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Whereas, all owners and occupants of the Dwelling Units will benefit from the creation of a Homeowners' Association (the "Association"), which will become the owner of and assume all maintenance obligations relative to the Common Area; and

Whereas, the Declarant has elected to declare that the several owners, mortgagees, occupants and other persons acquiring any interest in the Dwelling Units to be constructed on Sublots 1 through 20 inclusive of the Development shall at all times enjoy the benefit of hold their interest subject to the rights, obligations and restrictions set forth in this Declaration; and

Whereas, the development of, construction upon and use of the Real Estate shall comply with Village of Northbrook Ordinance No. 89-12 granting a special permit for a planned residential development on the Real Estate (a copy of which is attached hereto as Exhibit B and incorporated herein by reference), subject to such modifications, provisions or alterations as the Village of Northbrook, in its sole discretion, may approve from time to time;

Now, therefore, in consideration of the adoption by the VILLAGE OF NORTHBROOK of a Special Permit Ordinance for the Real Estate, the Declarant agrees to execute and record this Declaration of Covenants, Easements and Restrictions to run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate or any part thereof, and shall be binding upon their heirs, successors and assigns.

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Official Business

VILLAGE OF NORTHBROOK

By Barbara A. Adams, acty

88-1112

RETURN TO
BOX 337

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS
FOR BURR OAKS CIRCLE DEVELOPMENT

89298409

THIS DECLARATION made and entered into by FIRST AMERICAN BANK, Skokie, Illinois, not individually but solely as Trustee under Trust Agreement dated August 1, 1988 and known as Trust No. F88-148 (hereinafter referred to as the "Declarant").

ARTICLE I

RECITALS

Whereas, Declarant is the record title holder of the real estate legally described on Exhibit A attached hereto and made a part hereof; and

Whereas, said real estate (hereinafter referred to as the "Real Estate"), is to be developed under a special permit as a planned residential development of 20 units known as "Burr Oaks Circle"; and

Whereas, the units consisting of single family and townhomes (hereinafter referred to as "Dwelling Units") are to be constructed on the Real Estate on 20 sublots thereof denominated Sublots 1 through 20 inclusive; and

Whereas, the Burr Oaks Circle Development (hereinafter sometimes referred to as the "Development") will include private roads, green space, parking areas, driveways, walkways and areas for storm water detention. That portion of the Real Estate utilized in such fashion will be designated by the Declarant as the "Common Area."

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2.06. Common Area. Outlots A and B, as depicted in the final Plat of Subdivision, and the amenities constructed thereon, including, without limitation, the private roads, green space, parking areas, driveways, walkways, storm, water and sanitary sewer systems servicing the Dwelling Units (but not the collecting storm and sanitary sewer mains, water mains or the fire hydrants), street lights, storm water detention areas including the pumps therein, and underground sprinkler system.

2.07. Common Area Assessment. The amounts which the Association shall assess and collect from the Owners to pay the Common Area expenses and accumulate reserves for such expenses, as more fully described in Article VIII.

2.08. Common Area Expenses. The expenses of administration (including management and professional services), casualty and liability insurance, operation, maintenance, repair, replacement, landscaping and snow removal of the Common Area (including the storm water detention area and pumps therein) and the Dwelling Unit Extérieurs; the costs of any water, waste removal, scavenger services, electricity, telephone and other necessary utility expenses for the Common Area; the cost of general and special real estate taxes and assessments levied or assessed against the Common Area; the acquisition cost and expense incurred for the maintenance, repair and replacement of personal property acquired and used by the Association in connection with its operation and maintenance of the Common Area including, without limitation, the street lights, detention area pumps and underground sprinklers; and expenses specifically designated as Common Expenses by this Declaration; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

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During the construction and marketing of the Development the Declarant shall retain certain rights set forth in this Declaration, which rights shall include without limitation the right prior to the Turnover Date to appoint all members of the Board of Directors of the Association to: (1) complete construction of and (ii) sell the Dwelling Units.

ARTICLE II

DEFINITIONS

For purposes of prompt reference, the following words and terms used in this Declaration are defined as follows:

2.01. Association. Burr Oaks Circle Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

2.02. Board. The Board of Directors of the Association as constituted at any time or from time to time in accordance with the applicable provisions of Article IV.

2.03. Bylaws. The Bylaws of the Association.

2.04. Capital Reserve. The funds segregated by the Association in a special reserve account, use of which is limited to the making of capital expenditures in connection with the Common Area and Dwelling Unit exteriors, as more fully set forth in Section 7.07.

2.05. Charge. A Special Assessment levied by the Association and/or any special charges or payments which an owner is required to pay or for which an owner is liable under this Declaration and the Bylaws.

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include any beneficiary of a trust, shareholder of a corporation or partner of a partnership holding legal title to a Dwelling Unit.

2.15. Person. A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real estate.

2.16. Real Estate. The Real Estate described in Exhibit A, including Sublots 1 through 20 (the portions of the Real Estate upon which Dwelling Units are to be constructed), and Outlots A and B (the portion of the Real Estate upon which the private roads, parking areas, driveways, walkways and storm water detention are to be constructed and the portion devoted to green space).

2.17. Turnover Date. The date on which the rights of the Declarant to designate the members of the Board are terminated under Section 4.13.

2.18. Voting Member. The individual who shall be entitled to vote in person or by proxy in meetings of the Owners as more fully set forth in Section 4.03.

ARTICLE III

SCOPE OF DECLARATION

3.01. Property Subject to Declaration. Declarant, as the owner of fee simple title to the Real Estate, expressly intends to and by the recording of this Declaration does hereby subject the Real Estate to the provisions of this Declaration.

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2.09. Declaration. This instrument with all exhibits hereto, as amended or supplemented from time to time.

2.10. Dwelling Units. Any of the twenty (20) sublots denominated Sublots 1 through 20 inclusive as depicted on the Plat of Subdivision approved by the VILLAGE OF NORTHBROOK for the Real Estate. Each of such Sublots is or is to be improved with a residential unit some of which may share a wall (party wall) with one other residential unit. Each Sublot, whether or not improved, is a Dwelling Unit hereunder. The precise legal description of each Dwelling Unit shall be set forth in the deed which conveys the Dwelling Unit from the Declarant to the first purchaser of each such Dwelling Unit.

2.11. Dwelling Unit Exterior. The roof, foundation, steps, footings, outer surface of exterior walls, garage doors and deck of each Dwelling Unit including, to the extent that such improvements fall within the boundaries of the Dwelling Unit, the driveways and walkways.

2.12. Initial Development Period. The period commencing with the filing of this Declaration and ending on the Turnover Date.

2.13. Mortgagee. The holder of a bona fide first mortgage, first trust deed or equivalent security interest covering a Dwelling Unit.

2.14. Owner. The person or persons whose estates or interests individually or collectively aggregate fee simple absolute ownership of the Dwelling Unit. The word "Owner" shall also

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ARTICLE IV

ADMINISTRATION

4.01. Association. Declarant shall, prior to the sale of the first Dwelling Unit, cause to be incorporated a not-for-profit corporation under the General Not For Profit Corporation Act of the State of Illinois, to be called "BURR OAKS CIRCLE HOMEOWNERS' ASSOCIATION," which corporation (the "Association") shall be the governing body for all the Owners as provided herein. Every Owner shall, without exception, be a member of the Association. There will be one membership per Dwelling Unit. Membership shall be appurtenant to and may not be separated from ownership of a Dwelling Unit. Ownership of a Dwelling Unit shall be the sole qualification for membership. Membership shall automatically be terminated upon the sale, transfer or other disposition by such member of the Dwelling Unit, at which time the new Owner shall automatically become a member therein.

The Association shall be given written notice of the change of Ownership of a Dwelling Unit within ten (10) days after such change. Declarant will convey fee title ownership of the Common Area to the Association on or before the Turnover Date. The Common Area will at the time of such conveyance to the Association by the Declarant, be free and clear of any mortgage or trust deed.

4.02. Board of Directors. The direction and administration of the Association shall be vested in its Board. The Board shall consist three (3) persons who shall be designated or elected in

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3.02. Declaration to Run with Real Estate. All of the rights, benefits and privileges, and all of the restrictions, conditions, easements, reservations, covenants, liens and charges granted, created, reserved or declared by this Declaration, shall be deemed to be covenants appurtenant running with the land, and, so long as the Real Estate is subject to the provisions of this Declaration, shall remain in full force and effect, and inure to the benefit of and be binding upon the undersigned, its successors and assigns and upon any Person having an interest or estate in the Real Estate or any Dwelling Unit.

3.03 Conveyance Subject to Declaration. Deeds of conveyance, trust deeds and other instruments that create or memorialize an interest or estate in the Real Estate or any Dwelling Unit, including (without limitation) those that create or record mortgage or lien interests, shall irrespective of whether such instruments make reference to this Declaration, be subject hereto as fully and completely as would be the case were this Declaration set forth in its entirety in such instrument.

3.04. Dwelling Unit Conveyance. Once a Dwelling Unit has been conveyed by the Declarant to a bona fide purchaser for value, any subsequent conveyance or transfer of ownership of such Dwelling Unit shall be of the entire unit and there shall be no conveyance or transfer of a portion of a Dwelling Unit except between spouses, and children of a Person owning a Dwelling Unit, for estate and estate planning purposes, without the prior written consent of the Board.

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shall be the Voting Member with respect to any and all Dwelling Units owned by the Declarant.

4.04. Meetings.

(a) Meetings of the Voting Members shall be held at the Real Estate or at such other place in the Village of Northbrook, Dearfield or Wheeling, Illinois, as may be designated in any notice of a meeting. At any meeting of the Voting Members, the presence in person or by proxy of the Voting Members for at least eleven (11) Dwelling Units shall constitute a quorum. Except as otherwise required by the terms of this Declaration, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of a majority of the Voting Members present in person or by proxy.

(b) The initial meeting of the Voting Members shall be held upon at least ten (10) days' prior written notice given by the Declarant. Such written notice must be given not later than ten (10) days prior to the Turnover Date. Thereafter, there shall be an annual meeting of the Voting Members on the second Tuesday of November following such initial meeting, and on the second Tuesday of November of each succeeding year thereafter, at 7:30 p.m., or at such other reasonable time or date (not more than thirty (30) days before or after the scheduled meeting date) as may be designated by written notice by the Board given to the Voting Members not less than ten (10) days prior to the date fixed for said meeting.

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the manner hereinafter provided. Subject to the right of the Declarant's beneficiary to designate Board members prior to the Turnover Date, each member of the Board shall be one of the Owners or a spouse of an Owner; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer, director or other designated agent of such corporation, any partner or other designated agent of such partnership, any beneficiary or other designated agent of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board.

4.03. Voting Rights. There shall be one person with respect to each Dwelling Unit, who shall be entitled to vote at any meeting of the Owners. Such person shall be known and hereinafter referred to as a "Voting Member." Such Voting Member may be the Owner or one of the group comprising all the Owners of a Dwelling Unit, or may be a person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner or Owners. Any or all of such Owners may be present at any meeting of the Voting Members and (those constituting a group, when acting unanimously) may vote or take any other action as a Voting Member either in person or by proxy. Declarant's beneficiary

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receiving the highest number of votes at the first annual meeting shall be elected to the Board for a term of three (3) years, the person receiving the next highest number of votes shall be elected to the Board for a term of two (2) years and the person receiving the third highest number of votes shall be elected to the Board for a term of one (1) year. Upon the expiration of the terms of office of the Board members elected at the first annual meeting, and thereafter, successors shall be elected for a term of three (3) years each. The Voting Members for at least two-thirds ($2/3$) of the number of Dwelling Units may from time to time increase or decrease such number of persons on the Board or may increase or decrease the term of office of Board members at any annual or special meeting, provided that such number shall not be less than three (3), and that the terms of at least one-third ($1/3$) of the persons on the Board shall expire annually. Members of the Board shall receive no compensation for their services, unless expressly allowed by the Board at the direction of the Voting Members for a least two-thirds ($2/3$) of the number of Dwelling Units. Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board, shall be filled by the Voting Members present at the next annual meeting or at a special meeting of the Voting Members called for such purpose. Except as otherwise provided in this Declaration, the Association shall be managed by the Board and the Board shall act by a majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and

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(c) Special meetings of the Voting Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of all or some of the Voting Members, or for any other reasonable purpose. Said meetings shall be called by written notice authorized by a majority of the Board or by one-fifth (1/5th) of the Voting Members and given not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

4.05. Notice of Meetings. Notices of meetings required to be given herein may be delivered either personally deposited at the Dwelling Unit mail box, or sent by mail, to the Persons entitled to vote thereat, addressed to each such Person at the address given to the Board for purpose of service of such notice, or to the Dwelling Unit of the Owner with respect to which such voting right relates, if no address has been given to the Board.

4.06. Election of Board Members.

(a) At their initial meeting, the Voting Members shall elect a full three-member Board. In all elections for members of the Board, each Voting Member shall be entitled to cast the number of votes equal to the number of Board members to be elected. Cumulative voting will not be permitted. The three (3) candidates receiving the highest number of votes shall be deemed to be elected. Members of the Board elected at the initial meeting shall serve until the first annual meeting. At the first annual meeting (3) Board members shall be elected. The person

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power and authority to purchase and pay for such materials, supplies, labor, service, and the like, as it deems necessary in order to fulfill its obligations under this Declaration or to meet requirements imposed by the VILLAGE OF NORTHBROOK, or which are in its opinion necessary or proper for the maintenance and operation of the Common Area.

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

4.09. Adoption of Rules and Regulations. The Board, without approval from any of the Voting Members except as hereinafter set forth, may adopt such reasonable rules and regulations as it may deem advisable for the use, maintenance, conservation and beautification of the Common Area, and for the health, comfort, safety and general welfare of the Owners; provided, however, that no such rules, or any amendments thereof, shall be effective without the prior approval of the VILLAGE OF NORTHBROOK as expressed by duly adopted resolution. Written notice of such rules and regulations shall be given to all Owners. If within thirty (30) days from the date of written notice to the Owners of the adoption of any such rule and regulation, the Voting Members for at least one-fourth (1/4) of

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conducted in accordance with such resolutions as the Board may adopt. A majority of the total number of members of the Board shall constitute a quorum.

(b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the Voting Members, and who shall be chief executive officer of the Association; a Secretary who shall keep the minutes of all meetings of the Board and of the Voting Members and who shall, in general, perform all the duties incident to the office of Secretary; a Treasurer to keep the financial records and books of account and who shall, in general, perform all the duties incident to the office of Treasurer; and such additional officers as the Board shall see fit to elect.

(c) Any Board member elected by the Voting Members may be removed from office by affirmative vote of the Voting Members for at least two-thirds (2/3) of the number of Dwelling Units at any special meeting called for that purpose. A successor to fill the unexpired term of a Board member removed may be elected by the Voting Members at the same meeting or any subsequent meeting called for that purpose.

4.07. General Powers of the Board. The Board shall have such power as shall be necessary and appropriate to authorize, supervise and direct the performance by or on behalf of the Association of the various duties and obligations imposed on the Association in this Declaration. Without limiting the generality of the foregoing the Board shall be responsible for and have the

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conduct, gross negligence or fraud in the performance of his or her duties as such Board member or officer; or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for criminal conduct, gross negligence or fraud in the performance of his or her duties as such Board member or officer. It is intended that the foregoing indemnification shall be coextensive with the broadest indemnification permitted under the Illinois General Not-For-Profit Corporation Act of 1986, as from time to time amended.

Agreements made by the Association or the Declarant or its beneficiary, on behalf of the Owners may provide that the officers of the Association, members of the Board, or the Declarant or its beneficiary, as the case may be, are acting only as agents for the Owners and shall have no personal liability thereunder (except as Owners) and that each Owner's liability shall be limited to such proportion of the total liability as the number of Dwelling Units owned by such Owner bears to the aggregate numbers of Dwelling Units.

4.11 Managing Agent. The Association may engage a managing agent and pay such agent a reasonable fee for its services. Any such agency shall be reflected in a written agreement between the Association and the agent and be for a term of not more than one year and be terminable by the Association for cause on thirty (30) days' written notice, or by either party without cause or

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the Owners shall file with the Board a written objection thereto, then such rule and/or regulation shall be deemed rescinded until approved by the Voting Members for at least three fifths (3/5) of the Owners.

4.19 Board Member and Officer Liability. Board members and officers of the Association shall not be personally liable to the Owners for any mistake of judgment or any acts or omissions of any nature which such Board members or officers take or fail to take as Board members and/or officers, except with respect to acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless the Declarant, its beneficiary and each Board member and Association officer, along with their respective heirs, executors or others, arising out of contracts made by or other acts taken by and in their status as Board members or officers, unless in each case such contract or act shall have been entered into or taken criminally, fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, without limitation, counsel fees, judgments paid and settlements paid) actually and reasonably incurred in connection with defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or otherwise; provided, however, that such indemnity shall not be operative with respect to:

(1) any matter as to which such person shall have been adjudged in such action, suit or proceeding to be liable for criminal

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shall be vested exclusively in the Declarant and neither the Owners nor the counselors (if any) which they may have elected shall have any voting rights. Notwithstanding Declarant's acts, such acts or actions shall be exercised by Declarant's beneficiary, Brandess Home Builders, Inc.

4.14. Declarant's Reserved Rights During Initial Development Period.

(a) In connection with the sale of Dwelling Units the Declarant shall have the right and power to construct such temporary improvements as the Declarant may deem necessary or advisable, including (without limitation) the construction of a model Dwelling Unit or other promotional facility; provided that any such model Dwelling Unit or other promotional facility and all advertising and other promotional devices shall at all times be in conformity with the applicable ordinances of the VILLAGE OF NORTHBROOK.

(b) In connection with the construction of all of the Development the Declarant, its agents and contractors, shall have the right to store construction equipment and materials upon the Real Estate and otherwise engage in such activities as are necessary and appropriate and which are in conformity with the applicable laws and ordinances of the VILLAGE OF NORTHBROOK.

(c) The Declarant shall have the right and power to execute all necessary documents and perform all acts which in the Declarant's opinion are necessary in connection with the exercise of its rights under this Declaration.

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payment of any termination fee, on ninety (90) days' written notice.

4.12. Dissolution. To the extent permissible under applicable law, in the event of the dissolution of the Association, the Common Area shall be conveyed to the Owners as tenants in common, based upon the respective fractional ownership percentage each Dwelling Unit bears to the total of all Dwelling Units. No such conveyance shall be permitted without the prior approval of the VILLAGE OF NORTHBROOK by resolution duly adopted.

4.13. Declarant Control of Association. The first and all subsequent Boards shall (until the Turnover Date) consist solely of three (3) persons from time to time designated by the Declarant, which persons may, but need not be Owners. Declarant's rights under this Section to designate the members of the Board, shall terminate on the Turnover Date. For purposes of this Declaration the Turnover Date shall be the first to occur of:

(i) the giving of written notice by Declarant to each Owner of Declarant's election to terminate its rights; (ii) ninety (90) days following consummation of the sale of the twentieth (20th) Dwelling Unit; or (iii) five (5) years from the date of recording of this Declaration. Prior to the Turnover Date, Voting Members may elect such number of non-voting counselors to the Board as the Declarant may, in its sole discretion permit. From and after the Turnover Date, the Board shall be constituted and elected as provided in Sections 4.02 through 4.06. Prior to the Turnover Date, all of the voting rights at each meeting of the Owners

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manager or other persons and contract with independent contractors, managing agents, collection agents and others to perform and effectuate all or any part of the duties and powers of the Association, if deemed necessary by the Board and establish such reserves as may be required hereunder or as the Board shall from time to time deem necessary to fulfill and further the purposes of the Association.

5.02 Common Area Maintenance. The Association shall maintain, repair and replace the Common Area, and its components including, but not limited to the grass, trees, shrubs, the private roadways, the Parking Areas, plantings, pavement, lighting, signs and other improvements located upon the Common Area. The Association shall also maintain, repair and replace those portions of the roadways and Parking Areas located in the Common Area and shall maintain, repair, and replace any mailboxes located in the Common Area to the extent the names are not maintained, repaired and replaced by the U.S. Postal Service, and shall snowplow the roadways (including pathways located adjacent thereto) and then Parking Areas. The cost of maintenance shall be an Association expense, provided, that until the Association is organized, the Declarant shall be responsible therefor.

5.03. Maintenance of Detention Area.

That portion of the Common Area designed or intended for the proper drainage of detention of storm water (as depicted on the site plan, the landscape plan and engineering plan for the Real

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(d) All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to or assignee of the rights of the Declarant (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold and be entitled to exercise the rights of the Declarant hereunder.

ARTICLE V

DUTIES, OBLIGATIONS AND RESTRICTIONS

A. Duties and Obligations Relative to Common Areas.

5.01. General. The Association shall have the power and duty to pay any real property taxes and other charges assessed against the Common Area; purchase and pay for casualty and liability insurance for the Common Area; grant easements where necessary for public utilities over the Common Area to serve both the Common Area and the sublots; adopt reasonable rules and regulations controlling and limiting the use of the Common Area and further adopt rules and regulations, all subject to the approval of the Village of Northbrook, to promote the enjoyment, living standards and use of the Owners; and cooperate with the VILLAGE OF NORTHBROOK in the enforcement of all applicable laws, ordinances and permits in connection with the Real Estate. The Association shall maintain such policy or policies of insurance at all times, as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members, officers and directors; employ a

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such a manner as to insure the beauty and overall first rate appearance of such areas. In particular, such maintenance shall include the upkeep of all landscaping materials placed or planted in such green space and the prevention of accumulation of any litter thereon or development of and other condition that would detrimentally affect the beauty and overall first rate appearance of such areas.

5.06. Maintenance of Signage. The signage at the entrance to the Development and all no parking signs along the private roads shall be maintained in like new condition by the Association.

5.07. Maintenance of Driveways. All driveways servicing the various Dwelling Units shall be maintained by the Association in good condition and repair at all times, including the prompt and effective removal of snow and ice and shall provide a means of safe, efficient, unobstructed and comfortable passage from the various Dwelling Units to the private road and sidewalk which service the Development.

B. Duties and Obligations Relative to Dwelling Units.

5.08 Maintenance, Repair, Replacement and Rebuilding of Dwelling Units.

(a) The Association shall be responsible for the maintenance, repair and replacement of the Dwelling Unit Exteriors including without limitation the following:

(i) Painting, Maintenance, repair and replacement of the roof, outer surface of exteriors walls, foundations, steps, footings, driveways and walkways, but excluding win-

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Estate approved by the VILLAGE OF NORTHBROOK) shall be kept unobstructed and shall be mowed regularly by the Association. No trees, plantings, shrubbery, fencing, patios, structures of any kind, landscaping treatment or other obstruction shall be planted, placed or allowed to remain in the detention area, except as depicted on the aforesaid plans. Each Owner acknowledges, by acceptance of a deed to a Dwelling Unit, that the portion of the Common Area designed for storm water detention is for the benefit of the entire Real Estate, and that consequently the Declarant, any Owner, the village or the Association shall have the right to enter upon the Common Area to maintain drainage and detention in consonance with the aforesaid plans approved by the VILLAGE OF NORTHBROOK.

5.04. Maintenance of Private Roads. The private road and sidewalk which provide ingress and egress to the Development shall be maintained in good condition and repair by the Association at all times, including the prompt and effective removal of snow and ice and shall provide a means of safe, efficient, unobstructed and comfortable passage from the public right of way to the Development. The VILLAGE OF NORTHBROOK shall be under no obligation to provide maintenance for or accept dedication of said roads at any time.

5.05. Maintenance of Green Space. All Common Area green space shall be landscaped in accordance with the site plan and landscape plan approved by the VILLAGE OF NORTHBROOK for the Real Estate and shall be maintained by the Association at all times in

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Provided that the Association elects make said repairs and replacements, the expenditures incurred by the Association (including those in excess of any available insurance proceeds) shall become the personal obligation of the Owner and a continuing lien on the Dwelling Unit, recoverable with interest, costs and reasonable attorney's fees.

(c) In the event of damage to or destruction of any Dwelling Unit by fire or other casualty, the Owner thereof shall within a reasonable time after such damage or destruction, repair or rebuild the same in substantial and workmanlike manner with materials comparable to those used in the original structure and in conformity in all respects to the ordinances of the VILLAGE OF NORTHBROOK regulating the construction of buildings in force at the time of such repair or reconstruction. The Dwelling Unit Exterior, when rebuilt, shall be substantially similar to and its architectural design and landscape shall be acceptable to the Board, and in conformity with the surrounding Dwelling Units which have not been so damaged or destroyed. The Owner shall not be relieved of his or her obligation to repair or rebuild his or her Dwelling Unit under this Subsection (c) by reason of such Owner's failure to carry sufficient insurance or the fact that proceeds received by the Owner from the insurer are not sufficient to cover the cost thereof.

(d) In the event that any Owner shall fail, within a reasonable time after the occurrence of the damage or destruction referred to in Subsection (c), to perform the necessary repair or

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dow washing, replacement of broken glass and the repair of deck flooring and damage to garage doors and electric door openers;

(ii) Maintenance, repair and replacement of water, sewer, electrical and other systems located in Common Area and which serve more than one Dwelling Unit; but not including those portions of such systems which serve only one Dwelling Unit, such as, for example, a garage door opener, an interior air conditioning unit, and electrical or plumbing fixtures.

(b) The foregoing services provided by the Association in regard to exterior surfaces of an Owner's Dwelling Unit shall be limited to normal wear and tear; the Owner shall be solely responsible for all exterior repair and replacement resulting from causes other than normal wear and tear, including but not limited to losses from casualties, and shall be solely responsible for all interior and structural repair and replacement. In the event the Owner shall fail to diligently pursue and effect such repairs and replacements, the Association may (but shall not be required to) effect such repairs and replacements and the Association shall be entitled to reimbursement in full from the Owner for its costs of every kind incurred in connection therewith, including the right to any insurance proceeds. Subject to the rights of the first mortgagee, if any, in the event of any casualty loss, all insurance proceeds recovered shall be applied to effect such repairs and replacements.

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to time set, or: (ii) to pay to the Association from time to time the additional cost of maintenance of the Dwelling Unit Exterior resulting from such addition, alteration or improvement. If an addition, alteration or improvement is made to a Dwelling Unit Exterior by an Owner in violation of this Section, then the Board may, in its discretion, take any of the following actions:

(a) Require the Owner to remove the addition, alteration or improvement and restore the Dwelling Unit Exterior to its original condition, all at the Owner's expense; or

(b) If the Owner refuses or fails to promptly perform the work required under (a), the Board may cause such work to be done and charge the Owner for the cost thereof as determined by the Board; or

(c) ratify the action taken by the Owner, in which case the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this section.

Nothing in this section shall be in derogation of the ordinances of the VILLAGE OF NORTHBROOK insofar as such ordinances require the issuance of a building or other permit prior to the commencement of work.

5.11. Damage Caused by an Owner. If due to the act or omission of the Owner of a Dwelling Unit, or the household pet, guest or other occupant or invitee of such Owner, damage shall be caused to any Common Area or his Dwelling Unit, and as a result thereof maintenance, repairs or replacements shall be required,

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rebuilding, then the Board may cause such repairs or rebuilding to be performed in the manner and as provided in Subsection (a) and the cost thereof shall be charged to such Owner as his or her personal obligation and shall be a continuing lien on the Owner's Dwelling Unit.

5.09. Alterations, Additions or Improvements to the Common Area. The Association may cause alterations, additions or improvements to be made to any Common Area and the cost thereof shall be paid from Charges except that any such alteration, addition or improvement which shall cost more than \$2,500 shall require advance approval at a special meeting of the Owners. No alteration, addition or improvement shall, however, in any case be made to the Common Area without the prior approval of the Board.

5.10 Restrictions, Alterations, Additions or Improvements to Dwelling Units. No additions, alterations or improvements (including specifically, any permanent impervious ground cover), shall be made to any Dwelling Unit Exterior by an Owner, and no application for a building or other permit for the same shall be submitted to the VILLAGE OF NORTHBROOK by an Owner, without the prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement to a Dwelling Unit Exterior by an Owner upon the Owner's agreement either: (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time

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any Owner, relatives of the Owner, the Association, its directors and officers, the Declarant, its beneficiary, the managing agent, if any, and their respective employees and agents.

C. RESTRICTIONS.

5.13. Use Restrictions.

(a) No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Area nor shall any "For Sale" or "For Rent" signs or any other advertising be maintained or permitted on any part of any Common Area or any Dwelling Unit Exterior, except as permitted by the Board or as permitted by Section 4.14.

(b) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Dwelling Unit Exterior or any Common Area. The Common Areas shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

(c) Each Dwelling Unit shall be used only as a residence, provided that no Owner shall be precluded, with respect to his Dwelling Unit, from: (i) maintaining a personal professional library; (ii) keeping his personal business records or accounts therein; or (iii) handling his personal business or professional calls or correspondence therefrom.

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which would otherwise be a Common Area Expense, then the Owner or the Dwelling Unit shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by insurance carried by the Association. In the event such damage is covered by insurance carried by the Association then, unless a resolution to the contrary is adopted by the affirmative vote of at least seventy-five percent (75%) of the voting Members, the damaged improvements shall be repaired, replaced or reconstructed and the insurance proceeds used, first, to pay the cost thereof, and any excess thereafter used to pay the Common Area Expenses. Any deficiency shall remain the responsibility of the Owner whose act or omission caused the damage.

5.12. Waiver of Subrogation, The Association and each Owner hereby waive and release any and all claims which it, he or she may have against any Owner, including relatives of the Owner, the Association, its Board members and officers, the Declarant, its beneficiary, the managing agent, if any, and their respective employees and agents, for damage to the Dwelling Unit, the Common Area or any personal property located in the Dwelling Unit, the Common Area or any personal property caused by fire or other casualty to the extent that such damage is covered by fire or other forms of casualty insurance and to the extent that this release is permitted under policies for such insurance. To the extent possible, all policies purchased by the Board shall contain waivers of the insurer's rights to subrogation against

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does not abate upon reasonable notice, shall be permanently removed from the Development, upon ten (10) days' written notice from the Board to the Owner of the Dwelling Unit containing such pet; the decision of the Board shall be final. The breeding or keeping of dogs or cats for sale or profit is expressly prohibited.

5.16. Structural Impairment. Nothing shall be done in, on or to any part of any Dwelling Unit which would impair its structural integrity. Nor shall anything be done in, on or to any part of the Common Area which would interfere with the appearance or impair the utilization thereof for the purposes for which the same is designed.

5.17. Proscribed Activities. No noxious or offensive activity shall be carried on in the Development nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the residents.

5.18. No Dedication to Public Use. Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, expressed or implied, or any part of the Common Areas to or for any public use or purpose whatsoever.

5.19. Obstructions. Except as permitted under Section 4.14 there shall be no obstruction of the Common Areas, and nothing shall be stored in the Common Areas without the prior written consent of the Board or in violation of any applicable ordinance of the VILLAGE OF NORTHBROOK.

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(d) No trucks, busses, recreational vehicles or trailers shall be parked except within the individual garage which forms a part of each Dwelling Unit. Nor shall any such trucks, busses, recreational vehicles or trailers be parked in the Common Area.

(e) Notwithstanding anything contained in this Section to the contrary, only those uses permitted by the applicable ordinances of the Village of Northbrook, as amended from time to time, shall be permitted on the Real Estate.

5.14. Communication Dishes and Antennas. No communication dish or antenna shall be permitted on the roof or chimney of any Dwelling Unit. No communication dish shall be installed or maintained except in accordance with applicable requirements of the VILLAGE OF NORTHBROOK or without an applicable permit from the VILLAGE OF NORTHBROOK. Any communication dish or antenna erected on the Common Area shall be screened with landscape materials of no less than the height of the communication dish or antenna.

5.15. Pets. No animal of any kind shall be raised, bred or kept in the Common Areas. Common house pets such as dogs, cats and birds are permitted. The Board may from time to time adopt rules and regulations governing the keeping of pets in the Dwelling Units, which may include prohibiting certain dangerous species of pets from being kept in the Dwelling Units and requiring an Owner to clean up after his pet. Any pet causing or creating a nuisance or unreasonable disturbance which the Owner

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Any lease shall be in writing and shall provide that such lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease. A lessee shall be bound by the provisions hereof regardless of whether the lease specifically refers to this Declaration.

5.21. Overall Architectural Control. The Board or duly authorized committee thereof created pursuant to the Bylaws shall have the right and power from time to time to adopt reasonable rules and regulations governing the architectural design and exterior finish of all structures or improvements from time to time located in the Development, including without limitation the Dwelling Units and any improvements located on the Common Areas. The provisions of this Section shall not apply to any construction performed by the Declarant or its beneficiary and their officers, employees, agents or contractors.

5.22. Association's Access. The Association shall have the right and power to come onto any Dwelling Unit for the purpose of furnishing the services required to be furnished hereunder or enforcing its rights and powers hereunder.

5.23. Off-Street Parking. Fourteen (14) off-street parking spaces shall at all times be maintained in the Common Areas.

5.24. Violation of Village Ordinances. When notified by the VILLAGE OF NORTHBROOK of a violation of Village ordinances, codes or covenants, the Association will use its best efforts to assist the Village in obtaining appropriate compliance.

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5.20. Lease of Dwelling Unit. Any Owner shall have the right to lease all (but not less than all) of his Dwelling Unit subject to the provisions of Subsections (a) and (b) below:

(a) no Dwelling Unit shall be leased for transient or hotel purposes, which are hereby defined as being for a period of less than thirty (30) days or for a period of more than thirty (30) days where hotel services normally furnished by a hotel (such as room service or mail service) are furnished;

(b) the Owner shall submit to the Board (i) a written application completed by the proposed lessee, setting forth the name, current address and financial and character references of the proposed lessee, (ii) a description of the basic terms of the proposed lease, including the length of the term and rental amount, and (iii) any other information reasonably required by the Board.

Within fifteen (15) days after receipt of the aforementioned information, the Board shall hold a meeting to vote upon the question of approving the proposed lease. The lease shall be approved unless at least two-thirds (2/3) of the Board members then serving shall vote against such approval. The decision of the Board shall be final and binding. In the event the Board fails to hold a meeting within said fifteen (15) day period or fails to vote on the proposed lease, the Board shall be deemed to have consented to the terms and the lessee of the proposed lease.

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holes for nails, screws, anchors or other accessories and which do not diminish the structural integrity of such Party Wall, its fire resistance, or its sound-deadening quality.

(d) If any Party Wall is damaged or destroyed due to the act or omission of the Owner of a Dwelling Unit which utilizes such Party Wall, or the guest or other occupant or invitee of such Owner, such Owner shall forthwith proceed to rebuild or repair the same to a condition at least as good as that which obtained prior to such damage or destruction, without cost to the Owner of the adjoining Dwelling Unit which also utilizes such Party Wall.

(e) Any Party Wall damaged or destroyed by some event other than one resulting from an act or omission of the Owner of a Dwelling Unit which utilizes such Party Wall, or the guest or other occupant or invitee of such Owner, shall be rebuilt or repaired by the Owners of the two adjacent Dwelling Units which utilize such Party Wall to a condition at least as good as that which obtained prior to such damage or destruction, at the joint expense of such Owners and as promptly as is the rebuilding of any portion thereof which is part of a Dwelling Unit exterior shall be paid by the Association as a Common Expense to the extent not covered by insurance.

(f) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction of the type addressed by this Section to perform the necessary repair or rebuilding, the Board may cause such repair or

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5.25. Party Wall Rights and Obligations.

(a) Every wall, including the foundations therefor, built as a part of the original construction of a building and resting on the boundary line between separate Dwelling Units shall be deemed a "Party Wall" and the Owner of each Dwelling Unit which utilizes a Party Wall shall have the obligations, rights and privileges set forth in this Section, as well as those not inconsistent herewith embraced within the general rules of law regarding party walls.

(b) Without limiting the generality of paragraph (a) of this Section, each Owner of a Dwelling Unit which utilizes a Party Wall shall have the right to use such Party Wall for support of such Owner's Dwelling Unit including any replacement thereof, plus the right and obligation to maintain and repair, and in the event of its destruction to rebuild such Party Wall including in such case all pipes, conduit and ducts located therein.

(c) The Owner of a Dwelling Unit which utilizes a Party Wall shall refrain from using such Party Wall in any manner which interferes with the equal use thereof by the Owner of the other utilizing Dwelling Unit. Nor, in the connection with the reconstruction, repair or maintenance of a Dwelling Unit, shall the Owner thereof permit any joists, crossbeams, studs or other structural member used to encroach upon the Dwelling Unit of the other Owner whose Dwelling Unit utilizes such Party Wall. No openings shall be made through a Party Wall other than customary

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shall be made available, as the Board shall reasonably determine, for the repair, reconstruction, and restoration of such Dwelling Unit, subject to the right of first mortgagees. The Owner shall be responsible for payment of any deductibles. To the extent feasible, all such policies of insurance shall: (i) provide that the insurance shall not be invalidated by the act or neglect of the Declarant, the Association, its Board, its officers, any Owner or Occupant, or any agent, employee, guest or invitee of any of them; and (ii) shall contain an endorsement that such policies shall not be cancelled without at least thirty (30) days prior notice to the Association, the Owners, and all first mortgagees of the lots. The policies obtained by the Association shall be deemed to be the primary insurance coverage for any Dwelling Unit.

6.02. Owner's Insurance for Liability and Contents of Dwelling Unit. Each Owner shall maintain at his own cost and expense such insurance coverage as he may desire with respect to: (i) personal liability for acts and occurrences upon and within his Dwelling Unit, and (ii) casualty and physical damage losses for personal property and the contents of his Dwelling Unit, and shall further maintain at his cost and expense, any special flood hazard insurance as may be required by the first mortgagee of his Dwelling Unit.

The Association shall have no obligation in connection with the aforementioned insurance coverages.

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rebuilding to be performed and the cost thereof charged in the manner provided for in Section 5.08.

(g) In the event of disagreement between the Owners of adjoining Dwelling Units as regards their respective Party Wall rights or obligations, upon the written request of either of said Owners to the other, with a copy to the Board, the matter shall be adjudicated by the Board, whose decision with respect thereto shall be final and binding.

ARTICLE VI

INSURANCE

6.01. Casualty Insurance for Dwelling Units. The Association shall obtain and maintain a policy or policies of casualty insurance covering the Dwelling Unit exterior and structure (other than the contents thereof) constructed on the Real Estate, including, without limitation, all alterations and additions thereto, against damage or destruction by the perils of fire, lightning and those casualties contained in an all risk form fire and casualty insurance policy, and such other perils as the Board from time to time may determine should be included in such coverage, in an amount equal to 100% of the insurable replacement cost thereof, without depreciation, with an agreed amount provision and such reasonable deductibles all as the Board may determine. Such insurance shall name as the insured, and the proceeds thereof shall be payable to the Association; such proceeds shall be received as trustee for the Owners of any Dwelling Units damaged or destroyed. The proceeds from such insurance

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6.04. Liability Insurance; the Association. The Association shall obtain and maintain a policy or policies of comprehensive general liability insurance insuring on an occurrence basis, the Association, its Board, officers, the Members, and their agents and employees, against claims for personal injury, including death, and property damage, arising out of any occurrence in connection with the ownership of the Common Areas of the occupancy, supervision, operation, repair, maintenance or restoration of the Common Areas, or in connection with any act or omission of or in behalf of the Association, its Board, their agents or employees within the REal Estate. Such policies shall be in the amount of One Million Dollars for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that they may not be cancelled without at least a thirty (30) day prior notice to the Association, the Owners, and the first Mortgagees of the Dwelling Units.

6.05. Workmen's Compensation and Fidelity Insurance; Other Insurance. The Association shall obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage;

(a) Workers Compensation and employers liability insurance in such form and in such amounts as may be necessary to comply with applicable laws;

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6.03. Casualty Insurance; Common Area. The Association shall obtain and maintain a policy or policies of insurance with respect to the damage or destruction of the Common Area and any of the improvements thereon, and to any other tangible assets of the Association including coverage against damage or destruction by the perils of fire, lightning and those perils contained in an all risk form of insurance including vandalism and such other perils as the Board from time to time may determine should be included in such coverage, in an amount equal to 100% of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall name as the insured, and the proceeds thereof shall be payable to the Association,. The proceeds of such insurance shall be made available, as the Board shall reasonably determine, for the repair, reconstruction, and restoration of such Common Areas subject to the rights of the first mortgagees. To the extent feasible, all such policies of insurance shall: (i) provide that the insurance shall not be invalidated by the act or neglect of the Declarant, the Association, its Board, its Officers, any Owner or occupant, or any agent, employee, guest or invitee of any of them; and (ii) shall contain an endorsement that such policies shall not be cancelled without at least thirty (30) days prior notice to the Association, the Owners, and all first Mortgagees of the Dwelling Units.

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ARTICLE VII

EASEMENTS

7.01. Easement for Ingress and Egress. Each Owner shall have a non-exclusive perpetual easement for ingress to and egress from his Dwelling Unit to the public streets and roads over and across the Common Area, which easement shall run with the land, be appurtenant to and pass with the title to his or her Dwelling Unit. Such easement rights shall extend to and authorize utilization of such easement for ingress and egress purposes by any duly authorized occupants of such Owner's Dwelling Unit and by any duly authorized occupants of such Owner's Dwelling Unit and by guests, agents, invitees and licensees of the Owner. The VILLAGE OF NORTHBROOK shall have a non-exclusive easement of access over, across and through the Common Area for governmental purposes. The Declarant and its successors and assigns (including employees, agents and contractors) shall have a non-exclusive easement for ingress and egress over, across and through the Common Area for purposes of completing construction of the Development. The Association, its employees, agents and contractors shall have a non-exclusive easement of access over, across and through the Common Area for purposes related to the carrying out of its responsibilities as set forth in this Declaration, including the right to store equipment on the Common Area in connection therewith.

7.02. Storm Water Detention Easements. Perpetual easements for ingress and egress for maintenance of the storm water deten-

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(b) Fidelity insurance or bonds in reasonable amounts for all officers and employees having fiscal responsibilities, naming the Association as obligee; and

(c) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.

6.06. Waiver of Subrogation. To the extent feasible, all policies of insurance obtained by the Association shall contain provisions that no act or omission of any named insured shall affect or limit the obligation of the insurance company to pay the amounts of any loss sustained. So long as the policies of insurance provided for herein shall provide that a mutual release as provided for in this Section shall not affect the right of recovery thereunder, and further provide coverage for the matters for which the release herein is given, all named insured and all parties claiming under them, shall and do by these presents, mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard or source covered by any insurance procured by the Association, regardless of the cause of damage or loss.

6.07. Insurance Premium Expense. The expense of insurance premiums paid by the Association under this Article shall be an appropriate expense of the Association for which the Common Area Assessments collected by the Association from the Owners, shall be applied.

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municipal services, upon, over and across the Real Estate solely and strictly as depicted on the Plat of Subdivision for the Real Estate approved by the VILLAGE OF NORTHBROOK; other than the easement granted to the VILLAGE OF NORTHBROOK for municipal services, the utility easements recited are recitations of those shown on the Plat of Subdivision.

7.05. Easements - Municipal Authorities. Police, fire, water, health, and other authorized officials, employees and vehicles of the VILLAGE OF NORTHBROOK shall have the right of and are hereby granted ingress and egress to the Real Estate, and any part thereof, for performance of official duties and for the purpose of enforcing all Village ordinances and statutes of the State of Illinois. In addition, duly designated officials and employees of the VILLAGE OF NORTHBROOK and of other governmental having jurisdiction over the Real Estate shall have and are hereby granted an easement to enter upon, on and over the Real Estate for the purposes of maintaining the storm water detention area, drainage systems, and enforcing the applicable ordinances, rules and regulations of the said Village and governmental bodies and to correct or eliminate nuisances or violations resulting from the failure to exercise maintenance responsibilities by the Declarant or its successors and assigns, an Owner or the Association.

7.06. Easements to Run with the Land. All easements and rights on or with respect to the Real Estate are easements appurtenant to and running with the land, perpetually in full

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tion area is hereby reserved to the Declarant and its successors and assigns, the Association and for emergency, utility, enforcement and governmental service purposes, to the VILLAGE OF NORTHBROOK.

7.03. Easement with Respect to Green Space. Each Owner shall have a non-exclusive easement to use and enjoy the Common Areas for recreational purposes, consistent with the preservation of natural vegetation and trees. In no event shall snowmobiles, motorbikes or other motorized vehicles be used in the Common Areas. Such easement shall run with the land and be conveyed with the title to each Dwelling Unit. Enjoyment of the Common Areas shall be for any and all purposes not inconsistent with the provisions of this Declaration and allowed by the Association for the exclusive benefit of all Owners.

7.04. Easements for Utilities. Easements for serving the Real Estate with public utilities and municipal services are hereby granted for and granted to Commonwealth Edison Company, Northern Illinois Gas Company, Illinois Bell Telephone Company, the VILLAGE OF NORTHBROOK, ILLINOIS, and all other suppliers of utilities serving the Real Estate and their respective successors and assigns, jointly and severally, to install, lay, construct, renew, operate, maintain and remove, from time to time, conduits, cables, pipes, wires, transformers, switching apparatus and other facilities and appurtenances used in connection with serving the Real Estate and adjacent property with telephone communications, electric, sewer, gas, water, drainage, cable television, and

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trees, shrubs, or any building, fence, structure or paving erected on or installed within the easement areas, and no charge, claim or demand may be made against such parties for any such activities in the exercise of such rights provided and subject to all ordinance requirements of the Village of Northbrook.

7.10. Additional Easements - Association Authority. The Association shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with respect to any portions or all of the Common Areas for such uses and purposes as the Board deems to be in the best interests of the Owners and which are not prohibited hereunder, including, without limitation, the right to grant easements for utilities and similar and related purposes. Any and all proceeds from leases, easements, licenses or concessions with respect to the Common Areas shall be used to pay the Common Area Expenses. Also, the Association shall have the right and power to dedicate any part or all of the inroads or parking areas to the County, the Village or any municipality or other governmental authority which has jurisdiction over the Common Area. Each person, by acceptance of a deed, mortgage, trust deed, other evidence of obligation, or other instrument relating to a Dwelling Unit, shall be deemed to grant a power coupled with an interest to the Board, as attorney-in-fact, to grant, cancel, alter or otherwise change the easements provided for in this Section. Any instrument executed pursuant to the power granted herein shall be exe-

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force and effect, and at all times shall inure to the benefit of and be binding on the Declarant and its successors and assigns, every Owner and his or her heirs, grantees, successors and assigns, every Owner and his or her heirs, grantees, successors and assigns, the Association and the VILLAGE OF NORTHBROOK.

7.07. Creation of Easements. Reference to the easements and rights described in any part of this Declaration shall be sufficient to create such easements and rights and any subsequent conveyance of any Dwelling Unit shall be deemed to include such easements and rights as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such conveyance.

7.08. Non-Interference with Easements. The Association shall not interfere with or allow the interference with any easement as hereinabove set forth in this Article. Obstructions shall not be placed over any of said easements. The grade of the property over said easements shall not be altered in any manner so as to interfere with the proper operation and maintenance of the easement, but the same may be used for gardens, shrubs, landscaping and such other purposes that then and later do not unreasonably interfere with the use and right herein granted.

7.09. Easement Rights. The Declarant, its successors and assigns, and any party for whose benefit easements are granted pursuant to the terms hereof, shall have the right to do whatever may be required for the enjoyment of the easement rights herein granted, including the right to clear said easement area of

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(a) The estimated Common Area Expenses;

(b) The estimated amount, if any, required to maintain adequate reserves for extraordinary Common Area Expenses, including without limitation amounts required to maintain the Capital Reserve;

(c) The estimated net excess funds, if any, from the current year's assessments;

(d) The amount of the Common Area Assessment payable with respect to the ensuing year by the Owners, which amount is defined as the amount determined in (a) above, plus the amount determined in (b) above minus the amount determined in (c) above;

(e) That portion of the Common Area Assessment which shall be payable each month by the Owner of each Dwelling Unit which is subject to assessment hereunder, which shall be equal to one-twelfth (1/12) of the Common Area Assessment divided by 20 (the number of Dwelling Units), the intent being that each Owner shall pay an equal Common Area Assessment.

Anything in this Section to the contrary notwithstanding, during the Initial Development Period the assessment procedure set forth in Section 8.09 shall apply and the budget provided for in this Section need not disclose the information called for in Subsection (e) above. The budget shall, however, indicate the portion of each Owner's share of the Common Area Assessment which is intended to be added to the Capital Reserve.

8.03. Payment of Common Area Assessment. On or before the first day of January of the ensuing calendar year, and on or

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cuted by the President and attested by the Secretary of the Association and duly recorded.

7.11. Easement for Encroachment. In the event that by reason of the construction, repair, reconstruction, settlement or shifting of a Dwelling Unit any portion of such Dwelling Unit shall encroach upon any other Dwelling Unit or the Common Area, or in the event that for the reasons indicated any improvements to the Common Area shall encroach upon any Dwelling Unit, then in any such case there should be deemed to be an easement in favor of and appurtenant to such encroaching improvement for the continuance, maintenance, repair and replacement thereof, provided, however, that in no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful or negligent conduct of such Owner or such Owner's agent.

ARTICLE VIII

ASSESSMENTS, RESERVE FUND, REMEDIES

FOR NON-PAYMENT OF ASSESSMENTS

8.01. Purpose of Assessments. The assessments levied shall be exclusively for the purpose of defraying Common Expenses and accumulating reserves to defray any extraordinary Common Area Expenses.

8.02. Common Area Assessment. Each year on or before December 1 the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year. Such budget shall show the following with reasonable explanations and itemizations:

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8.06. Charges - Special Assessment. The Board may levy a charge as hereinafter provided: (i) to pay or build up reserves to pay expenses (other than Common Area Expenses), incurred (or to be incurred) by the Association from time to time for a specific purpose including, without limitation, to make alterations, additions or improvements to the Common Area, or establish reserves for repairs to Dwelling Units maintained by the Association; or (ii) to cover an unanticipated deficit under the prior year's budget. Any charge shall be levied against all of the Owners, share and share alike. No charge shall be adopted without the affirmative vote of at least two-thirds (2/3) of the Voting Members who cast their votes on the question. The Board shall serve notice of charge on all Owners by a statement in writing giving the specific purpose and reasons therefor in reasonable detail, and the charge shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section (other than those to cover an unanticipated deficit under the prior year's budget) shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

8.07. Capital Reserve. The Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Common Area and Dwelling Unit Exteriors (the "Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common

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before the first day of each and every month until the effective date of the next annual or revised Common Area Assessment, each Owner of a Dwelling Unit shall pay to the Association, or as the Board may direct, that portion of the Common Area Assessment which is payable by an Owner of a Dwelling Unit under Section 8.02(e).

8.04. Report of Expenditures. On or before April first of each year the Board shall supply to all Owners an itemized accounting of the Common Expenses actually incurred and paid with respect to the preceding calendar year together with a tabulation of the amounts collected by way of Common Area Assessments. Such accounting shall set forth overages or shortages as well as the amount of any reserves. The status of the Capital Reserve (with an itemization and explanation of all receipts and disbursements) shall be simultaneously reported to the Owners.

8.05. Revised Assessment. If the Common Area Assessment proves inadequate for any reason (including the non-payment of any Owner's assessment) or proves to exceed funds reasonably needed, the Board may increase or decrease the assessment payable under Section 8.02(e) by giving written notice thereof (together with a revised budget and explanation for the adjustment) to each Owner not less than ten (10) days prior to the effective date of the revised assessment. Said Assessment may also be revised by a vote of at least 51% of the Owners voting at any regular or special meeting.

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dex"), is greater than the level of the most recently published Index as of the date of the recording of this Declaration (the "Index Base Level"), then, at the option of the Board, the Basic Assessment until next adjusted, shall be equal to the Basic Assessment then in effect multiplied by a fraction, the numerator of which shall be the level of the most recently published Index and the denominator of which shall be the Index Base Level. If the Index shall cease being published, such other standard or index selected by the Declarant, in its discretion, as shall most nearly approximate the measurements theretofore made by the Index shall be used as the Index hereunder, and the Index shall be adjusted accordingly.

(c) Application of Assessments. Each month each Owner (other than the Declarant) shall pay as his monthly Common Area Assessment the amount determined under (a) and (b) above. The Association shall specify the portion, if any, of each such payment that is to be earmarked as a capital contribution under Section 8.02 to the Capital Reserve. The balance of each such payment shall be used by the Association to pay the Common Expenses.

(d) Declarant's Obligation. During the Initial Development Period the Declarant shall not be obligated to pay any amounts to the Association as a Common Area Assessment except as provided in this Subsection. The Declarant shall pay to the Association the aggregate excess, if any, of the Common Expenses incurred and paid during the Initial Development Period over the

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Area, the Dwelling Unit Exteriors and other property owned by the Association and periodic projections of the cost of anticipated major repairs or replacements to the Common Area, the Dwelling Unit Exteriors and the purchase of other property to be used by the Association in connection with its duties hereunder. Each budget shall disclose the portion of the Common Area Assessment which is to be added to the Capital Reserve.

8.08. Initial Capital Contribution. Upon the closing of the first sale of a Dwelling Unit by the Declarant to a purchaser for value, the purchasing Owner shall make a capital contribution to the Association in an amount equal to two (2) months' Common Area Assessment at the rate in effect with respect to the Dwelling Unit as of the closing. Said amount shall be held and used by the Association for its working capital needs.

8.09. Assessments During Initial Development Period. Anything herein to the contrary notwithstanding, until the Turnover Date (the "Initial Development Period"), the assessment procedure set forth in this Section shall apply.

(a) The Basic Assessment. The basic assessment ("Basic Assessment") shall be \$200.00 per Dwelling Unit per month.

(b) Cost of Living Increase. If, as of the first day of any month after this Declaration is recorded, the level of the most recently published Cost of Living Index for All Urban Consumers - All items, U.S. city average (1967 = 100) as published from time to time by the Bureau of Labor Statistics (the "In-

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respect to which such Owner shall be entitled to take a deduction for income tax purposes and the amount of the deduction to which such Owner is entitled. The Board shall also advise each Owner of the amount of any Capital Expenditures which affect the Owner's tax basis. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other Charges due and owing from such Owner.

8.12. Creation of Lien and Personal Obligation. The Declarant hereby covenants, and each Owner of a Dwelling Unit by acceptance of a deed therefor (whether or not it shall be so expressed in any such deed or other conveyance) shall be and is deemed to covenant and hereby agrees to pay to the Association all Charges made with respect to the Owner on the Owner's Dwelling Unit. Each Charge, together with interest thereon and reasonable costs of collection, if any, as hereinafter provided, shall be a continuing lien upon the Dwelling Unit against which such Charge is made and also shall be the personal obligation of the Owner of the Dwelling Unit at the time when the Charge becomes due. Declarant hereby agrees that during the Initial Development Period, any amounts which become payable from the Declarant to the Association under Section 8.09 shall be a continuing lien against the Dwelling Units owned by Declarant at the time that the payment becomes due. The lien or personal obligation created under this Section shall be in favor of and shall be enforceable by the Association.

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aggregate amounts assessed to the Owners (other than Declarant) for use by the Association for the payment of Common Expenses under Subsection (c) during the Initial Development Period. The Declarant shall make such payments to the Association as needed during such period (but at least quarter-annually) and a final accounting shall be made between Declarant and the Association within 120 days after the end of the Initial Development Period. The Declarant shall not be responsible for the payment of any amounts to the Capital Reserve during the Initial Development Period.

8.10. Payment of Assessments. Assessments levied by the Association shall be collected from each Owner by the Association and shall be a lien on the Owner's Dwelling Unit and also shall be a personal obligation of the Owner in favor of the Association, all as more fully set forth in Sections 8.12, 8.13, and 8.14.

8.11. Maintenance of Records. The Board shall keep full and correct books of account in chronological order of the receipts and expenses for which it is responsible, specifying and itemizing the maintenance and repair expenses as well as 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. The Board will cause each Owner to be notified of any expenditures of the Association with

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transfer of a Dwelling Unit. Where title to a Dwelling Unit is transferred pursuant to a decree of foreclosure of the Mortgagee's mortgage or by deed or assignment in lieu of foreclosure of the Mortgagee's mortgage, such transfer of title shall extinguish the lien for unpaid Charges which became due prior to the date of the transfer of title. However, the transferee of the Dwelling Unit shall be personally liable for his share of the Charges with respect to which a lien against his Dwelling Unit has been extinguished pursuant to the preceding sentence where such Charges are reallocated among all the Owners pursuant to a subsequently adopted annual or revised Common Area Assessment or charge and non-payment thereof shall result in a lien against the transferee's Dwelling Unit, as provided in this Article.

8.16. Self-Help by Board. In the event of a violation or breach by an Owner of the provisions, covenants or restrictions of this Declaration, the Bylaws, or rules or regulations of the Board, whenever such violation or breach may be cured or abated by affirmative action, the Board, upon not less than ten (10) days' prior written notice to the Owner, shall have the right to enter upon that part of the Real Estate with respect to which the violation or breach exists to remove or rectify the violation or breach.

8.17. Other Remedies of the Board. In addition to or in conjunction with the remedies set forth above, enforcement of any of the provisions contained in this Declaration or any rules and

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8.13. Collection of Charges. The Association shall collect from each Owner all Charges payable by such Owner under this Declaration.

8.14. Non-Payment of Charges. Any Charge which is not paid to the Association when due shall be deemed delinquent. Any Charge which is delinquent for thirty (30) days or more shall bear interest at the maximum legal general interest rate permitted by Illinois law from the due date to the date when paid. The Association may: (i) bring an action against the Owner personally obligated to pay the Charge to recover the Charge (together with interest, costs and reasonable attorney fees for any such action, which shall be added to the amount of the Charge and included in any judgment rendered in such action) and/or (ii) enforce and foreclose any lien which it has or which may exist for its benefit. In addition, the Board may add a reasonable late fee to any installment of an assessment which is not paid within thirty (30) days of its due date. No Owner may waive or otherwise escape personal liability for the Charges hereunder by nonuse of the Common Area or by abandonment or transfer of his Dwelling Unit.

8.15. Lien for Charges Subordinated to Mortgages. The lien for Charges, provided for in Section 8.12, shall be subordinate to the Mortgagee's mortgage on the Dwelling Unit if such mortgage was recorded prior to the date that any such Charge became due. Except as hereinafter provided, the lien for Charges, provided for in Section 8.12, shall not be affected by any sale or

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ARTICLE IX

GENERAL PROVISIONS

9.01. Declarant responsibility Prior to Association. Until such time as the Association is formed, the Declarant may exercise any of the powers, rights, duties and functions of the Association and shall be responsible for all obligations and responsibilities of the Board hereunder.

9.02. Mortgagee Entitlement to Notices. Upon written request to the board, any Mortgagee shall be entitled to be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Dwelling Unit is subject to such mortgage or trust deed.

9.03. References to Declaration in Conveyances. Each Owner of a Dwelling Unit, by acceptance of a deed therefor or conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all of the terms, conditions and obligations contained herein, including but not limited to the imposition and foreclosure of liens, and that the VILLAGE OF NORTHBROOK, Illinois, acting through its authorized officials and agents, shall be entitled to enforce the covenants and other terms of this Declaration; and that the said Village or its duly authorized agents or representatives shall also have the right, in the event the Declarant or Association shall fail to do so, and after giving ten (10) days' notice to the Declarant or Association, as the case may be, to enter upon the Real Estate or any part thereof to

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regulations adopted hereunder may be by proceeding at law or in equity by the Association against any person or persons violating or attempting to violate any such provision either to restrain such violation, require performance, recover sums due or payable, or recover damages, and/or against the land to enforce any lien created hereunder; and failure by the Association or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

8.18. Costs and Expenses. All costs and expenses incurred by the Board in connection with any action, proceedings or self-help in connection with exercise of its rights and remedies under this Article, including, without limitation, court costs, attorney fees and all other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum legal general rate permitted by Illinois law until paid, shall be charged to and assessed against the defaulting Owner, and the Association shall have a lien for the same upon his or her Dwelling Unit as provided in Section 8.12.

8.19. Enforcement by Owners. Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by any aggrieved Owner against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against a Dwelling Unit to enforce any lien created hereunder.

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9.04. Indemnification of Village. The Declarant, Association and Owners, as the case may be, and their respective assigns, successors and representatives shall defend, indemnify and hold harmless the Village, its elected and appointed officials, officers, boards, commissions, attorneys, employees and agents from any injury, claim, demand, suit, judgement, execution, liability, debt, damages or penalty (hereinafter collectively referred to as "claims") arising out of or resulting from any acts or omissions of the Declarant, Association or Owners, their respective assigns, successors or representatives. The Declarant, Association or Owners, as the case may be shall pay all expenses incurred by the Village in defending itself with regard to any claim, including out-of-pocket expenses such as attorneys and expert fees and the reasonable value of any services rendered by any employee of the Village. Nothing in this Section shall be deemed to indemnify the Village against any claims arising out of or from the negligent act or omission of the Village, its elected or appointed officials, officers, boards, commissions, attorneys, employees or agents.

9.05. Notice Requirements. Notices provided for in this Declaration shall be in writing, and shall be addressed to the Board in care of the President of the Association, or to any Owner, as the case may be, at such person's last known address as it then appears on the records of the Association or to the Village of Northbrook, to the Village Manager, Village of Northbrook, 1225 Cedar Lane, Northbrook, Illinois 60062. The Associa-

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perform or cause to be performed such maintenance and rehabilitation work as may be necessary to the proper maintenance and operation of the Common Area; and that said Village shall have a lien for the costs of such enforcement action or work if such costs are not paid as hereinafter provided. In the event that the said Village shall undertake any enforcement action or perform or cause to be performed any work pursuant to this Section 9.07, it shall have the right without the further consent of the Declarant, the Association, the Owners, or any Owner to charge against the Real Estate an amount sufficient to defray the entire cost of such action or work. If the amount so charged is not paid within thirty (30) days following a demand in writing by the Village for such payment, such charge, together with interest and costs of collection, shall become a lien upon the Real Estate and the Village shall have the right to collect such charge, interest and costs and to enforce such lien in the same manner as provided herein for assessments and liens resulting from unpaid Charges. The VILLAGE OF NORTHBROOK shall be under no obligation to exercise the rights granted in this Section except as it shall determine to be in its best interest. No failure to exercise any right herein granted to the Village shall be construed as a waiver of that or any other rights. Nothing in this Section or this Declaration shall be construed to constitute a dedication of any portion of the Real Estate to, or an acceptance thereof, by the VILLAGE OF NORTHBROOK.

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instrument (such as by way of example, Articles of Agreement for Deed) through which such person claims an interest or estate, makes reference to this Declaration, in like manner as though the provisions of the Declaration were recited and stipulated in full on each such deed of conveyance or other instrument.

9.08. Non-Enforcement of Covenants not a Waiver. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

9.09. Modification of Declaration. The provisions of Article III, Article VII and this Section 9.08 may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board, all of the Owners and all mortgagees having bona fide liens of record against any Dwelling Unit. Other provisions of this Declaration may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Board and the Owners of at least fourteen (14) Dwelling Units and containing an affidavit by an officer of the Association certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any Dwelling Unit, no less than ten (10) days prior to the date of such affidavit. No change, modification or rescis-

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tion or Board may designate a different address or addresses for notices to them, respectively, by giving written notice of such change of address to all Owners. Any Owner may also designate a different address for notice to him by giving written notice of his change of address to the Board. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgement of the receipt thereof, or, if addressed to an Owner, when deposited in his mailbox or at the door of his Dwelling Unit.

9.06. Delivery of notices. Notices required to be given any devisee or personal representative of a deceased Owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the courts wherein the estate of such deceased Owner is being administered.

9.07. Appurtenance of Covenants. All restrictions, conditions, covenants, easements, reservations, liens and Charges, as well as the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby created, reserved or declared, and all impositions and obligations hereby imposed, shall be deemed and taken to be covenants appurtenant, running with the land, and shall at all times be binding on and inure to the benefit of any person having at any time an interest or estate in the Real Estate or any Dwelling Unit. The foregoing shall obtain whether or not the deed of conveyance or other

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provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Governor of the State of Illinois, and the incumbent President of the United States.

9.12. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating an appropriate plan for the ownership, operation and maintenance of the Common Area and for the maintenance and renewal of Dwelling Unit Exteriors.

9.13. Condemnation. In the case of a taking or condemnation by competent authority of any part of any Common Area, the proceeds awarded in such condemnation shall be paid to the Association, and together with any portion of the Capital Reserve specifically earmarked for the Common Area, in the discretion of the Board: (a) applied to pay Common Area Expenses; or (b) distributed to the Owner's and their respective mortgagees as their interests may appear, in equal shares.

9.14. Responsibility of Trust Beneficiaries. In the event title to any Dwelling Unit is conveyed to a land title-holding trust, under the terms of which all powers of management, operation and control of the Dwelling Unit remain vested in the trust beneficiary or beneficiaries, then the Dwelling Unit under such trust and the beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such

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sion of any provision of this Declaration shall be effective without the prior approval of the VILLAGE OF NORTHBROOK evidenced by a formal resolution duly adopted by the President and Board of Trustees and the recordation of the aforementioned instrument in the Office of the Recorder of Deeds and/or the Registrar of Titles of Cook County, Illinois. A new covenant, easement or restriction may be added to this Declaration without the prior approval of the VILLAGE OF NORTHBROOK, provided that:

(a) Such additional covenant, easement or restriction does not modify, nullify, impair, rescind or in any way conflict with any of the existing covenants, easements, restrictions, terms or provisions of this Declaration; and

(b) Such additional covenant, easement or restriction has been approved in writing by the Owners of at least seventy percent (70%) of the number of Dwelling Units.

9.10. Invalidity of Covenant. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or any part of the same shall not impair or affect in any manner the validity or enforceability of the rest of this Declaration.

9.11. Unlawful Covenants. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such

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9.17. Enforcement of Declaration. This Declaration and the various covenants and restrictions therein contained may be enforced by the Declarant, the Association, by any Owner, and by any other person, including the VILLAGE OF NORTHBROOK, specifically authorized herein to enforce them or for whose benefit they are created. Enforcement of this Declaration and the various covenants and restrictions therein contained may be sought by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation, to compel affirmative action or to recover damages, and against the land to enforce any lien created by this Declaration. All expenses incurred by any party so enforcing this Declaration, including court costs and attorney fees, shall be borne by the party against whom the enforcement proceedings are maintained.

9.18 Recordation of Declaration. This Declaration shall be recorded with the Recorder of Deeds of Cook County, Illinois, and all contracts and deeds of conveyance relating to the Real Estate or any part thereof shall be subject to the provisions of this Declaration.

9.19 Declarant's Beneficiary. Declarant is an Illinois land trust, the beneficiary of which is Brandess Home Builders, Inc., an Illinois Corporation. Wheresoever in this Declaration the term or reference to Declarant is used with reference to any overt act or management, or with respect to the retention or exercise of any right hereunder, the burden of such obligation

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Dwelling Unit. No claim shall be made against any such title holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Dwelling Unit and the beneficiaries of such trust notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title of such Dwelling Unit.

9.15. Interpretation of Declaration. In the event of any dispute or disagreements between any Owners relating to the Common Area, or any question of interpretation or application of the provisions of this Declaration, the determination thereof by the Board shall be binding and final as to each of said Owners. In the event of any dispute or disagreement between the Board and the VILLAGE OF NORTHBROOK relating to the Common Property, or any question of interpretation of or application of the provisions of this Declaration, the determination thereof by the VILLAGE OF NORTHBROOK shall be binding and final as to the Board.

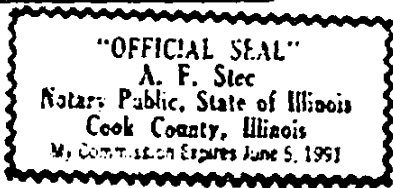
9.16. Compliance with Ordinances. The Declarant and each Owner shall be deemed to covenant and agree to abide by all applicable codes, regulations and ordinances of the VILLAGE OF NORTHBROOK including without limitation, Ordinance No. 89-12 granting a special permit for a planned residential development on the Real Estate.

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STATE OF ILLINOIS)
) COOK) SS.
COUNTY OF LAKE)

I, the undersigned a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that STEPHEN A. BILBIA, ASST. VICE President of FIRST AMERICAN BANK, a ^{STATE} National Banking Corporation, and MARY J. HOPKINS Secretary of said bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person 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, as President and Secretary, respectively as aforesaid, for the uses and purposes therein set forth, and the said Secretary then and there acknowledged that said Secretary, as custodian of the corporate seal of said bank, did affix the corporate seal of said bank to said instrument as said Secretary's own free and voluntary act and as the free and voluntary act of said bank, as Secretary as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7th day of June, 1989.



[Signature]
Notary Public

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and the benefit of such rights shall be deemed to belong to and be the obligation of Brandess Home Builders, Inc.

9.20 Trustee's Exculpatory Clause. This instrument is executed by the First American Bank, not individually but solely as Trustee, as aforesaid. As the covenants and condition to be performed hereunder by the First American Bank are undertaken by it solely as Trustee, as aforesaid, and not individually, no personal or individual liability shall be asserted or be enforceable against the First American Bank by reason of any of the covenants, statements, representations or warranties, express or implied herein contained in this instrument.

IN WITNESS WHEREOF, the said 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 to by its Secretary this 11th day of June, 1989.

FIRST AMERICAN BANK, Skokie, Illinois, not individually but solely as Trustee under Trust Agreement dated August 1, 1988 and known as Trust No. 888-143.

By: Stephen G. Nichols

Its: Assistant Vice President

ATTEST:

Cheryl A. Hoffman
Secretary

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Exhibit B

ORDINANCE NO. 89-12

AN ORDINANCE GRANTING A SPECIAL PERMIT
FOR A PLANNED RESIDENTIAL DEVELOPMENT
KNOWN AS BRANDESS SUBDIVISION
AND GRANTING A VARIATION RELATED THERETO

Passed by the Board of Trustees, March 14, 1989

Printed and Published, March 15, 1989

Printed and Published in Pamphlet Form
By Authority of the
President and Board of Trustees

VILLAGE OF NORTHBROOK
COUNTY OF COOK, ILLINOIS

I certify that this document
was duly adopted and published
on the dates stated above.

Village Clerk

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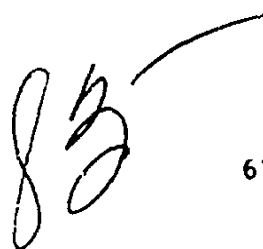
EXHIBIT A

BRANDESS SUBDIVISION, being a subdivision in the West Half of the Southwest 1/4 of the Southwest 1/4 of Section 5 and part of the Southeast 1/4 of the Southeast 1/4 of Section 6, Township 42 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

PERMANENT TAX NUMBER 04-05-302-004-0000

PERMANENT INDEX NUMBER 04-03-400-014-0000

Property of Cook County Clerk's Office



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Section 4. ACCEPTANCE AND ADOPTION OF PLAN COMMISSION FINDINGS

Certain findings were made and rendered by the Plan Commission and codified into its written report dated August 16, 1988 (the "Plan Commission Findings") with respect to the Petitioner's request for the subject special permit. The Plan Commission Findings are hereby accepted and adopted. Specifically, and without limitation of the foregoing, the Board of Trustees does hereby find and determine that the proposed planned development will provide compensating amenities not otherwise required by law including provisions for common open space, on site and off site engineering improvements, site planning and extensive landscaping and that it will promote the general health, safety and welfare and serve the best interests of the Village of Northbrook.

Section 5. SPECIAL PERMIT.

Based on the findings and determinations set forth in Section 4 of this Ordinance and subject to and contingent upon the conditions, restrictions and provisions set forth in Section 6 of this Ordinance, a special permit for the development and existence of a planned residential development on the Subject Property is hereby granted to the Petitioner in accordance with and pursuant to Section 11-603 of the Northbrook Zoning Code (1988) and the home rule powers of the Village of Northbrook.

Section 6. SPECIAL USE CONDITIONS.

The special use granted in Section 5 above shall be, and is hereby, expressly subject to and contingent upon each of the following conditions, restrictions and provisions:

1. The submission to, review of and acceptance and approval by the Village Engineer of final engineering plans for the Subject Property.
2. The Subject Property shall be developed, used and maintained only in strict accordance with the following documents and plans, except for minor engineering changes and site work approved by the Village Engineer:
 - a. the Site Plan, depicting a maximum of 20 townhomes, prepared by Seton Engineering Company, with latest revision date of February 12, 1989, and consisting of one (1) page, and initialed by the Village President and the Developer, a copy of which is attached hereto and, by this reference, incorporated herein as Exhibit "A";
 - b. the Landscape Plan, prepared by Rolf C. Campbell and Associates, Inc., with latest revision date of December 12, 1988 and consisting of one (1) page, and initialed by the Village President and the Developer, a copy of which is attached hereto and, by this reference, incorporated herein as Exhibit "B";

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ORDINANCE NO. 59-12

BE IT ORDAINED by the President and Board of Trustees of the Village of Northbrook, County of Cook and State of Illinois, THAT:

AN ORDINANCE GRANTING A SPECIAL PERMIT FOR A PLANNED RESIDENTIAL DEVELOPMENT KNOWN AS BRANDESS SUBDIVISION, AND GRANTING A VARIATION RELATED THERETO

be and is hereby adopted as follows:

Section 1. BACKGROUND

Brandess Home Builders, Inc. and First American Bank, not individually but as Trustee under a Trust Agreement dated August 1, 1988 and known as Trust Number F88-148 (collectively referred to as the "Petitioner") have petitioned for rezoning and a special permit to allow a planned residential development on an approximately 5.88 acre parcel located in the 3500 block of Dundee Road in the Village of Northbrook (the "Subject Property"). The planned residential development will consist of 20 townhome units and common open space on one zoning lot. Prior to the adoption of this Ordinance, the Village Board of Trustees adopted an ordinance annexing a portion of the Subject Property to the Village and an ordinance rezoning the Subject Property from the R-1 Single Family Residential District to the R-6 Multiple Family Residential District.

Section 2. DESCRIPTION OF SUBJECT PROPERTY

The Subject Property is located in the 3500 block of Dundee Road and is legally described as follows:

That part of the West Half of the Southwest Quarter of the Southwest Quarter of Section 5, Township 42 North, Range 12, East of the Third Principal Meridian, described as follows: Commencing at the Southwest corner of said Section 5; thence running East along the South line of said Section 5, 28 1/2 Rods; thence North on a line parallel with the West line of said Section 80 Rods more or less to the North line of the Southwest Quarter of the Southwest Quarter of said Section; thence West on a line parallel to the South line of said Section, 28 1/2 Rods to the West line of said Section; thence South along the West line of said Section to the place of beginning, (excluding therefrom that part of the West Half of the Southwest Quarter of the Southwest Quarter of Section 5 aforesaid lying North of a line parallel with the South line of Section 5 drawn through a point on the West line of Section 5, 550.00 feet North of the Southwest corner thereof) all in Cook County, Illinois (PRE: Nos. 04-05-302-004/014).

Section 3. PUBLIC HEARING.

A public hearing to consider a petition for a special permit for an R-6 planned residential development of the Subject Property and a variation for a six foot fence was duly advertised on June 2, 1988 in the Northbrook Star and publicly heard by the Northbrook Plan Commission on June 21, July 19 and August 16, 1988, with a favorable recommendation rendered at the Plan Commission's regular meeting on August 16, 1988.

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Section 8. BINDING EFFECT.

The privileges, obligations, and provisions of each and every section of this Ordinance are for and shall inure to the benefit of and are and shall be binding on the Petitioner and its successors, assigns, heirs and transferees to all, or any part of the Subject Property including, but not limited to, the owner or owners of any sublots on the Subject Property.

Section 9. VARIATION.

A variation from Sections 4-109 and 9-107 G is hereby granted to allow a fence of not more than six feet in height in the front yard of the Subject Property, as shown on the Site Plan attached as Exhibit A.

Section 10. EFFECTIVE DATE.

(a) The Ordinance shall be effective upon the occurrence of all of the following events:

- (i) passage by the Board of Trustees of the Village of Northbrook in the manner required by law; and
- (ii) publication in pamphlet form in the manner required by law; and
- (iii) the filing by the Petitioner with the Village Clerk, for recording in the Office of the Cook County Recorder of Deeds, of an unconditional agreement and consent to accept and abide by each and all of the terms, conditions and limitations set forth in this Ordinance. Said unconditional agreement and consent shall be in the form attached hereto and, by this reference, incorporated herein as Exhibit "E."

(b) This Ordinance shall be of no force or effect and shall be rendered null and void in the event that the Petitioner does not file with the Village Clerk the unconditional agreement and consent referenced in Section 10(A)(iii) of this Ordinance within fourteen (14) days of the date of passage of this Ordinance by the Village Board of Trustees.

PASSED: This 14th day of March, 1989

AYES: (6) Trustees Donahue, Frum, Gray, Jaeger, Miller and Walker

NAYS: (0)

/s/ Richard T. ...

Village President

ATTEST:

/s/ Lisa N. ...

Village Clerk

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- c. the elevations and floor plans for "Brandess Home Builders Adult Living Development," prepared by F/W Associates in Architecture Ltd., consisting of seven (7) pages with latest revision dates as follows: Sheet 1, undated; Sheets 2, 4, 5 and 6, dated 4/5/88; and Sheets 3 and 7, dated 5/4/88; and initialed by the Village President and the Developer, a copy of which is attached hereto and, by this reference, incorporated herein as Exhibit "C";
- d. the Final Engineering Plan, prepared by Steton Engineering Company, consisting of eight (8) sheets and with latest revision dates as follows: Sheets 1, 2, 3 and 5, dated February 21, 1989; Sheets 4, 6 and 8, dated January 13, 1989; and Sheet 7, dated January 23, 1989; and initialed by the Village President and the Developer, a copy of which is attached hereto and, by this reference, incorporated herein as Exhibit "D".
3. The execution and recordation of and compliance with a declaration of party wall rights, covenants, conditions, restrictions and easements, acceptable in form and substance to the Village Attorney, and as approved and accepted by the Village Board of Trustees.
4. Parking shall be prohibited along the cul de sac and on the west side of Laburnum Circle.

Section 7. FAILURE TO COMPLY WITH CONDITIONS.

Upon failure or refusal of the Petitioner to comply with any or all of the conditions, restrictions or provisions of this Ordinance, the special permit granted in Section 5 of this Ordinance shall, at the sole discretion of the Village Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the Village Board of Trustees may not so revoke the special permit unless it shall first provide the Petitioner with two (2) months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees. In the event of revocation, the development and use of the Subject Property shall be governed solely by the regulations of the R-6 Zoning District, or the applicable zoning district, of the Northbrook Zoning Ordinance, as the same may, from time to time, be amended. Further, in the event of such revocation of the said special permit, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances. The Petitioner acknowledges that zoning notices and hearings have been held with respect to the adoption of this Ordinance, has considered the possibility of the revocation provided for in this Section, and agrees not to challenge any such revocation on the grounds of any procedural infirmity or of any denial of any procedural right.

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EXHIBIT "E"

PETITIONER'S UNCONDITIONAL AGREEMENT AND CONSENT

WHEREAS, Brandess Home Builders, Inc. and First American Bank, not individually but as Trustee under a Trust Agreement dated August 1, 1988 and known as Trust Number F88-148 (collectively referred to as the "Petitioner"), has petitioned for a special permit for the development of a planned residential development on certain property located in the Village of Northbrook; and

WHEREAS, Ordinance No. 89-12, adopted by the President and Board of Trustees of the Village of Northbrook on March 16, 1989, grants such special permit; and

WHEREAS, Section 10 of Ordinance No. 89-12, provides that said Ordinance will be of no force or effect unless and until the Petitioner shall have filed with the Village Clerk, within 14 days following the passage of said Ordinance, its unconditional agreement and consent to accept and abide by each of the terms, conditions, and limitations set forth in said Ordinance.

NOW, THEREFORE, the undersigned, on behalf of themselves and their successors, assigns, heirs and transferees, do hereby acknowledge the validity of and do unconditionally accept, consent to, and agree to abide and be bound by each and all of the terms, conditions, and limitations set forth in Northbrook Ordinance No. 89-12.

Dated March 17, 1989

BRANDESS HOME BUILDERS, INC.

By: James P. Kelly
Its: Village President
(Title)

ATTEST:

Janet C. ...
Secretary

FIRST AMERICAN BANK, not individually but as Trustee under a Trust Agreement dated August 1, 1988 and known as Trust Number F88-148

by: [Signature]
Its: [Signature]
(Title)

ATTEST:

[Signature]

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