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McKINLEY PARK MANOR DECLARATION OF COVENANTS AND RESTRICTIONS



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Eugene "Gene" Moore Fee: \$84.00
Cook County Recorder of Deeds
Date: 05/05/2005 10:30 AM Pg: 1 of 31

MAIL TO:
JAMES MCNAUGHTON-PERSHING ROAD, LLC
123 E. Ogden Ave.
Hinsdale, IL 60521-3564

THIS INSTRUMENT PREPARED BY:
JAMES MCNAUGHTON-PERSHING ROAD, LLC
123 E. Ogden Ave.
Hinsdale, IL 60521-3564

Recorder's Stamp

F	11/1	A
P	11/1	P
T	11/1	V
I	11/1	

McKINLEY PARK MANOR

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made on this 3rd day of MAY, 2005, by CHICAGO TITLE LAND TRUST COMPANY, as successor trustee to Cole Taylor Bank as Trustee under Trust Agreement dated July 1, 2003 and known as Trust number 03-9901 (herein the "Trust" and, as to CHICAGO TITLE LAND TRUST COMPANY, as successor trustee to Cole Taylor Bank, the "Trustee"), and not individually, and JAMES McNAUGHTON-PERSHING ROAD, LLC (herein the "Developer"), sole beneficiary under the terms of the Trust.

WITNESSETH:

WHEREAS, Trustee is the Owner of 1.43 acres of real property located at 3801 - 3815 S. Hermitage, Chicago, in Cook County, Illinois (herein the "Property"), which real property has been annexed to the City of Chicago and is currently zoned under City R-4 Residential zoning; and

WHEREAS, JAMES McNAUGHTON-PERSHING ROAD, LLC an Illinois Limited Liability Company (herein the "Developer"), the beneficiary of the Trust, is a developer of single-family homes throughout the Chicago area and is the developer and general contractor of the Property; and

WHEREAS, the real property area which the Developer proposes to subdivide and develop is referred to herein, in some instances, as "McKINLEY PARK MANOR; and

WHEREAS, Developer intends to develop McKINLEY PARK MANOR into a community of sixteen (16) single-family residences erected on individual lots in McKinley Park Manor; and

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WHEREAS, Developer desires to provide for the preservation of the distinctive residential quality of McKinley Park Manor and for the maintenance of Outlot "A" (as defined herein) and, for these purposes, Developer desires to subject the Property to the conditions, covenants, restrictions, reservations, grants and easements herein set forth (all of which are hereinafter referred to collectively as the "Covenants and Restrictions"); and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers of administering and enforcing the Covenants and Restrictions.

NOW, THEREFORE, Trustee and Developer, for the purposes above set forth, hereby declare as follows:

ARTICLE 1

Declaration Subject to Covenants and Restrictions

1.1 Declaration of Trust and Description of the Property: Trustee does hereby declare that the Property is and shall be subject to the uses and purposes herein set forth. Developer declares further that this declaration of trust shall be managed and administered on the terms and conditions hereinafter set forth. The Property to which said declaration of trust relates, and which is subject to this declaration of trust is the real property which Developer is developing, and said real property is described as follows:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and OUTLOT A" IN MCKINLEY PARK MANOR, BEING A SUBDIVISION IN THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 14, 2004 AS DOCUMENT 0410539064 IN COOK COUNTY, ILLINOIS.

The specific lots in the McKinley Park Manor Subdivision are hereinafter referred to as the "Lots" and the related permanent index numbers and common addresses are identified below:

McKinley Park Manor

<u>LOT NO.</u>	<u>COMMON ADDRESS</u>	<u>PIN</u>
1	3815 S. Hermitage Ave.	
2	3811 S. Hermitage Ave	
3	3809 S. Hermitage Ave.	
4	3807 S. Hermitage Ave.	
5	3803 S. Hermitage Ave.	
6	3801 S. Hermitage Ave.	
7	3800 S. Paulina St.	

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8 3804 S. Paulina St.
 9 3806 S. Paulina St.
 10 3810 S. Paulina St.
 11 3812 S. Paulina St.
 12 3814 S. Paulina St.
 13 3818 S. Paulina St.
 14 3820 S. Paulina St.
 15 3822 S. Paulina St.
 16 3826 S. Paulina St.
 OUTLOT "A"

NOTE: Pre-existing PIN removed from assessment roll:

17-31-429-005-000

ARTICLE II Definitions

2.1 Association: The name of the Association is McKinley Park Manor Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

2.2 Board of Directors: The Association shall have a Board of three (3) Directors who shall constitute the Board of Directors. All rights, titles, powers, privileges and obligations vested in or imposed upon the Board, pursuant to the Illinois General Not-for-Profit Corporation Act of 1986 (805 ILCS 105 et seq.), and upon the Association in this Declaration shall be held and executed by this Association through the duly elected members of the Board of Directors and their successors in office.

2.3 By-Laws: The By-Laws of the Association.

2.4 Community Area: Outlot "A" as shown on the Plat of subdivision of McKinley Park Manor.

2.5 Community Expenses: The expenses of administration (including management and professional services), maintenance, operation, repair, replacement of the alley located in Outlot "A"; any expenses designated as Community Expenses by this Declaration or the By-Laws; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners, including, but not limited to, the cost of maintaining the storm water management facilities.

2.6 Declaration: This instrument as amended or supplemented from time to time.

2.7 Developer: JAMES McNAUGHTON-PERSHING ROAD, LLC an Illinois Limited Liability Company, its successors and assigns.

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2.8 Lot: A portion of the Property shown on the Plat which is improved or intended to be improved with one single family residence. The "Lots" are those portions of the Property, which are designated on the Plat as Lots 1 through 16.

2.9 Member or Membership: Shall mean or refer to every title holder of a Lot within McKinley Park Manor.

2.10 Outlot "A": That portion of the Property designated on the Plat as Outlot "A".

2.11 Owner: The record holder of fee simple title to any Lot on the Property, other than the Developer, whether such Owner shall be one or more persons or entities, the beneficiary or beneficiaries of a trust, shareholder of a corporation, or partner of a partnership, but excluding those persons or entities having any interest merely as security for the performance of an obligation.

2.12 Plat: The Plat of Subdivision of McKinley Park Manor Subdivision recorded in Cook County, Illinois, on April 14, 2004 as Document 0410539064.

2.13 Property: The use of the term "Property" shall mean and refer to Lots 1 – 16 and Outlot "A" in McKinley Park Manor, either improved, unimproved or both, whichever reference is appropriate in context, and all easements, rights and appurtenances belonging thereto.

2.14 Rules and Regulations: The Rules and Regulations adopted from time to time by the Board governing McKinley Park Manor and the use of McKinley Park Manor by the Owners and by all other persons.

2.15 Trust: Trust Agreement of JAMES McNAUGHTON-PERSHING ROAD, LLC and CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, as Trustee under Trust Agreement dated July 1, 2003 and known as Trust number 03-9901.

2.16 Trustee: CHICAGO TITLE LAND TRUST COMPANY, as successor trustee to Cole Taylor Bank, in its capacity as the Trustee of the Trust.

2.17 City: The City of Chicago, a municipal corporation authorized and existing under by virtue of the laws of the State of Illinois.

2.18 Voting Member: The person entitled to membership in the Association and who shall be entitled to vote at meetings of the Owners, as more fully set forth in Section 10.2 (b).

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ARTICLE III

General Purpose of this Declaration

Statement of Purpose: The purpose of this Declaration and of the Covenants and Restrictions contained herein is to insure a use and development of the Property consistent with the desire and intention of Developer to establish a residential community of high quality, to protect the owners of homes therein against use of the Property or of any part of the Property inappropriate to a fine residential community and incompatible with the proper enjoyment of such a community; to prevent the construction of buildings which, because of their design or construction or materials, are not in aesthetic harmony with other buildings on the Property; to encourage the construction of fine quality homes compatible with the architectural character of the Property; to make certain that homes are so located on sites within the Property that each home enjoys light, air, and free and open space; to protect owners of property within the Property against any improper use of proximate Lots as may depreciate the value of their property; and to insure that the Property is at all times carefully and efficiently maintained and that the facilities, lawns, walks and open spaces are always so maintained and operated that they may be enjoyed and used with comfort and pleasure by the owners of homes within said Property. It is the purpose of the Declaration, in general, to provide that the Property will be so managed, maintained and preserved, that it will at all times be regarded as a residential community of outstanding excellence.

ARTICLE IV

Restrictions and Responsibilities

4.1 Land Use and Building Type: All Lots shall be used for single-family purposes only, and no dwellings other than a single-family private residence and detached garages shall at any time be constructed or maintained on a Lot. Each home shall be occupied by only one family. One family shall be defined as one or more persons each related to the other by blood, marriage, guardianship or legal adoption, or a group of not more than three persons not so related, including their domestic servants, maintaining a common household in a dwelling unit.

No commercial enterprise that requires regular deliveries or pick ups or invites clients or customers, except that reserved for the Developer, whatsoever, shall be permitted or carried on at the Property. No structure shall be permitted on any Lot without prior architectural approval.

4.2 Architectural and Landscaping-Controls: The Developer has the right to establish architectural and landscaping controls for the purpose of creating a residential community in which each home is attractive and pleasing in design, and for the purpose of requiring and encouraging building styles and landscaping within the Property which incorporates a pleasing variety of designs, materials and colors that are compatible, and blend, rather than clash. No building, outbuilding, detached structure, storage shed, garage, landscape structure, recreational structure, fence, wall or other structure shall be commenced, erected or maintained, or shall any addition to, change or alteration in any of the foregoing be made, nor shall any exterior color changes be made, until the plans, construction plans and/or specifications

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shall have been submitted to the Developer and approved by the Developer, in writing. Said plans and specifications shall specify, but not be limited to, the nature, kind, shape, height, materials, color scheme and location of the structure on the Lot. In addition to the construction plans and specifications to be submitted to Developer, as above provided, there shall also be submitted to Developer for its prior written approval, landscaping and grading plans which shall show clearly, in reasonable detail, proposed grading and landscaping plans. Developer shall have the right to refuse to approve any construction plans, plans or specifications, and any landscape and grading plans and specifications, which, in Developer's judgment, do not comply with the architectural and landscaping controls or which conflict with the final grading plans for storm water detention and drainage approved by the Village. Developer has the right, in making a judgment as to the giving or withholding of approval to plans and specifications submitted to the Developer, to consider the desirability of the proposed construction, landscaping or grading, in relation to other homes and other landscaping and grading in the property, and to consider the character and qualities of the residential development existing or being created within the Property. Upon the Developer's written approval of the proposed plans or alterations, the Developer or the association as the case may be, has the right to collect a construction bond for the work to be performed on the subject lot. Developer has the right to appoint an architecture and landscape control committee for the purpose of reviewing plans and designs and making recommendations to the Developer. Such committee may be composed of persons with special expertise, and may be made up of Owners or non-Owners, or a combination thereof, in the discretion of the Developer. Developer further has a right to charge reasonable fees for such plan and design review, and to expend such fees, in whole or in part, for professional services used in connection with said plan and design review. Notwithstanding anything else contained herein, Developer's right to appoint the members of the architecture and landscape control committee shall terminate upon the earlier of: a) such time as Developer no longer has an ownership interest in the Property; or b) Developer has transferred and assigned its rights hereunder to the Association.

4.2.1 Fences: Chain link fences are prohibited. Scalloped red cedar, closed dog ear red cedar or decorative ornamental iron/aluminum fencing shall be permitted with a fence permit issued by the municipality. All fencing shall be placed to benefit the Owner's neighbors with the finished side of the fence facing away from the Owner's Lot. Installation of any fence must be in accordance with the City zoning, ordinances and a fence permit must be obtained from the City.

4.2.2 Landscaping: Every Owner of a structure shall within ninety (90) days of occupancy of such structure or within ninety (90) days of issuance of a certificate of occupancy install or cause to be installed grass sod and/or grass seed, weather permitting. Sod is required in front yards (not seed). Either sod or seed may be used in rear and side yards. If the Owner fails to install grass within such ninety (90) day period, Developer retains the right to install seed at Owner's sole expense.

4.2.3 Parkway Trees: In the event that an Owner desires to plant a tree or trees on the parkway of his or her Lot, the Owner will obtain the requisite permit or license form the City prior to such planting.

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4.3 Prohibition of Certain Activities and Other Matters: No activities shall be carried on which annoy or disturb or are likely to annoy and disturb others in or upon the Property.

No livestock, poultry or other undomesticated farm or similar creatures may be kept or maintained in or upon the Property. Dogs must be leashed at all time when being walked or walking on the Property. Any damages or requirements for maintenance on the Property caused by any pet shall be paid for by the owner of said pet, or the owner hosting the owner of said pet. The keeping of pets is subject to the Rules and Regulations established by the Developer or the Association.

Refuse or waste materials shall not be permitted to accumulate or to be burned outside of Owners' residences and shall be kept inside in an area screened from the public way or adjoining properties.

Boats, recreational vehicles and commercial vehicles shall not be parked outside overnight anywhere upon the Property.

No plants, seeds, landscape waste, or other things or conditions, harboring, breeding or likely to attract noxious insects or creatures, or likely to be conducive to plant disease, shall be brought into or permitted to exist or to be maintained within the Property.

No snowmobile, dune buggy, off-road vehicle, or similar motorized device may be operated anywhere upon or within the Property.

Violation of the foregoing restrictions shall entitle Developer or the Association to enforce the rights and remedies hereinafter specified, whether or not said violation constitutes a legal nuisance.

4.4 Owner's Individual Maintenance Obligation: As provided in Article VI, each Owner is responsible for the maintenance of his Lot and the improvements thereon except as otherwise provided in Section 11.1 herein. This responsibility shall be known as "Owner's Maintenance Obligation." If any Owner defaults in Owner's Maintenance Obligation, Developer or the Association is hereby granted all rights and powers necessary to perform such reasonable repairs, maintenance, rehabilitation or restoration as may in Developer's or the Association's opinion be reasonably necessary to correct such default. All cost and expense incurred in the performance of any such work shall be charged to the defaulting Owner, and shall constitute a lien against said Owner's Lot.

4.5 Community Association Maintenance Obligations: The Owners as members of the Association shall be solely responsible for all costs and expenses for the maintenance and upkeep of Outlot "A", including but not limited to pavement maintenance/repairs, snow removal, maintenance of storm sewer and garbage collection.

4.6 Maintenance Assessment: The Association shall annually prepare and distribute a budget for each calendar year to all owners of record of the McKinley Park Manor

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Development. The Association shall have the right to assess each Lot a prorata share of the cost of maintenance, upkeep, operation, safe-guarding and repair for Outlot "A". Each homeowner, by acceptance of a deed to a parcel, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, whether such acceptance shall occur before or after the conveyance of Outlot "A", (1) periodic assessment or charges; (2) special assessments for maintenance, repair, removal of liens and capital improvements; and (3) one time reserve fund payment for the maintenance and repair of the alley located in Outlot "A". Said payment to reserve fund shall be made by each purchaser at time of closing.

4.7 Antennae, Lighting, Flagpoles and similar Matters: No television or radio antennae' tower, satellite dish in excess of 30" in diameter, or other device to receive or transmit electromagnetic or other signals shall be erected outdoors, nor shall laundry be dried outdoors. Outdoor lighting and lighting fixtures shall be subject to approval by Developer or the Association and shall be in harmony with the character and aesthetics of the area. Flagpoles may be permitted by Developer or the Association, but no flagpole on a Lot shall have a height in excess of twenty-five (25) feet, and any such permitted flagpole shall be used solely for the display of the flag of the United States of America and the State of Illinois. Except as reserved by the Developer under Article IX, no "For Sale" or "For Rent" signs or other signs shall be erected on a Lot or exhibited from a none erected on a Lot.

Exterior and landscape lighting to be permitted so as to insure the safety and security of the residents and provide for the enjoyment of the environment in which they live provided that such lighting is of a style and type that is in keeping with the residential use and installed in such a way so as to minimize glare onto adjacent properties and assure that no more than .1 FC (foot candles) of light falls onto adjacent residential properties. Further, exterior lighting shall be limited to incandescent, high-pressure sodium, or low voltage halogen fixtures. Metal halide or high pressure mercury vapor fixtures will not be permitted.

4.8 Temporary Structures: Trailers and temporary buildings or structures may be located on a Lot only during the course of the construction of a home upon the Lot, but they shall be so located only because the convenience or necessity of the contractor in charge of construction requires their use, and all such trailers, temporary buildings or other structures shall be removed from the Lot promptly upon termination of the necessity or convenience therefore, or completion of the home, whichever first occurs.

4.9 Submission of Plans and Specifications: All plans, specifications and supporting and related material and documents for which the approval of Developer is required, shall be delivered to the Developer, together with the payment of the fee or fees established by the developer for review thereof. Developer shall approve or disapprove the submitted materials as soon as practicable, but Developer's written approval or disapproval shall, in any event, be given within thirty (30) days after all the necessary material has been delivered to Developer. If Developer disapproves any submitted material, or if Developer requires a modification of any kind, it shall, within said thirty-day (30) period, inform the Owner by whom the material was submitted, of the reasons for Developer's disapproval or Developer's requirement that changes be made, but notwithstanding the obligation of Developer to state the reason for disapproval or

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for the required modifications, the decision of Developer, reasonably made, shall be conclusive and binding on all parties. If Developer does not approve, or disapprove, or require a modification, within the aforesaid thirty-day (30) period, then at the expiration of said period, the material submitted to Developer shall be deemed to have been fully approved, and the plan or proposal of the Owner who has submitted the material shall be deemed to have been approved, by lapse of time, and said Owner shall have the right to proceed as if Developer's written approval has been procured. All buildings located on the Property shall have roofs of wood shingles, Architectural asphalt, slate, clay tile or such other material as approved by Developer. Three-tab shingles shall be permitted. The exterior materials shall be natural stone, brick, stucco, dryvit or natural wood (cedar or redwood) siding. Aluminum and vinyl siding materials shall be permitted. All footing discharges shall be completed in compliance with the ordinance of the City of Chicago.

4.10 Building Size and Exterior Material: All single-family residences, exclusive of garages, shall have a minimum external dimension of One thousand (1,000) square feet for one-story residences and two-story residences shall not be less than Two thousand (2,000) square feet in external dimension. The exterior materials shall be natural stone, brick, stucco, dryvit or natural wood (cedar or redwood) siding. Aluminum and vinyl siding materials shall be permitted.

4.11 Covenants and Restrictions-Running with Land: The Covenants and Restrictions created by this Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting the Property from and after the execution hereof shall be deemed subject to these Covenants and Restrictions and bound thereby as fully and as firmly as if said Covenants and Restrictions were fully set forth in each said conveyance or other instrument.

ARTICLE V Use of the Community Area

5.1 Use by Owners and Developer: The Owners, their families, guests, and invites have the right of access and the shared right to use the Community Area. Developer, its agents, employees and invitees also have the right to use the Community Area. Use of the Community Area shall be subject to the Rules and Regulations which may be amended from time to time by the Developer or the Association.

5.2 Use to Comply with Declaration and Rules and Regulations: No use of the Community Area shall be made by any person, whether Owner or otherwise, which does not comply with, and conform to, the requirements of this Declaration, and which does not comply with, and conform to, the Rules and Regulations.

ARTICLE VI Maintenance and Repair

6.1 Individual Responsibility of Owner: Each Owner of a Lot in McKinley Park Manor shall provide at his or her own expense and be liable for the following:

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(a) All of the maintenance, decorating, repairs and replacement as to his or her own Lot. Owner shall keep same in good condition, other than as specified in Section 11.1 herein.

(b) Installation of grass sod and/or grass seed as specified in Section 4.2.2 herein.

(c) Final grading on each Lot, including installation and maintenance of surface water drainage swales as shown on the final engineering plans, as approved by the Association and the City except, however, those portions of Lots designated as detention storage areas which shall be finally graded and seeded by the Developer. Owner shall not alter said grading. Owner shall not alter or interfere with any stormwater detention area on Owner's Lot. In addition, all Owners of Lots on which storm detention easements are located are subject to the following restrictions running with said Lots, to-wit:

1) Each Owner shall be responsible for maintaining the grades applicable to his or her respective Lot in such a manner as to insure the free and uninterrupted flow of storm water through the drainage system of McKinley Park Manor, and shall not destroy or modify grades or slopes without having first received prior written approval of the Association and the City. In the event any Owner fails to so properly maintain the water detention area easements, the Association and the City shall, upon ten (10) days' prior written notice, reserve the right to perform, or have performed on its behalf, any maintenance work to or upon the water detention, or have reasonably necessary to insure adequate storm water storage and free flow of storm water through the Property.

2) The Association shall ultimately be responsible for maintaining operating and repairing the portions of the property identified on the City approved Final Plat of subdivision for McKinley Park Manor as Outlot "A" at all times in a manner consistent with the plans and specifications approved by the City (and upon request, furnish proof of compliance therewith). The Association and Owners grant to the City, and its Designees the right of access upon, over and across the property to inspect the Stormwater management facilities areas and to perform any maintenance of said areas (and to store equipment necessary therefore), which the Owner and Association have failed to perform. If such failure continues for thirty (30) days after written notice from the City of such failure, the City may enter upon the property and perform such work as should have been undertaken by Owner or Association without notice in an emergency (e.g. where personal injury or material damage to property may be imminent). The Owners and Association, individually and collectively, shall be liable for the cost of any maintenance so performed by the City and shall promptly reimburse the City for such costs, with

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interest at statutory pre-judgment rate calculated from the date of expenditure. Upon recordation by the City of a claim for reimbursement, the City shall have a foreclosable lien upon the property to secure reimbursement.

Following any work to be performed by the City in the exercise of its easement rights granted herein, the City shall have no obligation with respect to surface restoration, including but not limited to, the lawn or shrubbery, provided, however, that said City shall be obligated following such maintenance work to backfill and mound any trench created so as to retain suitable drainage, to cold patch any asphalt or concrete surface, to remove any excess debris and soil and to leave the maintenance area in a generally clean and workmanlike condition.

3) The aforesaid restrictions and covenants, and each and every one of them, are hereby expressly made an essential part of this instrument, and shall be and remain of perpetual efficacy and obligation in respect to the said Property and the parties herein designated, their and each of their successors, heirs and assigns.

(d) Any normal or customary building permit, tap-on or connection fees.

However, Owner's responsibility for repair and maintenance and the costs thereof, as herein defined, shall not begin until:

(a) Owner has closed on his or her Lot or Lots; and

(b) Developer has notified the Owner that all public improvements are installed except for the final surface of interior roadways, sidewalks and parkway landscaping, which public sidewalks abutting Owner's Lot or Lots on the front and/or sideyards and parkway landscaping shall be the responsibility of the Developer to install.

Except as provided above, it is the intent of the parties that the Developer shall make all improvements so that said Lot or Lots are fully improved, ready for the issuance of a building permit and, thereafter, Owner shall assume responsibility for and maintain and repair such improvements as herein provided and specified.

6.2 Responsibility of Association: The Association shall be responsible for the maintenance, repair and replacement of the Property as specified in Section 11.1 of this Declaration.

6.3 Liability for Damage to Property: Each Owner of a Lot in McKinley Park Manor may be liable for the expense to the Association of any maintenance, repair or replacement of any of the Property, including, but not limited to, any and all public improvements, the storm water management facilities and structures, surface water drainage

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ways, curbs, gutters, street lights, street signs, survey stakes, markers and monuments, rendered necessary by his or her act, neglect or carelessness or by that of any member of his or her family or his or her guests, employees, contractors, subcontractors, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

ARTICLE VII

Maintenance Assessments for McKinley Park Manor

7.1 Creation of the Lien and Personal Obligation for Assessments: The Developer hereby covenants that each Owner, by acceptance of a deed or other document of conveyance therefore, whether or not it shall be so expressed in any deed or other document of conveyance, shall be deemed to covenant and agree to pay to the Association regular assessments or charges and special assessments for capital improvements and maintenance expenses as provided herein in an amount equal to (one sixteenth) $1/16^{\text{th}}$ of the total assessment. Such assessments shall be fixed, established and collected from time to time as hereafter provided. The regular and special assessments together with such interest thereon and cost of collection thereof, including reasonable attorneys fees, as hereinafter provided, shall be a charge against and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due.

7.2 Purpose of Assessments: The assessments levied by the Association shall be used for any purpose of the Association as specified in this Declaration or its Articles of Incorporation.

7.3 Regular Assessments: The Association, through the Board of Directors, shall levy for each assessment year an assessment, applicable to that year only, for the purpose of enabling the Association to exercise its powers and duties and to fulfill its responsibilities as delineated herein.

7.4 Procedures: The Board of Directors of the Association shall determine the amount of the assessment against each Lot for each assessment year. The Board of Directors shall notify in writing each member of the Association of the amount of the assessment against the member's Lot no later than December 1, of each year. The annual assessment shall be paid semi-annually by each member on or before January 1 and July 1 of each calendar year or as determined by the Board of Directors. The Board of Directors shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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7.5 Change in Basis of Regular Assessments: The Board of Directors of the association may change the amount and/or basis of the regular assessment during any assessment year, provided that any increase in the assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.6 Special-Assessments for Capital Improvements and Maintenance Expenses: In addition to the regular assessments authorized by Section 7.3 hereof, the Association, through the Board of Directors, may levy from time to time in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of any of the parkways, pathways, alley, entrance monuments, storm water management facilities, or common property provided that any such assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.7 Quorum for any Action authorized under Sections 7.5 and 7.6: The quorum required for any action authorized by Sections 7.5 and 7.6 hereof shall be the presence in person at the meeting of the Board of Directors a majority of that number of directors having the total votes that could be cast by the Board. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be the same number, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Effect of Non-Payment of an Assessment: If any regular or special assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection including reasonable attorneys' fees as hereinafter provided, thereupon become a continuing lien on the Lot and an equitable charge running with the land touching and concerning it, which shall bind upon the Lot in the hands of the then Owner, his heirs, devisees, personal representatives, assigns, successors, and grantees, and the limitation on the enforcement thereof shall coincide with the statutory limitation of the State of Illinois for the enforcement of oral agreements. The personal obligation of the then Owner to pay such assessment, however, shall remain his or her personal obligation to his or her successors in title unless expressly assumed by them. If title to a Lot is held by an Illinois land trust, the trustee shall not have any personal liability for the assessment, but all beneficiaries of the trust shall be jointly and severally so liable. In the event title to a Lot is held by more than one Owner, all Owners shall be jointly and severally liable. The lien shall attach to rents due from parties in possession to the record Owners, provided that it shall be subordinate to an assignment of rents held by a mortgagee delivered in connection with a first mortgage loan to a purchaser of a Lot.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at two (2%) percent over the highest prime rate quoted at the date of delinquency in the Wall Street Journal or the maximum rate of interest per annum, permitted by the usury laws of the State of Illinois, whichever rate shall be higher, and the Association may bring an action at law against the Owner personally obligated to pay same and/or to foreclose the lien against the Lot, and there shall be added to the amount of

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such assessment all the costs of preparing and filing the complaint and maintaining and concluding such action, including the cost of title reports, and in the event a personal judgment or decree of foreclosure is obtained, such judgment or decree shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with all costs of the action. The venue for all legal actions shall be in Cook County, Illinois. The persons in possession shall be authorized to accept summons for the Owners of the Lot.

In the event that title to any Lot is conveyed to a land trust, upon the demand of the Association, the trustee shall furnish the Association with a certified copy of the trust agreement so that the Association shall be advised of the beneficiaries entitled to vote and who will be personally liable for the regular and special assessments.

7.9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein may for any reason be subordinated by the Association by written document executed by its duly authorized officers and shall without any writing be subordinate to the lien of any mortgage placed upon the Lots subject to assessments for the purpose of purchasing the subject Lot or Lots provided, however, that such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the mortgage or mortgages, and provided further that such subordination shall apply only to the assessments which have become due and payable prior to sale or transfer of such property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Subject to applicable law, the Owners agree that upon accepting title that the lien of the assessments shall be prior to the homestead rights of the Owners since it runs with the land and is in existence before commencement of ownership interests.

ARTICLE VIII Easements

8.1 Easements Reserved by Developer: Notwithstanding any provision herein to the contrary, until such time as the Trustee, its successors and assigns, are no longer vested with or control title to any part of McKinley Park Manor or any lot in McKinley Park Manor and Developer no longer holds any ownership interest in the Property, Developer and its agents and contractors shall have the right (a) to place and maintain on the Property model residences, sales offices, construction offices, advertising signs, construction trailers, parking spaces and lighting in connection therewith, at such locations and in such forms as the Developer may determine, in its discretion, to be used by the Developer in connection with the promotion, sale, construction or lease of the residences constructed or to be constructed on any part of McKinley Park Manor (b) to come over, across and upon the Property for the purpose of making alterations or improvements to the residences, Lots or Community Area, and (c) to store on the Community Area or any Lot owned by it equipment and materials used in connection with such work on the residences, Lots or Community Area, all without the payment of any fee or charge whatsoever.

8.2 Perpetual Easements: Perpetual easement are hereby established in the Community Area for the use and enjoyment of said area by all Owners, their families, guests, invitees and others where a right to use or enjoy the Community Area is derived from the

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Owners. Each Owner, and all persons whose rights are derived from the Owner, has an easement to freely make all reasonable and proper use of the Community Area subject to the Rules and Regulations.

8.3 Perpetual Easement in Gross to Association: The Community Area shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association properly to perform its duties and responsibilities. The Association further has a perpetual easement in gross to enter upon a Lot where reasonably necessary in the judgment of the Association for the purpose of properly performing or executing a duty or responsibility of the Association in respect of other Owners, or of the Owners generally, or of the Community Area. Without limiting the above easement in gross, the Association has a perpetual easement in the Community Area and the Lots for the purpose of installing, repairing, maintaining, and inspecting the storm water management systems, pathways, or any other systems which the Association has the duty or responsibility to operate or maintain for the benefit of the Owners or the Association. Developer also has an easement in gross for the purpose of enabling and permitting Developer properly to perform its duties and responsibilities as Developer. Developer further has an easement in gross to enter upon a Lot where reasonably necessary in the judgment of Developer for the purpose of properly performing or executing a duty or responsibility of Developer in respect of other Owners, or of the Owners generally, or of the Community Area.

8.4 Easements for Public Utilities, Sanitary and Storm Sewers: Developer initially, and the Association thereafter, has the right to establish easements over portions of the Property for sanitary and storm sewers, storm water facilities, and for all other public utility purposes including but not limited to electricity, gas, water, cable television, and telephones, and Developer and the Association have the concomitant right, in connection with such grants of easements, to grant the right and power to do all things necessary or appropriate in connection with said grant of easements, including, but without limitation, the right of maintenance, repair and replacement. Developer and the Association are fully authorized and empowered to execute and deliver any and all documents necessary to implement these provisions, and the Owners shall be deemed to have approved and confirmed such documents, and to be bound thereby.

8.5 Easements: How Created: Easements for all public utilities or other purposes, including, but without limitation, electricity, gas, water cable television, security, and telephone, shall be initially created by the recording of the Plat in the Recorder's Office of Cook County, Illinois, and, if necessary, individual grants of easements to which shall be appended plats of easements showing the location of the easements being initially created. Thereafter, easements for public utilities shall be created by the recording of separate plats or grants of easements, each of which shall show the location, within the Community Area and within any Lots covered by such subsequent plats or grants of easements, of the easements being newly created. The utility easements created by the filing of plats or grants of easements shall be deemed to have been created upon, and subject to, all of the terms and conditions of the Plat and initial grants of easements to the respective utilities or services, so that upon the recording of a plat or grant of easement subsequent to the recording of the Plat or and initial grant of easement, each utility or service company shall forthwith have all the rights, powers and obligations contained in the Plat or in the initial grants of easements, as fully and as effectively as if all the

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terms of said grant of easements were contained within the subsequently recorded plat or grant of easements.

ARTICLE IX Developer's Reserved Rights

9.1 Developer's Rights, Powers and Obligations—Duration: Until such time as required by law, or sooner at the option of Developer, all of the rights, powers and obligations which by this Declaration are to be vested in the Board of Directors shall be deemed vested in and possessed by Developer.

9.2 Easement Grants: Developer shall grant such easements and convey Lots in the Property subject to such easements, as are necessary for the benefit of the Association for the performance of its obligations pursuant to this Declaration, including, but not limited to, maintenance, repair or replacement of the landscaped areas, including grass, trees and vegetation, and for access to maintain, repair or replace stormwater management facilities on the Property and for public utilities on Lots 1 through 16 in McKinley Park Manor.

9.3 Construction and Advertising by Developer: Prior to Developer's completion of improvements on the Property, or sale of all Lots owned by Developer or Developer's transfer of all of its rights, powers and obligations to the Board, Developer shall have the right and power to erect and maintain dignified advertising and to use and employ on the Property other sales devices and arrangements, all to be in good taste and consistent with the quality and character of the development, for the purpose of advertising Lots and residences in and upon the Property. Developer shall have the further right and power to maintain for the aforesaid period, sales, business and construction offices.

9.4 Developer's Successors and Assigns: This Agreement and all rights, powers, authority and obligations conferred herein shall at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns.

9.5 General Rights: The Developer shall have the right to execute all documents or undertake any actions affecting McKinley Park Manor which, in its sole discretion, are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to it by this Declaration.

ARTICLE X McKinley Park Manor Homeowners Association

10.1 The Association: McKinley Park Manor Homeowners Association has been organized under the Illinois General Not-for-Profit Corporation Act of 1986, (805 ILCS 105 et seq.), in a manner that allows such organization to function under this Declaration. The Association shall be the governing body for all of the Owners and for the administration and operation of McKinley Park Manor as provided in this Declaration and the By-Laws, which are attached hereto as Exhibit A.

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10.2 Membership:

(a) There shall be only one class of membership in the Association. The Owner of each Lot shall be a member of the Association, but there shall be only one member per Lot. Membership shall be appurtenant to and may not be separated from Ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of Ownership of a Lot within ten days after such change.

(b) One individual shall be designated as the "Voting Member" for each Lot. The Voting Member, or his proxy, shall be the individual who shall be entitled to vote at meetings of the Owners. If the record Ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board and, if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot. The Association shall have the right to suspend the voting rights of any member for any period during which any assessment levied by the Association against the member's Lot remains unpaid.

10.3 Election of a Board: When Developer notifies the Owners that Developer is ready to transfer and assign to the Association all of its rights, powers and obligations under this Declaration and pursuant to Illinois law, the Owners shall elect a Board. If the Owners fail to elect an initial Board within ninety (90) days after notice authorizing such election has been given by Developer, then Developer shall have the right to designate, in its discretion, any three of the Owners as an initial Board. A director shall serve for one year, and thereafter until his successor is elected.

10.4 Adoption of Rules and Regulations: Prior to the formation of the Board, Developer shall have the right to adopt Rules and Regulations. Thereafter, the Board may, from time to time adopt rules and regulations governing the Community Area and use of the Community Area by the Owners and by all other persons. All users of the Community Area and all use of the Community Area shall comply with the Rules and Regulations. Although the Rules and Regulations shall apply to, and be effective throughout McKinley Park Manor, including the Lots located therein, the rights, powers and duties of the Board shall be primarily concerned with the Community Area, and the primary responsibility of the Board is the management and the operation of the Community Area and enforcement of the provisions of this Declaration. The Rules and Regulations to be adopted by the Board in respect of the Community Area and Lots may cover, among other things and without limitation, matters pertaining to use, admission of guests, pets, discipline and disciplinary measures against violators of said Rules and Regulations.

10.5 Vacancies, Compensation and Other Matters: The Board shall receive no compensation for its services. A vacancy in the Board, whatever the reason for the vacancy, shall be filled by vote of the remaining members of the Board. If there are two or more

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vacancies in the Board, the vacancies shall be filled by majority vote of the Owners at a special meeting called for that purpose. The Board shall act by majority vote of those present at its meetings when a quorum is present.

10.6 Officers of the Board of Directors: The Board shall elect from among its members a President, a Vice President, a Secretary and a Treasurer. Each officer shall perform the duties which commonly attach to the office he or she holds. A Director may hold more than one office simultaneously.

10.7 Meetings of the Owners: When Developer is prepared to transfer and assign all of Developer's rights, powers and obligations to the Association, Developer shall give due notice to the Owners, and shall give Owners not less than 15 days notice of a meeting to be held by the Owners at a place to be designated by Developer at which, by majority vote of all Owners present at said meeting, the Owners shall elect the Board hereinabove referred to. Thereafter, the Owners shall meet annually for the purpose of electing Directors at a place to be designated by the Board. The first annual meeting of the Owners shall be held one year, as nearly as practicable, after the date of the first meeting of the Owners, and subsequent meetings shall be held at yearly intervals thereafter.

10.8 Meetings of the Board: The Board shall meet promptly after the first meeting of the Owners and annually thereafter, after the annual meeting of the Owners, at a place to be designated by the Board for the purpose of electing officers and transacting any other business which may properly come before the annual meeting. In addition to the said annual meeting, the Board may hold special meetings when business before the Board makes it necessary. Special meetings of the Board shall also be held on the written request of one-third of the Owners, delivered to the Board. The request of the Owners shall state the purpose of the special meeting for which a request has been made, and in response to a proper request by one-third of the Owners, the Board shall set a suitable date for a special meeting and shall give not less than 10 days notice to each Owner, of the date, time and place of the special meeting.

ARTICLE XI

Rights, Powers and Obligations of Association

11.1 Rights, Powers and Obligations of Association: For the benefit of all the Owners, the Association shall have all powers relating to the maintenance, repair, improvement, management, and operation of the Property including, but not limited to, the power set forth in this Article XI, and all the rights and powers possessed by Developer under the terms of this Declaration including, but not limited to, those rights and powers set forth in Article IV hereof. The power of the Association shall include the power to acquire and pay out funds as hereinafter provided for the following community expenses and/or residence expenses:

- (a) Management services;
- (b) Water, waste removal, snow removal, if any, operating expenses, electricity, telephone and other necessary utility services if any for the Community Area;

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(c) Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, insuring the Association itself, its manager, if any, agents and employees, the owner, including each member of the Board personally, the Trustee and the Developer, its agents and employees, from any liability in connection with the Community Area or the streets, sidewalks and public spaces adjoining the Community Area. Such insurance coverage shall also cover cross liability claims of one insured against another. The insurance coverage provided for Developer, its agents and employees, shall continue in force and effect only until the time of the transfer by Developer to the Association of all of the rights, powers and obligations of Developer, and said coverage may then be canceled;

(d) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Association in its judgment shall elect to effect;

(e) General real estate taxes, assessments or other charges, if any, of governmental bodies against the Community Area;

(f) The services of any person or firm employed by the Association. The Association may employ the service of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments, and in connection with any other matter where the respective interests of the Owner are deemed by the Association to be similar and non-adverse to each other;

(g) Landscaping, snow removal, cleaning, maintenance, repair and replacement in the Community Area, and acquisition of such furnishing and equipment for the Community Area as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Community Area.

(h) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations or assessments, tax or otherwise, which the Association is required to secure or pay for pursuant to the terms of this Declaration or the By-Laws or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Community Area or for the implementation of this Declaration; and

(i) All funds collected hereunder shall be held and expended for the purposes designated herein;

11.2 Alterations and Improvements of Community Area: The Association shall have the right to make or cause to be made alterations and improvements to the Community Area. The costs of such alterations and improvements shall be assessed as community expenses in the manner hereinafter set forth.

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11.3 Books and Records: The Association, through its Treasurer or Manager, if any, shall keep complete and correct books of account of the receipts and expenditures relating to the Community Area, specifying and itemizing the maintenance and repair expenses of the Community Area and any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten days' notice to the Association and payment of a reasonable fee, any Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner for community expenses.

11.4 Employment of Professional Management: The administrative duties of the Board may be performed by a Manager (which may be a professional management firm) employed by the Association, and the Association has the right to pay reasonable compensation to a Manager so employed. The Developer has the right, but not the obligation, on behalf of the Owners, to engage the initial Manager and to enter into a contract with said Manager expiring not later than one year after the voluntary turnover to the members of the Association the authority to elect the Board. The professional manager hired may be, but is not required to be, the Developer.

11.5 Execution of Agreements, Contracts, etc.: All agreements, contracts, vouchers for payment of expenditures and other instruments shall be signed by the President of the Board, or by such other persons and in such manner, as from time to time may be determined by the Board.

11.6 Authority of Board to Lease or License: The Board shall have the authority to lease or to grant licenses or concessions with respect to the Community Area when reasonably deemed to be in the best interests of the Owners and the Developer.

11.7 No Business Activity: Nothing in the Declaration shall be construed to give the Association authority to conduct a business for profit on the Community Area or any part hereof.

11.8 Non-Liability of the Board: The Board and Developer shall not be personally liable to the Owners or to any others for any mistake in judgment or for any acts or omissions made in good faith. The Owners shall indemnify and hold harmless each member of the Board and the Developer against all contractual liability to others arising out of contracts made by the Board or the Developer on behalf of the Owners unless any such contract shall have been made in bad faith or in violation of the provisions of this Declaration. The liability of the Owners based upon a contract made by the Board or by Developer, or based upon Owner's agreement to indemnify and hold harmless, shall be several, and not joint, and no Owner shall be liable for more than his or her equal proportionate share of any such contract or indemnity liability. Every agreement made by the Board or Developer shall provide that the Board or the Developer, as the case may be, are acting only as agents for and on behalf of the Association and the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be several, and not joint, and shall not exceed the Owner's

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equal proportionate share of such contract liability. The indemnity herein provided for shall extend to and be operative in favor of the Manager and all other agents and employees of the Association and the Developer.

11.9 Delegation of Power: The maintenance, repair, improvement, management and operation of the Community Area shall be the responsibility of the Association, but the Association has the right to delegate to the Manager or others such authority and duties as may be granted and imposed upon the Board by this Declaration.

11.10 Funds and Titles for the Owners: All funds and all properties acquired by the Association, and the proceeds thereof, shall belong to the Owners and shall be held for the benefit of the Owners subject to this Declaration for the purposes herein stated.

ARTICLE XII

Transfer of Rights by Developer to Association

12.1 Developer's Rights, Powers and Obligations Prior to Transfer to Association: Until such time as Developer turns over to the Members of the Association the authority to appoint the Board, all of the rights, powers and obligations which by this Declaration are to be vested in the Association or its Board shall be deemed vested in and possessed by Developer. Developer shall turn over to the Members, the authority to appoint the Board, upon the earlier of: a) such time as Developer has sold all of the Lots and no longer holds an ownership interest in the Property; or b) when required by applicable law. Notwithstanding anything else contained herein, Developer may, at any time, voluntarily turn over to the Members of the Association, the authority to appoint the Board.

12.2 Transfer of Rights, Powers and Obligations by Developer to Association: When Developer turns over to the Members of the Association the authority to appoint the Board, it shall transfer and assign to the Association all of its rights, powers and obligations under this Declaration.

12.3 Developer's Successors and Assigns: Developer's successors and assigns shall have, without limitation, qualification or exception, all the rights, powers and authority of Developer itself.

12.4 Community Area Improvements: Developer's Warranty. Developer warrants all improvements constructed by Developer in the Community Area to be free from defects in workmanship and materials. Said warranty shall be effective for twelve months from the date of installation of the improvements. During said twelve-month warranty period, all repairs required by reason of defects in workmanship or materials, shall be made by Developer at its own expense without charge to the Association or the Owners. After the expiration of the warranty period, all repair expense on Community Area improvements shall be borne by the Association or the Owners.

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ARTICLE XIII

Compliance, Breach of Covenants, and Default

13.1 Rights and Remedies of Association: Each Owner is bound by and shall comply with the terms of this Declaration, the By-Laws, and the Rules and Regulations adopted pursuant thereto, and by all amendments to them. A failure by an Owner other than the Developer to comply with this Declaration, or with the By-Laws, and Rules and Regulations of the Association or any authorized amendment to said Declaration, By-Laws, or Rules and Regulations shall constitute a default by such Owner. If a default occurs, the Association shall have the right to recover damages at law, to procure injunctive relief, to foreclose on any lien rights the Association may have, or to avail themselves of any other rights or remedies permitted at law or in equity including, but not limited to, filing suit pursuant to the Forcible Entry and Detainer Act. All Expenses of the Association in connection with any actions or proceedings described herein, including court costs and attorneys' fees and all other expenses of the proceeding, and all damages, liquidated or otherwise, together with interest thereon at the rate set forth in Section 7.8 herein until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his or her respective share of the annual expenses and the Association shall have a lien for all of the same, as well as for non-payment of his or her respective share of the annual expenses upon the Lot of such defaulting Owner and upon all of his or her additions and improvements thereto and upon all of his or her personal property located on his or her Lot or elsewhere on the Property. The rights and remedies of the Association shall be cumulative and shall be enforceable concurrently in a single proceeding. By virtue of the provision of this Declaration which gives Developer all rights and powers of the Association prior to transfer of Developer's rights to the Association, Developer has every right and power and every right and remedy which the Association is given by this Article.

13.2 Arbitration:

(a) All disputes which may arise between the Developer and the Association out of or in relation to this Declaration, or for its breach, including without limitation, disputes relating to the validity or existence of this Declaration as a whole, shall be finally settled by arbitration held in Cook County, Illinois, according to the Construction Industry Rules of the American Arbitration Association ("AAA"), by which each party agrees to be bound. Any such arbitration shall be conducted by a panel of three arbitrators appointed by the AAA. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the applicable law and judicial rules, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution.

(b) The award of the arbitration panel may be, alternatively or cumulatively, for monetary damages, an order requiring the performance of the obligations of this Declaration, or any other appropriate order or remedy. The award shall assign all costs of the arbitration to one or both parties. Judgment upon any award rendered in the arbitration may be entered by any court having proper jurisdiction.

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13.3 Liability of Owners for Negligence: Each Owner shall be liable for any damage caused by such Owner's act or negligence, or by the act or negligence of any party whose right to be upon the Community Area is derived from such Owner, but only to the extent that such damage is not covered by insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by an insurance company of rights of subrogation.

13.4 Recovery of Suit Expense: In any proceeding commenced by the Association or an Owner based upon or arising out of an alleged default by the Association or an Owner, the prevailing party, whether Association or Owner, shall be entitled to recover all expense of the proceeding, including reasonable attorneys' fees and costs such as but not limited to filing fees, depositions, experts, etc.

ARTICLE XIV

Amendment and Termination of Declaration

14.1 Amendment Prior to Sale of a Lot: So long as Developer owns all of the Lots, Developer itself has the right to amend or to terminate this Declaration at any time and in any manner. If Developer elects to terminate this Declaration, Developer may evidence its election by recordation of an appropriate statement of termination with the Recorder of Deeds of Cook County, Illinois, and upon such recordation, the entire title in the Property shall stand in the Trustee free and clear of this Declaration.

14.2 Amendment After Sale of a Lot: After one or more Lots have been sold, but prior to Developer's turnover to the Members of the Association the authority to appoint the Board, Developer itself, acting without concurrence of any other party, has the right to amend this Declaration as often as Developer deems necessary, but no such amendment shall unfairly or unreasonably affect any rights of the Owners of Lots already sold.

14.3 Amendment After All Lots Have Been Sold: After Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, all Lots having been sold by Developer, this Declaration may be amended by a two-thirds (2/3rds) vote of the Owners, but such amendment shall not unfairly or unreasonably affect the rights of the Owners.

14.4 Termination of Declaration: After one or more Lots have been sold, this Declaration may be terminated only with the joint consent of;

- (a) The Developer, if the Developer then has any unsold Lots. If Developer has sold all its Lots, consent of Developer shall not be required;
- (b) 75% of the Owners; and
- (c) All mortgagees of Lots

Concurrence of all the foregoing shall be required in order to effect a valid termination of this Declaration.

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14.5 Procedure on Amendments or Termination:

(a) If this Declaration is to be amended or terminated by the Developer solely, pursuant to the above provisions of this Article XIV, which provides for amendment or termination by Developer solely, Developer shall evidence said amendment or termination by due execution of an appropriate written instrument setting forth the terms of the amendment, or stating that this Declaration is terminated, as the case may be.

(b) If this Declaration is to be amended before the Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board, the amendment shall be effected by an appropriate written instrument setting forth the terms of the amendment and duly executed by the Developer.

(c) If an amendment is to be effective after Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board, and after the rights and powers of Developer have been transferred to the Association, then the amendment may be evidenced by a written instrument executed on behalf of sixty-six (66%) percent of the Owners, and participation by the Developer may be required only as Lot Owner.

(d) If this Declaration is to be terminated after the Developer voluntarily turned over to the Members of the Association the authority to appoint the Board, the termination shall be evidenced by an appropriate written instrument stating that this Declaration has been terminated. The statement of termination shall be executed by seventy-five (75%) percent of the Owners, and by all holders of mortgage liens.

(e) The instrument effecting an amendment or termination of this Declaration shall, after execution, be recorded promptly in the Office of the Recorder of Deeds of Cook County, Illinois, and the amendment or termination provided for therein shall become effective and operative upon recordation.

14.6 Notices with Respect to Amendment or Termination: All parties who have a right to participate in the amendment or termination of this Declaration, subject to Covenants and Restrictions, shall have the right to initiate proceedings for amendment or termination of this Declaration. Any such party desiring to initiate proceedings for amendment or termination shall give at least ten (10) days' prior written notice of the meeting at which amendment or termination is to be considered. If Developer solely amends this Declaration, in pursuance of the foregoing provisions providing for such amendment solely, then within fifteen (15) days after adoption of the amendment, notice of the amendment shall be given by Developer to all Owners, and each Owner, promptly upon receipt of such notice, shall give notice of the amendment to his mortgagee.

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ARTICLE XV General Provisions

15.1 Notices – In General:

(a) Notices given pursuant to this Declaration or in connection therewith shall be written and shall be delivered in person or by regular mail. Notices of default or formal demands by any party hereunder to any other party shall be sent by certified or registered mail, with request of return receipt. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing. Notice to an owner may be given to the Owner at his or her Lot, unless the Owner has informed the Association otherwise. Notice may be given to the Association at its registered office, or sent to the home of the President of the Board of Directors. Until Developer has transferred all its rights, powers and obligations to the Directors, all notices which the Board would be entitled to receive shall be given to Developer. Notices in respect of meetings or Special Meetings of the Board of Directors or of the Owners shall be given in accordance with the provisions of this Declaration.

(b) Notice to the personal representative of a deceased Owner shall be sent to the address furnished by such personal representative to the Board, and if no address is furnished by said personal representative, the notice to a deceased Owner shall be given to the deceased by a writing directed to the Owner at such Owner's Lot.

(c) Upon request of a mortgagee of a Lot, and payment of a reasonable charge therefore, the Board shall supply to said mortgagee a copy of any amendment to this Declaration.

15.2 Non-Waiver Except by Written Instrument: No conditions, covenants, restrictions, reservations, grants or other provisions of this Declaration shall be deemed to have been waived by silence, or inaction, or failure to enforce rights or by any other matters whatsoever, other than a writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived. No waiver shall be deemed to have been affected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights, which have occurred.

15.3 Liberal Interpretation: This Declaration shall be liberally construed so as to effectuate and facilitate the objectives of this Declaration as hereinabove set forth. Narrow, technical and literal construction of this Declaration inconsistent with the objectives of the Developer or the Association shall be avoided.

15.4 Rule Against Perpetuities: Should any provision of this instrument be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints or alienations, or (c) any other statutory or common law rules imposing time limits, then, and in that event, such provisions shall be deemed to be operative only until twenty-one (21) years after the death of the last survivor of the now living

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descendants of Rod Blagojevich, Governor of the State of Illinois, and George W. Bush, President of the United States of America.

15.5 Partial Invalidity—Severability: The invalidity of any of the conditions, covenants, restrictions or reservations herein contained, or of any other provision or provisions, of whatever nature, of this Declaration shall not in any way impair or affect the validity or enforceability of any other provision or provisions of the Declaration, and any such invalidity or enforceability of any other provision of this Declaration as remains, and any such invalidity shall be deemed partial and separable, and all of this Declaration shall be deemed valid, enforceable and binding except for the invalid provision.

15.6 Gender, Usage of Singular and Plural Forms and Other Usage: Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders. Prior to completion of development of the Property and sale of all Lots by Developer and to Developer's transfer of its rights, powers and obligations to the Board and Association, all references to the rights, powers and obligations of and to the Board or Association shall be read as references to the rights, powers and obligations of the Developer. The term "sale" means a sale consummated by delivery of a Trustee's Deed to a Lot to an Owner other than Developer.

15.7 Captions: Captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the test thereof.

15.8 Recordation: Prior to consummation of the sale of the first Lot in the property delivery of a Trustee's Deed to said Lot, this Declaration shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois. All amendments to the Declaration shall also be recorded in said Recorder's office.

15.9 Conflicts Between Declaration and City Ordinance Provisions: In the event there is at any time a conflict between any provision of this Declaration and any provision of any then effective ordinance, rule or regulation of the City, the ordinance, rule or regulation of the City then in effect shall prevail, but only to the extent it is more restrictive than this Declaration.

ARTICLE XVI

Sale, Lease or Other Transfer of Property Prior to Construction of Foundation

16.1 Right of Owners to Transfer Free of Developer's Options:

(a) The option given to Developer by Section 16.2 below to re-acquire any Lot or Lots shall not apply to any sale, lease, gift, devise or other transfer by Developer, or by an Owner, to a Co-Owner or to the spouse or child or children of an Owner, or to any trustee of a trust of which the sole beneficiary or beneficiaries is, or are the Owner, the spouse or children of the Owner, or any one or more of them.

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(b) Each section of this article XVI is expressly made subject and subordinate to the right of each Owner (and of Developer) to transfer his or her Lot or Lots to a party specified in Section 16.1 (a) free of the option given Developer by Section 16.2 below.

16.2 Sale or Lease of Property: Any Owner other than Developer under this Declaration who wishes to sell his or her Lot prior to the construction of a foundation and completion of all improvements thereon, including the issuance of a certificate of occupancy, on any Lot or Lots, shall give the Developer not less than thirty (30) days prior written notice by certified mail, return receipt requested, of the Owner's intent to sell. The Developer shall have the option to purchase such Lot for the same price and upon the same terms as said Lot was sold to Owner by the Developer, together with the lesser of the material cost or fair cash market value of any improvements then in place, said option to be exercisable by the Developer within thirty (30) days of the date of the receipt of notice and information by the Developer. The fair market value of any improvements then in place shall be determined by appraisal by an independent appraiser. No sale shall be consummated prior to the expiration of said thirty-day (30) period without Developer's written consent, and if a sale is consummated in violation of this provision, then, at the option of the Developer, the consummated transaction shall be deemed void and wholly inoperative. If the Developer does not exercise its option within said thirty-day (30) period, the Owner shall have the option to sell the Lot. This Section 16.2 is expressly made subject to and subordinate to the right of each Owner (and of Developer) to transfer his Lot to a party specified in Section 16.1 (a), free of the option given to Developer by this section 16.2.

16.3 Construction on a Lot: Prior to the initial construction on any Lot, repair of any home or construction on a lot or the alteration of any home, Developer reserves the right to approve the builder, which builder shall have built homes of the same or similar value, size and character as buildings located or to be located on the Property and shall be subject to the written approval of Developer prior to construction. Developer shall have the right to require such builder or the Owner to deposit a performance bond in an amount relative to the scope of the construction, alteration or repair, such bond to be held by the Developer. In the event Developer rejects the use of any builder and Owner desires not to substitute another builder or refuses to accept the decision of the Developer, said Owner shall be obligated to sell his Lot in accordance with Section 16.2 above. In the event the Owner is a builder and said builder no longer desires to construct a single-family residence on Owner's Lot or Lots, the provisions of Section 16.2 shall apply and said builder shall be obligated to grant Developer the option to purchase Owner's Lot or Lots. If Owner fails to commence substantial construction of a single-family detached residence on his Lot or Lots within (one (1) year after conveyance of the Lot or Lots to him by the Developer or fails to complete construction within one (1) year thereafter, the provisions of Section 16.2 shall apply and said Owner shall be obligated to grant Developer the option to purchase his Lot or Lots and Owner shall be required to give written notice, certified mail, return receipt requested, to Developer in accordance with Section 16.2 above.

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16.4 Involuntary Sale of Lot:

(a) If any Lot is sold at a judicial or execution sale (other than a mortgage foreclosure sale), prior to receipt of a certificate of occupancy, the purchaser of such Lot, before taking possession, shall give not less than thirty (30) days' written notice to the Developer of his intention to take possession pursuant to his purchase. The Developer shall thereupon have an option to purchase the Lot for the price for which said Lot was sold by said Developer. If the Developer elects to exercise its option to purchase, it shall tender the required sum to said purchaser within said thirty-day (30) period, and if it fails to do so, the purchaser shall then be entitled to take possession free and clear of the option provided for in this subsection.

(b) If a mortgage held by a bank, savings and loan association, insurance company or other commercial lender is foreclosed, the mortgagee shall have the right to acquire the mortgaged Lot at its foreclosure sale, either in its own name or in the name of a nominee. If, however, at any time after such acquisition, the mortgagee desires to sell the Lot it has acquired through its foreclosure, then the proposed purchaser from the mortgagee, before executing a contract to purchase, shall give not less than thirty (30) days' written notice to the Developer of his intention to purchase said Lot. The Developer shall thereupon have an option to purchase the Lot for the price at which it was sold at said sale to said purchaser. If the Developer elects to exercise its option to purchase, Developer shall tender the required sum to said lender within said thirty day (30) period, and if Developer fails to do so, the purchaser shall then be entitled to purchase free and clear of the option provided for in this subsection.

16.5 Title to Acquire Interest: Title to any Lot acquired pursuant to this Article XVI shall be held in the name of the Developer or in the name or names of its nominee or nominees, but title, however held, shall be for the benefit of Developer. Property acquired by Developer pursuant to this Article XVI may thereafter be sold by Developer on whatever terms it deems appropriate. All net proceeds of a sale acquired by Developer shall be the sole property of Developer.

IN WITNESS WHEREOF, the Trust and Developer have executed this Declaration of Covenants and Restrictions as of the date first above written.

* * *

This Declaration is executed by CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed by every person, firm, corporation or other entity hereafter claiming any interest under this Declaration that CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, as Trustee as aforesaid, and not personally, has joined in the execution of this Declaration for the sole purpose of subjecting its title-holding interest and the trust estate under said Trust No.03-9901 to the

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terms of this Declaration, that any and all obligations, duties, covenants and agreements of every kind and nature herein set forth by CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, as Trustee, as aforesaid, to be kept or performed, are intended to be kept, performed and discharged by the beneficiary under said Trust No. 03-9901, or its successors, and it shall not be the obligation of CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, either personally, or as such Trustee, to sequester trust assets, rentals, avails or proceeds of any kind or otherwise to see to the fulfillment or discharge of any obligations, express or implied, arising under the terms of this Declaration, except where said Trustee is acting pursuant to direction, as provided by the terms of said Trust No. 03-9901, and after the Trustee has first been supplied with funds required for that purpose. In the event of conflict between the terms of this paragraph and of the remainder of this Declaration on any question of apparent liability or obligation resting upon said Trustee, the exculpatory provision hereof shall be controlling.

CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, AS trustee as aforesaid, and not individually

By: 
Trust Officer

ATTEST:


Assistant Secretary

JAMES MCNAUGHTON PERSHING ROAD, LLC, an Illinois limited liability company
By: James McNaughton Builders, Inc., Manager

By: 
James McNaughton, President & CEO

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STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that the above-named Trust Officer and Assistant Secretary of the CHICAGO TITLE LAND TRUST COMPANY, as successor to Cole Taylor Bank, Declarant, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Land Trust Officer and Assistant Secretary, respectively, appeared before me this day and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that she, as custodian of the corporate seal of said Bank, caused the corporate seal of said Bank to be affixed to said instrument as her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of MAY, 2005

(Notarial Seal)

Gwendolyn L. Benson

 Notary Public



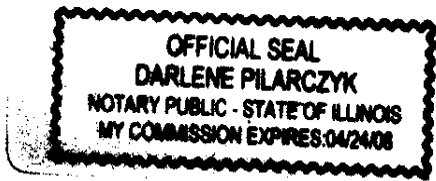
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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, DARLENE PILARCZYK, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that James McNaughton, President and Chief Executive Officer of James McNaughton Builders, Inc., Manager of James McNaughton-Pershing Road, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President and Chief Executive Officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as the free and voluntary act of James McNaughton-Pershing Road, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4th day of May, 2005.

(Notarial Seal)



Darlene Pilarczyk
Notary Public