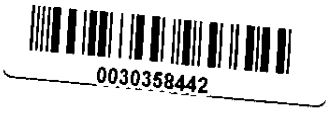


UNOFFICIAL COPY

0030358442

3/1/09 86 002 Page 1 of 34
2003-03-14 12:44:55
Cook County Recorder 90.50



Eugene "Gene" Moore
Cook County Recorder
Cook County, IL
Chicago 60602-1387

379380
TICOR

DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR HAMPTON KNOLL

PREPARED BY AND WHEN
RECORDED, MAIL TO:

PROPERTY ADDRESS: Vacant -
Hoffman Estates, Cook County, IL

CARLTON W. LOHRENTZ & ASSOCIATES
1655 N. ARLINGTON HTS. ROAD, #102E
ARLINGTON HEIGHTS, IL 60004

PROPERTY TAX NUMBER:
07-15-102-025-0000
07-15-102-026-0000



February, 2003

34

UNOFFICIAL COPY

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
HAMPTON KNOLL**

30358442

THIS DECLARATION is made and entered into this 24th day of February, 2003, by MITROFF GROUP, LTD., an Illinois corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the legal title holder of certain real property in the County of Cook and State of Illinois, which real estate is legally described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Declarant intends that the Property be developed and improved with residential dwelling units ("Units"), together with certain Common Areas (as hereinafter defined); and

WHEREAS, in order to preserve and enhance the values and amenities of the Property, Declarant shall cause to be established the Association (as hereinafter defined) which shall own and have the responsibility for maintaining the Common Areas (as hereinafter defined) and any improvements or facilities thereon, and for administering and enforcing the covenants, conditions, restrictions and easements as hereinafter set forth and for collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant intends to subject the Property to the covenants, conditions, restrictions, easements, assessments, charges and liens as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to this Declaration and shall be held, transferred, conveyed and occupied subject to this Declaration and the following covenants, conditions, restrictions, easements, assessments, charges and liens which are for the purpose of protecting the value and desirability of, and which shall run with the Property subjected hereto and be binding on and inure to the benefit of any owner (as hereinafter defined) thereof and to all parties having or acquiring any right, title or interest therein or in any part thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to the HAMPTON KNOLL HOMEOWNERS' ASSOCIATION, an Illinois not for profit corporation, its successors and assigns.

Section 2. “Board” or “Board of Directors” shall mean and refer to the board of Directors of the Association selected pursuant to the terms of this Declaration, the Articles of Incorporation of the Association and the Bylaws thereof.

Section 3. “Building” shall mean a structure in which one or more Residences are contained.

Section 4. “Building Facilities” shall mean Utilities (as hereinafter defined) located on a Lot, exterior of the Residences and Buildings and all appurtenances thereto, including, but not limited to fences, siding, trim, fascia, gutters, downspouts, stoops, porches, garage exteriors, garage door exteriors, lawn areas, landscaped areas, trees, shrubs, grass, private driveways, private sidewalks, private pathways and walkways, exterior water faucets and other exterior facilities of Buildings and Residences, but specifically excluding windows and window frames, exterior doors and door frames, patios, and any portion of a Lot which is fenced.

Section 5. “Bylaws” shall mean the bylaws of the association as amended from time to time.

Section 6. “Common Area” or “Common Areas” shall mean that portion of the Property generally so designated on Exhibit “B” attached hereto, which shall include any open space, landscaped areas, walkways, private streets, cul-de-sac islands, easements, storm water retention or detention areas, wetland areas, entry gates, including emergency easement access gate, lighting fixtures, common security systems, utilities, identification monuments, perimeter fencing and any other improvements constructed thereon by the Declarant or its designees or the association, title to which shall be vested in the Association.

Section 7. “Declarant” and “Developer” shall mean and refer to MITROFF GROUP, LTD., an Illinois corporation, its successors and assigns, as hereinafter set forth. For purposes of the Declaration, the terms “Declarant” and “Developer” shall be considered interchangeable as to the rights and obligations contained herein. The terms “Declarant” and “Developer”, as defined herein, shall also include such of their successors and assigns who are specifically assigned the respective rights and obligations of Declarant and Developer and who consent in writing to assume the duties and obligations connected therewith. Declarant shall have the right to assign any and all of its rights or obligations to any such successor or assign.

Section 8. “Declaration” shall mean and refer to this Declaration as amended from time to time.

Section 9. “Limited Building Facilities” shall mean that portion of the Building Facilities which by their nature and location are clearly intended to serve exclusively a certain Lot or Residence or Lots or Residences (but less than all of the Lots and Residences) to the exclusion of other Lots or Residences.

Section 10. “**First Mortgage**” shall mean a Secured Party which holds a first mortgage on a Lot.

Section 11. “**Lot**” shall mean and refer to the Lots enumerated on Exhibit A.

Section 12. “**Member**” shall mean and refer to any person or entity who holds membership in the Association.

Section 13. “**Owner**” shall mean and refer to the record owner (or the beneficiaries of a land trust which may be a record owner) whether one or more persons or entities, of fee simple title to any Lot, as defined herein, including contract sellers. The term “Owner” shall include Declarant to the extent of the number of Lots owned by Declarant and shall specifically exclude a Secured Party (as hereinafter defined) until such Secured Party owns the Property, any interest therein, a Lot or a Residence in fee simple title.

Section 14. “**Residence**” shall mean a dwelling unit designed for residential occupancy constructed on a Lot.

Section 15. “**Secured Party**” shall mean any party or entity whatsoever, including a natural person, corporation, limited liability company, trust, financial institution, bank or savings institution having a secured interest, mortgage, pledge or any other interest whatsoever with respect to or recorded as to the Property as the security for the payment of any debt or the performance of any obligation whatsoever.

Section 16. “**Utilities**” shall mean any natural gas, electric, water, telephone, television cable or other public or quasi-public utility services, installations, conduits or lines located in, on, upon or above the Property or any portion thereof (excluding the interior of the Residences or Buildings) which service a Building, Residence or the Common Area or any improvement located or constructed in or on the Common Area.

Section 17. “**Village**” shall mean the Village of Hoffman Estates, Cook County, Illinois.

ARTICLE II
COVENANTS RUNNING WITH THE LAND
AND NON-SEVERABILITY OF RIGHTS

Section 1. Burden Upon the Property. Declarant thereby declares that this Declaration and the obligations, covenants, restrictions and easements established in this Declaration shall be covenants, restrictions and easements to run with and bind the land. Said obligations, covenants, restrictions and easements shall inure to the benefit of and be binding upon each and every Owner, and his or her respective heirs, representatives, successors, assigns, purchasers, transferees, lessees, grantees and mortgagees. By the recording or acceptance of the conveyance of any portion of the

Property, a Lot, a residence or any interest therein, the person or entity to whom such interest is conveyed or granted, including a Secured Party and a mortgagee, shall be deemed to accept and agree to be bound by the provisions of this Declaration, Bylaws and Rules and Regulations of the Association, as amended from time to time, whether or not they are referred to or set forth in any deed, mortgage or the instrument of transfer of title or interest.

Section 2. Non-severability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of the Property, including a Lot, a residence or any interest therein, as more specifically set forth below, and may not be severed or alienated from such ownership. The fee simple ownership of a Lot and a Residence may not be severed or transferred separately.

ARTICLE III
MEMBERSHIP

Section 1. Incorporation of Association. Developer will cause to be incorporated a not-for-profit corporation known as the HAMPTON KNOLL HOMEOWNERS' ASSOCIATION, or such other name as Developer may elect. The Association shall be the sole governing body for the administration and operation of the Common Areas, and the terms and provisions of this Declaration and shall be the legal representative for all matters and claims relating directly or indirectly to the Common Areas or matters of common interest to all Owners. The Board shall constitute the final administrative authority of the Association and all decisions thereof with respect to the administration of the Property shall be binding. All rights, titles, privileges and obligations vested or imposed upon the Association by this Declaration shall be held and performed by the Board, although the actual day to day management of the functions of the Association may be delegated to and performed by a managing agent. Each management agreement entered into by the Association shall not exceed a term of two (2) years and shall be terminable for cause by the Association on thirty (30) days' written notice without payment of any termination fee.

Section 2. Membership. Every person or entity, including the Declarant, who is the record Owner of a fee simple interest in any Lot, including contract seller's shall automatically be a Member of the Association, so long as it continues as an Owner, whether or not it shall be so expressed in any deed or other conveyance. The foregoing shall exclude a Secured Party until such Secured Party owns a fee simple interest or undivided fee simple interest in the Property, any portion thereof or interest therein, a Residence or a Lot. For each Lot owned, the Owner thereof shall be entitled to one membership. Voting rights shall be determined as hereinafter set forth. Membership shall be appurtenant to and may not be separated from the ownership of any Lot and ownership of a Lot shall be the sole qualification for membership. For the purpose of this Declaration, the word "Member" shall include any beneficiary of a trust holding legal title to one or more such Lot. The Association may, from time to time hereafter, issue Certificates of Membership to Members.

Section 3. Transfer. Upon the termination of the interest of an Owner in a Lot, such

membership shall thereupon automatically terminate and transfer and inure to the new successor Owner. Except for memberships owned by Declarant, the membership held by an Owner of a Lot shall not be transferred, alienated or pledged in any way, except in accordance with a bona fide sale or encumbrance of such Lot. Any attempt to make a prohibited transfer is void and will not be inscribed in the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in its name to the purchaser thereof, the Association shall have the right to record the transfer upon the books of the Association and issue a new certificate to the purchaser if applicable, and thereupon the old certificate in the name of the seller shall be automatically null and void as though the same had been surrendered.

Section 4. Bylaws: Rules and Regulations. As a Member of the Association, each Owner hereby covenants and agrees to be bound by the provisions of the Bylaws and Rules and Regulations of the Association, as such may be properly adopted, altered or amended from time to time pursuant to the terms hereof or the By-Laws.

ARTICLE IV. **VOTING RIGHTS - ADMINISTRATION**

Section 1. Votes. After the Turnover Date (as hereinafter defined), each Member, including Declarant, shall be entitled to one (1) vote for each Lot in which it holds a fee or undivided fee interest; provided, however, that when more than one person holds such interest in any Lot, all such persons shall be Members, but only one vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast on behalf of any Lot.

Section 2. Administration of the Property. Until the Turnover Date, the direction, operation and administration of the Association and the Property (except maintenance of those portions of the Property which, pursuant to the terms of this Declaration, are the responsibility of the Owners) shall be vested in Declarant or the Initial Board (as hereinafter defined). After the Turnover Date, such direction, operation and administration shall be vested in the Association. Such direction, operation and administration shall include, but shall not be limited to, at the Association's cost and expense, maintenance, repair, restoration, reconstruction, replacement, regulation and operation of the Property in the manner as specifically provided in this Declaration, the By-Laws and the Rules and Regulations of the Association, as adopted and amended from time to time. Until the Turnover Date, Declarant shall be vested with all powers of the Association and the Board described herein and in the Bylaws; provided, however, that if Declarant so elects, until the First Annual Meeting (as hereinafter defined), Declarant may appoint the Board of Directors to serve in such capacity ("Initial Board") which shall number three (3) persons. The terms of office of the Initial Board shall automatically expire upon the election of the full Board of Directors at the First Annual Meeting. Any vacancies in the Initial Board shall be filled by or appointed by Declarant. Directors of the Initial Board need not be an Owner.

Section 3. First Annual Meeting of Members. Except for the Initial board, the first

Board of Directors of the Association shall be elected at the First Annual Meeting of Members ("First Annual Meeting") which shall be held upon the date which is no later than the first to occur of the following ("Turnover Date"):

(a) Ninety (90) days after the transfer of title to individual buyers of one hundred percent of all of the Lots, including those not yet of record but planned, if any, by Developer and approved by the Village from time to time;

(b) Ten (10) years from the date of recording of this Declaration in the Office of the Recorder of Deeds of Cook County, Illinois; or

(c) Upon not less than thirty (30) days prior written notice given to each Owner by Declarant.

ARTICLE V PROPERTY RIGHTS

Section 1. General Use. Except as otherwise provided herein, the Common Area is hereby restricted to ingress, egress, recreational and ancillary uses, structures relating thereto, wetlands, storm water retention and detention and easements for utilities, all for the benefit of the Owners. Maintenance, repairs, replacements, payments of taxes and general administration of the Common Areas, including, without limitation, the obligation to maintain entry monument signs, if any, shall be the responsibility of the Association, and the costs thereof shall be paid from the assessments as established hereinbelow.

Section 2. Members' Easements. Every Owner, by and through the Association, shall have the right and easement of enjoyment in and to the Common Area and a right and easement of ingress and egress to, from and through the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish uniform rules and regulations pertaining to the use, operation and maintenance of the Common Area and/or other facilities affecting the welfare of the Members;

(b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area or improvements situated thereon and in aid thereof to mortgage all or a portion of the Common Area; provided that the rights of such mortgagee shall not interfere with the rights of any Owner as provided in this Section 2 of this Article V;

(c) The right of the Association to suspend the voting rights of, and/or use of all or a portion of the Common Area by a Member, except Declarant, for

UNOFFICIAL COPY

30358442

any period during which any assessment of any kind against such Member or its Lot remains unpaid and delinquent, and for a period not to exceed sixty (60) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Rules and Regulations of the Association;

(d) The right of the Association to dedicate or transfer, in fee or grant of easement, all or any part of the Common Area to any public agency, cable company, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by two-thirds (2/3) of the Board; and

(e) Such other rights as are reserved or created by this Declaration.

Section 3. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by the Owner from liens and charges hereof, by non-use or waiver of the use and enjoyment of the Common Area or by abandonment of the Owner's Lot or a Residence. Where the Owner of a Lot is an Illinois land title holding trust, a corporation, limited liability company, partnership, trust or other non-natural person, then the beneficiary of such land trust, the shareholder of such corporation, the members of such limited liability company, the general partners of the such partnership or the beneficiaries of such trust shall be jointly and severally personally liable for Association assessments.

Section 4. Title to Common Areas. The Declarant hereby covenants, for itself, its successors and assigns, that no later than ninety (90) days after the last Lot is conveyed to a bona-fide third party Owner, it will cause to be conveyed to the Association fee simple title to the Common Area, subject to covenants, easements, conditions and restrictions of record (including those established in this Declaration), public zoning laws, Village ordinances, current real estate taxes, utility easements granted or to be granted for sewer, water, gas, electricity or telephone and any other necessary utilities and public street dedications, if any. Such fee simple title to the Common Area shall be free of all encumbrances and liens other than those described above. Notwithstanding anything to the contrary contained herein and whether or not Declarant shall have conveyed the Common Area to the Association, the Association shall pay and discharge all general and special real estate taxes and assessments levied by any public authority with respect to the Common Area.

Section 5. Common Area Encroachments. In no event shall an easement for an encroachment of a structure on the Common Area be deemed created in favor of any Owner.

Section 6. Alterations to Common Areas. Except for the Declarant or Developer, no Owner shall make any alterations or additions, including any planting or plantings thereon, to the Common Area. Except as may be constructed by the Developer or Declarant or specifically authorized by the Board, no structure, fence, antenna, or similar items, either permanent or temporary, shall be erected or placed on the Common Area. The Board may authorize as Common Expenses (as hereinafter defined) any alterations, improvements, or additions to the Common Area. Anything herein to the contrary notwithstanding, no alteration shall be made to any storm water retention or detention facility or wetlands area or modifications made to the storm water drainage pattern or flow on the Property, except by the Developer or Declarant, or without the formal approval of the governmental authorities having jurisdiction over the Property, including, if applicable, the Army Corps. of Engineers and Environmental Protection Agency, with respect to wetland areas.

ARTICLE VI
ARCHITECTURAL CONTROLS

Section 1. Residences, Fences, Walls and Other Structures. It is understood and agreed that the purpose of the architectural controls set forth herein is to secure an attractive and harmonious development. The Association shall have exclusive authority to establish, except as to Developer and Declarant, reasonable rules, regulations, standards and duties for Owners as to the construction of Residences, the care and use of the Common Area and for the care, upkeep, maintenance, use and appearance of the Property, Building Facilities and Lots, including but not limited to additions made to Residences, the color of the exterior architectural design of all buildings and structures, including fences and patios, so as to preserve the integrity of the Property. The Board may, in conjunction with the promulgation and enforcement of any such rules and standards, appoint an Architectural Control Committee consisting of Members ("Architectural Committee"), which shall administer such rules and standards. The provisions of this paragraph and the entire Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and management of a desirable and harmonious living environment. Until the Turnover Date, at the election of Developer, either it or the Initial Board shall exercise all rights of approval as to the matters set forth in this Article VI.

(a) Anything herein to the contrary notwithstanding, any privacy fence installed by Developer pursuant to its plan of development upon any Lot, shall be deemed part of the Common Area, and shall be maintained as such by the Association. The Association is hereby granted an easement over, upon, through, across and under the Property and each Lot for access to any such fence for maintenance purposes.

(b) No fencing of any kind shall be installed around any storm water detention or retention area or wetlands, unless so required by law or as approved by the Board.

Section 2. Maintenance of Building Facilities; Residences.

(a) Except as to those maintenance responsibilities for which the Association has responsibility, each Owner of a Residence shall keep all improvements located on its Lot, any fenced area on its Lot and within its Residence, and the patio located on its Lot and on the abutting Common Area, in good condition without deterioration in accordance with all laws, codes, and ordinances, including health and environmental laws and shall cause all work which is deemed necessary by the Association to be performed in connection with any maintenance required.

(b) The Association shall determine the need for and shall, as a Common Expense, carry out or cause to be performed all maintenance and repair to the Building Facilities, and exterior of the Residences and Utilities, including exterior painting, snow-plowing private driveways, maintaining private sidewalks, repair or replacement of roofs and decks, but specifically excluding windows and window frames, exterior doors and door frames, patios, central air conditioning compressors and any portion of a Lot which is fenced.

(c) The Owner or Occupant of each Lot shall, at its own expense, cause its lawn and shrubbery, trees and plantings to be watered as often as may be deemed advisable and necessary by the Association and in accordance with the direction of the Association. The failure of such Owner or Occupant to do so shall give the Association the right to cause such sprinkling to be accomplished and the cost thereof shall be assessed against the Owner or Occupant, and shall be a lien against the affected Owner's Lot until paid in full, together with all the costs of the Association associated therewith, provided however, if the Association has contracted lawn watering service, the Owner or Occupant is relieved of such responsibility.

(d) All costs for maintenance, repair, restoration and reconstruction charges not specifically allocated by this Declaration to the Association or for which the Association is responsible for be the responsibility of the individual Owner, including, without limitation, the maintenance, repair, restoration and reconstruction of such Owner's Residence and Lot, any appurtenances or other improvements situated thereon, and any portion of the patio on its Lot that may also be located on the abutting Common Area. Such maintenance, repair, restoration and reconstruction shall be performed by an Owner in such a manner and with such materials as shall preserve

the harmony of exterior design and appearance as the same existed on the date the initial construction of the Residence was completed.

Section 3. Maintenance and Repair of the Common Area and Other Maintenance and Repair. The Association shall maintain and keep in repair all the Common Area and any improvements and Utilities thereon (except as provided in Section 2(a) and (d) above), including but not limited to any entry monument, bicycle paths, ponds, storm water detention areas, and related facilities (unless maintained by the Municipality), walkways, cul de sac islands, signs, private driveways, mowing the grass areas and snowplowing private street, cul-de-sac islands and sidewalks located on the Common Area.

Section 4. Permitted Improvements; Standards.

(a) No improvements of any nature whatsoever shall be constructed, altered, added to or maintained upon any part of the Property, except (i) for Residences and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the Board in accordance with this Article or (iii) improvements which do not require the consent of the Board.

(b) The Board is hereby authorized to promulgate from time to time (or may delegate the same to the Architectural Committee), written architectural standards, rules, policies, and guidelines (the "Architectural Standards"), which it shall approve and distribute to all the Owners. Such Architectural Standards shall govern the construction and location of improvements, the exteriors of Residence, landscaping and design of all improvements constructed and located on the Lots or the Property, the contents of submissions of plans and specification and other information required to evidence compliance with and obtain the approvals pursuant to the requirements of this Article VI. Such Architectural Standards shall be binding on all Owners, except Declarant and Developer.

(c) No improvements of any nature whatsoever, including fences, shall be commenced, constructed, altered, added to or maintained upon any part of the Property (except for improvements which are constructed by Developer or Declarant) unless and until the Board has approved in writing all the proposed plans and specifications therefor and the builder of any such improvements and there is compliance with all other provisions of the Architectural Standards.

Section 5. Construction of Improvements. No construction of improvements on any Lots or Residences shall be undertaken or conducted on Sundays, except (i) construction activities of Declarant or Developer; (ii) emergency situations involving the potential loss, injury, or damage to persons or property; or (iii) as otherwise permitted by the Board.

Section 6. Architectural Approval. To preserve the architectural and aesthetic appearance of the Property, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner, other than Developer or Declarant, with respect to the construction or affecting the exterior appearance of any Building or Residence or with respect to any other portion of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, storm doors, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, or other outbuildings, not shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specification and related data (including, if required by the Board, a survey showing the location of trees and landscaping and other significant vegetation on such Lot or Residence) showing the nature, color, type, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Board. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within its Residence that do not affect the exterior appearance without the necessity of approval or review by the Board; provided that such Owner, to the extent the same is required by law, obtains the required building permits or other approvals of the Village. The Board shall, in its sole discretion, determine whether the plans and specifications submitted for approval are acceptable to the Association. Upon submission of the plans and specifications, the Board may refer the same to the Architectural Committee for recommendation. The recommendation of the Committee shall not be binding upon the Board. Following approval of any plans and specifications by the Board, representatives of the Board and Architectural Committee shall have the right, during reasonable hours and upon reasonable notice, to enter upon and inspect any Lot or Residence or other improvements with respect to which construction is underway to determine whether the construction and installation are consistent with and in accordance to the approved plans and specifications. If same are not in accordance therewith, the Board shall notify the Owner and the Owner shall immediately cease and desist such activity. Failure of the Owner to comply immediately with such request shall entitle the Board to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Board fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) business days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the Property as set forth in this Declaration. Upon approval of the plans and specifications, no further approval under this Article VI shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications or unless such plans and specifications are materially altered or changed. Refusal of approval of the plans and specifications may be based by the Board upon any ground which is consistent with the objects and purposes of this Declaration in the Board's discretion, including purely aesthetic considerations.

Section 7. Landscaping Approval. To preserve the aesthetic appearance of the Property, no landscaping, grading, excavation or filling of any nature whatsoever shall be implemented and installed by any Owner, other than Declarant or Developer, unless and until the plans therefor have been submitted to and approved in writing by the Board in accordance with the procedure as set forth in Section 6.

Section 8. Maintenance, Repairs and Replacements of Limited Building Facilities. The Board may perform, or cause to be performed, such maintenance, repair and replacement of the Limited Building Facilities and the cost thereof may be assessed in whole or in part to Owners benefited thereby; and further, at the discretion of the Board, the Board may direct such Owners, in the name and for the account of such Owners, to arrange for such maintenance, repair and replacements, to pay the cost thereof with the funds of such Owners and to procure and deliver to the Board such lien waivers and contractor's or subcontractor's sworn statements as may be required to protect the Building Facilities from all mechanics' or materialmen's lien claims that may arise therefrom.

Section 9. Evanston Street Buffer Area. The planting area along the Evanston Street right of way shall be maintained in a naturalistic fashion. Removal of plant material shall be limited to dead, diseased or damaged plants. Pruning is limited to those lower branches which may interfere with the use or maintenance of lawn areas, and upper branches which may represent a danger. The planting area should be edged and the mulch area refreshed as part of the normal maintenance program. Planting of any new plants is limited to deciduous trees and shrubs consistent with the naturalistic appearance of the buffer. No structures, fences or storage is permitted within this area.

ARTICLE VII USE AND OCCUPANCY RESTRICTIONS

Section 1. General Use. Except as specifically set forth herein, each Lot and residence shall be used exclusively for residential purposes and no other purposes whatsoever and each Residence shall be used only as a residence for a single family by the Owner or occupant thereof and family, their heirs, successors and assigns and otherwise in conformity to the laws, ordinances and codes of the Village. No business, industry, trade, occupation or profession of any kind (except such "at home" professions as are generally acceptable and permitted under applicable ordinances) or noxious or offensive activity shall be carried on anywhere on the Property, a Lot or Residence, nor shall anything be done thereon which may become an annoyance or nuisance or materially interfere with the right of peaceful enjoyment of the other Owners. The Association may enforce any right or remedy granted in this Declaration or contained in the Bylaws or Rules and Regulations as to any occupant separate or concurrent with the exercise of any right or remedy against any Owner.

Section 2. Lease Restrictions. Rental at any one time of more than eight residences shall be prohibited by the Association. All leases or rental agreements for residences shall be in

writing, shall be submitted to the Board for prior approval, shall be for a term of not less than 30 days and shall specify that the Occupant agrees to be bound by the Lease. The Lease shall specifically incorporate therein full compliance by the Occupant of the terms of this Declaration, the Bylaws, and Rules and Regulations of the Association.

Section 3. Animals. No animals of any kind shall be raised, bred or kept anywhere on the Property, Lot or Residence, except dogs, cats and other common household pets (for other than commercial purposes), provided that no more than two (2) household pets shall be allowed per Residence. The ownership of pets shall be subject to such reasonable rules and regulations as may be enacted by the Board from time to time. Owners and Occupants of a Residence shall promptly remove any waste deposited on the Common Area, the Lots and the outside of their Residences caused by such household pets and all other waste and rubbish. Any pets of an Owner or Occupant causing or creating a nuisance or unreasonable disturbance or causing or creating damage to the Property or Common Area, including landscaping, in the opinion of the Board, may be, by three (3) days written notice, prohibited from entering upon the Common Area or removed from the Property or the Board may take such other reasonable action as appropriate under the circumstances, to restrain or discourage the owner of such pet from allowing such pet on the Common Area or Property. Pets shall be restrained by leash or enclosures (which shall be approved by the Board) and shall not be permitted to roam the Common Area or Property.

Section 4. Obstructions of Common Area. There shall be no obstruction of the Common Area, nor shall anything be stored on the Common Area without the prior written consent of the Association.

Section 5. Nuisances. No nuisance, noxious or offensive activity shall be carried on in the Common Area, Lots or Residences (including garages and out buildings) nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or Occupants of the Residences. Each Owner, its family, tenants, guests, invitees, servants and agents shall refrain from any act or use of a Lot, Residence or the Common Area which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of the other portions of the Property, or which could result in a cancellation of any insurance for any portion of the Property or any Residence or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within a Lot, Residence, or the Common Area by an Owner or Occupant.

Section 6. Temporary Structures. No structure of a temporary character, including, without limiting the generality thereof, trailer, tent, shack, hot tubs, spas, or outbuilding, shall be constructed or erected on any Lot or on the Common Area at any time without prior written approval of the Board.

Section 7. Unsightly Activities. No clothes, sheets, blankets or laundry shall be hung

on any portion of the Property, and both the Common Area and the Lot shall be kept free and clear of all rubbish, debris and other unsightly materials, and no waste shall be committed thereon.

Section 8. Accessory Structures and Equipment.

(a) Without the written consent of the Board, the following shall not be constructed on or attached to the Property: (i) accessory storage buildings, sheds, or outbuildings; (ii) satellite reception dishes or any other exterior antennae or reception devices; or (iii) Flagpoles.

(b) Air conditioning condensers and other mechanical equipment shall not be permitted in front yards and must be screened from view.

(c) Should cable television service be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Board for permission to install a television antenna subject to the Board to establish design criteria for approval.

Section 9. Sign Standards. No signs of any kind shall be erected, placed or permitted to remain on the Property, except (i) a family name designated on a Residence or not more than 144 square inches; and (ii) for sale signs placed by an individual Owner; provided, however, that signs are consistent in size and style with the architectural integrity of the Property, as may be determined by the Board.

Section 10. Storage. No rubbish, storage piles, trash, garbage, compost pile or material shall be dumped or allowed to remain on the Property at any time except as shall be necessary to facilitate its pickup and disposal. All such storage shall be screened from view and shall otherwise be subject to such rules and regulations as may be enacted by the Board from time to time. All containers and equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No storage shall be allowed within a garage which would limit or prevent parking in such garage the number of cars for which it was intended.

Section 11. Vehicles and Parking. No vehicle, boat, camper, trailer, truck, minibike or snowmobile shall be stored or parked on the Common Area (permanently or temporarily), except upon written approval by the Board. Except as may otherwise be approved in writing by the Board, no boat, trailer, camper, trailer, recreational vehicle or commercial vehicle shall be parked on a driveway for more than twenty-four (24) hours; provided, however, that passenger vehicles (exclusive of trucks and similar motorized vehicles, including recreational vehicles) of any Owner may be parked in an Owner's driveway. Storage of such vehicles is permitted. No commercial activity shall be conducted within any garage. Except for maintenance of emergency vehicles, no vehicular traffic shall be permitted to park on the Common Area except as may be permitted by the Board.

No motor vehicles in non-operative condition shall be parked anywhere on the Property, except in garages. No parking shall be allowed in areas designated by the Village of Hoffman Estates as No Parking areas or in areas designated as fire lanes, as determined by the Village of Hoffman Estates. No parking shall be allowed on private drives of 24 feet in width or less.

Section 12. Fences. No fence or obstructions of any kind shall be erected, removed or relocated anywhere within the Common Area or the Lots, except as shall be specifically approved by the Board as set forth in Article VI.

Section 13. Landscaping. The Association shall be solely responsible for maintenance of all landscaping on the Common Areas and Lots. No trees, shrubs or other plantings of any kind shall be planted in or removed from the Common Area or Lot without the express written consent of the Board. With respect to the Lots, all landscaping plans shall be submitted to the Board for approval under Article VI. No planting of any kind shall be placed on any Lot in such a manner as to interfere with the use of neighboring Residences or the Common Area or to present any visual safety hazard and foliage and landscaping shall be neatly maintained.

Section 14. Owners' Responsibilities. Any expenses or costs incurred with respect to maintenance and/or repair of any portion of the Common Area or Building Facilities due to the willful or negligent acts of any Owner, Occupant, or its family, lessees, guests, licensees, invitees, agents or pets, shall be borne by such Owner and shall be an addition to such Owner's assessment. No Owner shall do any act or commence any work that will impair any easement or other interest in the Property, nor do any act or allow any condition to exist which will adversely affect other Residences or their Owners or Occupants.

Section 15. Construction and Contractors. All construction activity shall be governed by Rules and Regulations as are from time to time adopted by the Board.

Section 16. Lines and Wires. No lines or wires for communication or the transmission of electric current or power shall be constructed, placed or permitted to be placed anywhere on the Property other than within buildings or structures or attached to their walls, unless the same shall be contained in conduits or approved cables constructed, placed and maintained underground.

Section 17. Completion of Construction. Any construction on any Lot shall be undertaken personally and shall be continued with diligence toward the completion thereof and completed within six months from commencement of construction, except that such period may be extended for a reasonable time by reason of act of God, labor disputes or other matters beyond the Owner's control.

Section 18. Vacant Homesites. Vacant Lots must be kept clear of dead material (including trees), fallen branches, debris, shrubs and other undesirable vegetation, except as necessary for Developer's or Declarant's construction activities. Existing grass and lawn areas

must be trimmed or cut to a height of 3" or less and be clear of all weeds and unsightly vegetation. Failure to maintain a Lot in an acceptable condition will result in notification to the Owner or Occupant by the Board and the Owner or Occupant will have a period of ten (10) calendar days to complete the work required by the Board. If the Lot is not properly cleared or maintained, the Association may perform such work at the expense of the Owner and the Owner shall immediately pay the Association the cost thereof and such costs shall be a lien upon the Lot.

Section 19. Exterior Appearance. No chain link fences shall be permitted within the Property, except those fences erected by Declarant or Developer. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or other purpose nor shall any window-mounted heating or air-conditioning units be permitted. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited shall not be erected, placed or maintained, nor shall any clothing, rugs, or other item be hung on any railing, fence, hedge or wall. No projections of any type shall be placed or permitted to remain above the roof of any improvements except approved chimneys or vent stacks, except as approved by the Board.

Section 20. Rules and Regulations. The Board may promulgate such Rules and Regulations with respect to the matters set forth in this Declaration and with respect to any others matters concerning the maintenance, use or occupancy of the Property as may reasonably be desirable to make and keep the Property a desirable and harmonious residential housing development, including without limitation, Rules and Regulations regarding the use, appearance, upkeep and maintenance of the Residences, Lots and the Common Area. Owner and Occupants shall abide by all such Rules and Regulations.

Section 21. Rights of Declarant. Anything herein to the contrary notwithstanding, the foregoing restrictions in Article VI and Article VII shall not apply to the Developer or Declarant.

ARTICLE VIII EASEMENTS - PROPERTY RIGHTS

Section 1. Easements for Utilities. Easements for the installation, construction, reconstruction, maintenance, repair, operation and inspection of sewer, water, gas, drainage, electric, telephone or other utility or commercial entertainment services, including cable television services, shall be granted as shown on any plat or other documents of record filed from time to time in connection with the Property, Lots, Buildings or Common Area, and are otherwise hereby declared in favor of Commonwealth Edison, Northern Illinois Gas Company, Ameritech, the Village, the Association and other necessary utility and cable television companies. Further, any additional easements over the Property, Common Area, Buildings or Lots for such purposes may be granted by the Association or Declarant, as the case may be, at any time for the purpose of obtaining such services or maintaining the Property, Buildings or Lots. Each Owner by reason of acquiring a Lot, hereby grants to the Association a power of attorney to grant the aforesaid easements and hereby acknowledges that the Association is each Owner's agent and attorney in

fact to perform all such acts and execute and deliver on each Owner's behalf all such documents to effectuate the same and further acknowledges that his power of attorney and appointment is coupled with an interest.

Section 2. Association Access Easement. An easement is hereby granted to the Association for access, ingress, egress and use of any Lot or the exterior of any Residence for the purpose of enforcing this Declaration or maintaining any Lot or Residence in accordance with the requirements of this Declaration and the Rules and Regulations.

Section 3. Easements; Noninterference. No Owner or Occupant shall interfere with any easements hereinabove, hereinbefore and hereinafter set forth in this Declaration.

Section 4. Easement Rights. The Association, Developer and Declarant and their respective successors and assigns, and any party for whose benefit easements are granted pursuant to this Declaration, shall have the right to do whatever may be reasonably required for the enjoyment of the easement rights herein granted, including the right to clear said easement areas of trees or shrubs or any building, fence, structure or paving erected on or installed within the easements areas, and no charge, claim or demand may be made against such parties for any such activities in the exercise of such rights.

Section 5. Declarant's and Developer's Reserved Easements. Declarant and Developer and their successors, assigns, guests, invitees, licensees, agents, employees, representative, contractors and sub-contractors, are hereby granted and reserved an easement and right of way, without cost, in, over, upon, through, above and below the Property, including the Common Area and Lots for the following purposes:

(a) Ingress, egress and access from all portions of the Property to a public right of way or other portions of the Property;

(b) To construct, lay, erect, install and maintain all pipes, roadways, common area landscaping, improvements, utility lines, sewer lines, storm water drainage lines and all other improvements, installations and utilities;

(c) To lay, install, construct, reconstruct, maintain, repair, operate and inspect any sewer, natural gas, water, storm water drainage, sanitary sewers and other utilities and all other improvements, including Residences and all other appurtenances constructed or intended to be constructed on the Property;

(d) To use the Property or portions therefor, except any portion on which a Residence is constructed and which is sold and title thereto is conveyed to a bona fide third party from Declarant, for the purpose of (i) model Residences to exhibit to prospective purchasers or occupants; (ii) parking lots and facilities; (iii) walkways and pedestrian pathways; (iv) construction offices; (v) sales offices, administrative

or other offices; or (vi) other activities with respect to the construction of Residences, improvement of the Property and the sale or lease of Residences; and

(e) To store any equipment, materials or other item or object with regard to the construction of Residences, the improvement of the Lots or the Property, the installation of utilities or any other matter required for the construction of Residences or installation or construction of improvements on the Property.

Section 6. Easement for Ingress and Egress. The Owners and Occupants and their respective guests, agents, invitees and licensees, shall have and are hereby granted a general easement for ingress and egress over, across, and through the Common Area (except as provided in Article V)

Section 7. Easement for Association. The Association and its successors, assigns, officers, directors, employees, agents, representatives and designees shall at all times have the right of ingress and egress across the Lots and Common Area, for purposes of exercising the Association's rights hereunder, including the right to maintain the Common Areas, make emergency installation and repairs and otherwise enforce the covenants and restrictions contained herein, including the maintenance and repair of landscaping and maintenance and repair of the Common Area or any Lot or Residence as provided herein.

Section 8. Easements Running With the Land. All the easements herein described, reserved or granted are easements appurtenant to and running with the land; shall at all times inure to the benefit of and be binding on the undersigned and all of its grantees and their respective heirs, successors, personal representatives and assigns and shall be perpetually in full force and effect. As to any Property that is subject to the terms of this Declaration, reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation or transfer, to this Declaration or to the easements, covenants and restrictions contained herein shall be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though said easements, covenants and restrictions were fully recited as set forth in their entirety in such documents.

Section 9. Easement in favor of the Village of Hoffman Estates. An easement is hereby granted to the Village of Hoffman Estates for ingress and egress and for such other access as may be necessary for public emergency vehicles.

ARTICLE IX **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, by acceptance of any deed of conveyance of any Lot, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay to the Association: (i) annual assessments or charges representing its share of the expenses of maintenance, repairs,

replacements, taxes, administration and operation of the Association and Common Area and of maintenance, repairs and replacements to the Lot improvements which are the responsibility of the Association ("Common Expenses"); (ii) special assessments; and (iii) supplemental assessment for any purpose, including capital improvements and unforeseen expenses to be collected from time to time as hereinafter provided. (iv) Assessments or charges representing share of expenses of maintenance, repairs, replacements, taxes, administration and operation of the Master Association. Payments of assessments shall be in such amounts and at such times as provided by the Board. The annual and special assessments, together with such interest, costs and reasonable attorneys' fees, along with any other amount to which an Owner is obligated to pay the Association, shall be a charge on the land and shall be a continuing lien upon the Lot and Residence against which assessment is made. Each such assessment shall also be the personal obligation of the person who is the Owner of such Lot at the time the assessment is made or is due and payable and of such Owners' successors in title.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Residents of the Property and in particular for the improvement and maintenance of the Common Area and Building Facilities, including but not limited to, the payments of all taxes and insurance for Common Areas, repair, replacement and maintenance relating to the Common Area and Building Facilities, for painting of the exteriors of the buildings, including residences, and for maintaining and replacement of roofs of the buildings, including residences, and for services and facilities devoted to this purpose and related to the use and enjoyment thereof. Each individual Owner is responsible for the upkeep and maintenance of its residence and Lot (except exterior painting and roofs) and the Association shall have the right but not the obligation, to perform such maintenance and upkeep of the Owner's Residence or Lot, if such Owner fails to do so, and the cost thereof shall be the personal obligation of the Owner and a lien upon the Lot and Residence, as set forth hereinabove.

Section 3. Assessments.

(a) On or before December 1 of each year, the Board shall estimate the total amount necessary for the next calendar year to pay the cost of taxes, wages, materials, insurance, services and supplies relating to the maintenance of the Common Area, the Building Facilities, the Property and the Association for the rendering of all services, the assessments and charges of the Master Association, together, if deemed necessary by the Board, with a reasonable amount necessary for a reserve for emergencies and replacements, as more specifically provided in (e) below, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Such annual budget shall also take into account any estimated net accruable cash income for the year from operation or use of the Common Area and Building Facilities according to the funds available in the accounts established for the Common Expenses and other applicable

expenses for all the Lots. Said "estimated cash requirement" shall be assessed equally to each Owner, except the Declarant, according to the number of Lots owned by each Owner, and shall be due and payable in equal installments upon such dates and in such manner as shall be established by the Board from time to time. On or before the date of the annual meeting of each calendar year, the Board shall supply all Owners with an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid and other applicable expenses for all the Lots, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over and under actual expenditures plus reserves. In any given year, the amount accumulated in excess of the amount required for actual expenses and reserves shall be credited equally to each Owner by applying any such excess to assessments for the subsequent year.

(b) If said "estimated cash requirements" as hereinabove set forth proves inadequate for any reason, to defray the operating expenses and costs during any given year, then the Board shall be authorized to adopt a supplemental assessment budget or budgets and shall determine the amount of a supplemental assessment. The Board shall serve notice of such supplemental assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such supplemental assessment shall become due at such time as the Board may determine. All Owners shall be obligated to pay the supplemental assessment.

(c) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year for the purposes of defraying, in whole or in part, the cost of any Common Area taxes, and the cost of construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, Building Facilities or a Lot, the assessments or charges of the Master Association, provided that such special assessments in any assessment year shall have the assent of two thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Any such assessment shall be levied equally against each affected Owner deemed to be responsible for said assessment.

(d) Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or (c) above shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of the Member or of proxies entitled to cast twenty percent (20%) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(e) The Board may establish and maintain reasonable reserves for capital expenditures, if appropriate, contingencies and replacements as it shall deem necessary, and for extraordinary expenditures not included in the "estimated cash requirements". Such expenditures for capital expenditures, contingencies or replacements shall be first charged against such reserves in the year of such expenditure. If such reserves are depleted or, in the opinion of the Board, significantly reduced, then any supplemental budget, or the next regular "estimated cash requirements" shall provide for the reestablishment of such reserves as the Board shall deem reasonably appropriate.

(f) The failure or delay of the Board to prepare or serve on the Owners the annual or adjusted estimate or the itemized accounting of other documents or the next ensuing year's budget shall not constitute a waiver or release in any manner of such Owner's obligation to pay their annual assessments as herein provided, whenever the same shall be determined, and the absence of an annual estimate to the Owner shall constitute an obligation to pay, until notified otherwise, the then existing estimated assessment increased by the rate of inflation for the previous calendar year as determined by the United States Government Consumer Price Index, United States Average or its successor Index of the previous year.

(g) The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Property, specifying and itemizing the maintenance and repair expenses of the Property and any other expenses incurred. Such records shall be available for inspection by any Owner or first mortgagee of record, at such reasonable time or times during normal business hours as may be requested by the Owner or mortgagee. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner or an Owner's first mortgagee shall be furnished a statement of such Owner's account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

(h) No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, Building Facilities, Lot or Residences or abandonment of its Lot or Residence. Except as otherwise provided elsewhere herein, an Owner on the first day of the year shall personally be liable for the full amount of the annual assessment but shall have the right, so long as the Owner is free from default herein, to pay the same in the manner or installments established by the board from time to time. The Owner as of the date of any levy of a special assessment or supplemental assessment shall be personally liable for the full amount of such assessment but shall have the right, so long as the Owner is free from default herein, to pay the same in the installments set forth by the Board from time to time.

Section 4. Uniform Rate of Assessment. Subject to Section 13 hereof, annual, supplemental and special assessments must be charged equally to each Lot (except Lots owned by Declarant shall be exempt), except that if the Association provides maintenance, upkeep or expends funds for one or more Lots to the exclusion of other Lots, the Owner or Owners of the Lots or Residences thereof which are affected or benefited shall be assessed and shall reimburse the Association for all costs and expenses made or expended.

Section 5. Commencement and Payment of Annual Assessments. The assessments provided for herein shall commence for each Lot improved with a Residence as of the date title to such Lot is conveyed to a third party Owner other than Developer or Declarant.

Section 6. Association's Lien Subordinate to Mortgages. The lien for assessments as herein provided, and any fees, fines, interest, late charges or penalties levied in connection with unpaid assessments, shall be subordinate to the lien of any first mortgage (or equivalent security interest) on any Lot, provided that such subordination shall apply only to assessments provided for herein which have become due and payable prior to the time a sale or transfer of such property by foreclosure of the lien of the first mortgage against such Lot has occurred or any other transfer to such first mortgagee or other holder of an equivalent security interest, whether or not in lieu of foreclosure. Such sale or transfer shall not relieve such property and the transferee from liability for any assessments, including late payment penalties, thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 7. Effect of Nonpayment of Assessments - Remedies of the Association. The amount of each assessment or any specific charges or costs incurred by the Association with respect to the upkeep or maintenance of the Building Facilities of any particular Lot or Residence due to the failure of an Owner to do so or costs incurred by reason of negligent or other willful or intentional conduct of an Owner in derogation of this Declaration, shall constitute a lien on the Lot of such Owner. If the assessment or other amounts owed are not paid within thirty (30) days after the due date, the assessment and other cost, expenses and charges shall bear interest from the due date of such assessment or cost, expense or charge at the maximum rate of interest allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessments, cost, expense or charge. Upon the recording of a notice of lien by the Board of Directors, it shall be a lien upon such property prior to any other recorded or not recorded encumbrance, except as set forth in Section 6, and subject only to:

(a) Taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this state and other state or federal taxes which by law are a lien on the interest of such owner prior to pre-existing recorded encumbrances thereon; and

(b) Encumbrances on the interest of such Owner recorded prior to the date such notice is recorded, which by law would be a lien thereon prior to subsequently recorded encumbrances.

(c) The lien for Common Expenses shall be in favor of the Association for the benefit of all other Owners who may have the right to bring any action authorized under this Declaration, By-Laws or otherwise in law or equity. In the event an Owner's interest is sold at a public or private sale pursuant to this Declaration or the By-Laws because of the failure to pay the Common Expenses, the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed and to acquire and hold, lease, mortgage and convey the same. The Board shall also have the power and right to assess additional fines and penalties against any Owner for nonpayment of assessments, as long as said fines and penalties are uniformly applied.

Section 8. Forcible Entry and Detainer. In the event of any default by any Owner in the performance of the Owner's obligations under this Declaration, Bylaws, or Rules and Regulations of the Board, the board, or its agent, shall have such rights and remedies in addition to those provided or permitted by law, including the right to take possession of such Owner's interest in the Property for the benefit of all other Owners by an action for possession in the manner prescribed in the Forcible Entry and Detainer Act of the State of Illinois, as amended from time to time.

Section 9. Exempt Property. Notwithstanding anything contained in this Declaration to the contrary, the following Property, subject to this Declaration, shall be exempt from the levy and payment of any assessments created herein (including general, special, supplemental or other assessments): (a) all Property dedicated to and accepted by a local public authority and Property granted to or used by a utility company, (b) the Common Area; and (c) Property owned by Declarant or Developer which has not been improved with a Residence and sold and transferred to a bona fide third party purchaser.

Section 10. Mechanic's Liens. The board may cause to be discharged any Mechanic's Lien or other encumbrance which in the opinion of the Board may constitute a lien against the Common Areas. Where less than all of the Owners are responsible for the existence of said lien, such Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all costs and expenses, including attorney's fees and court costs incurred by reason of the lien.

Section 11. Initial Operating Assessment. At the closing of the initial sale of a Lot or a Residence to a bona fide third party purchaser, such purchaser of such Lot or Residence shall pay to the Association an amount equal to two full months' general assessment in effect at such time, as an initial operating contribution to the Association, plus a pro-rata assessment calculated from the date of closing until the first required assessment payment. Such payment shall not be

refundable or credited against assessments.

Section 12. Right to Mortgage. Anything contained herein to the contrary notwithstanding, Declarant and its successors and assigns shall have the right, at any time and from time to time, to mortgage or otherwise encumber any portion of the Property to which it is in title and not previously conveyed, and any lien created thereby shall at all times be superior to the lien of assessments established by this Article IX, or elsewhere in this Declaration, regardless of whether such lien is recorded prior to the commencement of assessments against such property.

Section 13. Developer's Obligations. Anything herein to the contrary notwithstanding, if during the course of any fiscal year prior to the Turnover Date and as of the end of such fiscal year, the normal operating and maintenance expenses of the Association (specifically excluding expenses made for capital replacements, capital repairs and other unforeseen matters) shall exceed the budgeted amount, then, at the election of Declarant, without amending the requirements as set forth in Section 3(d): (a) the Association shall issue a special assessment to each Owner (including the Declarant) to pay its share thereof (for purposes hereof, exclusively, the Declarant shall be deemed to own for purpose of the assessment the number of Lots which then are unsold to a bond fide third party or pending for sale); or (b) Declarant shall contribute to the Association or pay to the parties entitled to payment such amounts as may be necessary to absorb such deficit; or (c) Declarant shall pay to the Association an amount equal to the annual assessments which would have been due on Declarant's Lots as if Declarant had not been exempt from payment therefor.

ARTICLE X
INSURANCE

Acquisition of Insurance Coverage. The Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for death, injury and property damage, insuring the Association and its Members in an amount not less than is considered reasonable, but in no event less than \$1,000,000 per occurrence. Each Owner shall provide the Association with a certificate of insurance naming the Association as an additional insured thereunder evidencing that the Owner maintains fully paid fire and extended coverage insurance on its Residence in an amount equal to the replacement costs thereof, with no offset for depreciation.

ARTICLE XI
SALES AND CONSTRUCTION ACTIVITY

Declarant and Developer, for their own benefit and the benefit of their respective agents, representatives, contractors, subcontractors, designees, employees, guests, invitees, licensees, successors and assigns (individually, "Benefited Party" and collectively "Benefited Parties") hereby reserve an easement and right over, on, across, through and under the Buildings, Lots, Common Area and the Property (except as to a portion of a Lot or Building upon which a Residence is constructed and sold to a bona fide third-party purchaser, without cost, to construct,

maintain, install and carry on such facilities and activities as may be deemed required, convenient, necessary or incidental by a Benefited Party with respect to Developer and Declarant's activities at the Property which shall include, but not be limited to the construction, installation, improvement and development of the portion of the Property to which Declarant is in title, and the construction, improvement, sale or lease of Lots and/or Residences, including, without limitation, the display and installation of signs, the posting of banners and other promotional activity, operation of sales and construction trailers and sales and administration offices, the construction and maintenance of model facilities for the parking of vehicles, the storage of debris, material, construction material or other similar objects, the use of the Common Area and Lots for storage or parking of construction trailers of contractors and material suppliers and the erection of tents and other temporary facilities for promotional or other construction, sales or promotional activity. Easements of use, access, ingress, and egress are hereby granted for all such purposes, without cost, to Declarant, Developer and the Benefited Parties.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Board Liability. The Directors from time to time constituting the Board, and the officers thereof, shall not be liable to the Members of the Association for any mistake of judgment or for any actions or omissions to act made in good faith as such directors or officers.

Section 2. Initial Operation. Until such time as the Board provided for in this Declaration is formed, Declarant or Developer or and its successors and assigns shall exercise any and all of the powers and functions of the Association and the Board.

Section 3. Deeds and Conveyances Subject to Declaration. Each grantee, by the acceptance of a deed of conveyance of any Lot, agrees for all purposes to be deemed to be and have become the Owner of such Lot as herein defined, and accepts such conveyance subject to all easements, restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration and the By-Laws and all rights, easements, benefits and privileges of every character granted hereby, created, reserved or declared, whether or not they are referred to or set forth in any deed or other transfer of title or interest.

Section 4. Real Estate Taxes. Real estate taxes and general, special and supplemental assessments levied upon the Common Area shall be a Common Expense paid by the Association through assessments received from the Owners, pursuant to Article IX as hereinabove set forth. Real estate taxes shall be separately taxed to each Owner for its Lot as soon as feasible after the first sale of such Lot and shall be paid directly to the taxing authority by such Owner as and when so separately taxed. In the event that such taxes for any year with respect to any Lot are not separately taxed to the Owner thereof, but rather are taxed on any part or parts of the Property consisting of more than one (1) Lot, and containing the Lot of such Owner, then such Owner shall pay a percentage of such undivided tax bill determined by dividing the total number of square feet

in the Lot or Lots owned by such Owner, by the total number of square feet included in the undivided tax bill. The calculations referred to above shall be determined by the Association and shall be binding upon the Owners. Each Owner shall pay such amount to the Association within ten (10) days after demand therefor and the Association shall pay such taxes to the appropriate collecting authority. The Association shall have authority to advance funds in payment of all or a portion of such taxes pending receipt from the respective Owners of their proportionate shares.

Section 5. Conflicts. In the event of any conflict between this Declaration, and the Bylaws or Articles of Incorporation or the Rules and Regulations, this Declaration shall control. In the event of a conflict between the terms of this Declaration and any law applicable to the Property, the more restrictive (as determined by the lawmaking authority) shall control.

Section 6. Governing Law. The laws of the State of Illinois shall govern the construction, interpretation, application and enforcement of this Declaration and the Association formed pursuant thereto.

ARTICLE XIII **MISCELLANEOUS PROVISIONS REGARDING MORTGAGES**

The following provisions are intended for the benefit of each First Mortgagee and to the extent, if at all, that any other provisions of this Declaration or the Bylaws or rules and regulations conflict with the following provisions, the following provisions shall control:

(a) Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded first mortgage or trust deed on a Lot ("Insurer or Guarantor") and the Residence number or address, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of default of any Owner's obligations under this Declaration which is not cured within thirty (30) days. Any First Mortgagee of a Lot who comes into possession of the said Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Lot which become due prior to: (i) the date of the transfer of title; or (ii) the date on which the holder comes into possession of the Lot; or (iii) the date on which a receiver is appointed in a suit to foreclose the holder's lien, whichever occurs first.

(b) Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

UNOFFICIAL COPY

- 30358442
- (i) To examine current copies of this Declaration, the Bylaws, rules and regulations and the books and records of the Association during normal business hours;
 - (ii) To receive a financial statement prepared by the Association within ninety (90) days following the end of its fiscal year;
 - (iii) To receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;
 - (iv) To receive written notice of any decision by the Association or Owners to make a material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association;
 - (v) To receive written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (vi) To receive written notice of any proposed action which would require the consent of a specified percentage of First Mortgagees; and
 - (vii) To receive written notice of any condemnation or casualty loss that affects either a material portion of the Property or the Lot on which it holds, insures or guarantees the mortgage.

(c) No provisions of this Declaration, the Bylaws or the Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Lots or Residences therein shall be deemed to give an Owner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of the Lots, Residences or Buildings and/or the Common Area or any portion thereof or interest therein. In such event, the First Mortgagees, Insurers or Guarantors of the Lots or Residences affected shall be entitled, upon specific written request, to timely written notice of any such loss.

(d) Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Lot shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Area if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00), or of any damages to the Residence in excess of One Thousand Dollars (\$1,000.00) of which the Association acquires actual knowledge.

(e) If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, Insurer or Guarantor of said Lot will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association or any other instrument pertaining to the Property or the Lots, Buildings or Residences will entitle the Owner of a Lot or other party to priority over such First Mortgagee with respect to the distribution of the proceeds of any award or settlement with respect to such Lot or Residence.

(f) Notwithstanding the provisions of this Article XIII, failure of the Association to provide any of the foregoing to a First Mortgagee, Insurer or Guarantor which has so requested same shall not affect the validity of any action or decision of the Association.

ARTICLE XIV **AMENDMENTS TO DECLARATION**

Section 1. Approval of Amendments. Except as provided below, provisions of this Declaration may be amended by an instrument in writing setting forth the amendments and executed by the Owners representing not less than sixty seven percent (67%) of the outstanding membership votes entitled to be cast, or that is approved at a general or special meeting of Members by the affirmative vote, either in person or by proxy, of the Members having not less than sixty percent (60%) of the outstanding membership votes entitled to be cast and containing a certification by the President or a Vice President and the Secretary or an Assistant Secretary, or

such other officers authorized by the Board of Directors, that said instrument was duly approved as aforesaid, provided that the Declaration shall not be amended except with the prior written approval of the Village; and provided further that so long as the Declarant owns a Lot, Declarant's written approval to any amendment shall be required.

Section 2. Compliance with Governmental Authority. Declarant reserves the right and power to record any special amendments to this Declaration at any time and from time to time, to amend this Declaration to comply with requirements or requests of the Village or any other political or governmental subdivision or agency having jurisdiction over the Property, or any institutional lender, bank, savings and loan association or other similar institution providing acquisition, development or construction financing in respect of the development of the Property or the construction or installation of improvements thereon, construction of Residences or improvements on the Lots or the acquisition of Lots or Residences on the Property or a portion thereof, or as may be requested or required by the Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal Housing Administration or any other governmental or quasi governmental agency or public, quasi-public or private entity which

performs (or may in the future perform) functions similar to those currently performed by such entities.

Section 3. Restrictions on Alienation. Anything herein contained to the contrary notwithstanding, no amendment to the Declaration, Articles of Incorporation or Bylaws which shall seek to vest a right of first refusal as to the sale or lease of a Residence or Lot, or any similar restriction in favor of the Association, other Owners or related entities, shall be of any force or effect.

Section 4. Rights of Declarant and Developer. The foregoing notwithstanding, no amendment to this Declaration, the Bylaws or the Rules and Regulations which shall affect the rights or obligations of Declarant or Developer and their successors and assigns (including, but not limited to, the right to maintain sales facilities, signs and access for construction sales and storage, all as and otherwise set forth in this Declaration) shall be effective without Declarant's express written consent thereto. Declarant further reserves the right and power to record any amendments to this Declaration to correct clerical or typographical errors in this Declaration or any exhibit, supplement or amendment thereto or to otherwise amend the Declaration at any time, so long as the same has no material effect on the Owners' rights.

Section 5. Right of the Village. If the Association shall default in any of its obligations described above in Article VI, Sections 2 and 3, and if such default shall continue for thirty (30) days after notice thereof in writing to the Board from the Village then and in such event, the Village shall have the right (but not the obligation) to enter upon the Common Area, Building Facilities, Lots or Residences and remedy the same or cause the same to be done. The Association shall, upon demand, reimburse the Village for the reasonable cost of such work and if payment is not made within thirty (30) days after performed on a Lot, the aliquot share of the amount due shall become a lien on such Lot. Each such lien shall be subordinate to the lien of the first mortgage on the Lot and shall accrue interest at the rate of 13% per annum from the date incurred until paid. At the request of the Village, the Association shall levy a special assessment on the Owners (exclusive of Declarant) for the payment of any such amounts which become due to the Village, and the Village shall have the right to seek an injunction causing the Association to make such special assessment or, in the alternative, to record an appropriate notice of lien against the Common Area and, if applicable, the Lots, and to foreclose any such lien as provided for or permitted under applicable law. Any such costs and expenses incurred by the Village shall be paid by the Association and the Village shall have the right to record a lien against the Property for all such costs and expenses, (including reasonable attorneys' fees and interest) incurred in enforcing such Declaration and causing the cure of such default. The costs and expenses of the Association shall be a Common Expense. If the matter to which the Village claims is a matter which may be isolated to an Owner or group or Owners and the Association cures the default of the Owner or group of Owners, the affected Owners shall reimburse the Association for all costs of the cure thereof, including attorneys' fees and all costs and interest incurred, both direct and indirect. The Association shall have a lien against all of the affected Owners' Lots with respect to all the costs.

Section 6. Validity of Amendments. No amendment shall become valid until a copy of same is certified by the Declarant or the Secretary or an Assistant Secretary of the Association, as may be applicable, to be true and correct and placed of record.

Section 7. Release of Covenants. Anything herein to the contrary, Declarant may at any time within ten (10) years from the date of the recording of this Declaration, record an Amended Declaration or Declarations to effect the removal of any portion of the Property from the covenants, terms and restrictions set forth herein; provided that such removal shall be effective only as to such portion of the Property owned by Declarant or its designated successors and assigns, as of the date such Amended Declaration is recorded; and, provided further, that Declarant may again subject and remove such removed portion or portions, from time to time, to the terms of this Declaration by recording a subsequent amendment or amendments hereto setting forth Declarant's intent to re-include or re-remove such portion or portions, all within ten (10) years from the date of recording of this Declaration.

Section 8. Rule Against Perpetuities. If any provision of this Declaration is deemed to violate the Rule Against Perpetuities or any other rule, statute, or law imposing time limitations, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now-living descendants of current governor of the State of Illinois.

IN WITNESS WHEREOF, Declarant has caused its corporate seal to be affixed hereunder and has caused its name to be signed to these presents by its President and attested by its authorized officers this 24th day of Feb, 2002. 2003

MITROFF GROUP, LTD., an Illinois Corporation

By: Donald A. Mitroff
DONALD A. MITROFF
Its: PRESIDENT

ATTEST:
By: D.P.K., CFO
DANIEL P. KOVACEVIC
Its: CHIEF FINANCIAL OFFICER

THIS INSTRUMENT PREPARED BY:
CARLTON W. LOHRENTZ, Attorney
1655 N. Arlington Heights Road #102E
Arlington Heights, IL 60004

UNOFFICIAL COPY

EXHIBIT 'A'

PROPERTY

30358442

Lot 1 through 20, both inclusive, Outlot A, Outlot B, Outlot C, Outlot D, and Outlot E in Hampton Knoll Subdivision, being a part Subdivision of part of the Northwest Quarter of Section 15, Township 41 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded May 10, 2002, as document number 0020539223 in Cook County, Illinois.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

30358442

EXHIBIT B

COMMON AREA

Outlot A, Outlot B, Outlot C, Outlot D, and Outlot E in Hampton Knoll Subdivision, being a part Subdivision of part of the Northwest Quarter of Section 15, Township 41 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded May 10, 2002, as document number 0020539223 in Cook County, Illinois.

Property of Cook County Clerk's Office