

UNOFFICIAL COPY

94870613

DECLARATION OF COVENANTS, CONDITIONS EASEMENTS AND RESTRICTIONS FOR ALPINE HEIGHTS TOWNHOMES HOMEOWNERS ASSOCIATION

THIS DECLARATION made this 15th day of September, 1994 by Bank One as Trustee under a Trust Agreement dated February 12, 1993 and known as Trust No. 10601 ("Declarant").

R E C I T A L S:

DEPT-01 RECORDING \$104.00
T2222 TRAN 9345 10/07/94 16:57:00
T2209 \$ REC 4-74-870613
COOK COUNTY RECORDER

A. Declarant is the record owner of certain real estate in unincorporated Orland Township, County of Cook, State of Illinois, which is legally described on Exhibit "A" ("Property") and which will be improved with residential dwellings.

B. Declarant wishes to submit the Property to the provisions of this Declaration in the manner hereinafter provided and has formed an Illinois not-for-profit corporation known as Alpine Townhomes Homeowners Association for the purposes of owning, maintaining and administering certain portions of the Property and the facilities and improvements thereon, as hereinafter provided.

C. The property is a portion of a Planned Unit Development approved by Cook County as Alpine Heights Townhomes P.U.D. Block 9 of Alpine Heights is subjected to the covenants herewith. From time to time, portions of blocks 24 and 25 of Alpine Heights may be subjected to the covenants and added to the Association as an addition to the property.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property, as hereinafter defined, and be binding on all parties having or acquiring any right, title and interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 DEFINITIONS

The following words, when used in this Declaration or in any Supplementary Declaration shall, unless the context shall prohibit, have the following meanings:

1.01 Association. The Alpine Townhomes homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.

1.02 Property. The Property as hereinabove described and further described in exhibit A.

RECORDING FEE \$ 104.00
DATE 10-7-94 COPIES 6
BY [Signature]

94870613

UNOFFICIAL COPY

- 1.03 Common Area. All area within the Property, together with all improvements and facilities thereon, which is not part of a Dwelling Lot, including but not limited to any and all private roads and storm water management facilities, as described on the plat of survey attached hereto and incorporated herein as Exhibit "B".
- 1.04 Dwelling Lot. Any plot of land within the Property which is improved with one dwelling as described on the plan of Planned Unit Development attached hereto and incorporated herein as Exhibit "C".
- 1.05 Lot. Any dwelling lot as reflected in the plan of Planned Unit Development attached hereto and incorporated herein as Exhibit "C".
- 1.06 Owner. The record owner, whether one or more persons, individuals or entities, of a fee-simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.07 Declarant. Bank One as Trustee under a Trust Agreement dated February 12, 1993 and known as Trust 10601.
- 1.08 Developer. Marycrest Construction Co. of Palos Park, IL as to Phase One, Alpine Heights Townhomes P.U.D. North.
- 1.09 Board. The Board of Directors of Alpine Heights Townhomes Homeowners Association, an Illinois not-for-profit corporation.
- 1.10 By-Laws. The provisions for the administration of the Property.
- 1.11 Common Expenses. The expenses of administration, (including management and professional services) maintenance, operation, repair, replacement and landscaping of the Common Area; the cost of additions, alterations, or costs or improvements to the Common Area; the cost of insurance required or permitted to be obtained by the Board; utility expenses for the Common Area; the expenses designated as Common Expenses by this Declaration, or the By-Laws; and any other expenses lawfully incurred by the Association for the common benefit of all the owners.
- 1.12 Building. A structure where residents live for residential purposes only.
- 1.13 First Mortgagee. The holder of a bona fide first mortgage, first Trust Deed, or equivalent security interest covering a Lot.

UNOFFICIAL COPY

1.14 District. The Metropolitan Water Reclamation District of Greater Chicago.

1.15 Voting Member. The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article 2 and Article 3, Section 10.

ARTICLE 2 MEMBERSHIP AND BOARD OF DIRECTORS

2.01 Membership. Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

2.02 Voting Rights. (a) Subject to the provisions of Section 3.10(d), voting rights of the members of the Residential Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Unit Ownership. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Dwelling Unit shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Dwelling Unit shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners, no designation is given, then the Board at its election may recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit.

(b) Prior to the Turnover Date, all of the voting rights at each meeting of the Residential Association shall be vested exclusively in the Developer and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Residential Association shall be vested in the Voting Members and each Voting Member shall have one (1) vote. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

2.03 Board of Directors. The Association shall be governed by a Board of Directors (the Board) comprised of five (5) persons, or such greater number as may be provided in the By-Laws, duly appointed by the Developer or elected by the members of the Association as provided herein and in the By-Laws. Except for Directors appointed by Developer, Directors shall be members

UNOFFICIAL COPY

of the Association. The Board shall maintain and administer the Common Areas and certain portions of the Lots and improvements thereon in accordance with the terms and provisions of this Declaration and the By-Laws. Prior to the appointment of the first Board, the Developer shall be accorded all powers and privileges and act in the capacity of the Board and may perform all its functions as set forth in this Declaration and in the By-Laws.

- 2.04 Appointment of Directors by Developer. Notwithstanding anything in this Declaration or the By-Laws of the Association to the contrary, until the election of a new Board at the initial meeting of members of the Association, the Board shall consist of and vacancies shall be filled by such persons (not less than three (3)) as the Developer shall from time to time appoint, who need not be members of the Association. Said initial meeting shall be held upon not less than fifteen (15) days' written notice given by the Developer to the members of the Association. Such meeting shall be held on such date (the Turnover Date) as the Developer in its sole discretion shall determine, but in no event later than the date Developer has conveyed all of the lots in the property, including any additional property. Prior to the Turnover Date, neither the Articles of Incorporation of the Association, this Declaration, nor the By-Laws shall be amended, modified or changed without the prior written consent of Developer. Prior to the Turnover Date, Developer may, in its sole discretion, without affecting its right to appoint the Directors, appoint one or more members of the Association to act as non-voting advisors to the Board.
- 2.05 Election of Directors by Members. On the Turnover Date a new Board shall be elected as provided in the By-Laws.
- 2.06 Director and Officer Liability. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors or Officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors and Officers on behalf of the Owners or the Association or arising out of their status as Directors or Officers unless any such contract or act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action,

940700000

UNOFFICIAL COPY

suit or proceeding, whether civil, criminal, administrative or other, in which any such Director or Officer may be involved by virtue of being or having been such Director or Officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter settled or comprised unless, in the opinion of independent counsel selected by the Board or in opinion of independent counsel selected by or in a manner determined by the Board there is no reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such Director or Officer.

ARTICLE 3

EASEMENTS AND PROPERTY RIGHTS

3.01 Easements of Use and Enjoyment. An easement is hereby declared and created over and upon the Common Area for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access to and of ingress and egress on, over, across, in, upon and to the Common Area, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Area.
- (b) The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving, maintaining and repairing the Common Area and facilities located thereon and in aid thereof to mortgage the Common Area, provided that the rights of any such mortgagee in and to the Common Area shall, in the event of default, be limited to a right, after taking possession of such properties, to charge admission and other fees for the use and enjoyment by the Owners until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Owners hereunder shall be fully restored. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Area unless such mortgage is approved by the Board and by more than fifty percent (50%) of the members, other than Declarant, voting at a general or special meeting (duly called and held in accordance with the By-Laws, and by the mortgagees, as provided in Paragraph 6.01 hereof, provided that as long as Declarant owns a Lot, Developer's written consent to any such mortgage shall also be required.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area or any utility system thereon to any public agency, authority or utility for

9467001

UNOFFICIAL COPY

such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of the members of the Board of Directors, has been recorded, and the approval of mortgagees, as provided in Paragraph 6.01, has been obtained; provided further that as long as the Developer has the power to appoint a Director of the Association such instrument must also be signed by Developer. No such dedication or transfer shall restrict the right of each lot owner to an easement for ingress and egress.

- 3.02 Rights of Occupants. All persons who reside on a Lot shall have the same rights to use and enjoy the Common Area and all improvements situated thereon as the Owner of that Lot.
- 3.03 Utility Easement. The authorized telephone company, cable T.V. company, Commonwealth Edison Company, Northern Illinois gas company, Citizens Utilities of Illinois, Orland Park Public Works Department, Village of Orland Park, Illinois, and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housing for such equipment, into, over, under, on and through the designated utility easements and Common Area for the purposes of providing utility services to the Property. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Lot for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Lot. Easements are also hereby declared and granted to the Developer or its assignee to install, lay, construct, operate, maintain, renew, repair and replace any conduits, cables, pipes, wires or other equipment or components of a community antenna television service system into, over, under, on and through the Common Area and any Lot for the purpose of providing such television service to the Property or to other property.
- 3.04 Encroachments. In the event that (a) by reason of design, construction, location, repair, settlement, shifting or movement, any dwelling, or other improvement as originally constructed by the Developer on any Lot or upon the Common Area overhangs or otherwise encroaches or shall hereafter encroach upon any other Lot or upon the Common Area, or (b) by reason of such design, construction, location, repair, settlement, shifting or movement it shall be necessary or advantageous to any Owner to use or occupy any portion of the Common Area for any reasonable use appurtenant thereto which

94870001

UNOFFICIAL COPY

will not unreasonably interfere with the use or enjoyment of the Common Area by other Owners, or (c) by reason of the design or construction of utility, ventilation and exhaust systems, as originally constructed by Developer, any mains, pipes, ducts or conduits servicing any Lot or more than one (1) Lot, encroach or shall hereafter encroach upon any part of any Lot or the Common Area, then, in any such case, valid easements for the maintenance of such encroachment and for such use of the Common Area, together with the right to enter upon such other Lot or Common Area to maintain, repair, replace such encroachment, are hereby established and shall exist for the benefit of such Lot or the Common Area, as the case may be, so long as such dwelling, garage or other improvement is rebuilt, the same encroachment may be re-established and the easements herein granted for the maintenance, repair and replacement thereof shall continue in force; provided further that in no event shall a valid easement for any encroachment or use of the Common Area be created in favor of any Owner if such encroachment or use was created by the intentional, willful or negligent conduct of any Owner or that of his agent.

- 3.05 Transfer of Common Area to Association. Declarant will convey to the Association and the Association shall accept the Common Area herein described and any additions thereto, together with such facilities and improvements as the Developer may elect to install thereon and subject to such easements as the Developer may cause to be placed thereon, at such time or times as the Developer shall determine, provided that all Common Area shall be conveyed to the Association no later than sixty (60) days after the Turnover Date.
- 3.06 Maintenance of Common Area Prior to Conveyance to Association. Notwithstanding the retention by Declarant of title to all or any portion of the Property designated herein to in any recorded Supplementary Declaration as Common Area, the Association shall, from the Owner's assessments, pay or reimburse the Developer for all real estate taxes and all other costs and expenses arising out of or incident to the ownership, maintenance and repair of such portion of the Common Area that is available for use by the Owners to the same extent as such costs and expenses would be the obligation of the Association if it were the record owner thereof.
- 3.07 Easements to Run with the Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in force and effect, and at all times shall inure to the benefit of and be binding upon any Owner, purchaser, mortgagee or other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence or obligation to the easements and

UNOFFICIAL COPY

rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees or trustees as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

- 3.08 Drainage Easement. The portion of the Property described as the drainage easement was created for the purpose of protecting the scenic attractiveness of the community and providing for storm water management in the Marley Creek. The Association shall have the obligation to maintain, repair and replace said drainage easement property.

Anything to the contrary contained in this Declaration notwithstanding, the Owners, their heirs, successors and assigns, covenant to do and refrain from doing upon the drainage easement property the various acts hereinafter set forth:

- (a) The general topography of the drainage easement property shall be maintained in its present condition to the fullest extent practicable and no excavation, filling or topographic changes shall be made without the written approval (as required) of FEMA, Illinois Department of Transportation - Division Water Resources and the District, except that underground utilities may be installed to serve the Property (including the drainage easement property) provided that the topography is restored.
- (b) No dumping or placing of trash, waste, soil or other substances or materials on the drainage easement property shall be permitted.
- (c) To the fullest extent practicable, the planting and landscaping on the drainage easement property shall be maintained in a condition that storm water storage and flow shall not be impeded.

- 3.09 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Residential Association and such proceeds, together with any Common Area Capital Reserve being held for such part of the Common Area shall, in the discretion of the Board, either (i) be applied to pay the Association Expenses, (ii) be distributed to the Owners and their respective Mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration.

UNOFFICIAL COPY

3.10 Developer's Reserved Rights and Special Provisions Covering Development Period

(a) IN GENERAL: In addition to any rights or powers reserved to the Developer, under the provisions of this Declaration or the By-Laws, the Developer shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. If not sooner terminated as provided in this Article, the provisions of this Article shall terminate and be of no further force and effect from and after such time as the Developer is no longer vested with or controls title to any part of the Development Area.

(b) PROMOTION OF PROJECT: In connection with the promotion or sale of any improvements upon the Development Area: (i) the Developer shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements or to do such acts or other things in, on, or to the Parcel as the Developer may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Dwelling Units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Developer may deem advisable; and (ii) Developer, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge.

(c) CONSTRUCTION ON PARCEL: In connection with the construction of improvements to any part of the Development Area, the Developer, its agents and contractors, shall have the right, at the Developer's own expense, (but shall not be obligated) to make such alterations, additions or improvements to any part of the Parcel including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any structure which shall contain Dwelling Units which the Developer deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or planting and replanting of any unimproved portions of the Parcel. In connection with the rights provided in the preceding sentence, the Developer, its agents and contractors, shall have the right of ingress, egress and parking on the Parcel and the right to store construction equipment and materials on the Parcel without the payment of any fee or charge whatsoever.

94670004

UNOFFICIAL COPY

(d) DEVELOPER CONTROL OF ASSOCIATION: The Developer controlled Boards shall consist solely of three (3) persons from time to time designated by the Developer, which persons may, but need not, be members under Section 2.01. Thereafter, the Board shall consist of five (5) persons. Developer's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Developer no longer holds or controls title to any part of the Development Area, (ii) the giving of written notice by Developer to the Residential Association of Developer's election to terminate such rights, (iii) ten years from the date of Recording hereof or (iv) within ninety (90) days of the consummation of the sale of 32 being 100% of the maximum number of Dwelling Units which may be located in the Development Area (in the case the additional property is subjected to the covenants, than this subparagraph (iv) shall require the sale of 67 dwelling units or such other number of units as is the maximum number of unit on the portion of the property including the additional property subjected to the covenants). The date on which the Developer's rights under this Section shall terminate shall be referred to as the "Turnover Date". Prior to the Turnover Date, the Voting Members may elect that number of non-voting counselors to the Board as the Developer may, in its sole discretion, permit. From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Developer and the Delegates shall have no voting rights.

(e) OTHER RIGHTS: The Developer shall have the right and power to execute all documents and do all other acts and things affecting the Parcel which, in Developer's opinion, are necessary or desirable in connection with the rights of Developer under this Declaration.

(f) ASSIGNMENT BY DEVELOPER: All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Developer hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein. No such successor assignee of the acts of Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

UNOFFICIAL COPY

costs shall carry with it the same consequences as the failure to pay any assessments levied hereunder when due, as herein provided. The Association shall be responsible for and shall repair any damage caused by it in the exercise of its rights hereunder.

4.03 Maintenance of Elements Serving More than One Dwelling.

Where portions of the building or improvements constructed on the property serve more than one dwelling unit, including but not limited to party walls, roofs and the building exterior, the cost of maintaining, repairing or replacing such portions of the building in the normal course shall be divided equally among the dwelling units in the building served by the particular improvement. Maintenance, repair or replacement outside of the normal course, and disputes as to the necessity or allocation of cost of such maintenance, repair or replacement shall be governed by Article 8, Party Walls and subject to the enforcement provisions of section 4.02.

ARTICLE 5 COVENANTS AND ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation for Assessments.

Each Owner of a Lot (excluding Declarant), by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Lot owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the Owner of such Lot. The sale of a lot shall not relieve such owner of the personal obligation. In addition, upon a sale of a lot, the purchaser of a lot within the Association shall be responsible for any and all liens on the Lot including the Association's lien for failure to pay assessments.

5.02 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and, in particular, without limiting the foregoing, for maintenance, repair, replacement, improvement and additions of and to the Common Area and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Area and

2025-01-01

UNOFFICIAL COPY

all facilities and improvements thereon, for certain maintenance, repair and replacement of portions of the Lots and the exterior surfaces of certain improvements thereon, as hereinabove provided in Article 4, and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-Laws.

5.03 Assessment Procedure - Annual Assessments.

- (a) Each year, on or before December 1, the Board shall prepare a Budget for the Association for the ensuing twelve (12) months which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area and may also include a reserve for repairs and replacement of those portions of the improvements on the Lots for which the Association is responsible, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before the next January 1, following the preparation of the budget, and on the first day of each and every month for the next twelve (12) months, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before May 1 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding twelve (12) months together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, if income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association or credited to the next monthly installments due under the current year's estimate, until exhausted and any such deficit may, at the discretion of the Board, be assessed against the Lots and added equally to the installments due under the current year's estimate in each of the succeeding three (3) months after rendering of the accounting. Any such credit or assessment shall be allocated equally among all the Lots provided that any such credit or assessment with respect to an excess or deficit for a calendar year in which Lots were added shall be allocated among the Lots that were subject to assessments during

UNOFFICIAL COPY

paid calendar year in the proportion that the total assessments against each Lot during the year bears to the assessments against all Lots during that year.

- 5.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessments which in one (1) year exceed \$5,000.00 shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by members at a general or special meeting duly called and held for that purpose or, in lieu of such member's meeting, by an instrument signed by the members owning two-thirds (2/3) of the Lots. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members, and shall be used only for the specific purpose for which such assessment was levied.
- 5.05 Capital Reserves: The annual budget shall include an amount to be specifically designated as a capital reserve. A portion of each installment of the annual assessments paid to the Association as this amount shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Areas, to those portions of the Lots and improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder.
- 5.06 Initial Capital Contribution. At the closing of the sale of each Lot by the Declarant, the Owner purchasing such Lot will be required to make a capital contribution to the Association of twice the monthly assessment for each Lot pursuant to the initial budget of the Association. Such payment shall be held and used by the Association as an operating account, as the Board shall from time to time determine.
- 5.07 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which requires approval of the members shall be sent to all members not less than ten (10) days nor more than forty (40) days in advance of such meeting. At the first such meeting called, the presence of voting members in person or by proxy having fifty percent (50%) of the votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement

UNOFFICIAL COPY

and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than forty (40) days following preceding meeting.

- 5.08 Uniform Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, provided that no Lot owned by the Declarant shall be subject to the assessment, unless otherwise provided herein.
- 5.09 Commencement of Annual Assessments. Annual assessments shall commence upon conveyance of the first Lot by Declarant or such later date as Developer shall designate.
- 5.10 Assessments in First Year. Notwithstanding the foregoing, for the period of time from the date annual assessments commence through December 31, 1995, the monthly assessments for each Lot subject to assessment hereunder shall be \$20.00. The Developer shall pay to the Association the amount, if any, by which actual operating expenses during that period exceed the aggregate of the assessments established and received from Owners pursuant to this paragraph. Actual operating expenses means those expenses actually incurred that are reasonably necessary to normal maintenance and operation of the Common Area and of those portions of the Lots and the improvements thereon which the Association is to provide pursuant to Paragraph 4.01, and does not include capital expenditures, reserves, prepaid items, inventory items or similar expenses to the extent attributable to any subsequent period.
- 5.11 Collection of Assessments. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the maximum rate permitted by law. The Board may determine a late charge not to exceed Fifty and 00/100 Dollars (\$50.00) per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments to recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and including any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, late charges as determined by the Board, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Lot when payable and may be

UNOFFICIAL COPY

foreclosed by any action brought in the name of the Association. To the extent permitted by statute, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

5.12 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

5.13 Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona fide Mortgagee. Each holder of a first mortgage on a Lot who obtains title or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title or possession.

ARTICLE 6 RIGHTS OF FIRST MORTGAGEES

In addition to all other rights of the first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary:

6.01 Unless at least seventy percent (75%) of the first mortgagees (based upon one (1) vote for each first mortgage owned) of individual Lots (First Mortgagees) have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot and the Owner thereof as provided in Article 5, subject, however, to the provisions in Paragraph 6.05 hereof.

UNOFFICIAL COPY

- (c) By act or omission waive, abandon or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any dwelling or garage on a Lot, the exterior maintenance of any such dwelling or garage, the maintenance of party walls or common fences and driveways, or the upkeep or lawns and plantings on the Property.
- (d) Fail to maintain fire and extended coverage insurance on the insurable improvements to the Common Area in an amount not less than one hundred percent (100%) of the full insurable replacement cost.
- (e) Use hazard insurance proceeds for losses to any improvements to the Common Area for other than the repair, replacement or reconstruction of such improvements.
- 6.02 First Mortgagees shall have the right to examine the books and records of the Association at reasonable times during normal business hours.
- 6.03 First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy to the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association.
- 6.04 Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.
- 6.05 This Article 6 may be amended only with the written consent of seventy-five percent (75%) of the First Mortgagees (based upon one (1) vote for each first mortgage owned).

ARTICLE 7 COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Lots and Common Area shall be occupied and used as follows:

- 7.01 No part of the Property shall be used for other than housing and related common purposes for which the Property was designed. Each dwelling shall be used as a residence for a single family and for no other purposes.

UNOFFICIAL COPY

- 7.02 There shall be no obstruction of the Common Area, nor shall ready access to an entrance to any Lot be obstructed or impeded in any manner.
- 7.03 No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will increase the rate charged for or cause the cancellation of insurance carried by the Association on the Common Area improvements or contents thereof, or which would be in violation of any law, nor shall any waste be committed in the Common Area.
- 7.04 The covering of windows and other glass surfaces, whether by shades, draperies or other items visible from the exterior of any dwelling, shall be subject to the rules and regulations of the Board.
- 7.05 No animals or any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept subject to rules and regulations adopted by the Board, provided they are not kept, bred or maintained for any commercial purpose, and provided further that any such pet causing or creating a nuisance or unreasonable disturbances shall be permanently removed from the property upon ten (10) days written notice from the Board.
- 7.06 No obnoxious or offensive activity shall be conducted on any Lot or in the Common Area nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or a nuisance to other Owners or occupants.
- 7.07 No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploitation or otherwise, shall be conducted, maintained or permitted on any Lot.
- 7.08 No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such locations and in such form as shall be determined by the Board. Notwithstanding the foregoing, the right is reserved by the Developer or its agents to place and maintain on the Common Area or on any Lot it owns, as long as Developer is engaged in sales or leasing activities in connection with the Property, sales models, a sales or leasing office, advertising signs or banners and lighting in connection therewith, at such locations and in such forms as the Developer shall determine. There is also reserved to the Developer, its agents and prospective purchasers and lessees, the right of ingress and egress in and through the Common Area and to park in the outdoor parking areas, for or incident to such sales or leasing purposes and for such other purposes as may be necessary for the Developer during the time the

945700047

UNOFFICIAL COPY

Developer owns any Lot. The provisions of this paragraph shall inure to the benefit of any successors or assigns of Developer.

- 7.09 Except as constructed or altered by or with the permission of the Developer, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.
- 7.10 The restrictions in Paragraphs 7.01 and 7.07 shall not, however, be construed in such a manner as to prohibit an Owner from: (a) maintaining his personal professional library therein; (b) keeping his personal business records or accounts therein; or (c) handling his personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said paragraphs.
- 7.11 The Owner shall be individually responsible for insuring his/her dwelling and personal property in his/her respective Lot, his/her personal property located elsewhere on the Property and against any personal liability.
- 7.12 No fences shall be allowed on the property. After January 1, 2000, the Board may by resolution adopted by 2/3 vote of the members set rules for allowing fences.

ARTICLE 8 PARTY WALLS

- 8.01 PARTY WALL: Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Dwelling Units shall constitute and be a "Party Wall", and the Owner of a Dwelling Unit immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.
- 8.02 RIGHTS IN PARTY WALL: Each Owner of a Dwelling Unit, which is adjacent to a Party Wall, shall have the right to use the Party Wall for support of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

6-1-2011

UNOFFICIAL COPY

8.03 DAMAGE TO PARTY WALL:

(a) If any Party Wall is damaged or destroyed through the act or acts of any Owner of a Dwelling Unit which is adjacent to such Party wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Dwelling Unit.

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Dwelling Unit which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Dwelling Units to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of Common Area shall be paid by the Residential Association as a Association Expense to the extent not covered by insurance.

(c) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then, the Board may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Dwelling Unit.

8.04 CHANGE IN PARTY WALL: Any Owner of a Dwelling Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Dwelling Unit in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Dwelling Unit and the Board, in addition to meeting any other requirements which may apply.

8.05 ARBITRATION: In the event of a disagreement between Owners of Dwelling Units adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding.

UNOFFICIAL COPY

ARTICLE 9 ARCHITECTURAL CONTROL

- 9.01 General Review and Approval. No building, fence, wall, antenna, awning or other structure shall be commenced, erected or maintained upon the Property or upon any Lot, dwelling or other improvement thereon, nor shall any exterior addition to or change or alteration therein be made, except such as are erected or approved by the Developer, until written plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of the same and the approximate cost thereof shall have been submitted to and approved in writing by the Board or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated committee fail to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, said approval will not be required and this Article will be deemed to have been fully complied with.
- 9.02 Television Antenna. Notwithstanding the provisions of the paragraph immediately preceding, no outdoor television antenna shall be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot or upon any other portion of a lot, or on any portion of the Common Area, without the prior written consent of the Board and the Developer; provided that an outdoor television antenna and other components of a community antenna television service system may be affixed to or placed upon any Lot or improvement thereon and upon the Common Area only with the written consent of the Developer and no Board or other consent shall be required or be effective.
- 9.03 Repair and Reconstruction. In the event of damage to or destruction of any dwelling or other improvement installed by Developer on any Lot, the Owner or Owners from time to time of any such improvement, covenant and agree that they will, within a reasonable time after such destruction, repair or rebuild same in a substantial and workmanlike manner with materials comparable to those used in the original structure, and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as the architectural design conformable with the exterior of such structure immediately prior to such damage or destruction. If an Owner fails to make the necessary repairs or reconstruction within a reasonable time after such damage or destruction occurs, the Board may cause the same to be done and the cost thereof shall be charged to such Owner as his personal

94870642

UNOFFICIAL COPY

obligation and deemed a part of his assessment and shall constitute a lien on his lot.

ARTICLE 10 LEASE OF LOTS

- 10.1 Any lease agreement between an Owner and a lessee shall be in writing and shall provide that the terms of such lease are subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations of the Association, and that failure by the lessee to comply with the terms of such documents, Rules and Regulations shall be a default under the lease. Other than the foregoing, there is no restriction on the right of any Owner, including Declarant, to lease any Lot it owns.

ARTICLE 11 GENERAL PROVISIONS

- 11.01 Management and Other Contracts. The Developer hereby reserves the right, from time to time, for and on behalf of the Association, to engage a manager for the Association and the Property during all or any portion of the period Developer has the right to appoint directors as provided in Paragraph 2.04. Thereafter the Board may engage the service of an agent to manage the Property to the extent deemed advisable by the Board. Any management agreement shall be terminable by either party for cause upon thirty (30) days written notice, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any other contract providing for services by the Developer must provide for termination on ninety (90) days written notice and may only be for a maximum contract term of three (3) years.
- 11.02 Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at nine percent (9%) per annum, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part

94870643

UNOFFICIAL COPY

of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 5. If any Owner, or his guests, violates any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 5. The District may enforce the obligations of Section 3.08, and 4.01 in so far as such sections require the association to maintain the storm water management facilities, against The Association or any owners, with all rights of The Association provided herein.

11.03 Severability. Invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision hereof, all of which shall remain in full force and effect.

11.04 Title in Land Trust. In the event title to any Lot is conveyed to a title-holding trust under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiary or 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 Lot. 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 Lot and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Lot.

11.05 Amendments. The provisions of Article 3 and Paragraphs 5.08, 12.07 and this paragraph may be amended only by an instrument in writing setting forth such amendment signed and acknowledged by all Owners. The provisions of Articles 3.08 and 4.01 (in so far as they relate to storm water management) may only be amended with the consent of the District, which will not be unreasonably withheld. Subject to Article 6, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment, signed and acknowledged by the voting members having at least fifty-one percent

UNOFFICIAL COPY

(518) of the total votes of the members or that is approved at a duly called and held general or special meeting of members by the affirmative vote, either in person or by proxy, of the voting members having a majority of the total votes of the members and containing a certification by an officer of the Association that said instrument was duly approved as aforesaid. Notwithstanding anything herein to the contrary, no provision relating to the rights of Declarant, Developer or holder of a mortgage on a Lot may be amended without such party's written consent for so long as the Developer or Declarant or their successors or assigns hold title to a Unit. In addition to the foregoing, Declarant and Developer reserve the right, from time to time as long as Declarant owns a Lot, without the consent of any other party, to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Authority, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Dwelling Units, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In connection with the acquisition of any interest in first mortgages on Lots it may acquire or insure, provided that no such amendment shall reduce the rights of any mortgagee under the first mortgage on a Lot recorded prior to such amendment. In furtherance of the foregoing, a power coupled with an interest is hereby granted to Declarant and Developer, and each of them singly as attorney-in-fact, to so amend this Declaration, and each deed, mortgage or the instrument with respect to a Lot and the acceptance thereof shall be deemed a grant and acknowledgement of and consent to such power of each of said attorneys-in-fact and shall be deemed to reserve to each of them the power to execute and record such amendment. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

94870643

UNOFFICIAL COPY

- 11.06 Notice. Any notice required or desired to be given under the provisions of this Declaration to any Owner shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the person who appears as the Owner at his last known address, all as shown on the records of the Association at the time of such mailing.
- 11.07 Binding Effect. The covenants created by this Declaration shall be of perpetual duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots has been recorded, agreeing to amend said covenants and restrictions in whole or in part.
- 11.08 Successors and Predecessors of Declarant or Developer. No party exercising rights as Declarant or Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

ARTICLE 12 REMEDIES

- 12.01 The violation of any rule or regulation adopted by the Board or the breach of any restriction, covenant or provision herein contained, shall give the Board the right (a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Developer, the Declarant, its beneficiaries, successors or assigns, the Board and its agents, shall not thereby be guilty in any matter of the trespass; or (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest legal rate per annum until paid, shall be charged to and assessed against such defaulting owner, and shall be added to and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

62100000

UNOFFICIAL COPY

doomed part of such defaulting Owner's share of the Common Expenses, and the Board shall have a lien for all of the same upon the Lot of such defaulting Owner and upon all of the such defaulting Owner's personal property in the Lot or located elsewhere on the Property. In addition, the Association shall be entitled to take any action necessary under the Forcible Entry and Detainer Act of the State of Illinois. Any and all such rights and remedies may be exercised at any time and, from time to time, cumulatively or otherwise, by the Board.

ARTICLE 13 INSURANCE

13.01

FIRE AND HAZARD INSURANCE: The Association is not responsible for insuring the real property or personal property of the Owners, nor is the Association responsible for insuring any property, real or personal, other than noted elsewhere in this Declaration. Each owner shall be responsible for obtaining his own insurance coverage: (i) against loss or damage for fire, lightning and such other hazards as are customarily covered by fire and extended coverage policies in an amount equal to one-hundred percent (100%) of the insurable replacement cost of the real property without depreciation; and (ii) against comprehensive personal liability in an amount not less than \$300,000.

The Owner shall obtain the insurance from an insurance company of his choice rated B+ or better by Best's Rating Guide. The Association shall be listed as an "additional insured as its interest may appear" on the comprehensive personal liability policy of each Owner.

A Certificate of Insurance must be delivered and filed annually with the Board or its designated agent within thirty (30) days from the effective/renewal date of the insurance policy. All new purchasers of Dwelling Units within the Association must provide a binder or Certificate of Insurance to the Board or its designated agent prior to the date of closing of said Dwelling Unit.

Failure to procure such insurance is deemed a violation of the Association's Declaration. In addition to all rights granted under the Declaration to enforce the Association's policies and rules, the Association will also be permitted to procure the required insurance coverage on behalf of any defaulting Owner. The cost of such insurance will be charged back to the Owner as a special assessment and be deemed a part of and added to the Owner's Association account. Failure to make the

UNOFFICIAL COPY

payment shall subject the Owner to all the legal and equitable remedies necessary for the collection thereof.

No owner shall cause or permit anything to be done or kept on the Association's or Owner's property which will result in the cancellation of insurance on such Owner's Dwelling Unit or any other Dwelling Unit.

13.02 Owner's Insurance for Liability and Contents of Townhomes. Each Owner shall maintain at his own cost and expense such insurance coverage as he may desire with respect to physical damage losses for personal property and the contents of his townhome, and shall further maintain at his cost and expense, any special flood hazard insurance as may be required by the first mortgagee of his Lot. The Association shall have no obligation in connection therewith.

13.03 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 (if any) 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 perils form, and such other perils as the Board of Directors of the Association from time to time may determine should be included in such coverage, in an amount equal to one hundred percent (100%) of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall be made available, as the Board of Directors of the Association 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 of Directors, 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 canceled without at least thirty (30) days' prior notice to the Association, the Owners, and all First Mortgagees of the Lots.

13.04 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, the Directors, Officers, the Members, and their agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in

UNOFFICIAL COPY

connection with the ownership, occupancy, supervision, operation, repair, maintenance or restoration of the Common Areas, the Sidewalks (if any), the Entrance Gate (if any), or the Streetlight, in connection with any act or omission of or on behalf of the Association, its Board of Directors, agents or employees within the Properties. Such policies shall be in the amount of One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that they may not be canceled without at least a thirty (30) days, prior notice to the Association, the Owners, and the First Mortgagees of the Lots.

- 13.05 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) Worker's Compensation and employers liability insurance in such form and in such amounts as may be necessary to comply with applicable laws; (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.
- 13.06 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 insureds 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.
- 13.07 Insurance Premium Expense. The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

94870643

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE 14 Annexing Added Property

14.01

ADDED PARCEL: The Trustee, Developer, and their successors and assigns, hereby reserve the right and option, at any time and from time to time, within ten (10) years from the date of the recording of this Declaration in the office of the Recorder of Deeds of Cook County, Illinois, to add-on and annex to the Parcel all or any portion of the property legally described on Exhibit "D" attached hereto and incorporated herein by reference ("Future Development Parcel"), by recording an amendment or amendments to this Declaration executed by the Trustee (every such instrument being hereinafter referred to as "Amendment to Declaration") which shall set forth the legal description of the additional parcel or parcels within the Future Development Parcel to be annexed to the Parcel. Upon the recording of every such Amendment to Declaration, the Additional Parcel shall be deemed submitted to and governed in all respects by the provisions of this Declaration and shall thereupon become part of the Parcel. No portion or portions of the future Development Parcel shall be subject to any of the provisions of this Declaration unless and until an Amendment to Declaration is recorded annexing such portion or portions to the Parcel as aforesaid. The Owners shall have no rights whatsoever in or to any portion of the Future Development Parcel, unless and until an Amendment to Declaration is recorded annexing such portion to the Parcel as aforesaid. Upon the expiration of said ten (10) year period, no portion of the Future Development Parcel which has not theretofore been made part of or annexed to the Parcel shall thereafter be annexed to the Parcel. No portion of the Future Development Parcel must be added to the Parcel. Portions of the Future Development Parcel may be added to the Parcel at different times within such ten (10) year period. Except as may be required by applicable laws and ordinances, there shall be no limitations (i) on the order in which portions of the Future Development Parcel may be added to the Parcel, (ii) fixing the boundaries of these portions, or (iii) on the location of improvements which may be made on the Future Development Parcel. Structures, improvements, buildings and units to be constructed on portions of the Future Development Parcel which are added to the Parcel need not, except to the extent required by applicable laws and ordinances, be compatible with the configuration of the Parcel in relation to density, use, construction and architectural style.

948708943

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

14.02. Amendments to Declaration Adding Added Property. Every Amendment to Declaration shall include the legal description of the portion or portions of the Future Development Parcel annexed to the Parcel; which shall be added to the legal description of the property.

Signed as of the day and year first above written.

Bank One as Trustee under a
Trust Dated February 12, 1993
and Known as Trust No. 10601

By:

Its:

Attose:

Its:

John Nugent, ACP
Trustee

Robert
Asst. Vice Pres. & Trust
Officer

[Faint, illegible text, possibly a stamp or a very faded signature]

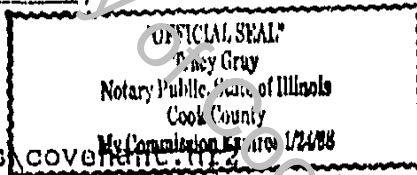
94870643

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

I, Tracy Gray, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lola Nugent, AVP & Land Trust Officer of Bank One, and P. Grant, AVP & Trust Officer of Bank One, personally known to me to be the same persons whose names are subscribed to the foregoing DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE ALPINE HEIGHTS TOWNHOMES HOMEOWNERS ASSOCIATION INCORPORATED, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, on behalf of the Bank One and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 15th day of September, 1994.



Tracy Gray
Notary Public

b:\marycres\covenant.012

Cook County Clerk's Office

94870843

UNOFFICIAL COPY

EXHIBIT A

ALPINE HEIGHTS TOWNHOMES BEING A SUBDIVISION OF LOTS 1 THROUGH 48 IN BLOCK 9 AND ALL THAT PART OF THE VACATED STREETS AND ALLEYS LYING ADJACENT TO AND ADJOINING SAID LOTS, AS VACATED BY DOCUMENT RECORDED AS _____, AS DOCUMENT NO. _____, ALL IN ALPINE HEIGHTS, BEING A SUBDIVISION IN SECTION 20, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

94870643

UNOFFICIAL COPY

Property of Cook County Clerk's Office

24730093

UNOFFICIAL COPY

EXHIBIT D

LOTS 1 THROUGH 48 IN BLOCK 24, LOTS 1 THROUGH 7 AND 34 THROUGH 46 IN BLOCK 25, AND THAT PART OF LOTS 8 THROUGH 13 AND 25 THROUGH 33 IN BLOCK 25 LYING NORTHWESTERLY OF A LINE RUNNING FROM THE SOUTHEAST CORNER OF LOT 7 IN SAID BLOCK 25 TO THE NORTHWEST CORNER OF LOT 28 IN SAID BLOCK 25, ALSO ALL THAT PART OF THE VACATED STREETS AND ALLEYS LYING ADJACENT TO AND ADJOINING SAID LOTS, AS VACATED BY DOCUMENT RECORDED 8-6-1892, AS DOCUMENT NO. 1713023, ALL IN ALPINE HEIGHTS, BEING A SUBDIVISION IN SECTION 20, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Cook County Clerk's Office

94870643

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20000000

UNOFFICIAL COPY

EXHIBITS

- A. Legal Description of the Property.
- B. Plat of Planned Development, Alpine Heights Townhomes P.U.D.
- C. Site Plan Of Phase One, Alpine Heights Townhomes North.
- D. Legal Description of Added Property.

Property of Cook County Clerk's Office

94870643

UNOFFICIAL COPY

PLAT

SEE PLAT COPY

FILE DATE

10-7-94

DOCUMENT #

94870643

UNOFFICIAL COPY

9470613

DECLARATION OF COVENANTS, CONDITIONS EASEMENTS AND RESTRICTIONS FOR ALPINE HEIGHTS TOWNHOMES HOMEOWNERS ASSOCIATION

THIS DECLARATION made this 15th day of September, 1994 by Bank One as Trustee under a Trust Agreement dated February 12, 1993 and known as Trust No. 10601 ("Declarant").

DEPT-01 RECORDING \$104.00
T52222 TRAN 9345 10/07/94 16:57:00
#2209 + KE *-94-870643
COOK COUNTY RECORDER

RECITALS:

A. Declarant is the record owner of certain real estate in unincorporated Orland Township, County of Cook, State of Illinois, which is legally described on Exhibit "A" ("Property") and which will be improved with residential dwellings.

B. Declarant wishes to submit the Property to the provisions of this Declaration in the manner hereinafter provided and has formed an Illinois not-for-profit corporation known as Alpine Townhomes Homeowners Association for the purposes of owning, maintaining and administering certain portions of the Property and the facilities and improvements thereon, as hereinafter provided.

C. The property is a portion of a Planned Unit Development approved by Cook County as Alpine Heights Townhomes P.U.D. Block 9 of Alpine Heights is subjected to the covenants herewith. From time to time, portions of blocks 24 and 25 of Alpine Heights may be subjected to the covenants and added to the Association as an addition to the property.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property, as hereinafter defined, and be binding on all parties having or acquiring any right, title and interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 DEFINITIONS

The following words, when used in this Declaration or in any Supplementary Declaration shall, unless the context shall prohibit, have the following meanings:

- 1.01 Association. The Alpine Townhomes Homeowners Association, an Illinois not-for-profit corporation, its successors and assigns.
- 1.02 Property. The Property as hereinabove described and further described in exhibit A.

PLAT WITH THIS DOCUMENT

RECORDING FEE \$ 104.00
DATE 10-7-94 COPIES 6
BY [Signature]

UNOFFICIAL COPY

Property of Cook County Clerk's Office

[Faint, illegible text in a vertical column on the left side of the page]

UNOFFICIAL COPY

- 1.03 Common Area. All area within the Property, together with all improvements and facilities thereon, which is not part of a Dwelling Lot, including but not limited to any and all private roads and storm water management facilities, as described on the plat of survey attached hereto and incorporated herein as Exhibit "B".
- 1.04 Dwelling Lot. Any plot of land within the Property which is improved with one dwelling as described on the plan of Planned Unit Development attached hereto and incorporated herein as Exhibit "C".
- 1.05 Lot. Any dwelling lot as reflected in the plan of Planned Unit Development attached hereto and incorporated herein as Exhibit "C".
- 1.06 Owner. The record owner, whether one or more persons, individuals or entities, of a fee-simple title to any lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.07 Declarant. Bank One as Trustee under a Trust Agreement dated February 12, 1993 and known as Trust 10601.
- 1.08 Developer. Marycrest Construction Co. of Palos Park, IL as to Phase One, Alpine Heights Townhomes P.U.D. North.
- 1.09 Board. The Board of Directors of Alpine Heights Townhomes Homeowners Association, an Illinois not-for-profit corporation.
- 1.10 By-Laws. The provisions for the administration of the Property.
- 1.11 Common Expenses. The expenses of administration, (including management and professional services) maintenance, operation, repair, replacement and landscaping of the Common Area; the cost of additions, alterations, or costs or improvements to the Common Area; the cost of insurance required or permitted to be obtained by the Board; utility expenses for the Common Area; the expenses designated as Common Expenses by this Declaration, or the By-Laws; and any other expenses lawfully incurred by the Association for the common benefit of all the owners.
- 1.12 Building. A structure where residents live for residential purposes only.
- 1.13 First Mortgagee. The holder of a bona fide first mortgage, first Trust Deed, or equivalent security interest covering a Lot.

UNOFFICIAL COPY

1.14 District. The Metropolitan Water Reclamation District of Greater Chicago.

1.15 Voting Member. The individual who shall be entitled to vote in person or by proxy at meetings of the Owners, as more fully set forth in Article 2 and Article 3, Section 10.

ARTICLE 2 MEMBERSHIP AND BOARD OF DIRECTORS

2.01 Membership. Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

2.02 Voting Rights. (a) Subject to the provisions of Section 3.10(d), voting rights of the members of the Residential Association shall be vested exclusively in the Voting Members. One individual shall be designated as the "Voting Member" for each Unit Ownership. The Voting Member or his proxy shall be the individual who shall be entitled to vote at meetings of the Owners. If the Record ownership of a Dwelling Unit shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Dwelling Unit shall be designated by such Owner or Owners in writing to the Board and if in the case of multiple individual Owners, no designation is given, then the Board at its election may recognize an individual Owner of the Dwelling Unit as the Voting Member for such Dwelling Unit.

(b) Prior to the Turnover Date, all of the voting rights at each meeting of the Residential Association shall be vested exclusively in the Developer and the Owners shall have no voting rights. From and after the Turnover Date, all of the voting rights at any meeting of the Residential Association shall be vested in the Voting Members and each Voting Member shall have one (1) vote. From and after the Turnover Date any action may be taken by the Voting Members at any meeting at which a quorum is present (as provided in the By-Laws) upon an affirmative vote of a majority by the Voting Members present at such meeting, except as otherwise provided herein or in the By-Laws.

2.03 Board of Directors. The Association shall be governed by a Board of Directors (the Board) comprised of five (5) persons, or such greater number as may be provided in the By-Laws, duly appointed by the Developer or elected by the members of the Association as provided herein and in the By-Laws. Except for Directors appointed by Developer, Directors shall be members

UNOFFICIAL COPY

of the Association. The Board shall maintain and administer the Common Areas and certain portions of the Lots and improvements thereon in accordance with the terms and provisions of this Declaration and the By-Laws. Prior to the appointment of the first Board, the Developer shall be accorded all powers and privileges and act in the capacity of the Board and may perform all its functions as set forth in this Declaration and in the By-Laws.

- 2.04 Appointment of Directors by Developer. Notwithstanding anything in this Declaration or the By-Laws of the Association to the contrary,, until the election of a new Board at the initial meeting of members of the Association, the Board shall consist of and vacancies shall be filled by such persons (not less than three (3)) as the Developer shall from time to time appoint, who need not be members of the Association. Said initial meeting shall be held upon not less than fifteen (15) days' written notice given by the Developer to the members of the Association. Such meeting shall be held on such date (the Turnover Date) as the Developer in its sole discretion shall determine, but in no event later than the date Developer has conveyed all of the lots in the property, including any additional property. Prior to the Turnover Date, neither the Articles of Incorporation of the Association, this Declaration, nor the By-Laws shall be amended, modified or changed without the prior written consent of Developer. Prior to the Turnover Date, Developer may, in its sole discretion, without affecting its right to appoint the Directors, appoint one or more members of the Association to act as non-voting advisors to the Board.
- 2.05 Election of Directors by Members. On the Turnover Date a new Board shall be elected as provided in the By-Laws.
- 2.06 Director and Officer Liability. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such Directors or Officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors and Officers on behalf of the Owners or the Association or arising out of their status as Directors or Officers unless any such contract or act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action,

976100000

UNOFFICIAL COPY

sult or proceeding, whether civil, criminal, administrative or other, in which any such Director or Officer may be involved by virtue of being or having been such Director or Officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter settled or comprised unless, in the opinion of independent counsel selected by the Board or in opinion of independent counsel selected by or in a manner determined by the Board there is no reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such Director or Officer.

ARTICLE 3 EASEMENTS AND PROPERTY RIGHTS

3.01 Easements of Use and Enjoyment. An easement is hereby declared and created over and upon the Common Area for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access to and of ingress and egress on, over, across, in, upon and to the Common Area and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Area.
- (b) The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving, maintaining and repairing the Common Area and facilities located thereon and in aid thereof to mortgage the Common Area, provided that the rights of any such mortgagee in and to the Common Area shall, in the event of default, be limited to a right, after taking possession of such properties, to charge admission and other fees for the use and enjoyment by the Owners until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the Owners hereunder shall be fully restored. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Area unless such mortgage is approved by the Board and by more than fifty percent (50%) of the members, other than Declarant, voting at a general or special meeting duly called and held in accordance with the By-Laws, and by the mortgagees, as provided in Paragraph 6.01 hereof, provided that as long as Declarant owns a Lot, Developer's written consent to any such mortgage shall also be required.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area or any utility system thereon to any public agency, authority or utility for

94510001

UNOFFICIAL COPY

such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of the members of the Board of Directors, has been recorded, and the approval of mortgagees, as provided in Paragraph 6.01, has been obtained; provided further that as long as the Developer has the power to appoint a Director of the Association such instrument must also be signed by Developer. No such dedication or transfer shall restrict the right of each lot owner to an easement for ingress and egress.

- 3.02 Rights of Occupants. All persons who reside on a Lot shall have the same rights to use and enjoy the Common Area and all improvements situated thereon as the Owner of that Lot.
- 3.03 Utility Easement. The authorized telephone company, cable T.V. company, Commonwealth Edison Company, Northern Illinois gas company, Citizens Utilities of Illinois, Orland Park Public Works Department, Village of Orland Park, Illinois, and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housing for such equipment, into, over, under, on and through the designated utility easements and Common Area for the purposes of providing utility services to the Property. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Lot for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities serving such Owner's Lot. Easements are also hereby declared and granted to the Developer or its assignee to install, lay, construct, operate, maintain, renew, repair and replace any conduits, cables, pipes, wires or other equipment or components of a community antenna television service system into, over, under, on and through the Common Area and any Lot for the purpose of providing such television service to the Property or to other property.
- 3.04 Encroachments. In the event that (a) by reason of design, construction, location, repair, settlement, shifting or movement, any dwelling, or other improvement as originally constructed by the Developer on any Lot or upon the Common Area overhangs or otherwise encroaches or shall hereafter encroach upon any other Lot or upon the Common Area, or (b) by reason of such design, construction, location, repair, settlement, shifting or movement it shall be necessary or advantageous to any Owner to use or occupy any portion of the Common Area for any reasonable use appurtenant thereto which

UNOFFICIAL COPY

will not unreasonably interfere with the use or enjoyment of the Common Area by other Owners, or (c) by reason of the design or construction of utility, ventilation and exhaust systems, as originally constructed by Developer, any mains, pipes, ducts or conduits servicing any Lot or more than one (1) Lot, encroach or shall hereafter encroach upon any part of any Lot or the Common Area, then, in any such case, valid easements for the maintenance of such encroachment and for such use of the Common Area, together with the right to enter upon such other Lot or Common Area to maintain, repair, replace such encroachment, are hereby established and shall exist for the benefit of such Lot or the Common Area, as the case may be, so long as such dwelling, garage or other improvement is rebuilt, the same encroachment may be re-established and the easements herein granted for the maintenance, repair and replacement thereof shall continue in force; provided further that in no event shall a valid easement for any encroachment or use of the Common Area be created in favor of any Owner if such encroachment or use was created by the intentional, willful or negligent conduct of any Owner or that of his agent.

- 3.05 Transfer of Common Area to Association. Declarant will convey to the Association and the Association shall accept the Common Area herein described and any additions thereto, together with such facilities and improvements as the Developer may elect to install thereon and subject to such easements as the Developer may cause to be placed thereon, at such time or times as the Developer shall determine, provided that all Common Area shall be conveyed to the Association no later than sixty (60) days after the Turnover Date.
- 3.06 Maintenance of Common Area Prior to Conveyance to Association. Notwithstanding the retention by Declarant of title to all or any portion of the Property designated herein to in any recorded Supplementary Declaration as Common Area, the Association shall, from the Owner's assessments, pay or reimburse the Developer for all real estate taxes and all other costs and expenses arising out of or incident to the ownership, maintenance and repair of such portion of the Common Area that is available for use by the Owners to the same extent as such costs and expenses would be the obligation of the Association if it were the record owner thereof.
- 3.07 Easements to Run with the Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in force and effect, and at all times shall inure to the benefit of and be binding upon any Owner, purchaser, mortgagee or other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence or obligation to the easements and

94870001

UNOFFICIAL COPY

rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees or trustees as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

- 3.08 Drainage Easement. The portion of the Property described as the drainage easement was created for the purpose of protecting the scenic attractiveness of the community and providing for storm water management in the Marley Creek. The Association shall have the obligation to maintain, repair and replace said drainage easement property.

Anything to the contrary contained in this Declaration notwithstanding, the Owners, their heirs, successors and assigns, covenant to do and refrain from doing upon the drainage easement property the various acts hereinafter set forth:

- (a) The general topography of the drainage easement property shall be maintained in its present condition to the fullest extent practicable and no excavation, filling or topographic changes shall be made without the written approval (as required) of FEMA, Illinois Department of Transportation - Division Water Resources and the District, except that underground utilities may be installed to serve the Property (including the drainage easement property) provided that the topography is restored.
- (b) No dumping or placing of trash, waste, soil or other substances or materials on the drainage easement property shall be permitted.
- (c) To the fullest extent practicable, the planting and landscaping on the drainage easement property shall be maintained in a condition that storm water storage and flow shall not be impeded.

- 3.09 CONDEMNATION: In the case of a taking or condemnation by competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Residential Association and such proceeds, together with any Common Area Capital Reserve being held for such part of the Common Area shall, in the discretion of the Board, either (i) be applied to pay the Association Expenses, (ii) be distributed to the Owners and their respective Mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration.

UNOFFICIAL COPY

3.10 Developer's Reserved Rights and Special Provisions Covering Development Period

(a) IN GENERAL: In addition to any rights or powers reserved to the Developer under the provisions of this Declaration or the By-Laws, the Developer shall have the rights and powers set forth in this Article. Anything in this Declaration or the By-Laws to the contrary notwithstanding, the provisions set forth in this Article shall govern. If not sooner terminated as provided in this Article, the provisions of this Article shall terminate and be of no further force and effect from and after such time as the Developer is no longer vested with or controls title to any part of the Development Area.

(b) PROMOTION OF PROJECT: In connection with the promotion or sale of any improvements upon the Development Area: (i) the Developer shall have the right and power, within its sole discretion, to construct such temporary or permanent improvements or to do such acts or other things in, on, or to the Parcel as the Developer may, from time to time, determine to be necessary or advisable, including, without limitation, the right to construct and maintain model Dwelling Units, sales or leasing offices, parking areas, advertising signs, lighting and banners, or other promotional facilities at such locations and in such forms as the Developer may deem advisable; and (ii) Developer, its agents, prospective purchasers and tenants, shall have the right of ingress, egress and parking in and through, and the right to use and enjoy the Common Area, at any and all reasonable times without fee or charge.

(c) CONSTRUCTION ON PARCEL: In connection with the construction of improvements to any part of the Development Area, the Developer, its agents and contractors, shall have the right, at the Developer's own expense (but shall not be obligated) to make such alterations, additions or improvements to any part of the Parcel including, without limitation, the construction, reconstruction or alteration of any temporary or permanent improvements to any structure which shall contain Dwelling Units which the Developer deems, in its sole discretion, to be necessary or advisable, and the landscaping, sodding or planting and replanting of any unimproved portions of the Parcel. In connection with the rights provided in the preceding sentence, the Developer, its agents and contractors, shall have the right of ingress, egress and parking on the Parcel and the right to store construction equipment and materials on the Parcel without the payment of any fee or charge whatsoever.

UNOFFICIAL COPY

(d) DEVELOPER CONTROL OF ASSOCIATION: The Developer controlled Boards shall consist solely of three (3) persons from time to time designated by the Developer, which persons may, but need not, be members under Section 2.01. Thereafter, the Board shall consist of five (5) persons. Developer's rights under this Section to designate the members of the Board shall terminate on the first to occur of (i) such time as Developer no longer holds or controls title to any part of the Development Area, (ii) the giving of written notice by Developer to the Residential Association of Developer's election to terminate such rights, (iii) ten years from the date of Recording hereof or (iv) within ninety (90) days of the consummation of the sale of 32 being 100% of the maximum number of Dwelling Units which may be located in the Development Area (in the case the additional property is subjected to the covenants, than this subparagraph (iv) shall require the sale of 67 dwelling units or such other number of units as is the maximum number of unit on the portion of the property including the additional property subjected to the covenants). The date on which the Developer's rights under this Section shall terminate shall be referred to as the "Turnover Date". Prior to the Turnover Date, the Voting Members may elect that number of non-voting counselors to the Board as the Developer may, in its sole discretion, permit. From and after the Turnover Date, the Board shall be constituted and elected as provided in the By-Laws. Prior to the Turnover Date all of the voting rights at each meeting of the Owners shall be vested exclusively in the Developer and the Delegates shall have no voting rights.

(e) OTHER RIGHTS: The Developer shall have the right and power to execute all documents and do all other acts and things affecting the Parcel which, in Developer's opinion, are necessary or desirable in connection with the rights of Developer under this Declaration.

(f) ASSIGNMENT BY DEVELOPER: All rights which are specified in this Declaration to be rights of the Developer are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Developer hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure, or otherwise) shall hold or be entitled to exercise the rights of Developer hereunder as fully as if named as such party herein. No such successor assignee of the acts of Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

UNOFFICIAL COPY

ARTICLE 4

MAINTENANCE BY ASSOCIATION AND OWNERS

- 4.01 Association's Obligations. In addition to the rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-Laws of the Association shall have the following rights, powers and duties with regard to the Common Area, the cost and expense of which shall be paid for by the Association from assessment fund:
- (a) Common Area. The Association shall maintain, repair, replace and maintain the Common Area (if any) and all facilities, improvements and equipment thereon, and pay for all expenses and services in connection therewith, including without limiting the generality of the foregoing: snow removal, lighting of the street lights, storm water management facilities, comprehensive liability, hazard and other insurance, payment of all taxes, assessments and other liens and encumbrances which are assessed to or charged against the Common Area or other property owned by the Association, and such other services for the Common Area as the Board deems to be in the best interest of the Association and its members.
- 4.02 Owners' Obligations. Except for that which the Association is to provide or is liable for pursuant to Paragraph 4.01(a), each Owner, at his sole cost and expense, shall maintain, repair and replace his dwelling and Lot and the improvements thereon, keeping the same sightly and in good condition and repair, including, without limitation, exterior surface of the dwelling, roofs, siding, shrubs and other landscaping, window washing and repair, watering of all landscaping, and any solar energy equipment which may be installed on the roof of his dwelling or elsewhere on his Lot. In the event any Owner shall fail to do so, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternate remedies, shall have the right (but not the obligation), through its employees and agents or through independent contractors, upon reasonable notice or, in the case of an emergency, without notice, to enter upon any Lot and, if required, into any dwelling, to repair and maintain the Lot and the improvements situated thereon. Each Owner, by acceptance of a deed of his Lot, hereby covenants and agrees to pay the Association the cost of such repairs and maintenance, upon demand, and the Association shall have a lien upon said Lot enforceable in the manner of Assessments as provided in Article 5. The failure of such Owner to pay such

UNOFFICIAL COPY

costs shall carry with it the same consequences as the failure to pay any assessments levied hereunder when due, as herein provided. The Association shall be responsible for and shall repair any damage caused by it in the exercise of its rights hereunder.

4.03 Maintenance of Elements Serving More than One Dwelling.

Where portions of the building or improvements constructed on the property serve more than one dwelling unit, including but not limited to party walls, roofs and the building exterior, the cost of maintaining, repairing or replacing such portions of the building in the normal course shall be divided equally among the dwelling units in the building served by the particular improvement. Maintenance, repair or replacement outside of the normal course, and disputes as to the necessity or allocation of cost of such maintenance, repair or replacement shall be governed by Article 8, Party Walls and subject to the enforcement provisions of section 4.02.

ARTICLE 5 COVENANTS AND ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation for Assessments.

Each Owner of a Lot (excluding Declarant), by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Lot owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the Owner of such Lot. The sale of a lot shall not relieve such owner of the personal obligation. In addition, upon a sale of a lot, the purchaser of a Lot within the Association shall be responsible for any and all liens on the Lot including the Association's lien for failure to pay assessments.

5.02 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and, in particular, without limiting the foregoing, for maintenance, repair, replacement, improvement and additions of and to the Common Area and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Area and

UNOFFICIAL COPY

all facilities and improvements thereon, for certain maintenance, repair and replacement of portions of the Lots and the exterior surfaces of certain improvements thereon, as hereinabove provided in Article 4, and for otherwise carrying out the duties and obligations of the Board and of the Association as stated herein and in its Articles of Incorporation and By-Laws.

5.03 Assessment Procedure - Annual Assessments.

- (a) Each year, on or before December 1, the Board shall prepare a budget for the Association for the ensuing twelve (12) months which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area and may also include a reserve for repairs and replacement of those portions of the improvements on the Lots for which the Association is responsible, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before the next January 1, following the preparation of the budget, and on the first day of each and every month for the next twelve (12) months, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before May 1 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding twelve (12) months together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, if income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association or credited to the next monthly installments due under the current year's estimate, until exhausted and any such deficit may, at the discretion of the Board, be assessed against the Lots and added equally to the installments due under the current year's estimate in each of the succeeding three (3) months after rendering of the accounting. Any such credit or assessment shall be allocated equally among all the Lots provided that any such credit or assessment with respect to an excess or deficit for a calendar year in which Lots were added shall be allocated among the Lots that were subject to assessments during

UNOFFICIAL COPY

said calendar year in the proportion that the total assessments against each Lot during the year bears to the assessments against all Lots during that year.

- 5.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessments which in one (1) year exceed \$5,000.00 shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by members at a general or special meeting duly called and held for that purpose or, in lieu of such member's meeting, by an instrument signed by the members owning two-thirds (2/3) of the Lots. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members, and shall be used only for the specific purpose for which such assessment was levied.
- 5.05 Capital Reserves: The annual budget shall include an amount to be specifically designated as a capital reserve. A portion of each installment of the annual assessments paid to the Association as this amount shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Areas, to those portions of the Lots and improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder.
- 5.06 Initial Capital Contribution. At the closing of the sale of each Lot by the Declarant, the Owner purchasing such Lot will be required to make a capital contribution to the Association of twice the monthly assessment for each Lot pursuant to the initial budget of the Association. Such payment shall be held and used by the Association as an operating account, as the Board shall from time to time determine.
- 5.07 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which requires approval of the members shall be sent to all members not less than ten (10) days nor more than forty (40) days in advance of such meeting. At the first such meeting called, the presence of voting members in person or by proxy having fifty percent (50%) of the votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement.

94570004

UNOFFICIAL COPY

and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than forty (40) days following preceding meeting.

- 5.08 Uniform Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, provided that no Lot owned by the Declarant shall be subject to the assessment, unless otherwise provided herein.
- 5.09 Commencement of Annual Assessments. Annual assessments shall commence upon conveyance of the first Lot by Declarant or such later date as Developer shall designate.
- 5.10 Assessments in First Year. Notwithstanding the foregoing, for the period of time from the date annual assessments commence through December 31, 1995, the monthly assessments for each Lot subject to assessment hereunder shall be \$20.00. The Developer shall pay to the Association the amount, if any, by which actual operating expenses during that period exceed the aggregate of the assessments established and received from Owners pursuant to this paragraph. Actual operating expenses means those expenses actually incurred that are reasonably necessary to normal maintenance and operation of the Common Area and of those portions of the Lots and the improvements thereon which the Association is to provide pursuant to Paragraph 4.01, and does not include capital expenditures, reserves, prepaid items, inventory items or similar expenses to the extent attributable to any subsequent period.
- 5.11 Collection of Assessments. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the maximum rate permitted by law. The Board may determine a late charge not to exceed Fifty and 00/100 Dollars (\$50.00) per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments to recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and including any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, late charges as determined by the Board, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Lot when payable and may be

6
6
6
6
6

UNOFFICIAL COPY

foreclosed by any action brought in the name of the Association. To the extent permitted by statute, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

- 5.12 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.
- 5.13 Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona fide Mortgagee. Each holder of a first mortgage on a Lot who obtains title or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title or possession.

ARTICLE 6 RIGHTS OF FIRST MORTGAGEES

In addition to all other rights of the first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary:

- 6.01 Unless at least seventy percent (75%) of the first mortgagees (based upon one (1) vote for each first mortgage owned) of individual Lots (First Mortgagees) have given their prior written approval, the Association shall not be entitled to:
- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.
 - (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot and the Owner thereof as provided in Article 5, subject, however, to the provisions in Paragraph 6.05 hereof.

19900306

UNOFFICIAL COPY

- (c) By act or omission waive, abandon or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any dwelling or garage on a Lot, the exterior maintenance of any such dwelling or garage, the maintenance of party walls or common fences and driveways, or the upkeep or lawns and plantings on the Property.
- (d) Fail to maintain fire and extended coverage insurance on the insurable improvements to the Common Area in an amount not less than one hundred percent (100%) of the full insurable replacement cost.
- (e) Use hazard insurance proceeds for losses to any improvements to the Common Area for other than the repair, replacement or reconstruction of such improvements.
- 6.02 First Mortgagees shall have the right to examine the books and records of the Association at reasonable times during normal business hours.
- 6.03 First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy to the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association.
- 6.04 Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.
- 6.05 This Article 6 may be amended only with the written consent of seventy-five percent (75%) of the First Mortgagees (based upon one (1) vote for each first mortgage owned).

ARTICLE 7 COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Lots and Common Area shall be occupied and used as follows:

- 7.01 No part of the Property shall be used for other than housing and related common purposes for which the Property was designed. Each dwelling shall be used as a residence for a single family and for no other purposes.

UNOFFICIAL COPY

- 7.02 There shall be no obstruction of the Common Area, nor shall ready access to an entrance to any Lot be obstructed or impeded in any manner.
- 7.03 No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will increase the rate charged for or cause the cancellation of insurance carried by the Association on the Common Area improvements or contents thereof, or which would be in violation of any law, nor shall any waste be committed in the Common Area.
- 7.04 The covering of windows and other glass surfaces, whether by shades, draperies or other items visible from the exterior of any dwelling, shall be subject to the rules and regulations of the Board.
- 7.05 No animals or any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept subject to rules and regulations adopted by the Board, provided they are not kept, bred or maintained for any commercial purpose, and provided further that any such pet causing or creating a nuisance or unreasonable disturbances shall be permanently removed from the property upon ten (10) days written notice from the Board.
- 7.06 No obnoxious or offensive activity shall be conducted on any Lot or in the Common Area nor shall anything be done therein or thereon, either willfully or negligently, which may be or become an annoyance or a nuisance to other Owners or occupants.
- 7.07 No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploitation or otherwise, shall be conducted, maintained or permitted on any Lot.
- 7.08 No "For Sale" or "For Rent" signs, advertising or other displays shall be maintained or permitted on any part of the Property except at such locations and in such forms as shall be determined by the Board. Notwithstanding the foregoing, the right is reserved by the Developer or its agents to place and maintain on the Common Area or on any Lot it owns, as long as Developer is engaged in sales or leasing activities in connection with the Property, sales models, a sales or leasing office, advertising signs or banners and lighting in connection therewith, at such locations and in such forms as the Developer shall determine. There is also reserved to the Developer, its agents and prospective purchasers and lessees, the right of ingress and egress in and through the Common Area and to park in the outdoor parking areas, for or incident to such sales or leasing purposes and for such other purposes as may be necessary for the Developer during the time the

UNOFFICIAL COPY

Developer owns any Lot. The provisions of this paragraph shall inure to the benefit of any successors or assigns of Developer.

- 7.09 Except as constructed or altered by or with the permission of the Developer, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.
- 7.10 The restrictions in Paragraphs 7.01 and 7.07 shall not, however, be construed in such a manner as to prohibit an Owner from: (a) maintaining his personal professional library therein; (b) keeping his personal business records or accounts therein; or (c) handling his personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said paragraphs.
- 7.11 The Owner shall be individually responsible for insuring his/her dwelling and personal property in his/her respective Lot, his/her personal property located elsewhere on the Property and against any personal liability.
- 7.12 No fences shall be allowed on the property. After January 1, 2000, the Board may by resolution adopted by 2/3 vote of the members set rules for allowing fences.

ARTICLE 8 PARTY WALLS

- 8.01 PARTY WALL: Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Dwelling Units shall constitute and be a "Party Wall", and the Owner of a Dwelling Unit immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.
- 8.02 RIGHTS IN PARTY WALL: Each Owner of a Dwelling Unit, which is adjacent to a Party Wall, shall have the right to use the Party Wall for support of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

6-1-2011

UNOFFICIAL COPY

8.03 DAMAGE TO PARTY WALL:

(a) If any Party Wall is damaged or destroyed through the act or acts of any Owner of a Dwelling Unit which is adjacent to such Party wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Dwelling Unit.

(b) Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Dwelling Unit which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Dwelling Units to as good a condition as in which such Party Wall existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of Common Area shall be paid by the Residential Association as a Association Expense to the extent not covered by insurance.

(c) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then, the Board may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his personal obligation and shall be a continuing lien on the Owner's Dwelling Unit.

8.04 CHANGE IN PARTY WALL: Any Owner of a Dwelling Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Dwelling Unit in any manner which requires the extension, alteration or modification of any Party Wall shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Dwelling Unit and the Board, in addition to meeting any other requirements which may apply.

8.05 ARBITRATION: In the event of a disagreement between Owners of Dwelling Units adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding.

94870673

UNOFFICIAL COPY

ARTICLE 9 ARCHITECTURAL CONTROL

- 9.01 General Review and Approval. No building, fence, wall, antenna, awning or other structure shall be commenced, erected or maintained upon the Property or upon any Lot, dwelling or other improvement thereon, nor shall any exterior addition to or change or alteration therein be made, except such as are erected or approved by the Developer, until written plans and specifications showing the nature, kind, shape, height, materials, color scheme and location of the same and the approximate cost thereof shall have been submitted to and approved in writing by the Board or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated committee fail to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, said approval will not be required and this Article will be deemed to have been fully complied with.
- 9.02 Television Antenna. Notwithstanding the provisions of the paragraph immediately preceding, no outdoor television antenna shall be affixed to or placed upon the exterior walls or roof of any dwelling, garage or other improvement on a Lot or upon any other portion of a Lot, or on any portion of the Common Area, without the prior written consent of the Board and the Developer; provided that an outdoor television antenna and other components of a community antenna television service system may be affixed to or placed upon any Lot or improvement thereon and upon the Common Area only with the written consent of the Developer and no Board or other consent shall be required or be effective.
- 9.03 Repair and Reconstruction. In the event of damage to or destruction of any dwelling or other improvement installed by Developer on any Lot, the Owner or Owners from time to time of any such improvement, covenant and agree that they will, within a reasonable time after such destruction, repair or rebuild same in a substantial and workmanlike manner with materials comparable to those used in the original structure, and shall conform in all respects to the laws or ordinances regulating the construction of such structures in force at the time of such repair or reconstruction. The exterior of such structure, when rebuilt, shall be substantially the same as the architectural design conformable with the exterior of such structure immediately prior to such damage or destruction. If an Owner fails to make the necessary repairs or reconstruction within a reasonable time after such damage or destruction occurs, the Board may cause the same to be done and the cost thereof shall be charged to such Owner as his personal

94870642

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

obligation and deemed a part of his assessment and shall constitute a lien on his Lot.

ARTICLE 10 LEASE OF LOTS

- 10.1 Any lease agreement between an Owner and a lessee shall be in writing and shall provide that the terms of such lease are subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations of the Association, and that failure by the lessee to comply with the terms of such documents, Rules and Regulations shall be a default under the lease. Other than the foregoing, there is no restriction on the right of any Owner, including Declarant, to lease any Lot it owns.

ARTICLE 11 GENERAL PROVISIONS

- 11.01 Management and Other Contracts. The Developer hereby reserves the right, from time to time, for and on behalf of the Association, to engage a manager for the Association and the Property during all or any portion of the period Developer has the right to appoint directors as provided in Paragraph 2.04. Thereafter the Board may engage the service of an agent to manage the Property to the extent deemed advisable by the Board. Any management agreement shall be terminable by either party for cause upon thirty (30) days written notice, and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any other contract providing for services by the Developer must provide for termination on ninety (90) days written notice and may only be for a maximum contract term of three (3) years.
- 11.02 Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration, the Articles of Incorporation, By-Laws and Rules and Regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at nine percent (9%) per annum, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part

UNOFFICIAL COPY

of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 5. If any Owner, or his guests, violates any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 5. The District may enforce the obligations of Section 3.08, and 4.01 in so far as such sections require the association to maintain the storm water management facilities, against The Association or any owners, with all rights of The Association provided herein.

- 11.03 Severability. Invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision hereof, all of which shall remain in full force and effect.
- 11.04 Title in Land Trust. In the event title to any Lot is conveyed to a title-holding trust under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiary or 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 Lot. 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 Lot and the beneficiaries of such trust, notwithstanding any transfers of the beneficial interest of any such trust or any transfer of title to such Lot.
- 11.05 Amendments. The provisions of Article 3 and Paragraphs 5.08, 12.07 and this paragraph may be amended only by an instrument in writing setting forth such amendment signed and acknowledged by all Owners. The provisions of Articles 3.08 and 4.01 (in so far as they relate to storm water management) may only be amended with the consent of the District, which will not be unreasonably withheld. Subject to Article 6, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment, signed and acknowledged by the voting members having at least fifty-one percent

94870643

UNOFFICIAL COPY

(51%) of the total votes of the members or that is approved at a duly called and held general or special meeting of members by the affirmative vote, either in person or by proxy, of the voting members having a majority of the total votes of the members and containing a certification by an officer of the Association that said instrument was duly approved as aforesaid. Notwithstanding anything herein to the contrary, no provision relating to the rights of Declarant, Developer or holder of a mortgage on a Lot may be amended without such party's written consent for so long as the Developer or Declarant or their successors or assigns hold title to a Unit. In addition to the foregoing, Declarant and Developer reserve the right, from time to time as long as Declarant owns a Lot, without the consent of any other party, to Record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Authority, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Dwelling Units, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In connection with the acquisition of any interest in first mortgages on Lots it may acquire or insure, provided that no such amendment shall reduce the rights of any mortgagee under the first mortgage on a Lot recorded prior to such amendment. In furtherance of the foregoing, a power coupled with an interest is hereby granted to Declarant and Developer, and each of them singly as attorney-in-fact, to so amend this Declaration, and each deed, mortgage or the instrument with respect to a Lot and the acceptance thereof shall be deemed a grant and acknowledgement of and consent to such power of each of said attorneys-in-fact and shall be deemed to reserve to each of them the power to execute and record such amendment. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of Cook County, Illinois.

94870643

UNOFFICIAL COPY

- 11.06 Notice. Any notice required or desired to be given under the provisions of this Declaration to any Owner shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the person who appears as the Owner at his last known address, all as shown on the records of the Association at the time of such mailing.
- 11.07 Binding Effect. The covenants created by this Declaration shall be of perpetual duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots has been recorded, agreeing to amend said covenants and restrictions in whole or in part.
- 11.08 Successors and Predecessors of Declarant or Developer. No party exercising rights as Declarant or Developer hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

ARTICLE 12 REMEDIES

- 12.01 The violation of any rule or regulation adopted by the Board or the breach of any restriction, covenant or provision herein contained, shall give the Board the right (a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Developer, the Declarant, its beneficiaries, successors or assigns, the Board and its agents, shall not thereby be guilty in any matter of the trespass; or (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest legal rate per annum until paid, shall be charged to and assessed against such defaulting owner, and shall be added to and

UNOFFICIAL COPY

deemed part of such defaulting Owner's share of the Common Expenses, and the Board shall have a lien for all of the same upon the Lot of such defaulting Owner and upon all of the such defaulting Owner's personal property in the Lot or located elsewhere on the Property. In addition, the Association shall be entitled to take any action necessary under the Forcible Entry and Detainer Act of the State of Illinois. Any and all such rights and remedies may be exercised at any time and, from time to time, cumulatively or otherwise, by the Board.

ARTICLE 13 INSURANCE

13.01 FIRE AND HAZARD INSURANCE: The Association is not responsible for insuring the real property or personal property of the Owners, nor is the Association responsible for insuring any property, real or personal, other than noted elsewhere in this Declaration. Each owner shall be responsible for obtaining his own insurance coverage: (i) against loss or damage for fire, lightning and such other hazards as are customarily covered by fire and extended coverage policies in an amount equal to one-hundred percent (100%) of the insurable replacement cost of the real property without depreciation; and (ii) against comprehensive personal liability in an amount not less than \$300,000.

The Owner shall obtain the insurance from an insurance company of his choice rated B+ or better by Best's Rating Guide. The Association shall be listed as an "additional insured as its interest may appear" on the comprehensive personal liability policy of each Owner.

A Certificate of Insurance must be delivered and filed annually with the Board or its designated agent within thirty (30) days from the effective/renewal date of the insurance policy. All new purchasers of Dwelling Units within the Association must provide a binder or Certificate of Insurance to the Board or its designated agent prior to the date of closing of said Dwelling Unit.

Failure to procure such insurance is deemed a violation of the Association's Declaration. In addition to all rights granted under the Declaration to enforce the Association's policies and rules, the Association will also be permitted to procure the required insurance coverage on behalf of any defaulting Owner. The cost of such insurance will be charged back to the Owner as a special assessment and be deemed a part of and added to the Owner's Association account. Failure to make the

UNOFFICIAL COPY

payment shall subject the Owner to all the legal and equitable remedies necessary for the collection thereof.

No owner shall cause or permit anything to be done or kept on the Association's or Owner's property which will result in the cancellation of insurance on such Owner's Dwelling Unit or any other Dwelling Unit.

13.02 Owner's Insurance for Liability and Contents of Townhomes. Each Owner shall maintain at his own cost and expense such insurance coverage as he may desire with respect to physical damage losses for personal property and the contents of his townhome, and shall further maintain at his cost and expense, any special flood hazard insurance as may be required by the first mortgagee of his Lot. The Association shall have no obligation in connection therewith.

13.03 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 (if any) 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 perils form, and such other perils as the Board of Directors of the Association from time to time may determine should be included in such coverage, in an amount equal to one hundred percent (100%) of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall be made available, as the Board of Directors of the Association 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 of Directors, 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 canceled without at least thirty (30) days' prior notice to the Association, the Owners, and all First Mortgagees of the Lots.

13.04 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, the Directors, Officers, the Members, and their agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in

UNOFFICIAL COPY

connection with the ownership, occupancy, supervision, operation, repair, maintenance or restoration of the Common Areas, the Sidewalks (if any), the Entrance Gate (if any), or the Streetlight, in connection with any act or omission of or on behalf of the Association, its Board of Directors, agents or employees within the Properties. Such policies shall be in the amount of One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that they may not be canceled without at least a thirty (30) days, prior notice to the Association, the Owners, and the First Mortgagees of the Lots.

13.05 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) Worker's Compensation and employers liability insurance in such form and in such amounts as may be necessary to comply with applicable laws; (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.

13.06 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 insureds 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.

13.07 Insurance Premium Expense. The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

94870643

UNOFFICIAL COPY

ARTICLE 14 Annexing Added Property

14.01

ADDED PARCEL: The Trustee, Developer, and their successors and assigns, hereby reserve the right and option, at any time and from time to time, within ten (10) years from the date of the recording of this Declaration in the office of the Recorder of Deeds of Cook County, Illinois, to add-on and annex to the Parcel all or any portion of the property legally described on Exhibit "D" attached hereto and incorporated herein by reference ("Future Development Parcel"), by recording an amendment or amendments to this Declaration executed by the Trustee (every such instrument being hereinafter referred to as "Amendment to Declaration") which shall set forth the legal description of the additional parcel or parcels within the Future Development Parcel to be annexed to the Parcel. Upon the recording of every such Amendment to Declaration, the Additional Parcel shall be deemed submitted to and governed in all respects by the provisions of this Declaration and shall thereupon become part of the Parcel. No portion or portions of the future Development Parcel shall be subject to any of the provisions of this Declaration unless and until an Amendment to Declaration is recorded annexing such portion or portions to the Parcel as aforesaid. The Owners shall have no rights whatsoever in or to any portion of the Future Development Parcel, unless and until an Amendment to Declaration is recorded annexing such portion to the Parcel as aforesaid. Upon the expiration of said ten (10) year period, no portion of the Future Development Parcel which has not theretofore been made part of or annexed to the Parcel shall thereafter be annexed to the Parcel. No portion of the Future Development Parcel must be added to the Parcel. Portions of the Future Development Parcel may be added to the Parcel at different times within such ten (10) year period. Except as may be required by applicable laws and ordinances, there shall be no limitations (i) on the order in which portions of the Future Development Parcel may be added to the Parcel, (ii) fixing the boundaries of these portions, or (iii) on the location of improvements which may be made on the Future Development Parcel. Structures, improvements, buildings and units to be constructed on portions of the Future Development Parcel which are added to the Parcel need not, except to the extent required by applicable laws and ordinances, be compatible with the configuration of the Parcel in relation to density, use, construction and architectural style.

9289708433

UNOFFICIAL COPY

14.02. Amendments to Declaration Adding Added Property. Every Amendment to Declaration shall include the legal description of the portion or portions of the Future Development Parcel annexed to the Parcel; which shall be added to the legal description of the property.

Signed as of the day and year first above written.

Bank One as Trustee under a Trust Dated February 12, 1993 and Known as Trust No. 10601

By: David M. Nugent, AUP

Its: Attorney General's Office

Attorn: Robert Grant

Its: Asst Vice Pres. & Trust Officer

[Faint, illegible text, likely a stamp or official notice]

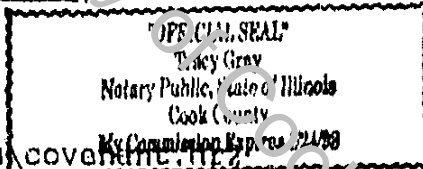
94870643

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

I, Tracy Gray, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Lois Nugent, AVP & Land Trust Officer of Bank One, and P. Grant, AVP & Trust Officer of Bank One, personally known to me to be the same persons whose names are subscribed to the foregoing DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE ALPINE HEIGHTS TOWNHOMES HOMEOWNERS ASSOCIATION INCORPORATED, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument, on behalf of the Bank One and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 15th day of September, 1994.



Tracy Gray
Notary Public

b:\marycros\covenant

Cook County Clerk's Office

94870643

UNOFFICIAL COPY

Property of Cook County Clerk's Office

APR 20 1977

UNOFFICIAL COPY

EXHIBIT A

ALPINE HEIGHTS TOWNHOMES BEING A SUBDIVISION OF LOTS 1 THROUGH 48 IN BLOCK 9 AND ALL THAT PART OF THE VACATED STREETS AND ALLEYS LYING ADJACENT TO AND ADJOINING SAID LOTS, AS VACATED BY DOCUMENT RECORDED AS

_____, AS DOCUMENT NO. _____, ALL IN ALPINE HEIGHTS, BEING A SUBDIVISION IN SECTION 20, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

94870643

UNOFFICIAL COPY

Property of Cook County Clerk's Office

20250033

UNOFFICIAL COPY

EXHIBIT D

LOTS 1 THROUGH 48 IN BLOCK 24, LOTS 1 THROUGH 7 AND 34 THROUGH 46 IN BLOCK 25, AND THAT PART OF LOTS 8 THROUGH 13 AND 29 THROUGH 33 IN BLOCK 25 LYING NORTHWESTERLY OF A LINE RUNNING FROM THE SOUTHEAST CORNER OF LOT 7 IN SAID BLOCK 25 TO THE NORTHWEST CORNER OF LOT 28 IN SAID BLOCK 25, ALSO ALL THAT PART OF THE VACATED STREETS AND ALLEYS LYING ADJACENT TO AND ADJOINING SAID LOTS, AS VACATED BY DOCUMENT RECORDED 8-6-1892, AS DOCUMENT NO. 1713023, ALL IN ALPINE HEIGHTS, BEING A SUBDIVISION IN SECTION 20, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

94870643

Cook County Clerk's Office

UNOFFICIAL COPY



Property of Cook County Clerk's Office

CR1000000

UNOFFICIAL COPY

EXHIBITS

- A. Legal Description of the Property.
- B. Plat of Planned Development, Alpine Heights Townhomes P.U.D.
- C. Site Plan Of Phase One, Alpine Heights Townhomes North.
- D. Legal Description of Added Property.

Property of Cook County Clerk's Office

94870643