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**TALL TIMBERS
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Declaration") is made this _____ day of _____, 2002, by MSK Tall Timber, Inc., an Illinois corporation ("Developer").

PREAMBLES:

A. Developer owns fee simple title to a certain parcel of real estate in the County of St. Clair, State of Illinois, known as Tall Timbers, legally described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

B. As part of the development process, the Developer recorded Covenants, Agreements and Restrictions dated January 4, 2002 and recorded January 14, 2002 in Book 3622 on Page 1213 as Document #A01656851 ("Original Declaration"); and

C. Developer (hereinafter defined in Article I) desires to develop a single family residential development on the Property to be known as Tall Timbers (the "Development"); and

D. Developer desires to terminate the Original Declaration in its entirety and to submit the Property to the provisions of this Declaration instead.

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

ARTICLE I

Definitions

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

□ 1.1 "Association" shall mean Tall Timbers Homeowner's Association, an Illinois not-for-profit corporation.

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

1.3 "Developer" shall mean and refer to MSK Tall Timber, Inc., an Illinois corporation, its successors and/or assigns. Any such successor or assignee shall be deemed a Developer and entitled to exercise all or any rights of Developer provided herein if designated as such by Developer in any instrument recorded for such purposes as provided in Section 8.11.

1.4 " Dwelling " shall mean any building located on a Lot and intended for the shelter and housing of a Single Family (hereafter defined) residence. Dwelling shall include any Improvement (hereafter defined) attached or adjacent to the Dwelling utilized for storage of personal property, tools and equipment.

1.5 "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.

1.6 "Lot" shall mean each part of the Property, the size and dimension of which shall be established by the legal description in the Deed conveying such Lot. A Lot may also be established pursuant to the Subdivision Plat or by an instrument in writing executed, acknowledged and recorded by Developer, which designates a part of the Property as a Lot for the purposes of the Declaration.

1.7 "Deed" shall mean the deed of Developer conveying a Lot to an Owner.

1.8 "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.

1.9 "Common Area" shall mean those areas designated on the Subdivision Plat as Outlot A and Outlot B and the front entrance gate and all its related systems relative to its operation and the landscaped entrance median, the fence, which runs along the front perimeter of the Subdivision, and any other area which the Developer hereafter sets aside and declares to be a Common Area.

1.10 "County" shall mean St. Clair County, State of Illinois.

1.11 "Lake Lot Owner" shall mean and refer to the Owner (hereafter defined) of Lots 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, and Outlot B ("Lake Lots" or individually "Lake Lot"). This definition for purposes of representation on the Association committee for the Board shall be further broken down as follows:

(a) "Pine Lake Lot Owners" shall mean and refer to the Owners of Lots 18, 19, 20, 21, 22, 23, 24, 25, 27, and 28 and the Lake for these Lots shall be known as Pine Lake; and

(b) "Timber Lake Lot Owners" shall mean and refer to the Owners of Lots 29, 30, 31, 32, 33, 34, 35 and 36 and the Lake for these Lots shall be known as Timber Lake.

(c) "Adjacent Owner" shall mean all other Owners in the Subdivision except for Pine Lake Lot Owners and Timber Lake Lot Owners.

(d) Pine Lake and Timber Lake are sometimes collectively referred to as "Lake."

1.12 "Municipality" shall mean the Village of Smithton, Illinois, an Illinois municipal corporation.

1.13 "Owner" shall mean and refer to the record owner, whether one or more Persons (hereafter 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 "Substantial Completion" and "Substantially Complete" shall mean the date on which the Municipality issues an occupancy permit to the Owner. All construction of Improvements must be Substantially Complete no later than twelve (12) months from the time construction begins. In the event of a dispute as to whether or not any Improvements is/are Substantially Complete, such dispute shall be conclusively decided by Thouvenot, Wade & Moerchen, Inc., whose decision shall be binding on the parties.

1.18 "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 the County Zoning Ordinance or the Municipality in the category SR-1.

1.19 "Special Amendment" shall have the meaning set forth in Section 8.6.

1.20 "Subdivision Plat" or "Subdivision" shall mean the plat of subdivision for Tall Timbers as recorded in the Office of the Recorder of Deeds of St. Clair County, State of Illinois on January 14, 2002 in Book 101, Page 35 as Document No. A01656850.

1.21 "Gate Agreement" shall mean that certain agreement by and between the Municipality and the Developer dated January 2, 2002 and recorded January 14, 2002 in Book 3622 on Page 1226, which is part of the Original Declaration recorded as Document #A01656851. The Gate Agreement is attached hereto as Exhibit "B" and made a part hereof.

1.22 "Low Pressure Sewer System Agreement" shall mean that certain agreement by and between the Municipality and the Developer dated January 2, 2002 and recorded January 14, 2002 in Book 3622 on Page 1230, which is part of the Original Declaration recorded as Document #A01656851, which affects Lots 1 through 24, inclusive. The Low Pressure Sewer System Agreement is attached hereto as Exhibit "C" and made a part hereof.

1.23 "Common Ground Agreement" shall mean that certain Common Ground Agreement by and between the Municipality and the Developer dated January 2, 2002 and recorded on January 14, 2002 in Book 3622 on Page 1234, which is part of the Original Declaration recorded as Document #A01656851. The Common Ground Agreement is attached hereto as Exhibit "D" and made a part hereof.

1.24 "Municipal Documents" shall collectively mean the Gate Agreement, the Low Pressure Sewer System Agreement and the Common Ground Agreement. Municipal Documents shall also include any document, which imposes maintenance of the retaining wall, which borders Lots 5 and 6.

1.25 "Member" shall mean each Owner of a Lot in the Subdivision.

ARTICLE II

Declaration Purposes and Property Subjected to Declaration

2.1. Tall Timbers has unique natural setting for this area with the consideration of full growth pine trees, firs, hardwoods and the scenic lakes and a rolling hill topography. As such, the Developer desires to create on the Property a Single-Family development for future owners of Lots for the following general purposes:

(a) The Developer desires to provide upon the Property, through its 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, Developer intends to provide a plan for development of the Property, which is intended to enhance and protect the values of Developer's Single-Family residential community.

(c) The Developer desires 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 Common Property located within the Subdivision; (iv) encourage the construction of attractive improvements on the Property; (v) prevent haphazard development; (vi) to preserve the natural beauty of the Development by implementing construction standards that will be harmonious with the natural beauty of the Property; and (vii) in general, provide for the highest quality environment for the Property.

2.2. To further the general purposes herein expressed, the Developer, 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, restrictions and easements set forth in this Declaration.

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ARTICLE III

Specific Restrictions

3.1. All Lots shall be used only for Single-Family Dwellings. Each Owner shall (i) maintain his Lot and all Improvements located thereon in a clean, sightly and safe condition, (ii) cause the prompt removal of all papers, debris and refuse therefrom and the removal of snow and ice from all sidewalks, driveways and similar areas serving said Lot and (iii) comply with all applicable governmental codes (including without limitation, the Gate Agreement, the Common Ground Agreement and the Low Pressure Sewer System Agreement applicable to Lots 1 through 24, inclusive.

3.2. All Improvements shall be constructed 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. If, and to the extent any conflict exists between the terms and conditions of this 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 the Developer or by application of the more stringent provision providing the higher or better quality result, whichever the Developer decides.

3.3. 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 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. Trucks, boats, recreational vehicles, trailers or other vehicles (other than automobiles) shall at all times be parked in the garage of the Dwelling. All repair or maintenance shall not be permitted except within the confines of the garage.

3.7. 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. The breeding or keeping of dogs or cats for sale or profit is expressly prohibited.

3.6. The operation of "ham" or other amateur radio stations or the erection of any communication antennae, satellite dishes, or similar devices shall not be allowed unless located in the back yard of the Lot and completely screened from view from all streets, except as otherwise allowed by federal law.

3.7. 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, which exist at the time this Declaration was recorded, 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 Developer as stated in Article IV. Any disagreement between any Owner with respect to this provision shall be determined by the Developer in Developer'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.

3.8 The storage of tools, landscaping instruments, household effects, empty or filled containers, boxes, bags, trash, firewood, air conditioning equipment, pool 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.

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

3.10. No aboveground pools may be erected on any Lot. The placement of in-ground pools and hot tubs requires Developer's approval. The heating of pools or hot tubs by propane is not permitted.

3.11. 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 and any Lake Lot.

3.12. Motorized vehicles not requiring registration with the State of Illinois (excluding construction, landscaping, and maintenance equipment) shall be prohibited from using the 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.

3.13. No oil drilling, oil development, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted for use in boring for oil or natural gas be erected, maintained or permitted on any Lot.

3.14. 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 Developer. All exterior construction and landscaping must be completed within twelve (12) months after commencement.

3.15. 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 3/4ths ton pick-up) 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. Furthermore, this prohibition shall not apply to any sales or marketing office established and maintained for the sale and marketing of the Property by the Developer.

3.16. 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.

(b) Signs used by a builder (as approved by the Developer) to advertise the Property during the construction and sale period

(c) Any size or type of sign Developer, or its successors, assigns or agents, may choose to erect, for the purpose of advertising the sale of Lots and/or located in the said Property.

(d) Any size or type of sign Developer 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.

3.17. No recreational apparatus will be permitted in any front yard, or side yard, or side yard next to a platted street. No clothes lines are allowed. In addition to others provided herein, recreational apparatus, including swing sets, swimming pools, basketball courts, (a basketball pole with backboard will be permitted next to driveway), playground equipment, satellite dishes, or similar devices shall only be located in the backyard. The Developer shall have absolute discretion to decide what is a front or side yard, and to approve or disapprove of any recreational lighting or swimming pool, where it is to be located, shaded, and of such intensity so as not to become a visual nuisance to any adjoining or nearby Owner.

3.18. No gas, oil, or fuel tank shall be permitted on any Lot without the approval of the Developer.

3.19. No Lot in the Subdivision may be further divided except upon the express written approval of the Developer.

ARTICLE IV

Architectural Controls

4.1. Except for Improvements constructed by Developer, no Improvement, whether original or replacement, temporary or permanent, shall be constructed, placed or permitted on any Lot without the prior written approval of Developer obtained in the manner hereinafter set forth. Approvals or denials under this Article IV may be withheld in Developer's sole and absolute discretion.

4.2. In order to secure Developer's approval of any proposed Improvement or Improvements, the Owner shall submit to Developer a complete set of 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 other information Developer 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. Note: all mailboxes throughout the Subdivision shall be uniform in size, shape and color as determined by the Developer;

(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 and that will need to be removed during the construction process. Owner of Lots 7, 8, 9, 10, 11, 12 and 25 shall also provide a soil analysis to ensure that a proper foundation is installed during construction.

All of the foregoing (hereinafter collectively referred to as the "Plans and Specifications") shall conform to the applicable provisions of this Declaration.

4.3. (a) Within thirty (30) days following the recordation of this Second Amendment, the Developer shall name three (3) residents of the Subdivision to consult with the Developer in reviewing Plans and Specifications submitted to the Developer pursuant to Section 4.2. Such residents shall not be an owner of Developer nor an immediate family member of any such owner. (Such residents shall hereinafter be the "Advisory Committee"). Each member of the Advisory Committee shall serve for a one (1) year term or until their successor has been appointed by the Developer; provided that any member shall cease to be a member of the

Advisory Committee, if they cease to reside in the Subdivision; and provided, further, that any member may resign from the Advisory Committee, at any time, by giving the Developer a minimum of five (5) days written notice. Should a member of the Advisory Committee move, resign, or otherwise be unable or unwilling to act, the Developer shall appoint another resident of the Subdivision to serve on the Advisory Committee. Should there be less than three (3) residents of the Subdivision qualified and willing to serve on the Advisory Committee, the Committee shall be reduced to the number of qualified residents who are willing and able to serve.

(b) Within two (2) business days of receiving Plans and Specifications submitted in accordance with Section 4.2, the Developer shall call a meeting of the Advisory Committee to review such Plans and Specifications. Such meeting shall be held on a weekend or evening, or at a time otherwise mutually agreed by the Developer and the members of the Advisory Committee, upon no less than forty-eight (48) hours' notice; provided that such meeting shall occur no later than ten (10) days after Developer's receipt of the Plans and Specifications.

(c) At such meeting, the Advisory Committee shall review the Plans and Specifications, and advise the Developer of any specific details in which the members believe the Plans and Specifications fail to conform to the Declaration as amended from time to time. Such advice shall be fully considered by the Developer in either approving or rejecting the Plans and Specifications as submitted; but the final determination to approve or reject any such Plans shall be made by the Developer.

(d) Within fifteen (15) days after Developer's receipt of the Plans and Specifications, Developer shall notify Owner in writing whether such Plans and Specifications are approved or disapproved. Any such disapproval shall set forth the reason or reasons for such disapproval and shall list the changes required by the Developer. If Developer fails to so approve or disapprove the Plans and Specifications within said fifteen (15) day period, then Developer's approval shall be conclusively presumed.

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

4.5. The Owner shall secure the approval of Developer 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. Neither Developer, nor any of its agents, attorneys, shareholders, employees, licensees, successors and 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.

4.7. The provisions of Article IV of this Declaration shall not apply to any Improvements installed or completed by the Developer or any affiliate or subsidiary of or other entity controlled by or in common control with the Developer.

4.8. Notwithstanding anything in this Article IV to the contrary, each Owner shall be required to install the landscaping as approved under this Article IV no later than ninety (90) days after the Owner receives an occupancy permit for the Dwelling in an amount of at least TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00). In the event the Owner does not perform the landscaping according to the Plans and Specifications, the Home Association may accomplish same.

4.9. If required by the Developer, each builder shall acknowledge the provisions of this Article IV. Each builder or Owner shall be required during the construction process to install adequate siltation control measures and drainage control measures on each Lot so that no debris, dirt, or flooding occurs to any other Lot or Common Area in the Subdivision, including

without limitation, mud on the streets or sidewalks. All excess soil or other construction materials shall be removed immediately after the Dwelling is Substantially Complete. In addition, each builder and Owner is required to repair any damage to any of the improvements within the Subdivision such as to sidewalks, public streets or rights of way and landscaping.

Construction may only be permitted Monday through Friday during the hours of 7:00 a.m. to 6:00 p.m. All workers must vacate the Subdivision after this time except in the event of an emergency. Each Owner must ensure that its Lot is kept in a neat and orderly manner during the construction of the Improvements. In the event any builder or Owner fails to comply with same that builder or Owner shall be in default and the Developer may pursue all remedies at law or equity under the remedies Section, which are specifically enumerated in this Declaration, it being understood that all remedies are cumulative.

4.10. The Plans and Specifications shall contain the following requirements:

(a) The minimum living area of the main structure erected on any Lot shall be no less than 2,150 square feet in a one-story structure, 2,450 square feet in a one and one-half story structure, and 2,700 square feet in a two-story or two and one-half 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 outside walls of all Dwellings erected or placed on any Lot shall be constructed of at least fifty percent (50%) brick, stone, stucco or Drainable Exterior Insulation Finishing System ("D.E.I.F.S."). Lots 1-4, 18-25, 27-36, 42, 43 and 45-47 must have twenty percent (20%) brick, stone, stucco or D.E.I.F.S. on the rear of the Dwelling and contain at least sixty percent (60%) brick, stone, stucco or D.E.I.F.S., in the aggregate, on the outside walls. Use of aluminum siding, vinyl siding, PVC siding, Masonite and/or Z-Brick[®] will not be permitted. When computing exterior surface area, windows and doors are excluded.

(c) All footings shall be pierced and rodded. Basement walls shall be rodded under and over windows when possible with 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 and D.E.I.F.S.;

(d) Shingles shall be asphalt, architectural shingles or a better quality. Roof pitch must be at least 8 vertical to 12 horizontal pitch 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;

(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), and shall have a side entrance. Garages shall be attached to the Dwelling structures;

(f) All outside air conditioning equipment, any exterior equipment, refuse storage, pool equipment, etc. shall be screened from front roadway view by either evergreen planting or screening walls or fences. Any private water hydrants must be hidden from public view with landscaping. All birdhouses mounted on poles or any other structure mounted on a pole or post over six feet above the ground must be approved by the Developer. Any wells designed for a geo-thermal heating and cooling must be approved by the Developer, including location and type of cover;

(g) 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;

(h) All vent piping that exits on a roof area is to be located on the rear of the roof. Prefab fireplace inserts are required to be encased with a chimney enclosure of masonry, stucco or D.E.I.F.S. and supported by a foundation at grade when located on an exterior wall. All chimneys located on the front or sides of any Dwelling shall be made of brick, stone, stucco, D.E.I.F.S. or cultured stone;

(i) Each Dwelling shall have a driveway and parking area, exclusive of the garage, paved with concrete, concrete pavers, brick, stone, or asphalt large enough to permit

parking thereon for at least four full-sized automobiles. The Developer must approve the driveway location. Street parking is only for temporary and visitor parking directly in front of Owner's Lot. 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. No trucks, trailers, or commercial vehicles will be allowed to stand upon any Lot, other than service vehicles making deliveries and pick up trucks. No campers, trucks (other than pick up trucks), 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. No other car or other vehicle that leaks oil or other materials shall be parked on the street or on the Common Area.

(j) 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 25 feet from the rear Lot line. On Lake Lots, no Dwelling shall be located nearer than twenty-five (25) feet from the shoreline as indicated on the Subdivision Plat. 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 on a Lot to encroach upon another Lot.

(k) All exterior lighting, including but not limited to directional lighting, shall be so located, shaded and of such intensity so as not to become a visual nuisance to any adjoining or nearby Lot Owner. Dusk to dawn lights are not permitted. Mailboxes must be of cast iron approved by the Developer and purchased from the Homeowner Association at cost, the location of which is approved by the Developer. Only house numbers are permitted on mailboxes. Upkeep of the mailbox is the responsibility of the Owner.

(l) The development concept of Tall Timbers emphasizes preserving the natural beauty and aesthetics of the land. Therefore, all fences, walls or other dividing elements must be approved by the Developer as to design and location. In the event that an in-ground pool is constructed by the Owner on a Lot, a wrought-iron fence or aluminum wrought-iron type fence, subject to approval by the Developer, is permitted around the pool and/or decking.

(m) Generally, no fence shall be allowed and no chain link fences shall be permitted. But if allowed, fences of wood, decorative vinyl or wrought iron may not exceed six (6) feet in height and the detail of the Fence must be shown on the Plans and Specifications. All fences shall require the express written approval of Developer.

(n) All outbuildings, to the extent allowed, shall only be considered for an Owner of a Lot, which contains five (5) acres or more, and be subject to approval of the Developer and/or the Architectural Control Committee in their or its sole and absolute discretion. In the event a qualified Owner desires an outbuilding, the Owner must submit Plans and Specifications for same as provided in this Article IV.

ARTICLE V

Homeowner's Association

5.1. The Developer has formed an Illinois not-for-profit corporation, which is known as the Tall Timbers Homeowner's Association that shall provide for maintenance and operation of the Common Areas and other enforcement provisions of this Declaration as provided herein.

5.2.

(a) The Association shall have a Board of not less than three (3) directors who shall be elected by the Developer until the Turnover Date (hereafter defined) then thereafter by the Members of the Association at such intervals as the articles of incorporation and By-Laws (a substantial copy of which is attached hereto as Exhibit "E" and made part hereof). The Association shall provide (i) that vacancies on the Board occurring between regularly scheduled meetings of the Members may be filled by the Board if so provided by the articles of incorporation or By-Laws and (ii) that the first Board and subsequent Boards (until the Turnover Date) shall be appointed by the Developer in Developer's sole and absolute discretion. Except for directors of the Board appointed by the Developer, all directors shall be Members of the Association. The Developer may, from time to time, by written notice to the Association, elect to relinquish its right to appoint any one or more directors and continue to exercise its right to appoint the remaining directors of the Board until the Turnover Date.

(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. The Association shall also have such committees, including the Lake Committee, which

shall comprise of six (6) members of the Lake Lot Owners, who shall be chosen by the Board, but three (3) members must be chosen from the Timber Lake Lot Owners and three (3) members must be chosen from the Pine Lake Lot Owners. Except as expressly provided otherwise by the articles of incorporation or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in the Board from time to time and its officers under the direction of the Board, and shall not be subject to the approval of the Members. The directors and officers of the Association shall not be liable to the Owners, Members or any others for any mistake of judgment or any acts or omissions made in good faith as such directors or officers.

5.3. The Developer shall, through the Board appointed by it in accordance with Section 5.2, exercise control over all Association matters, until the first to occur of the following: (a) the date which is twenty (20) years from the date of this Declaration, (b) the date of the sale and conveyance of legal title to all of the Lots to Owners other than Developer or an assignee of Developer, or (c) the date Developer elects voluntarily to turn over to the Association the authority to appoint the Board, which election shall be made by directing the Developer to execute and record in the Office of the Recorder of Deeds of St. Clair County, Illinois an instrument setting forth its intention to so turn over its authority hereunder. The date upon which the authority to appoint the Board passes to the Association is hereinafter referred to as the "Turnover Date." On or prior to the Turnover Date, the Developer shall convey to the Association and the Association shall accept, the Common Area to be owned by the Association hereunder and the Association shall maintain the Common Area, as required hereunder. In addition, on or prior to the Turnover Date, to the extent necessary, the Developer shall assign to the Association the Municipal Documents and the Association shall acknowledge the Association's responsibility to enforce the term of those documents as required thereunder.

5.4.

(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. Nothing herein contained shall be interpreted to exclude Developer from membership while it or any of its successors in interest owns one or more Lots.

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(b) From and after the Turnover Date, 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. The Association, through the Board, shall have the power and duty to:

(a) Own, maintain and otherwise manage the Common Area and all improvements thereon and all other 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, provided that any contract with a person or firm appointed as a manager or managing agent by Developer shall give the Association the right to terminate without cause or penalty not later than ninety (90) days after the date the initial meeting of the Members of the Association is held as provided in the By-Laws;

(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) At its option, mow, care for, maintain and remove rubbish from any vacant or unimproved portions of the Property or Lot and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or unimproved portions of the Property or Lot neat in appearance and in good order. The foregoing rights shall not apply to any Lot or other portion of the Property owned by Developer;

(e) 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 the Subdivision a highly desirable Single-Family

residential community; and

(f) 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.

(g) Monitor the maintenance of the Lakes and the dam of all Lake Lot Owners.

5.6. Pine Lake and Timber Lake and their respective Dams ("Dam") must be maintained by the Lake Lot Owners and inspected on a periodic basis and in the event of non-compliance, in addition to any other remedy provided herein, the Association has the right to enforce the obligation of the Lake Lot Owners to maintain the Lakes and the Dam.

5.7. The Board shall also have the authority and responsibility to obtain and maintain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workers' compensation insurance, and other liability insurance as it may deem desirable, insuring the Association, its officers, the Board, the Developer, and their respective employees and agents from liability and insuring the officers of the Association and the Board from liability for any good faith actions taken beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties by having a severability of 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 and responsibility to obtain and maintain insurance policies covering the Common Area against loss or damage by fire and such other hazards contained in customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable. The Association shall also have the authority to obtain such other kinds of insurance as the Association shall from time to time deem prudent.

5.8. 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 Article V.** 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.

5.9 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation administered by the United States Arbitration & Mediation in St. Louis, Missouri ("USA&M") under its Commercial Mediation Rules, before resorting to arbitration. Thereafter, the Association may if it elects to do so, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration administered by the USA&M in accordance with its Commercial Arbitration Rules, and judgment upon the Award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Under no circumstance shall the arbitrator award punitive, consequential, incidental or any other damages (except actual) against the Association and all fees, including without limitation reasonable attorneys' fees, incurred by the Association to the USA&M shall be paid by the Owner.

5.10.

(a) Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to exercise all power and authority of the Board.

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(b) Until the Turnover Date, Developer shall have the right, but not the obligation, to maintain the Common Area and all signs and monuments located thereon and, in its sole discretion, pay all expenses and costs arising 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. Developer shall convey the Common Area via quit claim deed to the Association on or before the Turnover Date.

(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 and invitees, to utilize the 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 sales offices and model homes as required to conduct its sales and marketing of the Property as Developer determines in its sole and absolute discretion.

ARTICLE VI

ASSESSMENTS

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

6.2. 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, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area. Such uses shall include, without limitation, the cost of all general real estate taxes, insurance, repair, replacement and maintenance and other charges required or permitted by this Declaration and the cost of those items that the Board shall determine to be necessary or desirable to meet the purposes of the Association, including without limitation the establishment and maintenance of a Contingency and Replacement Reserve and further including the prorata share of the Adjacent Owners to provide for the maintenance of Pine Lake. The annual assessments provided for herein shall commence for each Lot on the first day of the month following delivery of a Deed to an Owner.

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6.3. Each year on or before November 1, the Board will estimate the total amount of maintenance expenses necessary to pay the cost of wages, materials, taxes, insurance, services, supplies and any other necessary or desirable items which will be required during the ensuing calendar year (January 1 □ December 31) for services authorized by the Board, and shall, on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line □ item basis. The Estimated Cash Requirement shall be assessed equally among all of the Owners excluding the Developer. On or before January 1 of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 6.3. 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 at any time furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment or nonpayment of any assessment thereon.

6.4. The Board may, at any time, levy a special assessment, which shall be assessed equally among the Owners, excluding the Developer. 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. When the first Board elected by the Members hereunder takes office, it shall determine the Estimated Cash Requirement for the period commencing on the first day of the month following the Turnover Date and ending on December 31 of the calendar year in which the Turnover Date occurs. The initial Estimated Cash Requirement shall be assessed equally

among the Owners, excluding the Developer.

6.6. 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.

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6.7. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Common Area, the Municipal Documents specifying and itemizing the maintenance and repair expenses of the Common Area, the Municipal Documents and any other expenses so incurred. 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) 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.

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

6.9. 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 assessment shall bear interest from and after the due date 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 (which the Board may record a memorandum of lien if it so desires) 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 of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at 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.

6.10. In addition to the rights and remedies set forth in Section 6.9, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Dwelling from any defaulting Owner, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the circumstances and, in addition, to exercise any other rights or remedies provided in the Forcible Entry and Detainer Act of the State of Illinois.

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

6.12. The Association shall have the right to separately assess the Lake Lot Owners for maintenance of the Lake Lots for purposes set forth in this Article VI, in addition to the other powers granted herein and all provisions of this Article VI shall apply to the Lake Lot Owners as if they were defined as an "Owner" for assessment purposes under Section 6.1 through 6.11, inclusive.

6.13. The Association shall have the right to separately assess Lot Owners 1 through

24, inclusive, for maintenance of the Low Pressure Sewer System Agreement as required by that agreement, pursuant to Section 6.1 through 6.11 inclusive.

ARTICLE VII

Easements

7.1 All easements as shown on the Subdivision Plat shall be and the same are hereby set aside and reserved for the wires, pipes, water meters, gas meters, and sewer drainage (storm and sanitary) and other subdivision essentials and facilities which either benefit the Developer, the County, the Municipality or any other governmental entity, which has control over the Subdivision. In addition, the Developer hereby reserves to itself and its successors and/or assigns, all easements shown on the Subdivision Plat to locate and install Subdivision essentials and facilities, including without limitation, the fence that runs along the perimeter of the Subdivision, the monument signs in the front of the entrance median strip, and other signs, which in the opinion of the Developer benefit the Subdivision.

7.2 All utilities wires, pipes, and lines including telephone, electric, gas, and water shall be buried underground (except to the extent that emergency and construction standards require otherwise), unless otherwise approved by the Developer.

7.3 No building, structure or Improvement nor any part thereof, retaining wall, walk, driveway or other interfering obstruction 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 Developer and the utility companies, which may be using said easement for their facilities, underground cables, or pipes, etc., except that a driveway may be constructed across any easement adjacent to any street within the Subdivision.

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7.4 It is expressly declared and provided, however, that Developer reserves and retains, so long as Developer remains the Owner of any one or more Lots within the Property, the right, title and privilege to enter upon any Owner's Lot for purposes of performing any required maintenance or to enforce any of the covenants contained herein, including without limitation, maintenance of the Dams as stated in Article IX, eliminate any one or more of the easements, or any part or 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 Developer, during said period of time, shall have the right to designate additional easements, other than those platted, to adequately serve any Lot in the Property or the Subdivision, as Developer deems best or desirable, as described by Developer in its sole and absolute discretion, including without limiting the rights, title and easement to go on to each Lot to perform any landscaping 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 Developer of any appropriate instrument thereto, which shall be duly acknowledged and recorded in the Recorder's Office of St. Clair County, Illinois.

7.5 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 matters. 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 The easements created by and on the Subdivision Plat are for the benefit of the Lots within the Subdivision and not the general public. Developer reserves the right to prohibit access or use of any easement by adjacent owners or owners of property lying nearby or across any roadway. No utility shall be extended to any adjacent Lot nearby or across any road in the Subdivision without the express written consent of Developer.

ARTICLE VIII

General Provisions

8.1. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Developer and after the Turnover Date, the

Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this 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. 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 covenant shall continue and endure for as long as the law shall allow.

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8.3. If at any time or times the Developer or the Association shall deem it necessary or advisable to rerecord this 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. Each grantee of Developer by taking title to a 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, easement, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, or in any mortgage or trust deed or other evidence of obligation, and the rights described in this Section 8.4 or described in any other part of this Declaration shall be sufficient to create and reserve such rights to the respective grantees, mortgagees and trustees of such Lot as fully and completely as though such rights were recited fully and set forth in their entirety in any such documents. In addition, each grantee in any deed or any other conveyance shall be deemed to include the following language:

"This conveyance is made subject to the Declaration of Covenants, Conditions, Restrictions and Easements of Tall Timbers recorded in Book _____ on Page _____ as Document # _____ ("Declaration") in the Recorder's Office of St. Clair County, Illinois, together with the Municipal Documents attached to the Declaration as Exhibits.

8.5. Developer and the Association from time to time shall have the right jointly and separately to sue for and obtain a prohibitive or mandatory injunction to prevent the breach of, or to enforce the observance of, the covenants and obligations above set forth, or any of them, in addition to the right to bring a legal action for damages. 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 Declaration herein set forth, or any of them, for a period of thirty (30) days after delivery of written notice thereof (in the manner provided in Section 8.13 hereof from Developer or the Association to the Owner of any such Lot, then Developer or 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 Developer or 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 Declaration to the contrary, the Owner shall not have the right to seek a prohibitive or mandatory injunction or to obtain damages from the Developer or the Association but only to obtain declaratory relief with respect to any disagreement over interpretation of the Declaration, which must be resolved by the dispute resolution procedures as stated in Section 5.9 of this Declaration, and the Owners shall not be able to collect any attorneys' fees or costs with respect to any action brought against the Developer or the Association as stated herein AND HEREBY WAIVES THE RIGHT TO TRIAL BY JURY.

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8.6. Developer and the Association hereby reserves the right and power to record a special amendment (hereinafter the "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 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 Declaration or any Exhibit hereto or any supplement or amendment thereto, or (iv) to amend, modify, change in whole or in part by the Developer in order to, among other things, correct deficiencies of this Declaration as determined to exist by the Developer, and to give effect 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 Developer 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 Developer to vote in favor of, make, execute and record Special Amendments. Subject to the provisions of Section 8.11 hereof, the right of the Developer to act pursuant to rights reserved or granted under this Section shall terminate at such time as the Developer no longer holds title to any Lot.

8.7. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development for the Property. Under no circumstance shall the provisions of this Declaration be construed or otherwise interpreted against the Developer.

8.8. 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 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.

8.9. 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.

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

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8.11. Notwithstanding anything herein to the contrary, the Developer hereby reserves the right to transfer, assign, mortgage or pledge any and all of either's 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 St. Clair County, Illinois. Upon such assignment, Developer shall be relieved from any and all 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 the Developer shall have or incur any liability for the obligations or acts of any predecessor in interest.

8.12. Developer may, at its sole discretion, from time to time, elect to bring within the scheme of this Declaration certain portions of additional property. Developer is not obligated in any manner by this Declaration to annex said additional property to the Property or to annex any particular tract, or to annex tracts in any particular sequence, or to annex contiguous tracts, it being the intention hereof that Developer may decline to exercise the rights granted in this Section 8.12 or may elect to exercise such rights only to a limited extent. The additions authorized by the following and succeeding provisions of this Section 8.12 shall be made by recording in the Office of the Recorder of Deeds for St. Clair County, Illinois, a Supplementary Declaration with respect to any such additional property, or portion thereof, which shall extend the scheme of this Declaration to the property to be annexed (hereinafter referred to as the "Annexed Property"). Such Supplementary Declaration may contain such complementary

additions and modifications of the covenants and restrictions contained in this Declaration as are not unreasonably inconsistent with the scheme of this Declaration. At such time as the Developer causes the recording of such Supplementary Declaration or Declarations, then in such event: (a) Developer shall have and enjoy in such Annexed Property all easements and exercise all rights, privileges and immunities reserved to them or either of them in this Declaration in the same manner and with the same force and effect as though the term Property as used in this Declaration included such Annexed Property; and (b) in all other respects, all the provisions of this Declaration shall include and apply to such Annexed Property in the same manner and with the same force and effect as though such Annexed Property had been subject to the provisions of this Declaration.

8.13. 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 Developer, or the Lot address if no address is on file, shall be sufficient and proper notice to such Owner and shall be deemed delivered on the third (3rd) day after deposit in the United States mails.

ARTICLE IX

Use of Lake/Lake Lots

9.1 The Lake Lots are also subject to the following restrictions:

(a) Only Lake Lot Owners and their respective guests and invitees may use the Lake to which that Owner's Lot touches or concerns. Adjacent Owners may only use Pine Lake. The use of Pine Lake by the Adjacent Owners and their guests and invitees, is strictly forbidden and restricted only to Outlot B, and which use is subject to rules and regulations as established by the Association, which at a minimum shall establish for use of Outlot B by the Adjacent Owners, as follows:

(i) rules and regulations concerning the times and days the Adjacent Owners may use Pine Lake;

(ii) that no boats of any kind or other recreational equipment shall be used on the Lake by any Adjacent Owners and that any Adjacent Owners may only use Outlot B for picnics and small social gatherings.

(iii) that no loud music shall be allowed;

(iv) that no obnoxious or loud activities or sport events such as touch football, badminton or other games, which are vocal in nature, be allowed;

(v) that no vehicle may be parked on Outlot B and that the access to Outlot B for all Adjacent Owners must be by pedestrian travel and that no Adjacent Owner may park any vehicle on the street that adjoins Outlot B while that Adjacent Owner is using Outlot B; and

(vi) that no camping, fires or overnight stays are allowed on Outlot B.

(vii) the Board shall establish additional more comprehensive rules as the Association and/or the Developer deems necessary for the orderly use of Outlot B by the Adjacent Owners.

(b) The Owner of any Lake Lot in the Subdivision, and said Owner's guests, when accompanied by the Owner, may use said Lake, but no Owner (or said Owner's guests) may access the Lake by traveling over another Owners' Lot, unless the consent of that Owner is obtained.

(c) The use of power-driven boats, except those powered by small electric trolling motors, is strictly prohibited.

(d) No Improvement, nor any part thereof may be erected or maintained in, on or above the Lake except as approved by the Developer. All requested Improvements must comply with Article IV of this Declaration.

(e) No commercial use shall be made of the Lake, including without limitation any "pay for lake" fishing.

(f) Water shall not be extracted from the Lake for any purpose except for emergency use in the fighting of fires.

(g) No Lake Lot Owners may store personal property and boats (and that of their guests) at the Lake in view of others. Outside storage along shoreline area is strictly prohibited.

(h) No wildlife (fish, ducks, etc.) and no chemical substances (for moss control, etc.) shall be introduced into the lake except as approved by the Developer.

(i) Sand beaches and landscaping (rip rap, etc.) or seawalls in the Lake area must be approved by the Developer.

(j) Subject to Article IV, Boat landings or docks will be permitted provided that said boat landing or dock does not exceed one hundred (100) square feet in surface and does not extend more than twelve (12) feet from the shoreline into the Lake and must be built on piers not floating. The boat landing or dock will not be more than three (3) feet above the normal water level of the Lake.

(k) No building or structure except a seawall of the boat landing or dock mentioned in paragraph (k) above may be erected or maintained on any Lake Lot.

(1) Maintenance of Dam:

(i) Up to five (5) years from the date of the recording of the Subdivision Plat for Tall Timbers or until the Turnover Date, whichever comes first ("Dam Maintenance Turnover Date"), the Developer will be responsible for the reasonable maintenance of the Dam as Developer deems necessary.

(ii) After the Dam Maintenance Turnover Date, reasonable costs incurred for the maintenance of the Lake and the Dam and shoreline, including insurance premiums and a reasonable reserves for future expenses, shall be borne by the Association.

(m) Each Lake Lot Owner shall properly maintain its Lot so that it shall always comply with the standards of the State of Illinois or with any other governmental agency, which has authority over the matter, including without limitation the Municipality with respect to erosion and/or siltation control for waterfront protection.

ARTICLE X

Termination of Original Declaration

10.1 The Original Declaration is hereby terminated in its entirety as such the Original Declaration shall have no further force or effect as this Declaration supersedes and replaces each and every covenant, agreement and restriction contained in the Original Declaration.

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

IN WITNESS WHEREOF, MSK Tall Timber, Inc. has caused its seal to be affixed hereunto and has caused its name to be signed to this Declaration by its President and attested to by its Secretary, as of the day and year first above written.

MSK TALL TIMBER, INC., an Illinois corporation

By:

[Balance of Page Intentionally Left Blank]

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

I, _____, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that MICHAEL J. KINSELLA, the President of MSK Tall Timber, Inc., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

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

Notary Public

THIS DOCUMENT WAS PREPARED BY:

Rand Juliano, P.C.
772 Wall Street
Suite A
O'Fallon, IL 62269
(618) 632-0200
□

MSK Tall Timber, Inc. – Revised Declaration of Covenants, Conditions, Restrictions and Easements Second Amendment February

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EXHIBIT "A"

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of TALL TIMBERS, being a subdivision of part of the East ¼ of the Southeast Quarter and the East 15 acres off of the Southwest Quarter of the Southeast Quarter of Section 5 and the West 24 feet of the Southwest Quarter of the Southwest Quarter of Section 4 all in Township 2 South, Range 8 West of the Third Principal meridian; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats 101 on Page 35 as Document No. A01656850.

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

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EXHIBIT "B"

(GATE AGREEMENT)

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EXHIBIT "C"

(LOW PRESSURE SEWER SYTEM AGREEMENT)

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EXHIBIT "D"

(COMMON GROUND AGREEMENT)

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EXHIBIT "E"

**BY LAWS OF
TALL TIMBERS HOMEOWNER'S ASSOCIATION,
an Illinois not-for-profit corporation**

ARTICLE I

Purposes and Powers

The Association shall be responsible for the general management and supervision of the Property and the ownership of the Common Area thereof and shall have all of the powers to perform, and shall be responsible to perform, all of the obligations provided in the Declaration. Further, the Association shall have all powers now or hereafter granted by the General Not-For-Profit Corporation Act of the State of Illinois which shall be consistent with the purposes specified herein and in the Declaration. Any defined terms used in these By-Laws shall have the same meaning as set forth in the Declaration, except as otherwise provided herein.

ARTICLE II

Offices

2.1. The Association shall have and continuously maintain in the State of Illinois a registered office and a registered agent whose office shall be identical with such registered office. The Association may have other offices within or without the State of Illinois as the Board of Directors may from time to time determine.

2.2. The principal office of the Association shall be maintained in St. Clair County, Illinois.

ARTICLE III

Membership

(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. Nothing herein contained shall be interpreted to exclude Developer from membership while it or any of its successors in interest owns one or more Lots.

(b) From and after the Turnover Date, each Member shall be entitled to one (1) vote for each Lot owned by him 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.

3.2.

(a) Meetings of the Members shall be held at the principal office of the Association or at such other place in St. Clair County, Illinois, as may be designated in any notice of a meeting. The presence at any meeting, in person or by proxy, of a majority of the total votes determined pursuant to Section 3.1 above shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Members at which a quorum is present upon the affirmative vote of the Members having a majority of the total votes present at such meeting. Any Member in writing may waive notice of a meeting, or consent to any action of the Association without a meeting.

(b) The initial meeting of the Members shall be held at such time as may be designated upon not less than ten (10) days' written notice given by the Developer, provided that such initial meeting shall be held no later than sixty (60) days after the Turnover Date. Thereafter, there shall be an annual meeting of the Members on the third Tuesday of November of each succeeding year, at 7:30 o'clock P.M. If the date for the annual meeting of Members is a legal holiday, the meeting will be held at the same hour on the first day next succeeding such date which is not a legal holiday.

(c) Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of the Declaration or these By-Laws, require the approval of all or some of the Members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board or by the Members 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.

3.3. Notices of meetings required to be given herein may be delivered either personally or by mail to the persons entitled to vote thereat, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the Lot address of the Owner with respect to which such voting right appertains, if no other address has been given to the Board.

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

ARTICLE IV

Board of Directors

4.1. The direction and administration of the Property in accordance with the provisions of the Declaration shall be vested in the Board consisting of five (5) persons who shall be elected in the manner hereinafter provided, except that until the Turnover Date the first and each subsequent Board shall be appointed by the Developer and shall only consist of three (3) persons. From and after the Turnover Date, the Members having at least two-thirds (2/3) of the total

votes may from time to time increase or decrease the number and term of the office of the Board members at any annual meeting, provided that such number shall not be less than five (5), and the terms of at least two-fifths (2/5) of the persons on the Board shall expire annually. Each member of the Board, with the exception of the Board members initially appointed by the Developer shall be an Owner; provided, however, that in the event an Owner is a corporation, limited liability company, partnership, trust or other legal entity other than a natural person or persons, then any director or officer of such corporation, members or manager of the limited liability company, partner of such partnership, individual trustee or beneficiary of such trust or agent or employee of a beneficiary of such trust, or manager of such legal entity, shall be eligible to serve as a member of the Board.

4.2. Except as otherwise provided in this Declaration, all matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of the Declaration or these By-Laws shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

4.3. At the initial meeting of the Members as provided in Section 3.2(b) hereof, and at all subsequent annual meetings of the Members there shall be elected members of the Board. In all elections for members of the Board, each Member shall be entitled to vote on a cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. After the Turnover Date, Five (5) Board members shall be elected at the initial meeting and shall serve until the first annual meeting. The three (3) 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 two (2) persons receiving the next highest number of votes at the first annual meeting shall be elected to the Board for a term of one (1) year. In the event of tie votes, 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 terms. 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. Notwithstanding the aforesaid election procedure until the Turnover Date, the Developer may appoint a Board which shall have the same powers and authority as given to the Board generally, as provided hereinafter, and such appointed Board shall function until such time as the initial meeting of the Members is held.

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

4.5. Vacancies in the Board, other than as a result of removal pursuant to Paragraph 4.7, including vacancies due to any increase in the number of persons on the Board, shall be filled by majority vote of the remaining members of the Board or of the Members present at the next annual meeting or at a special meeting of the Members called for such purpose.

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

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

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

any action may be taken by the Board upon the affirmative vote of those present at its meetings when a quorum is present.

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

ARTICLE V

Powers of the Board

5.1. Without limiting the general powers which may be provided by law, the Declaration or these By-Laws, the Board shall have the power and duty to:

(a) Own, maintain and otherwise manage the Common Area and all improvements thereon and 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-sacs and median strips which are within the Property and to maintain any signage and lighting located thereon, if necessary;

(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 by Developer shall give the Association the right to terminate without cause or penalty not later than ninety (90) days after the date the initial meeting of the Members of the Association is held as provided in these By-Laws;

(c) Maintain, at the expense of the defaulting Owner, all drainage areas, lakes 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) At its option, mow, care for, maintain and remove rubbish from any vacant or unimproved portions of the Property and to do any other things necessary or desirable in the judgment of the Board to keep any vacant or 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 Developer;

(e) 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 these By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable residential community; and

(f) Exercise all other powers and duties vested in or delegated to the Association, and not specifically reserved to the Members by the Declaration, the articles of incorporation or these By-Laws.

5.2. 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 maintenance fund.

5.3.

(a) The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Common Area and the maintenance of the Lakes.

(b) The Board may engage the initial management organization under contracts expiring not later than ninety (90) days after the date the initial meeting of Members is held. Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board.

(c) Nothing hereinabove contained shall be construed to give the Board authority

to conduct an active business for profit on behalf of all of the Owners or any of them.

5.4. The members of the Board and the officers of the Association shall not be personally liable to the Owners or others for any mistake of judgment or for any acts or omissions made in good faith by such officers or Board members.

ARTICLE VI

Assessments Maintenance Fund

6.1. Each year on or before November 1, the Board will estimate the total amount of maintenance expenses necessary to pay the cost of wages, materials, taxes, insurance, services, supplies and any other necessary or desirable items which will be required during the ensuing calendar year (January 1 to December 31) for services authorized by the Board (including any requirements for the maintenance of the Lake by the Lake Lot Committee), and shall, on or before December 1, notify each Owner in writing of the amount of such estimate ("Estimated Cash Requirement"). Such Estimated Cash Requirement shall be prepared on a line-item basis. The Estimated Cash Requirement shall be assessed equally among all of the Owners, excluding the Developer. On or before January 1 of the ensuing fiscal year, each Owner shall be obligated to pay to the Board, or as it may direct, the annual assessment made pursuant to this Section 6.1. 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 at any time, furnish a certificate in writing signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment or nonpayment of any assessment thereon.

6.2.

(a) The Board may, at any time, levy a special assessment, which shall be assessed equally among the Owners, excluding the Developer. 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.

6.3. When the first Board elected by the Members hereunder takes office, it shall determine the Estimated Cash Requirement for the period commencing on the first day of the month following the Turnover Date and ending on December 31 of the calendar year in which the Turnover Date occurs. The initial Estimated Cash Requirement shall be assessed equally among the Owners, excluding the Developer.

6.4. 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.

6.5. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures pertaining to the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses so incurred. 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) 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.

6.6. 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.

6.7. 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 assessment shall bear interest from and after the due date 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 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 and may include the collection of reasonable attorneys' fees and costs. The directors of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey any interest so acquired. To the fullest extent permitted by law, any court shall be authorized to restrain the defaulting Owner from reacquiring his interest at such foreclosure sale.

6.8. In addition to the rights and remedies set forth in Section 6.7 of these By-Laws, if any Owner shall default in the payment, when same shall be due, of the aforesaid charges or assessments and said default shall continue for thirty (30) days after written notice to said Owner by the Board, of the amount of unpaid charges or assessments and a demand for payment thereof, the Board shall have the right to declare said default a forcible detainer of the Dwelling and shall have the right, on behalf of the other Owners, to enter and take possession of the Dwelling from any defaulting Owner, to put out said Owner, or any occupant or tenant claiming by, through or under said Owner, using such reasonable force as the Board shall deem necessary under the circumstances and, in addition, to exercise any other rights or remedies provided in the Forcible Entry and Detainer Act of the State of Illinois.

ARTICLE VII

~~Covenants and Restrictions as to Use and Occupancy~~

All Owners shall maintain, occupy and use their Dwelling only in accordance with the terms of the Declaration and any additional rules and regulations adopted by the Board or by the Members. The Board shall have full authority to enforce all such rules and regulations by taking all action as may be necessary.

ARTICLE VIII

Committees

8.1. 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, including a Lake Committee, 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.

8.2. 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 Members of the Association, 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.

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

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

8.5. 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.

8.6. 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.

the uses and purposes therein set forth.

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

Notary Public

□

***MSK Tall Timber, Inc. – Revised Declaration of
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GATE AGREEMENT

THIS GATE AGREEMENT (“Agreement”) is made and entered into effective as of this _____ day of _____, 2002 by and among THE VILLAGE OF SMITHTON, ILLINOIS (the “Village”) and MSK TALL TIMBER, INC., an Illinois Corporation (“Developer”).

WITNESSETH

WHEREAS, Developer is developing within the boundary of the Village a residential subdivision known as Tall Timbers located adjacent to Knab Road (the “Subdivision”); and

WHEREAS, in conjunction therewith, the Developer intends to provide for a gated entrance to and from the Subdivision from Knab Road, and the Village has previously approved said gated entrance, subject to establishment of a written agreement regarding certain aspects, which shall be accomplished hereby, and Developer shall convey all interest in and to said gate to TALL TIMBERS HOME OWNERS ASSOCIATION, an Illinois not-for-profit corporation (“Association”) upon formation of the Association.

NOW THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. The Village consents to the construction, installation, operation, maintenance and repair of a gated entrance to and from the Subdivision from Knab Road subject to the following:

(a) Access to and egress from the Subdivision through said gates shall be accomplished with the use of an electronic access coded device. Said gates shall also be equipped with a manually operated mechanism that shall position and lock each gate in an open status if at any time or in any event said electronic access coded device should malfunction.

(b) The ingress gate allowing access to said subdivision shall remain open during daylight hours at all times. When closed, entry through the access gate into the Subdivision shall be limited to and by the use of said electronic access coded device unless said device should malfunction. The ingress gate shall also be equipped with a siren-operated sensor to allow emergency vehicle access at any time. The egress gate shall remain closed at all times, but will automatically open upon the approach of a vehicle with an electronic eye, pressure sensor or other electronic mechanism which shall be pre-approved by the Village.

(c) The gates shall, at all times hereafter, be fully maintained and kept in a constant state of good operational condition and repair at the sole cost and expense initially of the Developer and thereafter, the Association.

(d) Said gates shall be opened at any time necessary to accommodate a request to remove snow or accomplish repairs and maintenance to the streets or other municipal utilities or assets dedicated to the public use and benefit.

(e) It is specifically agreed and acknowledged that the Village shall never be responsible at any time for the maintenance, repair or replacement of said gates and that the Developer and the Association do both fully release and hold harmless the Village from and against any claim, demand, action or injury of any kind or nature, to the person or property of another relating directly or indirectly to the installation, maintenance, repair, replacement or operation of said gates. In the event of any such claim, demand, action or injury as aforesaid described, the Developer and/or the Association shall pay any and all legal fees or other costs and expenses of any kind or nature incurred by the Village, as well as any judgments rendered.

(f) In the event that at any time said gates are not kept in a state of proper repair and maintenance, the Developer and/or the Association shall, upon two (2) days notice by the Village, keep and retain said gates in an open position until and unless necessary maintenance and repair has been performed by the Developer and/or the Association to the satisfaction of the Village.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successive successors and assigns. Upon formation of the Association and installation of the gates, Developer shall assign this Agreement and all ongoing obligations to the Association, and the Association shall accept and agree to be bound thereby, in which case Developer shall have no further responsibility or liability hereunder except to the Village for matters or events occurring prior to such assignment. All deeds from Developer to the purchaser of a lot in the Subdivision shall contain the following language, "This conveyance is made subject to Covenants, Agreements and Restrictions of Tall Timbers Subdivision recorded in Book ___ on page ___ in the Recorder's Office of St. Clair County, Illinois and subject to a Gate Agreement recorded in Book ___ on page ___ in the Recorder's Office of St. Clair County, Illinois." It is intended that the provisions hereof shall be construed as covenants and not as conditions and that, to the fullest extent legally possible, all such covenants shall run with the land.

3. This Agreement shall be construed in accordance with the laws of the State of Illinois. This Agreement may be modified, amended or terminated only in writing and signed and agreed to by the parties hereto. If any provision of this Agreement or portion shall be determined to be unenforceable or invalid, the remainder of this Agreement, or the application of such provision or portion thereof to any other person or circumstances shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration of this Agreement, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

4. In consideration of the agreements of Developer herein, the Village agrees to accept dedication of and responsibility for the streets within the Subdivision, provided the streets within the Subdivision are constructed and installed pursuant to and in compliance with the terms and provisions of the applicable municipal ordinances and codes.

IN WITNESS WHEREOF, this Agreement has been executed and shall be binding upon the parties thereto as of the date and year first above written.

Village of Smithton

By: _____
Virgil Becker, its Mayor

MSK Tall Timbers, Inc.

By: _____
Michael J. Kinsella, its President

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

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Mayor of the Village of Smithton, personally appeared before me this date and acknowledged that he signed the foregoing as his free and voluntary act.

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public

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

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael J. Kinsella, President of Tall Timber, Inc., personally appeared before me this date and acknowledged that he signed the foregoing as his free and voluntary act.

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public

LOW PRESSURE SEWER SYSTEM AGREEMENT

THIS SEWER SYSTEM AGREEMENT ("Agreement") is made and entered into effective as of this _____ day of _____, 2001 by and among THE VILLAGE OF SMITHTON, ILLINOIS (the "Village") and MSK TALL TIMBER, INC., an Illinois Corporation ("Developer").

WITNESSETH

WHEREAS, Developer is developing within the boundary of the Village a residential subdivision known as Tall Timbers located adjacent to Knab Road (the "Subdivision"); and

WHEREAS, in conjunction therewith, the Developer intends to provide for a low pressure sewer system to service lots 1-24 of the Subdivision; and

WHEREAS, the Village has declared and the Developer has acknowledged that the Village does not presently and shall never in the future at any time or under any circumstances whatsoever, accept, acknowledge, assume or be responsible for construction, implementation, inspection, operation or maintenance of said Low Pressure Sewer System for lots 1-24 of the said Subdivision.

NOW THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Lots 1-24 of the Subdivision shall be serviced by a low-pressure sewer system.
2. The Developer shall provide the LPS pump unit to the homeowner and the homeowner shall be solely responsible for the installation of the pump unit.
3. Maintenance of the sewer pipe from the house to the collector pipe shall be the sole and individual responsibility of each individual homeowner.
4. Maintenance of the LPS pump unit shall be the sole responsibility of the Homeowners Association and/or individual homeowners. However, the first five years of maintenance of the pump unit shall be covered by maintenance contract obtained by the Developer.
5. The Homeowners Association and/or individual homeowners shall be responsible for the maintenance of the main collector line. The Homeowners Association may assess these lots for maintenance of the pump and collector line but must maintain a separate fund.

6. The Village does not presently and shall never in the future at any time or under any circumstances whatsoever, accept, assume, or be held responsible in any manner for the construction, implementation, inspection, operation, maintenance, repair or replacement of said Low Pressure Sewer System which shall service lots 1-24 of said Subdivision. Furthermore, the

Homeowners Association fully releases and holds harmless the Village from and against any claim, demand, action or injury of any kind or nature, to the person or property of any person, object or thing relating directly or indirectly to the construction, implementation, inspection, operation, maintenance, repair or replacement of the entire or any portion whatsoever of said Low Pressure Sewer System servicing lots 1-24 of the Subdivision. In the event of any such claim, demand, action, injury or damage which could, may or shall occur as aforesaid described, the Homeowners Association and/or individual property owners shall pay any and all legal fees or other costs and expenses of any kind or nature incurred by the Village, as well as any judgments rendered with respect thereto. This provision does not apply to any claims, causes of actions or demands resulting from negligence, gross negligence or intentional actions of any Village employee or agent.

7. After execution of this Agreement by the parties hereto, this Agreement shall be placed on record at the Recorder's Office of St. Clair County, Illinois.

8. The Village shall rebate unto the Homeowners Association the sum of \$250 for each tap-in fee paid for lots 1-24.

□

T. Benedick Ver. 12/28/01

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9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. This agreement and the covenants contained herein shall run with the land. The Developer shall cause a copy of this Agreement to be distributed to the Homeowners Association and each individual Subdivision homeowner and make the terms and the provisions herein and their legal effects a condition of the sale and binding upon any buyer or owner of said lots. A copy of this Agreement shall be filed by the Developer and shall appear in the chain of title for the sale of each lot and each Buyer shall be made explicitly aware of his obligations pursuant to the terms and provisions herein.

10. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and merges all prior negotiations and agreements. All amendments hereto must be in writing and signed by the parties sought to be charged with the same.

11. This Agreement may be executed by the parties in one or more counterparts, each of which, when fully executed, shall be deemed an original and all of which together shall constitute one and the same agreement.

12. Should either party default in any of its obligations under this Agreement, the other party shall be entitled to specific performance or damages, or both.

13. This Agreement shall be interpreted pursuant to the laws of the State of Illinois.

14. No party shall be deemed to have waived any right of remedy hereunder unless such waiver is in writing and signed by the party against whom the waiver is asserted. A waiver on any one occasion shall not be construed as a waiver with respect to any subsequent default of any provision of this Agreement, nor shall any delay or omission by either party to seek a remedy for any such default or to exercise a right hereunder be deemed a waiver by such party of such remedy or right.

15. If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and all other provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Agreement has been executed and shall be binding upon the parties thereto as of the date and year first above written.

Village of Smithson

By: _____
Virgil Becker, its Mayor

MSK Tall Timbers, Inc.

By: _____
Michael J. Kinsella, its President

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

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Virgil Becker , Mayor of the Village of Smithton, personally appeared before me this date and acknowledged that he signed the foregoing as his free and voluntary act.

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public

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

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael J. Kinsella, President of Tall Timber, Inc., personally appeared before me this date and acknowledged that he signed the foregoing as his free and voluntary act.

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public

COMMON GROUND AGREEMENT

THIS COMMON GROUND AGREEMENT ("Agreement") is made and entered into effective as of this _____ day of _____, 2001 by and among THE VILLAGE OF SMITHTON, ILLINOIS (the "Village") and MSK TALL TIMBERS, INC., an Illinois Corporation ("Developer").

WITNESSETH

WHEREAS, Developer is developing within the boundary of the Village a residential subdivision known as Tall Timbers located adjacent to Knab Road (the "Subdivision"); and

WHEREAS, the proposed development contains approximately 20 acres of what shall be known as common ground which shall not be dedicated to the Village or maintained by the

Village but shall be owned, maintained and used by Tall Timbers Homeowners Association for the benefit of the land owners within the Subdivision.

NOW THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. The 20 acres of common ground contained within the Subdivision shall neither be owned nor maintained by the Village. The Village assumes no obligation in any shape or form for the maintenance of the common ground.

2. Maintenance of the common ground shall be the sole responsibility of Tall Timbers Homeowners Association.

3. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and merges all prior negotiations and agreements. All amendments hereto must be in writing and signed by the parties sought to be charged with the same.

4. This Agreement may be executed by the parties in one or more counterparts, each of which, when fully executed, shall be deemed an original and all of which together shall constitute one and the same agreement.

5. Should either party default in any of its obligations under this Agreement, the other party shall be entitled to specific performance or damages, or both.

6. This Agreement shall be interpreted pursuant to the laws of the State of Illinois.

7. No party shall be deemed to have waived any right of remedy hereunder unless such waiver is in writing and signed by the party against whom the waiver is asserted. A waiver on any one occasion shall not be construed as a waiver with respect to any subsequent default of any provision of this Agreement, nor shall any delay or omission by either party to seek a remedy for any such default or to exercise a right hereunder be deemed a waiver by such party of such remedy or right.

8. If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and all other provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Agreement has been executed and shall be binding upon the parties thereto as of the date and year first above written.

Village of Smithson

By: _____
Virgil Becker, its Mayor

MSK Tall Timbers, Inc.

By: _____
Michael J. Kinsella, its President

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

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Mayor of the Village of Smithton, personally appeared before me this date and acknowledged that he signed the foregoing as his free and voluntary act.

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public

□ STATE OF ILLINOIS)
) ss.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael J. Kinsella, President of Tall Timber, Inc., personally appeared before me this date and acknowledged that he signed the foregoing as his free and voluntary act.

Subscribed and sworn to before me this _____ day of _____, 2001.

Notary Public

T. Benedick Ver. 12/28/01

