodded. Basement walls shall be rodded under and over windows when possible with the greater of (i) the requirements of the Municipality or (ii) a minimum of two #4 re-bar in footings and #4 re-bar spaced on two-foot centers vertically in walls. No exposed concrete on the foundation is permitted, except for 6-8 inches at grade with siding.

(d) Shingles shall be asphalt, architectural shingles, or a better quality. Roof pitch must be at least 6 (six) vertical inches to twelve (12) horizontal inches, either gabled, hipped or a tasteful combination. No flat roofs are allowed. Lower pitches for minor areas of the roof may be considered for review and approval in writing by the Board.

(e) Each Lot with a Dwelling shall have a garage fully capable of housing a minimum of two (2) automobiles but not more than four (4). Garages shall be attached to the Dwelling.

(f) All sites must have a finish grade that will allow the natural flow of surface drainage water from one lot to another without erosion or damage. Under no circumstances shall the Owner of any Lot or parcel of land in the Subdivision alter the topographic conditions of said Owner's property in any way that will permit or cause additional quantities of water to flow from or across said Owner's Lot and onto any adjoining property or public right of way. Grading shall be sloped and tapered at the side and rear lot lines in such a manner as to permit construction on an adjacent Lot without the need for retaining walls.

(g) All vent piping or chimneys that exit on a roof area are to be located on the rear of the roof. Prefab fireplace inserts are required to be encased with a chimney enclosure of vinyl siding or masonry, both shall be required to be similar to existing siding or masonry.

(h) No Dwelling shall be located on any lot nearer than the front building line as stated on the Subdivision Plat. No Dwelling shall be located nearer than ten (10) feet from the side Lot line, and twenty-five (25) feet from the rear Lot line. For the purpose of this provision, eaves, steps, and open porches shall not be considered as part of the Dwelling, providing, however, that this shall not be construed to permit any portion of a Dwelling or other Improvement on a Lot to encroach upon another Lot.

4.9 Additional Specific Requirements and Regulations as to Lots, Dwellings, and/or Improvements.

(a) Any structure mounted on a pole or post over six (6) feet above the ground, including, but not limited to, birdhouses must be approved in writing by the Board.

(b) Any wells designed for geo-thermal heating and cooling must be approved in writing by the Board, including location and type of cover.

(c) No portion of a Lot, driveway, street or other location outside the exterior wall of the garage may be used for purposes of blocking, jacking, maintaining or repairing any automobile, van, trailer, truck, or other vehicles for any period of time. Except as allowed in Article 3.16, no commercial trucks, trailers, or other commercial vehicles will be allowed to stand upon any driveway or Lot, other than service vehicles making deliveries or providing service to the Property. No campers, trucks (other than personal pickup trucks of 3/4-ton or less having no business or advertising materials on the exterior), mobile equipment, trailers, boats, vans, motor homes, or recreational vehicles will be permitted to be stored outside the Dwelling or garage on any Lot in the Subdivision. Parking of all Owner vehicles must be on the driveway, in the garage, of any Dwelling or Improvement, on a paved surface upon the Lot. No parking shall be allowed on any unpaved or grass portion of any Lot.

(d) All exterior lighting, including but not limited to directional lighting and dusk to dawn lighting, shall be located on a building, shaded and of such intensity so as not to become a visual nuisance to any adjoining or nearby Lot Owner.

(e) Upkeep of the mailbox is the responsibility of the Owner, and all mailboxes shall be of a size and shape approved by the Board, and shall be maintained, straight, and in good repair and condition. All mailboxes and posts shall be white or black; provided that any mailbox existing as of the date of this Fourth Amended Declaration are exempt to these specifications until such mailbox shall be re-painted, repaired, or replaced at which time only white or black mailboxes and posts shall be permitted. Permanent stickers, beyond the resident's name and address, are discouraged. Minimal holiday décor shall be in accordance with any then applicable Board policy.

(f) The development concept of the Subdivision emphasizes preserving the natural beauty and aesthetics of the land. Therefore, all fences, walls or other dividing elements must be approved by the Board as to design and location, except for those existing as of the date of this Fourth Amended Declaration. Generally, and subject to any Ordinances of the Municipality, only fences that are constructed of wrought iron, aluminum, or similar material, are black in color, not more than four (4) feet in height, and have at least one gate that is a minimum of six (6) feet wide, shall be permitted, subject to approval by the Board. The details of the fence must be shown on the Plans and Specifications required herein; provided that the Board may, in its sole discretion and judgement, and in accordance with past decisions, if any, waive in writing the requirement for the submission of Plans and Specifications and authorize the submission of such other documentation and drawings as the Board shall determine necessary to confirm any proposed is in keeping with the general intent and purpose of this Fourth Amended Declaration. All fences

currently constructed, previously approved, and existing as of the date of this Fourth Amended Declaration are exempt to these specifications; however, in the event of reconstruction, the replacement fences shall adhere to the fence requirements in this Fourth Amended Declaration

(g) No outbuilding not currently constructed, previously approved, and existing as of the date of this Fourth Amended Declaration shall be allowed, except as approved by the Board after the date of this Fourth Amended Declaration.

ARTICLE V ***Homeowners Association***

5.1 **Association.** The Association was formed to provide for the maintenance of the exterior of the Dwellings and for the enforcement of the provisions of this Fourth Amended Declaration, all as provided herein. The Association's Board is hereby vested with the authority to administer and enforce this Fourth Amended Declaration in accordance with its terms and all applicable laws, ordinances, rules, or regulations, including but not limited to any rules, or regulations adopted by the Board in accordance with the authority granted herein.

5.2 Board of Directors and Officers.

(a) The Association shall have a Board of not less than five (5) Directors elected by the Members of the Association at such intervals as the Articles of Incorporation and Bylaws (a substantial copy of which is attached hereto as Exhibit B and made part hereof) of the Association may provide. All Directors shall be Members of the Association.

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

5.3 **Board Policies.** Whether or not specifically provided in this Fourth Amended Declaration, the Board shall have the authority to develop policies related to this Fourth Amended Declaration and the intent and administrations of the provision herein. Such policies shall be approved by not less than a majority of the Board, shall be in writing, and shall be available for all Owners or members of the Association upon request and without charge.

5.4 Members, Membership and Voting.

(a) Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(b) Each Member shall be entitled to one (1) vote for each Lot owned by him or her on each matter submitted to a vote of Members; provided, however, that where there is more than one Owner of a Lot, such co-owners of a Lot shall only be entitled to one vote.

5.5 **Board Powers and Duties.** The Association, through the Board, shall have the power and duty to:

(a) Own, maintain, and otherwise manage all property acquired by the Association or which the Association agrees to maintain, including any obligation to maintain any landscaping, gates or other areas in use by the Subdivision, which are within the Property, to maintain any entrance sign located thereon and to ensure compliance with the terms of the Municipal Documents, including the enforcement thereof, if necessary;

(b) 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;

(c) Maintain, at the expense of the defaulting Owner, all drainage areas and facilities located on the Property in accordance with the reasonable and acceptable engineering requirements of the Municipality in the event that one or more Owners fail to do so;

(d) Provide such facilities and/or 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 Bylaws, provided, however, that any such action so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable Single Family residential community; and

(e) Provide the following services:

(i) Lawn mowing and trimming - to be performed not more than once per week;

(ii) Lawn treatments – to provide for lawn treatments, aeration and overseeding at such frequencies as may be determined by the board;

(iii) Shrub/bush trimming – to provide for trimming of shrubs/bushes, growing within the landscape rock in the front of Dwellings, two times per year during the growing season.

(iv) Snow removal - to provide for snow removal and salting of the driveway and front sidewalk of Dwelling when snowfall is two (2) inches or greater;

(v) Roof replacement and repairs - to establish a reserve to replace roofs at the end of the life of the roof and make interim repairs to preserve the integrity of existing roofs ;

- (vi) Painting - to establish a reserve to perform this service whenever needed, as determine by the Board, but typically no less frequently than every five (5) years on the front door, front door jamb and any sidelights, and jamb around the garage door;
- (vii) Termite Inspection and Treatment - to provide for termite inspection and treatment at such frequencies as may be determined by the Board;

and to provide other types of maintenance as the Association deems desirable or as the Association may from time to time deem prudent.

(f) Provide to each Owner, at least thirty (30) days prior to the adoption thereof by the Board, a copy of the proposed annual budget.

(g) Supply to all Owners an itemized accounting of the common expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficit of income over expenditures plus reserves.

(h) Provide each Owner written notice as required by this Fourth Amended Declaration not less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of the proposed annual budget or any increase in the budget, or the establishment of an assessment.

(i) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by applicable law, this Fourth Amended Declaration, the Articles of Incorporation of the Association, or the Association's Bylaws.

5.6 Maintenance of Insurance. The Board shall also have the authority and responsibility to obtain and maintain comprehensive public liability insurance, including liability for injuries to and death of persons, property damage, and other liability insurance and in such limits as the Board may deem desirable, including but not limited to insurance on the exterior of any Dwelling, which includes coverage from the studs to the outside exterior of any Dwelling (including windows which shall be a part of the exterior of any building), insuring the Association, its officers, the Board, and their respective employees and agents, from liability for any good faith actions taken beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties by having a severability of interests endorsement. The premiums for such insurance shall be common expenses payable out of the proceeds of the assessments required by and collected in accordance with this Article V. The Association shall also have the authority to obtain such other kinds of insurance as the Association shall from time to time deem prudent.

5.7 **Waiver of Liability and Right to Trial by Jury.** *The Board, officers of the Association, and the employees and agents of any of them shall not be liable to the Owners, the Members or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners and/or Members shall indemnify, hold harmless, protect and defend the foregoing parties against all claims, suits, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. The burden of the foregoing indemnity shall be borne by the Owners at the time such loss, damage, cost or expense is incurred in the same proportion as assessments are borne by the Owners as provided in Article VI hereof. **TRIAL BY JURY IS HEREBY EXPRESSLY WAIVED FOR THIS FOURTH AMENDED DECLARATION.** To the extent possible, the Board's and Association's liability hereunder and the Owner's or Member's indemnification obligation shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association. Each Owner shall, upon becoming an Owner of all or any portion of a Lot or Dwelling, be deemed to have understood and agreed to the waivers hereby provided and made.*

5.8 **Mandatory Mediation and Arbitration.** In the event a dispute shall arise between the parties to this Fourth Amended Declaration, the parties agree to participate in at least four (4) hours of mediation in accordance with the mediation procedure of United States Arbitration & Mediation Midwest, Inc. The parties agree to share equally in the costs of the mediation. The mediation shall be administered by the office of the United States Arbitration & Mediation nearest to St. Clair County, Illinois. Mediation involves each side of a dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. In the event the parties are unable to resolve the dispute in mediation, it is hereby agreed that the dispute shall be referred to United States Arbitration & Mediation for arbitration in accordance with United States Arbitration & Mediation Midwest's Rules of Arbitration. The arbitrator's decision shall be final and binding and judgment may be entered thereon. Each party shall bear its own costs, expenses and attorneys' fees in relation to any mediation or arbitration proceeding; provided that in the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with arbitrator's award, the other party(ies) shall be entitled to recover all of their reasonable costs expenses and attorneys' fees for having to compel arbitration or defend or enforce the award.

ARTICLE VI

Assessments

6.1 **Assessments.** Each Owner, by taking title to a Lot, shall be deemed to have covenanted and agreed to pay to the Association monthly assessments or charges for the obligations of the Association as provided in Article V, and special assessments for capital improvements and unforeseen expenses, to be collected from time to time as hereinafter provided. The monthly and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a lien on the Lot against which each such assessment is

made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation of any Owner shall not pass to his successors in title unless expressly assumed by them.

6.2 Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Subdivision, and in particular, for the improvement and maintenance of the Subdivision, and services and facilities devoted to these purposes. Such assessments shall include, without limitation, the cost of any Association insurance, repair, replacement and maintenance and other charges required, permitted, or limited by this Fourth Amended Declaration, and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation the establishment and maintenance of a contingency and replacement reserve fund. The monthly assessments provided for herein shall commence for each Lot on the first day of the month following delivery of a Deed to an Owner.

6.3 Budget and Notice. Each year on or before November 1, the Board will estimate the total amount of maintenance expenses necessary to pay the cost of any expenses incurred by the Association pursuant to this Fourth Amended Declaration or as required by applicable law, other necessary or desirable items which will be required during the ensuing calendar year (January 1-December 31) for services authorized by the Board, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line-item basis. The Estimated Cash Requirement shall be assessed to each Owner or group of Owners. On or before January 1 of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as the Board may direct, the monthly assessment made pursuant to this Section.

On or before the date of the annual meeting of each calendar year, the Board shall furnish to all Owners an itemized accounting of the 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 and showing the net amount over or short of the actual expenditures, plus reserves.

The Board shall, upon demand from an Owner at any time, furnish a certificate to Owner, or such other party as Owner shall request, 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 or nonpayment of any assessment thereon.

6.4 Special Assessment.

(a) The Board may, at any time, levy a special assessment, which shall be assessed equally among all Owners, for any costs or expenses of the Association.

(b) The Board may, at any time, levy a special assessment to any specific Owner(s) for any additional insurance premiums incurred by the Association as a result of any action or activity of such specific Lot Owner(s).

(c) The Board shall serve notice of any such special assessment on all such Owners by a statement in writing giving the amount and reasons therefor, and such special assessment shall become effective and fully payable ten (10) days after the delivery or mailing of any such notice of assessment.

6.5 **No Implied Waiver.** The failure or delay of the Board to prepare or serve the Estimated Cash Requirement on any Owner shall not constitute a waiver or release in any manner of any Owner's obligation to pay his share of such Estimated Cash Requirement as herein provided, as and when the Estimated Cash Requirement shall be determined, and, in the absence of the preparation of the Estimated Cash Requirement, the Owner shall continue to pay his share of such Estimated Cash Requirement at the then existing annual rate established for the previous calendar year, subject to adjustment at such time as the Estimated Cash Requirement has been prepared and the Owners have been notified thereof.

6.6 **Books and Records.** The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the maintenance of the Subdivision. Such records and the vouchers authorizing the payments described therein shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, or any holder of a Mortgage at such reasonable time or times during normal business hours when requested by an Owner or by the holder of a Mortgage. Upon five (5) business days' prior written notice to the Board, any Owner shall be furnished a statement of his account, which statement shall set forth the amount of any unpaid assessments or other charges due and owing from such Owner.

6.7 **Use of Funds.** All funds collected hereunder shall be held and expended for the purposes designated herein, and are hereby held in trust for the benefit, use and account of all Owners. All funds not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may select.

6.8 **Delinquent Assessments.** Any assessments or other charges which are not paid when due shall be delinquent. If the assessment or charge is not paid within thirty (30) days after the due date, the Owner shall also pay the greater of (a) a late fee of Ten Dollars (\$10.00) for each month or portion thereof in which such assessment payment(s), or any portion thereof, is delinquent, or (b) interest from and after the due date of such assessment payment(s) at the lesser of the rate of twelve percent (12%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of any such overdue assessment. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided, shall be and become a lien. The Board may record a lien, memorandum of lien or charge against the Lot of any such Owner when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of mortgage liens against real estate. The Directors and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest for foreclosed at any foreclosure sale, and to acquire and hold, lease, mortgage and convey

any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his interest at such foreclosure sale.

6.9 **Association's Lien Rights.** In addition to the rights and remedies set forth in this Fourth Amended Declaration, or as allowed by law, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments, cost, late fees, or expenses, including but not limited to reasonable attorneys' fees, and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to peaceably enter and take possession of the Dwelling from any defaulting Owner, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the circumstances and, in addition, to exercise any other rights or remedies provided by law.

ARTICLE VII
Easements

7.1 **Easements.** All easements as shown on the Subdivision Plat are hereby set aside and reserved for the wires, pipes, water meters, gas meters, sewer drainage (storm and sanitary) and other subdivision essentials and facilities which either benefit the Owners, the Association, the County, the Municipality or any other governmental entity which has control over the Subdivision. Any easements properly recorded as of the date of this Fourth Amended Declaration are and remain reserved as shown on the Subdivision Plat.

7.2 **Utilities to be Buried.** All utilities, wires, pipes, and lines, including, but not limited to, telephone, cable, electric, gas, sewer and water shall be buried underground (except to the extent that emergency and construction standards require otherwise).

7.3 **No Obstructions.** No building, structure or improvement nor any part thereof, retaining wall, walk, driveway or other interfering obstruction not duly and properly approved, authorized, and meeting the requirements of the Municipality as of the date of this Fourth Amended Declaration, may be erected, constructed or maintained within, on or over an easement, as shown on the Subdivision Plat, or which may hereafter be established, without the approval of the Board; provided, however, that utility companies may use designated utility easements for their facilities, underground cables, pipes, etc.

7.4 **Reservation and Granting of Access Right.** It is expressly declared and provided, however, that the Association reserves and retains the right, title and privilege, and Owner grants to the Association the same, to enter upon any Owner's Lot for purposes of performing any required maintenance or to enforce any of the covenants contained herein, eliminate any one or more of the easements, or any part of parts thereof, but there shall at the time be provided for each Lot affected thereby and for the building or structure, which may then or thereafter be erected thereon, proper facilities as adequate as those eliminated.

It is further expressly declared and provided that the Association shall have the right to designate additional easements, other than those platted, to adequately serve any Lot in the Subdivision, as the Association deems best or desirable, as determined by the Association in its sole and absolute discretion, including without limitation the rights, title and easement to go on to each Lot to perform any landscaping or maintenance as provided herein. Any elimination, designation or creation of any easement, easements, or any part of parts thereof shall become effective upon the execution by the Association of any appropriate instrument thereto, which shall be duly acknowledged and recorded in the Recorder's Office of St. Clair County, Illinois.

7.5 No Accumulation on Easement. The Owner of each Lot shall at all times, with respect to said easement or any part thereof, properly care for same, and keep same free from unsightly accumulation, weeds, debris, or other such matter. No easement or right of access shall be granted or permitted across, through or over any Lot, the effect of which would be to provide access for vehicular or other traffic into or out of said Property or the streets or roads thereof, nor shall any Lot be used in any manner to provide such access.

7.6 Beneficial Parties. The easements created by and on the Subdivision Plat are for the benefit of the Lots within the Subdivision and not the general public. The Association reserves the right to prohibit access or use of any easement by adjacent Owners or owners of property lying nearby or across any roadway. Unless duly and properly approved, authorized, and installed as of the date of this Fourth Amended Declaration, no utility shall be extended to any adjacent Lot nearby or across any road in the Subdivision without the express written consent of the Association.

ARTICLE VIII ***General Provisions***

8.1 Applicability and Term. The covenants and restrictions of this Fourth Amended Declaration shall run with the land, and shall inure to the benefit of and be enforceable by, as applicable, the Association and/or Board, and by their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Fourth Amended Declaration is recorded in the Office of the Recorder of Deeds of St. Clair County, Illinois, after which time said covenants shall be automatically extended for successive periods of ten (10) years, subject to amendment as hereinabove provided.

8.2 Interpretation. 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 during which such covenants may be valid, then said covenants shall continue and endure for as long as the law shall allow.

8.3 Consent to Additional Action. If at any time or times, the Association shall deem it necessary or advisable to re-record this Fourth Amended Declaration or any part hereof in the Office of the Recorder of Deeds of St. Clair County, Illinois, in order to avoid the expiration hereof or of any of the covenants or other provisions herein contained under any of the provisions of 735 ILCS 5/13-118 *et seq.*, or any other law or statute of similar purport, such rerecording shall be

binding upon all Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said Owners and the rerecorded document executed and acknowledged by each of them.

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

This conveyance is made subject to the Fourth Amended and Restated Declaration of Covenants and Restrictions for The Villas at Lakepointe recorded as Document # _____ ("Declaration") in the Recorder's Office of St. Clair County, Illinois, together with the Municipal Documents attached to the Original Declaration referenced therein as Exhibits.

8.5 **Incorporation into Leases.** The provisions of this Fourth Amended Declaration, the Association's Bylaws, as amended, and rules, regulations and policies that relate to the use of a Dwelling and the Property shall be applicable to any person leasing a Dwelling and shall be deemed to be incorporated in any lease executed or renewed on or after the effective date of this Fourth Amended Declaration. With regard to any lease entered into subsequent to the effective date of this Fourth Amended Declaration, the Owner leasing the dwelling shall, upon written request of the Board, deliver a copy of the signed lease and/or contact information for any tenant(s) to the Board not later ten (10) days after such written request.

8.6 **Remedies.** The Association from time to time shall have the right to sue for and obtain a prohibitive and mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them, in addition to the right to bring a legal action for damages. Whenever there shall have been built (or whenever there is being built) on any Lot any Improvement which is and remains in violation of this Fourth Amended Declaration herein set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof by the Association to the Owner of any such Lot, then the Association shall have, in addition to the foregoing rights, the right to enter upon the property where such violation exists and summarily to abate or remove it at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass.

In no event shall the failure of the Association to enforce any of the covenants or obligations herein provided due to a particular violation be deemed to be a waiver of the right to do so respecting any such violation or any subsequent violation. Notwithstanding anything in this Fourth Amended Declaration to the contrary, the Owner shall not have the right to seek a prohibitive or mandatory injunction or to obtain damages from the Association but only to obtain declaratory relief with respect to any disagreement over interpretation of this Fourth Amended Declaration, which must be resolved by the dispute resolution procedures as stated in this Fourth Amended Declaration, and the Owners shall not be able to collect any attorneys' fees or costs with respect to any action brought against the Association as stated herein **AND HEREBY WAIVES THE RIGHT TO TRIAL BY JURY**. This Section shall not limit the remedies of the Association or Board.

8.7 Special Amendment Right. The Association hereby reserves the right and power to record a special amendment (hereinafter the "Special Amendment") to this Fourth Amended Declaration at any time and from time to time which amends this Fourth Amended 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 Veterans' 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, (iii) to correct clerical or typographical errors in this Fourth Amendment Declaration or any Exhibit hereto or any supplement or amendment thereto, or (iv) to amend, modify, or change it in whole or in part, in order to, among other things, correct deficiencies of this Fourth Amended Declaration as determined to exist by the Board, and to give effect to all of the rights, obligations and duties created or contemplated herein. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the President of the Association 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. Said power shall be irrevocable and is coupled with an interest. 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 the reservation of, the power of the Association's President to vote in favor of, make, execute and record Special Amendments.

8.8 Construction. The provisions of this Fourth Amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property. Under no circumstances shall the provisions of this Fourth Amended Declaration be construed or otherwise interpreted against the Association.

8.9 Successors and Assigns. In the event title to any Lot is conveyed to a titleholding 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 beneficiaries thereunder from time to time shall be personally responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants, obligations and undertakings chargeable or created under this Fourth Amended Declaration against any such Lot. No claim shall be made against any

such titleholding 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 said Lot and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to any such Lot.

8.10 **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 Fourth Amended Declaration. The singular shall include the plural wherever this Fourth Amended Declaration so requires, and the masculine the feminine and neuter and vice versa.

8.11 **Waiver not Binding.** The failure of the Association or Board at any time to require performance of any provision of this Fourth Amended Declaration shall not limit the Association's or Board's right to enforce the provision in the future or circumstance, nor shall any waiver of any breach of any provision be deemed a waiver by the Association or Board of any succeeding breach of any provision or a waiver of the provision itself or any other provision.

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

8.14 **Notice.** For all purposes of this Fourth Amended Declaration, a written or printed notice (a) deposited in the United States Mail, First Class U.S. postage prepaid, and addressed to any Owner at the last address filed by such Owner with the Association, or the Lot address if no address is on file, (b) emailed to the email address last provided to the Association by Owner, or (c) hand delivered to Owner, shall be sufficient and proper notice to such Owner. Any notice provided by United States Mail shall be deemed delivered on the fifth (5th) day after deposit in an approved United States Mail receptacle or location.

ARTICLE IX

Party Wall

A dividing wall will exist as a "Boundary Line" and stand equally on the Dwelling. Such wall shall at times and in all respects be considered a party wall (the "Party Wall"). The following rights, obligations, burdens, easements, covenants, uses and privileges shall exist in connection with the Party Wall:

(a) Either owner may extend the height and/or length of the Party Wall from time to time, only with the prior written consent of the other Owner and Board.

(b) Each Owner hereby grants to the other Owner the right and easement to use the Party Wall below and above the surface of the ground and along the whole length or any part of the length thereof for the support of the Dwelling. Neither Owner shall be entitled to use the top surface of the Party Wall to the exclusion of the use thereof by the other Owner.

(c) Either Owner may repair and/or maintain the Party Wall as necessary to ensure that it shall remain structurally sound and the cost of such repair and maintenance shall be shared equally by the Owners. Each Owner, at its sole cost and expense, shall have the right to paint, decorate, clean, and perform other similar activities on the interior surface of the Party Wall.

(d) In the event of destruction or damage to the Party Wall, including the foundation thereof, by fire or other casualty, either Owner may, with prior written approval of the Board, repair or restore the Party Wall, at its sole cost and expense; provided, however, that, if the other Owner thereafter makes use of the Party Wall or constructs improvements, said Owner shall promptly pay to the repairing Owner fifty percent (50%) of the cost of repair or restoration of the Party Wall. All such repair and restoration shall be performed in a good and workmanlike manner with materials comparable to those used in the original Party Wall and shall conform in all respects with all laws, ordinances, rules and regulations of all applicable governmental authorities. Whenever the Party Wall or any portion thereof shall be repaired or restored, it shall be erected in the same location, on the same line and be of the same height, width, length and load-bearing capacity as the Party Wall in existence prior to the casualty.

(e) Each Owner of a Party Wall hereby indemnifies and agrees to hold the other Owner harmless from and against any and all losses, costs, claims, liabilities, or expenses (including any obligation to contribute to repair or restoration) arising out of or relating to any damage caused to the Party Wall by the negligent acts or omissions of such Owner, its employees, agents, licensees, invitees, and/or representatives causing such damage (all and each referred to as and being "Indemnifying Owner"). No Indemnifying Owner shall be permitted to seek contribution from any other Owner or the Association for repairs or restoration of the Party Wall resulting from any such negligent act or omission of such Indemnifying Owner.

ARTICLE X
Termination of Original Declaration
and All Previously Amended and Restated Declarations

10.1 The Third Amended and Restated Declaration of Residential Covenants and Restrictions recorded as Document #A02403869 *et seq.* of the St. Clair County Illinois Recorder of Deeds ("Third Amended and Restated Declaration") is hereby terminated in its entirety and neither the Original Declaration, Amended and Restated Declaration, or Third Amended and Restated Declaration shall have any further force or effect, as this Fourth Amended Declaration supersedes and replaces each and every covenant, agreement, and restriction contained in the Original Declaration and/or Amended and Restated Declaration and/or Second Amended and Restated Declaration and/or Third Amended and Restated Declaration.

ARTICLE XI
Amendment

After the date of this Fourth Amended Declaration ("Declaration"), in addition to the power to amend set forth herein, this Fourth Amended Declaration may be further amended by the affirmative vote of no less than two-thirds (2/3) of the Owners of Lots within the Property at a special meeting (or a duly noticed regular meeting) called for such purpose. Amendments to this

Fourth Amended Declaration shall be executed and recorded by the President of the Board of Directors. Amendments to this Fourth Amended Declaration shall be deemed effective upon recordation, unless the amendment sets forth a different effective date.

THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE THAT MAY BE BINDING ON THE PARTIES HEREIN.

IN WITNESS WHEREOF, The Villas at Lakepointe Homeowners Assoc., Inc. has caused its name to be signed to this Fourth Amended and Restated Declaration of Residential Covenants and Restrictions by the President and Secretary of its Board of Directors as of the day and year first above written.

**The Villas at Lakepointe
Homeowners Assoc., Inc.**

By: *Linette Warnecke*
Linette Warnecke, President

Attest:

By: *Lisa Caldwell*
Lisa Caldwell, Secretary

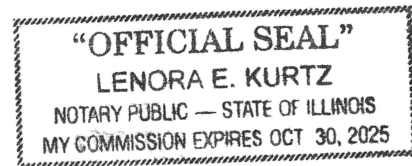
STATE OF ILLINOIS)
) ss.
COUNTY OF ST. CLAIR)

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that **Linette Warnecke**, as **President** of The Villas at Lakepointe Homeowners Assoc., Inc., personally known to me (or proven by satisfactory evidence) to be the same person whose name is subscribed to the foregoing, appeared before me this day in person and independently acknowledged that as a duly authorized officer of The Villas at Lakepointe Homeowners Assoc., Inc. he/she signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2 day of April, 2024.

Lenora E. Kurtz
Notary Public

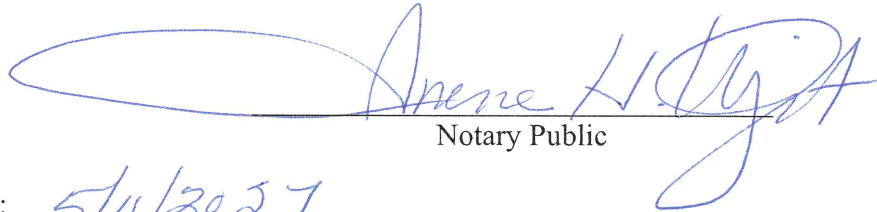
My Commission Expires: 10-30-2025



STATE OF ILLINOIS)
) ss.
COUNTY OF ST. CLAIR)

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that **Lisa Caldwell**, as **Secretary** of The Villas at Lakepointe Homeowners Assoc., Inc., personally known to me (or proven by satisfactory evidence) to be the same person whose name is subscribed to the foregoing, appeared before me this day in person and independently acknowledged that as a duly authorized officer of The Villas at Lakepointe Homeowners Assoc., Inc. he/she signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of April, 2024.


Notary Public

My Commission Expires: 5/11/2027



EXHIBIT A

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of THE VILLAS AT LAKEPOINTE; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats 97 on Page 9 as Document No. A01449265.

Except coal, gas and other mineral rights excepted or reserved in prior conveyances.