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*Mary Ann Samuel*  
RECORDER

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE RAIL ESTATES

Upon recording, please return to:

HYATT & STUBBLEFIELD, P.C.

Attorneys and Counselors

1200 Peachtree Center South Tower  
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Atlanta, Georgia 30303

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## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

### THE RAIL ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by First National Bank of Springfield ("First National"), not personally, but solely as trustee under the provisions of a trust agreement dated September 28, 1972, known as Land Trust No. 3130, ("Land Trust") as of the date set forth on the signature page hereof.

Land Trust is the owner of the real property described in Exhibit "A," which is attached and incorporated by reference. By this Declaration, First National, as trustee on behalf of Land Trust, imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, The Rail Estates Homeowners Association, Inc., has been formed as an Illinois not-for-profit corporation to own, operate and maintain the Common Area, as defined below, and to administer and enforce the provisions of this Declaration, the By-Laws, Design Guidelines and Use Restrictions and Rules (as further described in Article I) promulgated pursuant to this Declaration.

First National, as trustee on behalf of Land Trust, hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the Illinois Condominium Property Act, Ill. Rev. Stat. 1992 Ch. 30, §301, et seq.

#### **Article I** **DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

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1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of The Rail Estates Homeowners Association, Inc., as filed with the Secretary of State of the State of Illinois.

1.3. "Association": The Rail Estates Homeowners Association, Inc., an Illinois not-for-profit corporation, its successors or assigns.

1.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Illinois corporate law.

1.5. "By-Laws": The By-Laws of The Rail Estates Homeowners Association, Inc., attached as Exhibit "D," as they may be amended.

1.6. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.7. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

1.9. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Committee.

1.10. "Declarant": Brookdale Development Company, by assignment from First National, as trustee on behalf of Land Trust, an Illinois corporation, by assignment from First National, as trustee on behalf of Land Trust, or any successor, successor-in-title, or assign who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, there shall be only one Declarant at any time.

1.11. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article VIII.

1.12. "Final Plat": The "Final Plat-Rail Estates" prepared by Crawford, Murphy & Tilly, Inc., Consulting Engineers, dated approved on July 15, 1994, as it may be amended from time to time, which plan includes the property described on Exhibit "A."

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1.13. "General Assessment": Assessments levied on all Units subject to assessment under Article VII to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 7.1 and 7.2.

1.14. "Golf Course": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties which is privately owned by Persons other than the Association and which is operated as a golf course and which currently is known as The Rail Golf Course.

1.15. "Governing Documents": The Declaration, any Supplemental Declaration, the By-Laws, Articles of Incorporation, Design Guidelines, and the Use Restrictions and Rules, or any of the above, as each may be amended from time to time.

1.16. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

1.17. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.18. "Mortgagee": A beneficiary or holder of a Mortgage.

1.19. "Mortgagor": Any Person who gives a Mortgage.

1.20. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.21. "Person": A human being, a corporation, a partnership, a trustee, or any other legal entity.

1.22. "Properties": The real property described on Exhibit "A."

1.23. "Public Records": The Office of Recorder of Deeds of Sangamon County, Illinois, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.24. "Special Assessment": Assessments levied in accordance with Section 7.5.

1.25. "Specific Assessment": Assessments levied in accordance with Section 7.6.

1.26. "Supplemental Declaration": An instrument filed in the Public Records which imposes additional restrictions and obligations on the land described in such instrument.

1.27. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single



family. The term shall include within its meaning, by way of illustration but not limitation, the numbered Lots 2-17, inclusive, as shown on the Final Plat, together with the structures, if any, constructed thereon, but shall not include Common Areas, including but not limited to, Lot 1 as shown on the Final Plat, or property dedicated to the public.

1.28. "Use Restrictions and Rules": Those use restrictions and rules affecting the Properties, which may be adopted, modified and repealed as set forth in Article IX. The initial Use Restrictions and Rules are set forth on Exhibit "B."

**Article II**  
**PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board and the membership to adopt, amend and repeal rules pursuant to Article IX regulating the use and enjoyment of the Common Area;
- (d) the right of the Board to impose reasonable membership requirements, adopt a code of rules governing use of any structure or improvement on the Common Area, and charge reasonable admission or other use fees for the use of any recreational or social facilities situated upon the Common Area;
- (e) the right of the Board to permit use of the Common Area by persons other than Owners, their families, lessees and guests for no charge or upon payment of such use fees as the Board may establish;
- (f) the right of the Board to suspend the right of an Owner, his or her family, lessees, and social invitees to use the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents, and (iii) for a period not to exceed 30 days for conduct deemed, in the discretion of the Board, to be unacceptable or abusive, which causes damage to the Common Area, or which interferes with the ability of the Declarant to sell Units;
- (g) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and
- (h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

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Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Golf Course. Access to and use of the Golf Course is strictly subject to the rules and procedures of the owner of the Golf Course, and no Person gains any right to enter or to use the Golf Course by virtue of membership in the Association or ownership or occupancy of a Unit.

2.3. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.4. Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to written notice prior to disbursement of the condemnation award or proceeds of conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Class "B" membership exists, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

### **Article III** **MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article IX. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth

in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Illinois.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the By-Laws. All co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, partnership, trust or other entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except Land Trust and the Class "B" Member, if any.

Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Unit. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under the Governing Documents, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws. The Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

The Class "B" membership shall terminate upon the earlier of:

- (i) the termination of the Class "B" Control Period; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant and Land Trust shall be a Class "A" Members entitled to Class "A" votes for each Unit which they, singularly, or collectively own, if any.

**Article IV**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not be obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit "A," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Area. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or stop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as Land Trust owns any property described on Exhibit "A," the Declarant may designate sites within the Properties for public or quasi-public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Land Trust provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member, including members of the committees established under Article VIII, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Illinois law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available and affordable.

4.7. Dedication of Common Area. The Association may dedicate portions of the Common Area to the Village of Sherman or to Sangamon County, Illinois, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar

alarm system or other security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Utility Lines. Each Owner, occupant, guest, and invitee acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, the Board, nor Declarant shall be held liable for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each Owner, occupant, guest, and invitee assumes all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that neither Declarant nor the Association have made any representations or warranties, nor has any Owner, occupant, guest, or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

## **Article V MAINTENANCE**

### 5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all Common Area;

(ii) all perimeter fencing, street lighting and other common lighting located on or near the perimeter of the Properties, whether on the Common Area or on a Unit;

(iii) all landscaping, irrigation and structures situated upon the Common Area, including, without limitation, the landscaping and entry features located at the Sebring Road entrance to the Properties;

(iv) all landscaping, entry features and signage within or adjacent to public rights-of-way within or abutting the Properties; and

(v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, storm drainage facilities, and other property

dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) There are hereby reserved to the Association perpetual, non-exclusive easements over the Properties including the Units, as necessary to enable the Association to fulfill such responsibilities.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment. Notwithstanding the foregoing, the Board may, within its sole discretion, allocate the expense of maintenance, repair, and replacement which benefits one or more, but less than all Units, as a Specific Assessment in accordance with the benefit so received by such Units, pursuant to Section 7.6.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration or other covenants applicable to such Unit.

Owners shall not permit any structures, equipment or other items on the exterior portions of a Unit to become rusty, dilapidated or otherwise fall into disrepair. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 7.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Maintenance shall include the responsibility for repair and replacement as necessary. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

**Article VI**  
**INSURANCE AND CASUALTY LOSSES**

6.1. Association Insurance.

(a) Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect, if reasonably available and affordable and to the extent the Board deems reasonably necessary, blanket property insurance on any portions of the Area of Common Responsibility for which the Association has maintenance, repair and/or replacement responsibilities; commercial general liability insurance on the

Area of Common Responsibility, insuring the Association and its Members; directors and officers liability coverage; fidelity insurance covering Persons handling Association funds; and such additional insurance as the Board, in its best business judgment, determines advisable or is required by law. The Board shall annually review the types and amounts of insurance coverage and shall establish the requirements for such coverages. All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association. Association insurance premiums shall be a Common Expense.

In the event of an insured loss, the deductible, in such amount as established by the Board, shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 7.7.

(b) Policy Requirements. Association insurance shall not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually, and the Association's policies shall:

(i) contain an inflation guard endorsement; and

(ii) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, its agents, Members, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and



(vii) a provision vesting the Board with the authority to adjust losses.

(c) Damage and Destruction. In the event of a loss covered by Association insurance, the Board or its duly authorized agent shall file and adjust all insurance claims. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss, or such additional time deemed necessary by the Board, not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared and shall be maintained by the Association consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 7.6.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VIII. Alternatively, the Owner shall clear the Unit and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

**Article VII**  
**ASSESSMENTS**

7.1. Creation of and Obligation for Assessments.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for the Common Expenses of the Association. There shall be three types of assessments: (a) General Assessments as described in Section 7.2; (b) Special Assessments as described in Section 7.5; and (c) Specific Assessments as described in Section 7.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from the due date of such assessment at a rate of 18% per annum, or the maximum rate permitted by Illinois law if less than 18% per annum), late charges in such amount as the Board may establish by resolution (subject to the limitations of Illinois law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 7.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

The General Assessment shall be an annual assessment due and payable in monthly installments on the first day of each month; provided, the Board may by resolution permit payment by semi-annual or quarterly installments. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner shall be exempt from liability for assessments due to non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or

Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

7.2. Computation of General Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 7.4.

General Assessments shall be fixed at a uniform rate for all Units. Such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to partial or full assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least 30 days prior to the effective date of such budget. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if any. If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year, which revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If a budget is not adopted for any year, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year.

7.3. Declarant's Obligation for Assessments. During the period of Class "B" membership, Declarant or Land Trust shall not be obligated to pay assessments for any Unit owned. Declarant or Land Trust shall pay the difference, or "cover the shortfall," between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year; provided, however, Declarant or Land Trust shall not be obligated to cover any shortfall created by the non-payment by any Owner of any assessment.

The Declarant's or Land Trust's obligation hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials or by a combination of these.

7.4. Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.

7.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines, in its sole discretion, to more appropriately be handled outside of the regular operating budget. Except as provided in Section 6.1(c), any Special Assessment which would cause the amount of Special Assessments allocable to any Unit to exceed \$250.00 per Unit in any year may be disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering such a Special Assessment except on petition of the Members as required for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of Special Assessment.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units. Nothing in this Section 7.5 shall be construed as a limitation on the Board's power to revise the operating budget pursuant to Section 7.2 above.

The Special Assessments referred to hereunder are separate and apart from the special assessment bond issued by the Village of Sherman, Illinois, to finance the construction of all or part of the infrastructure for the Properties. The terms of such special assessment bond and the obligations created thereunder exist independent of this Declaration.

7.6. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the By-Laws, before levying any Specific Assessment under this subsection (b).

7.7. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Illinois law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Illinois law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 7.8, including such acquirer, its successors and assigns.

7.8. Date of Commencement of Assessments. Except as provided in Section 7.3, the obligation to pay assessments shall commence as to each Unit on the first day of the month following the earlier of: (a) the month in which the Unit is first conveyed to a Class "A" Member; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

7.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to

pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls.

7.10. Exempt Property. The following property shall be exempt from payment of assessments:

(a) All Common Area, including Lot 1 as shown on the Final Plat, and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Any Unit owned by Declarant or Land Trust for development and sale.

### **Article VIII** **ARCHITECTURAL STANDARDS**

8.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 8.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to the Declarant or Architectural Review Committee, as appropriate, in their sole discretion. All plans and specifications shall be subject to review as provided herein.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Class "B" membership exists.

8.2. Architectural Review. Until 100% of the Properties have been developed, conveyed to Class "A" Members and improved with a completed single-family residential dwelling, the Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for construction and modifications within the

Properties. There shall be no surrender of this authority prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such authority, the Board shall appoint an Architectural Review Committee ("ARC"), the members of which shall thereafter serve and may be removed in the Board's discretion. The ARC shall have no rights or authority until the Declarant's authority under this Article expires or is surrendered.

Notwithstanding the above, until the formation of the ARC, Declarant may delegate responsibility for review of applications for approval of modifications to improved Units to the Advisory Committee, the members of which shall be appointed and shall serve as set forth in the By-Laws. If so delegated, the Advisory Committee shall have jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The Declarant shall have the right to veto any action taken by the Advisory Committee which the Declarant determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the Declarant. (For purposes of this Article, "Reviewing Body" shall refer to either the Declarant, the Advisory Committee, or the ARC, as appropriate under the circumstances.)

The Declarant or, upon formation of the ARC, the Board, may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

### 8.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare Design Guidelines for the Properties and shall have sole and full authority to amend them as long as it owns any portion of the Properties. Thereafter, the ARC shall have the authority to amend the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as landscape plans and other specific provisions which vary from one portion of the Properties to another depending upon the location and unique characteristics. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Declarant or, upon its formation, the ARC, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines.

All structures and improvements constructed upon a Unit shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate committee, unless the Reviewing Body has granted a variance in writing pursuant to Section 8.6. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. No structure, building, fence, wall, road, driveway or any improvement or alteration of any nature shall be placed, constructed, erected or installed without written approval of the Reviewing Body as to size, location, materials, and harmony of exterior design with other structures. As a prerequisite to consideration for approval, and prior to beginning the contemplated work, two complete sets of building plans and specifications, including a plat plan showing the building location, must be submitted to the Reviewing Body. Upon giving approval, construction shall be completed in conformity with such plans. The Reviewing Body shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations. The Reviewing Body shall be entitled to stop construction in violation of these restrictions. Any member of the Reviewing Body or its agents or assigns shall have the right during reasonable hours to enter upon any Unit to inspect any improvements thereon for the purpose of ascertaining whether or not the Governing Documents have been or are being complied with, and if necessary, for the purpose of remedying and correcting any breach of the Governing Documents. Such person or persons shall not be deemed guilty of trespass by reason of such entry or by reason of remedying or correcting any such breach of these covenants. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as the Reviewing Bodies and their members change over time.

In the event that any application is not approved or disapproved in writing within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 8.6.

All site work shall be completed within 18 months of commencement or such shorter period as the Reviewing Body may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewing Body.

No Unit may be occupied for residential purposes until all construction of improvements and landscaping have been completed. Notwithstanding the above, the Reviewing Body or the Board, in their discretion, may permit occupancy prior to the completion of landscaping on a



Unit provided such landscaping shall be completed within 120 days of occupancy. If a Unit is occupied prior to the completion of landscaping, as a condition of such occupancy, the Owner shall deposit funds with the Board, to be held by the Board in escrow, in an amount sufficient to pay for the work required under the approved landscaping plans. In the event landscaping is not completed within 120 days of occupancy, the Board may enter the Unit and complete the required landscaping by use of the escrowed funds; provided, however, the Owner shall be obligated for the actual cost of landscaping, including such cost in excess of the amount held in escrow. Any unpaid amounts shall be the personal obligation of the Owner and a continuing lien against the Unit which may be enforced by the Association in accordance with Article VII.

8.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

8.5. Specific Design Requirements. In addition to such standards as may be set forth in the Design Guidelines, structures placed, erected or installed upon any portion of the Properties shall be in compliance with the following specific requirements:

(a) Minimum Dwelling Sizes

- (1) Any single story residential dwelling (i.e., ranch style) shall contain a minimum of 2,500 square feet of living space.
- (2) Any two story residential dwelling shall contain a minimum of 2,000 square feet of living space on the first floor and a minimum of 1,000 square feet of living space on the second floor.
- (3) Any three story residential dwelling shall contain a minimum of 3,000 square feet of living space on the first floor.
- (4) Any bi-level or tri-level residential dwelling shall contain a minimum of 2,600 square feet of "footprint" area for the living space of the dwelling. The "footprint" area shall refer to the outline of the structure as shown on a survey of the Unit.
- (5) Living space, as used in this Section, shall mean only those portions of a dwelling which are normally associated with living quarters and, by way of example and not limitation, shall not include walkout lower levels, porches, garages, or breezeways.

(b) Exterior Materials

- (1) No wood, vinyl or aluminum siding shall be permitted as the primary exterior siding material on any dwelling; provided, however, the Reviewing Body may permit the limited use of such materials where it would add to the architectural character of the dwelling.
- (2) Acceptable exterior siding materials shall include brick, stone, dryvit, or similar material, and other hard finish materials as may be approved by the Reviewing Body; provided, however, the use of any material on any dwelling shall be subject to the approval of the Reviewing Body as to the color, blend of materials, aesthetics and architectural character of such dwelling.
- (3) Acceptable materials for the exterior of chimneys shall include brick, stone, dryvit or such other hard finish materials as may be approved by the Reviewing Body. All chimneys must be a minimum of six feet in width and shall extend to a height of no less than three feet above the highest ridge of the roof of the dwelling. Chimney caps shall be subject to approval by the Reviewing Body as to style, material and color. Special attention shall be given to the detail of chimney caps to ensure a character of design which is consistent and compatible with other dwellings within the Properties.

(c) Roofing Materials

- (1) No asphalt or fiberglass roofing materials shall be permitted on any Unit.
- (2) The exterior surface of all roofs shall consist of cedar shake (full thick), tile, slate, or other materials approved by the Reviewing Body.
- (3) Each Owner acknowledges and understands that compatibility of design of dwellings is of primary concern within the Properties and, as such, the color and texture of roof materials shall be evaluated subject to such compatibility concerns.

(d) Setback Lines

No dwelling shall be placed, erected or installed upon any Unit within the area between the Unit boundary and the setback lines as set forth herein. For purposes of determining whether a dwelling falls within such area, porches, decks, wing-walls, balcony eaves, and

steps extended beyond an outside wall of a dwelling shall not be considered as part of the dwelling. However, this provision shall not be construed to authorize or permit any encroachment upon any other easement or right-of-way over the Unit.

The setback lines shall be 40 feet from the front boundary, or property line, of a Unit and 20 feet from any side or interior boundary, or property line, of a Unit.

The establishment of such setback lines is not intended to engender or promote a uniformity of setbacks, and the Reviewing Body may require that neighboring dwellings be staggered where appropriate. The setback lines defined herein or shown on the Final Plat may be altered by the Reviewing Body whenever, in its discretion, it determines that the topography, configuration or other circumstances of any Unit so require.

(e) Garages

- (1) Dwellings containing less than 3,000 square feet of living space shall have an attached garage with space provided for a minimum of two cars.
- (2) Dwellings containing between 3,001 and 3,999 square feet of living space shall have an attached garage with space provided for a minimum of three cars.
- (3) Dwellings containing greater than 4,000 square feet of living space shall have an attached garage with space provided for a minimum of four cars.

8.6. Variance. Except as to the specific design requirements set forth in Sections 8.5(a), 8.5(b)(1) and (2), 8.5(c) and 8.5(e)(1) and (2), the Reviewing Body may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewing Body from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Advisory Committee may not authorize variances without the written consent of the Declarant.

8.7. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Neither the Declarant, the

Association, the Board, the ARC or the Advisory Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications or the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, or the Advisory Committee or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the ARC and the Advisory Committee and their members shall be defended and indemnified by the Association as provided in Section 4.6.

8.8. Enforcement. Any structure, improvement or landscaping placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant, the ARC or the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded and/or enjoined by law from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

#### **Article IX USE RESTRICTIONS AND RULES**

9.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties in order to enhance all Owners' quality of life and collective interests, the aesthetics

and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article VIII, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, and the Use Restrictions and Rules, all of which establish affirmative and negative covenants, easements, and restrictions on the properties.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

9.2. Authority to Promulgate Use Restrictions and Rules. Initial Use Restrictions and Rules applicable to all of the Properties are attached as Exhibit "B" to this Declaration. Subject to the terms of this Article, the initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and to act reasonably on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective after compliance with subsection (c) below unless disapproved at a meeting by a vote of more than 50% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules by a vote of more than 50% of the Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect (the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

(d) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Use Restrictions and Rules shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Properties.

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(e) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines. In the event of any inconsistency between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

9.3. Owners' Acknowledgment and Notice to Purchasers. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into and recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules, including those set forth on Exhibit "B", may change from time to time.

9.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "B," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs or engage in political speech shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria).

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions and restrictions on the extent of such displays.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection

expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(j) Operation of Private Golf Course. No rule or action by the Association shall interfere with the use or operation of the Golf Course.

The limitations in this Section 9.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 14.2.

## **Article X EASEMENTS**

### **10.1. Easements for Utilities, Etc.**

(a) There are hereby reserved to the Declarant, so long as the Declarant or Land Trust owns any property described on Exhibit "A," the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; irrigation systems, street lights and signage; and all utilities, including, but not limited to, water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant, Land Trust or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

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Declarant, on behalf of Land Trust, specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant or Land Trust owns any property described on Exhibit "A" of this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A."

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section 10.1, or (ii) to define the limits of any such easements; provided, however, Declarant shall relocate, at its own expense, any utility lines or facilities located on or under that portion of the Properties being released.

10.2. Easements for Maintenance and Flood Water. The Declarant, on behalf of Land Trust, reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Properties for access, ingress and egress to creeks, streams, and wetlands located within the Area of Common Responsibility and for (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; and (c) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

10.3. Easements to Serve Property. The Declarant, on behalf of Land Trust, hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Properties.. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.



10.4. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, members of the ARC pursuant to Article IX, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

#### **Article XI MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties.

11.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

11.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

11.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

**Article XII**  
**DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and its designees may maintain and carry on upon portions of the Common Area such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units. The Declarant and its designees shall have easements for access to and use of such areas.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 10 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

**Article XIII**  
**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

13.1. Agreement to Avoid Litigation. The Declarant, Land Trust, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 13.2 ("Claims") shall be resolved using the procedures set forth in Section 13.3 in lieu of filing suit in any court.

13.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights,

obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article VIII (Architectural Standards) or Article IX (Use Restrictions and Rules);

(c) any suit by an Owner to challenge the actions of the Declarant, the Association, the ARC, the Advisory Committee, or any other committee with respect to the approval or disapproval of plans and specifications in accordance with Article VIII (Architectural Standards);

(d) any suit by an Owner to challenge the enforcement or application of specific Use Restrictions and Rules promulgated in accordance with the procedures set forth in Article IX (Use Restrictions and Rules);

(e) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(f) any suit in which any indispensable party is not a Bound Party; and

(g) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.3.

### 13.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

3. Claimant's proposed remedy; and

4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent dispute resolution center, the Illinois Chapter of the Community Associations Institute, or such other independent agency in the Sangamon County or Metropolitan Springfield, Illinois area upon which the Parties may mutually agree.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "C" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding,

the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Illinois. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Illinois.

#### 13.4. Allocation of Costs of Resolving Claims.

(a) Subject to Section 14.4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

13.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 13.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

### **Article XIV** **GOLF COURSE**

14.1. General. The Golf Course is not part of the Properties nor part of the Common Areas. Access to and use of the Golf Course is strictly subject to the rules and procedures of the owner(s) of the Golf Course, and no Person gains any right to enter or to use such facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

Rights to use the Golf Course will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the owner(s) of the Golf Course. The owner(s) of the Golf Course shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Golf Course, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the provisions of any outstanding membership documents.

14.2. Ownership and Operation of the Golf Course. All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of the Golf Course. No purported representation or warranty, written or oral, in regard to the Golf Course shall be effective unless set forth in an amendment to this Declaration executed by the Declarant and the owner(s) of the Golf Course.

The ownership and/or operation of the Golf Course may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Golf Course by an independent Person; (b) the conversion of the ownership and/or operating structure of the Golf Course to an "equity" club, or similar arrangement whereby the Golf Course or the rights to operate it are transferred to an entity which is owned or controlled by its members; or (c) the transfer of ownership or control of the Golf Course to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association or any Owner shall be required to effectuate such transfer or conversion.

14.3. Easements Respecting the Golf Course. The following easements apply only to the Golf Course:

(a) The owner(s) of the Golf Course, their respective agents, successors, and assigns, shall have non-exclusive easements over the Common Areas for ingress and egress, utilities, and such other purposes as may be reasonably necessary or convenient to the establishment, operation, maintenance, repair and replacement of the Golf Course. The owner(s) of the Golf Course, members (regardless of whether such members are Owners hereunder), if any, of the Golf Course, their guests and invitees, such other guests or customers having a right to use the Golf Course, and the employees, agents, contractors, and designees of the Golf Course shall at all times have a right and non-exclusive easement of access and use over the Common Area for purposes consistent with and reasonably necessary for playing the game of golf on the Golf Course. The benefitted parties shall be obligated to use due care in the exercise of such easement rights. Any specific damage to the Common Area caused by the failure to exercise due care shall be the responsibility of the owner(s) of the Golf Course and the user of the Common Area pursuant to the easement rights stated herein.

The Association shall not exercise its authority over the Common Areas to frustrate the rights of the owners of the Golf Course, their respective agents, successors and assigns, as well as their members, guests, invitees, employees, contractors, designees, and authorized users.

(b) Every Unit and the Common Area is burdened with an easement permitting golf balls unintentionally to come upon such areas and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall obtain the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage

or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association or its Members (in their capacity as such); the owner(s) of the Golf Course or their successors, successors-in-title, or assigns; any successor Declarant; any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(c) The Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for overspray of water from the irrigation system serving the Golf Course. Under no circumstances shall the Association or the owner(s) of the Golf Course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner(s) of the Golf Course, their respective agents, employees, contractors, successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls within the Common Area lying reasonably within range of golf balls hit from the Golf Course.

(e) The owner(s) of the Golf Course, their respective agents, employees, contractors, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Common Area for the maintenance and dredging of lakes, ponds and other bodies of water located on the Golf Course, and the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps and pipelines, utility lines, wires and drainage pipelines serving all or portions of the Golf Course. Any damage to the Common Area resulting from the exercise of such easement rights shall be the responsibility of the owner(s) of the Golf Course.

(f) The Properties are hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.

(g) The Declarant hereby reserves for itself, its successors and assigns, and may assign to the owner(s) of the Golf Course, an easement upon the Common Area for purposes of irrigation of the Golf Course and for access to and the right to enter upon the Common Area for installation and maintenance of any irrigation systems serving the Golf Course.

(h) The owner(s) of the Golf Course, their respective agents, employees, contractors, successors and assigns shall have an obligation to maintain, in accordance with the Community-Wide Standard, the road or pathway situated on that portion of the Common Area identified on the Final Plat as Lot 1 and shall have a perpetual, non-exclusive easement over the Common Area for such purpose.

14.4. View Impairment. Neither the Declarant Land Trust, First National, nor the Association guarantees or represents that any view over and across the Golf Course from adjacent Units will be preserved without impairment. The owner(s) of the Golf Course shall have no obligation to prune or thin trees or other landscaping and shall have the right, in its sole and

absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the owner(s) of the Golf Course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on the Golf Course from time to time. Any such additions or changes to the Golf Course may affect the view of the Golf Course from the Units.

14.5. Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the Golf Course, no amendment to this Article, and no amendment in derogation of any rights reserved or granted to the owner of the Golf Course by other provisions of this Declaration, may be made without the written approval of the owner of the Golf Course. The foregoing shall not apply, however, to amendments made by the Declarant.

14.6. Jurisdiction and Cooperation. It is Declarant's intention that the Association and the owner of the Golf Course shall cooperate to the maximum extent possible in the operation of the Properties and the Golf Course. Each shall reasonably assist the other in upholding the Community-Wide Standard. The Association shall have no power to promulgate rules and regulations affecting activities on or use of the Golf Course.

14.7. Assumption of Risk and Indemnification. Each Owner, by its purchase of a Unit in the vicinity of the Golf Course, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of the Golf Course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset) (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) use of effluent in the irrigation of the Golf Course, (f) reduction in privacy caused by constant golf traffic on the Golf Course or the removal or pruning of shrubbery or trees on the Golf Course, (g) errant golf balls and golf clubs, and (h) design of the Golf Course. The Owner hereby agrees to indemnify and hold harmless Declarant, Association and any other entity owning or managing the Golf Course against such claims by Owner's visitors, tenants and others upon such Owner's Unit.

#### **Article XV** **GENERAL PROVISIONS**

##### 15.1. Duration.

(a) Unless terminated as provided in Section 15.1(b) or unless otherwise limited by Illinois law, this Declaration shall have perpetual duration. If Illinois law hereafter limits the period during which covenants may run with the land, then, to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period



for successive periods of 30 years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Illinois law, in which case such law shall control, this Declaration may not be terminated within 30 years of the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Units within the Properties and by the Declarant, so long as Declarant or Land Trust owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

15.2. Amendment. Until conveyance of the first Unit to a Class "A" Member, the Declarant may unilaterally amend this Declaration. Thereafter, the Class "B" Member may amend this Declaration if such amendment is specifically required to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units. In addition, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of not less than 75% of the Class "A" Members and the consent of the Declarant, so long as the Class "B" Membership exists.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Class "A" Members in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VII; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XIII, if applicable.

15.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Use of the Words "The Rail Estates." No Person shall use the words "The Rail Estates" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "The Rail Estates" in printed or promotional matter where such terms are used solely to specify that particular property is located within The Rail Estates development and the Association shall be entitled to use the words "The Rail Estates" in its name.

15.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to Article IX. Subject to the terms of Article XIII, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.9. Exhibits. Exhibits "A," and "C" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

IN WITNESS WHEREOF, the undersigned have executed this Declaration this 2nd day of November, 1994.

FIRST NATIONAL: FIRST NATIONAL BANK OF SPRINGFIELD, as trustee under a trust agreement dated September 28, 1972, and known as Trust No. 3130

By: L. Larry Johnson [SEAL]

Its: Trust officer

Attest: [Signature]

Its: Vice President + Sr. Trust officer  
This instrument is executed by FIRST NATIONAL BANK

COUNTY OF SANGAMON  
STATE OF ILLINOIS

TO WIT:

I, Susan M. Hartl, a notary public in and for the State and County aforesaid, do certify that L. Larry Johnson, Trust officer, of the First National Bank of Springfield, as trustee under a trust agreement dated September 28, 1972, and known as Trust No. 3130, is signed to the writing above, bearing date of the 2nd day of November, and has acknowledged the same before me in the county aforesaid.

Given under my hand and official seal this 2nd day of November, 1994.

My term of office expires on June 29, 1996.



Susan M. Hartl  
NOTARY PUBLIC

(SIGNATURES CONTINUED ON NEXT PAGE)

000570

DECLARANT: BROOKDALE DEVELOPMENT COMPANY, an Illinois corporation

By: Leonard W. Sapp [SEAL]  
Leonard W. Sapp  
President

Its: \_\_\_\_\_

Attest: Lola Lovene Sapp

Its: Secretary

COUNTY OF SANGAMON

STATE OF ILLINOIS

TO WIT:

I, Constance W. Jones, a notary public in and for the State and County aforesaid, do certify that Leonard W. Sapp, as President, of Brookdale Development Company, an Illinois corporation, has signed the writing above, bearing date of the 13<sup>th</sup> day of October, 1994, and has acknowledged the same before me in the county aforesaid.

Given under my hand and official seal this 13<sup>th</sup> day of October, 1994.

My term of office expires on 9-5-98  
OFFICIAL SEAL  
CONSTANCE W. JONES  
Notary Public, State of Illinois  
My commission expires 9-5-98  
Constance W. Jones  
NOTARY PUBLIC

DOCS364--10/11/94

