

3603236

RECORDER
LAKE COUNTY, ILLINOIS

94 OCT 14 PM 1:51

Frank J. Neutra

AMENDED AND RESTATED
DECLARATION
FOR
DELAWARE CROSSING

46

3603236

AMENDED AND RESTATED DECLARATION
FOR
DELAWARE CROSSING

THIS AMENDED AND RESTATED DECLARATION, made this 13th day of October, 1994, by FIRST MIDWEST TRUST CO., N.A., as trustee under trust agreement dated July 28, 1987 and known as Trust No. 484 (hereinafter called "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II of this Amended and Restated Declaration upon which there shall be constructed a residential community with common open spaces and facilities for the benefit of said community including stormwater detention facilities and improvements; and

WHEREAS, Declarant desires to provide for the preservation and for the maintenance of the common open spaces and the stormwater detention facilities and improvements; and to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth (the "Covenants"); and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the community to create an entity to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the Covenants and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused or will cause to be incorporated, under the laws of the State of Illinois, DELAWARE

3603236

2

3603236

CROSSING OWNER'S ASSOCIATION, as a not-for-profit corporation, for the purpose of exercising the functions aforesaid; and

WHEREAS, Declarant desires that the terms, provisions and covenants herein contained shall amend, restate and replace in their entirety the terms, provisions and covenants set forth in that certain Declaration made by Declarant on February 18, 1994 and recorded as Document No. 3498431 and states the provisions of this Amended and Restated Declaration do not result or in any manner diminish the function of the Declaration to insure that the stormwater detention facilities and improvements comply with all ordinance requirements and that the Association's responsibility for continued maintenance, operation, preservation and protection of such facilities and improvements and of the common open space is not abrogated by this Amended and Restated Declaration.

NOW THEREFORE, Declarant declares that the real property described in Article II, such real property shall be held, transferred, sold, conveyed and occupied subject to these Covenants.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

Association: DELAWARE CROSSING OWNER'S ASSOCIATION, an Illinois not-for-profit corporation, its successors and assigns. For purposes of these Covenants, references to the Association or

its Board of Directors shall mean the Developer until such time as the Association is formed.

Common Open Space: Out-Lot 96, Out-Lot 97, Out-Lot 98, all as depicted on the Final Plat of Subdivision for Country Towne II, recorded as Document No. 349843 on February 28, 1994 (the "Final Plat").

Common Facilities: All improvements and fixtures situated on or in the areas of Common Open Space, including the stormwater detention facilities and improvements located on Out-Lot 97, plus any personal property owned by the Association and entry monuments for the Community located within entry monument easement areas granted to or reserved for the benefit of the Association.

Community: The real property described in Exhibit "A" attached hereto and made a part hereof.

Developer: FRANK BLAZEVIICH.

Eligible Mortgage Holder: A holder of a first mortgage on a Unit that has requested the Association notify it on any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

First Mortgagee: The holder of any recorded first mortgage lien on one or more Units.

Owner: The record owner, whether one or more persons or entities and including the Developer or Declarant where applicable, of the fee simple title to any Unit situated in the Community. Owner shall not mean or refer to a mortgagee unless

and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or transfer in lieu of foreclosure.

Unit: Lots 1 through 92, inclusive, as depicted on the Final Plat, Out-Lot 94 until subdivided, and thereafter, each of the multi-family dwelling units constructed on Out-Lot 94 (up to a maximum of 60 dwelling units if separately owned in fee simple) and Out-Lot 93. Lots 1 through 92 are collectively called the "Single Family Units."

County: The County of Lake.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which shall be held, transferred, sold, conveyed and occupied subject to these Covenants is located in Lake County, State of Illinois, and is more particularly described on Exhibit "A" attached hereto. All of the real property described thereon is hereinafter referred to as the "Property." The Property does not include Out-Lot 95 as depicted on the Final Plat, which has been dedicated to Warren Township for natural resource protection, stormwater detention and greenway purposes and Warren Township is not a member of the Association.

ARTICLE III

USE RESTRICTIONS

Section 1. Out-Lot 96 shall be maintained, protected and preserved in its natural state and cannot be developed or used for any purpose other than common open space for recreation

purposes and no buildings or structures can be developed or erected thereon for any other purposes.

Section 2. Out-Lot 98 shall be maintained, protected and preserved in its natural state and cannot be used for any purpose other than for common open space for natural resource protection purposes and, as such, cannot be developed, cleared or used for buildings or structures and can only be used in such a manner so that the natural resources thereon are not damaged or destroyed.

Section 3. Out-Lot 97 shall be maintained in perpetuity for and cannot be developed or used for any purpose other than common open space for stormwater detention facilities and improvements and cannot be developed for any other reason which would limit or cause to limit its use and function for the management of stormwater.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is the Owner of a fee or undivided fee interest of any Unit shall be a member of the Association and said membership shall be appurtenant to said Unit, and each purchaser of any Unit by acceptance of a deed therefor covenants and agrees to be a member of the Association whether or not it shall be so expressed in any such deed or other conveyance, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Membership Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer and Declarant. Class A members shall be entitled to one vote for each Unit in which they hold the interest required for membership by Section 1. When more than one person holds such interest in any Unit, all such persons shall constitute one member. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Unit in which it holds the interest required for membership by Section 1, provided that the Class B membership shall close and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a) Four (4) months after 75% of the Units have been conveyed to Unit purchasers; or
- b) Three (3) years after the first Unit is conveyed to a member (the "Turn Over Date").

Section 3. Transfer of Membership. Membership held by any Owner of a Unit is an appurtenance to such Unit and shall not be transferred, alienated, or pledged in any way, except upon the sale or encumbrance of such Unit, and then only to the purchaser of such Unit. Any attempt to make a transfer except by the sale or encumbrance of a Unit is void. Reference to the transfer of membership need not be made in an instrument of conveyance or

encumbrance of such Unit for the transfer to be effective, and the same shall automatically pass with title to the Unit.

ARTICLE V

COVENANT FOR CAPITAL CONTRIBUTIONS

AND MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Capital Contributions and Assessments. Developer and each purchaser of any Unit by acceptance of a deed or other instrument of conveyance therefore, whether or not it shall be so expressed in any deed or other instrument of conveyance, hereby covenants and agrees, for himself, his heirs, personal representatives, successors and assigns, to pay to the Association: (a) annual assessments or charges, payable monthly; (b) special assessments for payment of excess real estate taxes (as provided in Section 3 of this Article; and (c) capital contributions (described in Section 4 of this Article). Such contributions and assessments are to be fixed, established and collected from time to time as hereinafter provided. Such capital contributions and assessments (or installments of either), together with such interest thereon, late charges, attorney's fees and costs of collection thereof as are hereinafter provided, when due and not fully paid shall be a charge on the land, and shall be a lien upon the property against which each call for such contributions or assessment (or installment of either) is made until the same shall be paid in full. Each such capital contribution or assessment (or installment of either), together with such interest thereon, late charges, attorney's fees and cost of

collection thereof as are hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Unit at the time when such contribution or assessment (or installments of either) falls due.

Upon the initial conveyance of each Single Family Unit with a residential dwelling unit constructed thereon, the purchaser thereof shall pay an assessment deposit to the Association, which shall constitute a capital contribution of \$150.00 for such Unit. Upon the initial conveyance of Out-Lot 93 and Out-Lot 94 from Declarant to a purchaser, a capital contribution of \$150.00 shall be made for Out-Lot 93 and of \$1,350.00 for Out-Lot 94. The assessment deposit shall not be refunded to purchaser upon a subsequent conveyance unless and until the party to whom purchaser conveys deposits a like amount with the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare and enjoyment of the Community, and in particular for the maintenance of the Common Open Space and the Common Facilities, including, but not limited to, the payment of real estate taxes on the Common Open Space, the payment of liability, casualty, worker's compensation, and fidelity insurance premiums and such other insurance premiums as may be deemed necessary from time to time on the Common Open Space and/or the Common Facilities, the payment of interest, the costs of maintenance, upkeep and repair of the Common Open Space and/or the Common Facilities, the cost of labor, management, supervision and operation necessary or desirable for the

foregoing, and to provide funds for the Association to carry out its duties set forth herein or in its Articles of Incorporation or By-laws.

Section 3. Assessments. No assessments shall be levied and assessed until the first of the Out-Lots comprising a part of the Common Open Space has been conveyed to the Association as provided in Section 2 of Article VIII (the "Initial Conveyance"). For the calendar year beginning on the first of January occurring after the Initial Conveyance, the annual assessment shall be not more than \$150.00 for each Single Family Unit, \$150.00 for Out-Lot 93 and \$1,350.00 for Out-Lot 94. Thereafter, on an annual basis, the annual assessment may be increased by vote of the Owners of the Association, as provided in Section 5 of this Article.

In the event the annual assessment is not increased by vote of the members of the Association, as provided in Section 5 of this Article, this assessment may be increased effective the first day of January of each year on and after January 1, 1997, by action of the Board of Directors of the Association and without the necessity for a vote of the Owners.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at an amount more or less than the annual assessment established in accordance with this Article.

If taxes on real estate owned by the Association, as shown by the tax bills received by the Association each year, shall

exceed the amounts estimated for such taxes in the budget previously used in determining the annual assessment for such year, the Board of Directors may, without the assent of the members, cause the Association to levy a special assessment to provide funds for payment of such increase in taxes, in such manner and time or times as the Board of Directors shall determine.

Monies received by the Association pursuant to this Section shall be deposited in the general account of the Association.

In the event that the sum of the annual and special assessments for any calendar year shall exceed the Association's expenses including reserves for such calendar year, the Board of Directors shall cause the Association either to return the amount of such excess assessments to the members of the Association promptly after the end of such calendar year or to apply the amount of such excess against the members' annual assessments for the next following calendar year. Any such excess assessments which the Board of Directors elects to return to the members shall be returned to those persons who are members of the Association on the last day of the calendar year in which such excess arose. For purposes of this Section 3, the Association's expenses for a calendar year shall be conclusively deemed to equal the expenses reported on the Association's federal income tax return for such calendar year. The Association shall establish and maintain from annual assessments collected hereunder, an adequate reserve fund for the costs of maintenance,

repair and replacement of the Common Open Space and Common Facilities.

Section 4. Capital Contributions. In addition to the annual and special assessments authorized by Section 3 of this Article, The Board of Directors may (and in the case of inadequate reserves for replacement of improvements to the Common Open Space or Common Facilities shall) cause the Association to require, from time to time on at least thirty (30) days advance written notice to all members, a capital contribution to the Association (which may be payable in installments if so designated by the Board of Directors and, in the case of capital contributions for the replacement of improvements to the Common Open Space or Common Facilities, shall be payable in monthly installments), for the purpose of (a) paying capital expenditures, including (without limitation), the cost of any construction or reconstruction, alteration or replacement of one or more capital improvements upon the Common Open Space or Common Facilities, the cost of the necessary fixtures and personal property related thereto, and the cost of acquisition or replacement of any major specified item or items of personal property owned or to be owned by the Association, or (b) making principal payments on loans made to the Association, or (c) providing the Association with working capital as reserves against future expenses, or (d) providing funds to cover losses incurred by the Association. Notwithstanding the foregoing, such capital contributions may not be levied without the assent of two-thirds (2/3) of the votes of each class of voting membership

3603236

in the Association, cast in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all voting Owners at least thirty (30) days in advance and which shall set forth the purpose of the meeting.

The purpose(s) of each capital contribution shall be specified in the aforementioned notice and all monies received by the Association in payment of the capital contributions referred to in this Section 4 shall be segregated from all other monies of the Association in a separate bank account or other investment approved by the Board of Directors, to be held by the Association and identified as being for funds for the purpose called for in the said notice to membership.

Section 5. Change in Assessments by Action of the Membership. Subject to the limitations of Section 3 of this Article, the Association may, notwithstanding any action or inaction by the board of Directors, change the annual assessment fixed pursuant to said Section 3 prospectively for any such period, provided that any such change shall have the consent of a majority of the votes of each class of the voting Owners of the Association, cast in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all voting Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum for Actions under Sections 4 & 5. The quorum required for any action authorized by Sections 4 and 5 of this Article shall be as follows: At the first meeting called, as provided in said Sections 4 and 5, the presence at such

meeting of Owners of the Association, or of proxies, entitled to cast sixty (60) percent of all of the votes of each class of voting members shall constitute a quorum. If the required quorum is not forthcoming at such meeting, another meeting may be called, subject to the notice requirement set forth in said Sections 4 and 5 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the immediately preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the date of the immediately preceding meeting.

Section 7. Commencement of Annual Assessments. Annual assessments shall commence as to Units on the first day of January following the Initial Conveyance.

The annual assessment shall become due and payable in equal monthly installments to be paid each month in advance, on or before the first day of the month commencing on the first day of January of the year for which the assessment is levied, unless the Board of Directors designates another form of periodic payments.

The due date of any special assessment or capital contribution under Section 3 or Section 4 hereof respectively (and whether or not such assessment, or capital contribution, shall be payable in installments) shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of Board of Directors as to Assessments. At least thirty (30) days in advance of the due date for any capital contribution assessed pursuant to Section 4 above, or

annual or special assessment of the first installment of such contribution or assessment, the Board of Directors of the Association shall fix the amount of such contribution or assessment against each Unit. 90% of each capital contribution or assessment shall be assessed against the Single Family Units, with 9% thereof assessed against Out-Lot 94 and with 1% thereof assessed against Out-Lot 93. The total amount of each contribution or assessment assessed against the Single Family Units shall be allocated equally among each Single Family Unit subject to this Declaration. The Board shall prepare a roster of the Units and capital contributions and assessments applicable thereto which shall be kept in the office of the Association and such roster, as well as the other books and records of the Association, shall be open to inspection by any Owner or First Mortgagee. Written notice of the assessment or capital contribution, or both, shall thereupon be sent to every Owner and First Mortgagee subject thereto. The Board of Directors may, in its discretion, designate a form of periodic payments. The Board of Directors may also, in its discretion, designate and retain any agent to collect such capital contributions and assessments on behalf of the Association, to whom payments of such contributions and assessments shall be made.

Section 9. Non-Payment. If the capital contributions or assessments (or any installments or either) are not paid on the date when due (being the dates specified in Section 7 hereof), they shall be deemed delinquent, and such delinquent contribution, assessment or installment of either shall, together

3603236

with such interest thereon and the cost of collection thereof as are hereinafter provided, thereupon become a lien on the Unit of the delinquent Owner which shall bind such Owner, his heirs, devisees, personal representatives and assigns and the Association shall have the right to record in the Lake County Recorder's Office, a notice of lien upon the Unit of the delinquent Owner. The personal obligation of the then Owner to pay such capital contribution or assessment however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. Sale or transfer of any Unit shall not affect the continuing lien on such Unit for the amount of any unpaid capital contributions or assessments (or installments of either).

If a capital contribution or assessment (or installment of either) is not paid within thirty (30) days after the due date thereof, such contribution, assessment or installment shall bear interest from such due date at the highest rate permitted by Illinois law, and the Association, or its collecting agent designated by the Board of Directors, may bring any legal action against the Owner personally obligated to pay the same and/or to execute or foreclose upon the Association's lien against the delinquent Owner's Unit, and there shall be added to the amount of such contribution, assessment or installment the costs of preparing and filing the complaint in such action and, in the event a judgment is obtained, such judgment shall include interest on the contribution or assessment as above provided and a reasonable attorney's fee to be fixed by the court together

3603236

with the cost of the action. In addition thereto, the Association may deny to the delinquent Owner the use and enjoyment of any of the Common Open Space and Common Facilities used for recreation until the delinquent contribution assessment or installment is paid, together with any interest, costs and other sums set forth above which the Association is entitled to receive. No Owner may avoid liability for the capital contributions and assessments provided for herein by non-use of the Common Open Space and/or the Common Facilities, by set-off of any claims he may have against the Association, or by abandonment of his Unit. In addition to the foregoing, the Association may maintain an action against a delinquent Owner for forcible entry and detainer under 735 ILCS 5/9-102, pursuant to the provisions thereof. Any unpaid assessment which cannot be promptly collected from an Owner of a Unit may (but need not) be reassessed by the Board of Directors as a common expense to be collected from all of the Owners, including (by way of illustration and not limitation) a purchaser who acquires title to the Unit owned by the defaulting Owner at a sheriff's sale of such Unit pursuant to execution upon a lien against such Unit (including, without limitation, the Association's lien for delinquent capital contribution(s) and/or assessment(s), his successors and assigns and any holder of a mortgage who comes into possession of a Unit by deed in lieu of foreclosure or any transfer or assignment in lieu of foreclosure).

Nothing herein contained shall be deemed to restrict the remedies available to the Association against any particular Unit

or Unit Owner(s) in the event of non-payment of contributions or assessments when due, or for costs assessed to Unit Owner(s) as a result of willful or negligent acts of Owner(s), their family, guests or invitees.

Section 10. Subordination. The lien of the capital contributions and assessments provided for herein shall be subordinate to the lien of any first mortgage placed upon the Unit subject to such capital contribution or assessment prior to the time such capital contribution or assessment becomes a lien on such Unit; provided, however, that such subordination shall apply only to the contributions, assessments or installments which have become due and payable prior to the date of sale of such Unit pursuant to a decree of foreclosure of such mortgage or prior to the date of a deed, or other instrument of conveyance, of such Unit given by the mortgagor in lieu of foreclosure. Any First Mortgagee who comes into possession of a Unit on which it holds or held a mortgage, through foreclosure of such mortgage, or by deed (or assignment) in lieu of foreclosure, shall take the Unit free of any claims for unpaid assessments, capital contributions, or other charges against such Unit which have accrued prior to the time such First Mortgagee comes into possession of such Unit (except for claims for a pro rata share of such assessments, capital contributions or other charges resulting from a pro rata reallocation thereof by the Association to all Units including the mortgaged Unit). Such sale, or deed or instrument of conveyance in lieu of foreclosure, shall not relieve such Unit from liability for any capital contributions or

3603236

3603236

assessments, or installments of either, which thereafter become due nor from the lien of any such subsequent contribution, assessment or installment.

Section 11. Exempt Units. The following property subject to this Declaration shall be exempt from the capital contributions and assessments, charges and liens created herein: (a) properties dedicated to and accepted by a local public authority and devoted to public use, from and after the time of acceptance of such dedication; (b) all Common Open Space; (c) all Units owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Illinois, so long as such Units are not used as a residential dwelling.

Section 12. Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for said capital contribution or assessment, a certificate in writing signed by an officer of the Association, setting forth whether the annual assessments or capital contributions on a specified Unit have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Said certificates shall be conclusive evidence that any assessment or capital contribution therein stated to have been paid has in fact been paid. No charge shall be made for issuing from time to time said certificates to the Developer on Units then owned by Declarant.

ARTICLE VI
MAINTENANCE

Section 1. The Association's Maintenance Duties. The Association, in addition to its other powers, rights and duties as set forth in these Covenants and in its Articles of Incorporation, By-Laws and any Rules and Regulations which the Association may promulgate, shall, from and after conveyance of the Common Open Space to the Association, maintain, operate and manage all the Common Open Space and Common Facilities including entry monuments, shall pay all real estate taxes, personal property taxes or other charges which may be assessed against or levied upon the Common Open Space; and shall cause the Association to maintain continually in effect, and to pay the premium of comprehensive public liability insurance covering all of the Common Open Space, a fidelity bond or insurance policy covering all persons who are responsible for handling the funds of the Association, and such other insurance as the Board of Directors of the Association shall deem to be necessary or desirable, all of which shall be in such amounts and with such companies as the Board of Directors shall determine; provided, however, that if and for so long as any First Mortgagee shall be the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other Federal, State or local agency or instrumentality, then the insurance coverage carried by the Association shall, at a minimum, comply with any applicable

3603236

requirements of such association, corporation, agency and/or instrumentality.

The Association may delegate one or more of such duties to one or more independent contractors including, without limitation, Developer and entities affiliated with Developer, or agents or employees of the Association, by contract.

Section 2. Maintenance Standards. Maintenance of natural resource protection areas on Out-Lot 98 shall consist of the removal of litter, junk, debris, and may also include the removal of dead or diseased vegetation and the removal of such noxious species as Lonicera tatarica (Honeysuckle), and Rhamnus cathartica (Buckthorn). Maintenance of recreational areas on Out-Lot 96 shall consist of all acts necessary to ensure that all recreational areas and facilities remain in usable condition and that no hazards, nuisances or unhealthy conditions exist. Maintenance of any greenway areas within the areas of Common Open Space shall consist of all acts necessary to ensure that such areas remain aesthetically and functionally usable as originally designed and that no hazards, nuisances or unhealthy conditions exist, while maintenance of any bufferyard areas thereon shall consist of all acts necessary to ensure that such areas remain aesthetically and functionally usable as original designed and shall include, but shall not be limited to, the removal of litter, junk and debris and the replacement of dead or diseased vegetation so that no hazards, nuisances or unhealthy conditions exist. Maintenance of the stormwater detention facilities shall

consist of all acts necessary to ensure that such areas continue to function as designed.

The extent and frequency of the activities of the Association in carrying out the duties set forth above and achieving the standards shall be decided by the Board of Directors, and the Board of Directors may appoint committees to advise the Board on such matters. The Board of Directors may also promulgate Rules and Regulations to aid in carrying out of said maintenance and management duties, and may amend said Rules and Regulations from time to time.

The Board of Directors shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Open Space on behalf of the Owners as their interests may appear.

ARTICLE VII

CERTAIN RIGHTS OF FIRST MORTGAGEES

Section 1. A First Mortgagee of a Unit may, either singly or jointly with First Mortgagees of other Units, on behalf of the Association (i) pay taxes or other charges which are in default and which may become or have become a lien or charge against the Common Open Space, the Common Facilities or both, and (ii) pay overdue premiums on one or more hazard insurance coverages of the Common Open Space and Common Facilities upon the failure of the Association to replace such policy not later than the time it elapses (including any applicable grace period). One or more First Mortgagees making such payment on behalf of the Association shall be entitled to be reimbursed therefor from the Association

upon written demand therefor. Upon written request by a First Mortgagee, the Association shall confirm in writing to such First Mortgagee that if any First Mortgagees were to make one or more of the payments referred to in the first sentence of this Section 1 on behalf of the Association, such First Mortgagee(s) would thereby be entitled to the reimbursement mentioned in the immediately preceding sentence.

Section 2. No Owner of a Unit, or any other party, shall have priority over any rights of First Mortgagees of Units pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Open Space, the Common Facilities or both; provided, however, that nothing in this Section 2 shall be deemed to create, or imply the existence of, any rights of Owners of Units, or their Mortgagees, or both, in and to any such insurance proceeds and condemnation awards.

Section 3. The holder, insurer or guarantor of the mortgage on any Unit, which sends a written request to the Association, stating its names and address and the Unit description of the Subject Unit, shall be entitled to timely written notice of the following:

(a) any condemnation or casualty loss which affects either a material portion of the Community or the Unit securing its mortgage;

(b) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;

3603236

(c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

ARTICLE VIII

COMMON OPEN SPACE

Section 1. Rights of Owners and the Association. Except as the right may be suspended under Section 9 of Article VI hereof for non-payment of delinquent assessments, or as provided below, each Owner, at the time he becomes an Owner and for so long as he is an Owner, is hereby granted a non-exclusive easement for ingress and egress over and across, and use of, enjoyment in and access to all of the Common Open Space which may be used for recreational purposes subject to the Rules and Regulations of the Association as promulgated from time to time. Such easement shall be deemed to be appurtenant to such Owner's Unit, shall run with the land and shall pass with the title to such Unit. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Open Space will be void unless the Unit to which that interest is allocated is also transferred.

The Association shall have the right to grant permits, licenses, or easements over or dedicate all or portions of the Common Open Space to any public body, agency, authority or utility for utilities, roads & other purposes necessary for the proper operation of the Community; and further provided that no such dedication shall be effective unless an instrument signed by

Owners entitled to cast two-thirds (2/3) of the votes of each class of voting membership has been recorded, agreeing to such dedication and unless written notice of the proposed dedication is mailed or hand delivered to every Owner and First Mortgagee at least ninety (90) days in advance of any action taken. Any Unit Owner may delegate in accordance with the By-laws of the Association, his right of enjoyment to the Common Open Space to the members of his family, his tenants or contract purchasers who reside on such Unit.

Section 2. Obligations of the Developer. No later than June 30, 1995, Developer shall complete all of the work to be performed on Common Open Space and shall install all of the Common Facilities thereon, including but not limited to stormwater detention facilities and improvements, as listed and described in greater detail on the approved final engineering plans for the subdivision covering the Property and other lands and on that certain Landscape Plan prepared by David R. McCallum & Associates as revised June 25, 1993 (the foregoing is hereinafter called the "Work"). Upon completion of the Work for each of the areas of Common Open Space, satisfaction of all requirements of ordinances applicable thereto, including those relating to the stormwater detention facilities and improvements to be installed within Out-Lot 97, and obtaining final inspection approval and a certificate of compliance therefor from all governmental authorities having jurisdiction thereover, including the County, and the release after satisfaction of all required maintenance guarantees, Developer shall cause Declarant to convey

to the Association in fee each of the areas of Common Open Space free and clear of all mortgages and subject only to real estate taxes for the year of conveyance and subsequent years. Taxes for the year of conveyance shall be prorated between the Developer and the Association. Developer shall be responsible for assessments levied against all Units while owned by Declarant.

Section 3. Use and Rights of Public Authorities. The duly designated officials, employees and contractors of governmental bodies having jurisdiction over the Community, including the County, shall have an easement to enter upon on, and over the Common Open Space for the purpose of providing police and fire protection and enforcing the applicable laws, ordinances, rules and regulations of the said governmental bodies. The Declarant, Developer and the Association shall hold police and governmental personnel harmless from civil or criminal actions arising through a charge of trespass for entering on the Common Open Space in performance of their duties.

Section 4. Condemnation. In the event of condemnation or destruction of any Common Open Space or Common Facilities, and in the event of liquidation or termination of the Association, any losses or proceeds resulting therefrom shall be shared equitably between the Unit Owners effected by such event(s), as reasonably determined by the Board of Directors of the Association. The Association is hereby designated to represent the Members in any proceedings, negotiations, settlements or agreements regarding any such condemnation or destruction, and each Member, by acceptance of a deed for a Unit appoints the Association as its

attorney-in-fact for the foregoing purposes. Any proceeds from any such settlements shall be payable to the Association for the benefit of the Members and their mortgage holders.

Section 5. Stormwater Detention Facilities and Improvements. The duly designated officers and employees of the County are hereby granted an easement to enter upon, on and over all areas of Common Open Space for the purpose of inspecting such areas to determine whether the stormwater detention facilities and improvements and systems appurtenant thereto have been and are being properly maintained in conformity with this Amended and Restated Declaration and the applicable ordinances and regulations of the County. If it is determined that the facilities are not in conformity with applicable ordinances and regulations, the County shall give the Association written notice of such determination.

The County shall have the right to compel correction of a problem concerning maintenance after providing notice to the Association, although notice shall not be required in the event that the County determines that the failure of maintenance constitutes an immediate threat to public health, safety and welfare or will result in irreparable harm or damage to the Common Open Space. If the Association fails to perform the necessary maintenance within a reasonable time after receiving notice of the determination, the County shall have the right to perform or cause to be performed such maintenance or other operations necessary to preserve the drainage structures and characteristics of the stormwater detention facilities

improvements or the natural resources and character of the Common Open Space. If the County is required to perform such service, it shall be entitled to complete reimbursement by the Association. The easement described in this Section is an easement appurtenant, running with the land; it shall at all times be binding upon the Declarant, all of its grantees and their respective heirs, successors, personal representatives and assigns perpetually and in full force.

ARTICLE IX

DOCUMENTS AND RECORDS

Section 1. Records. The Association shall maintain the following records and make them available for examination and copying at convenient hours of weekdays by any Owners or their mortgagees and their duly authorized agents and attorneys:

(a) Copies of the recorded Amended and Restated Declaration, Articles of Incorporation and By-Laws of the Association, and any amendments thereto, annual reports and rules and regulations adopted by the Association, as well as the Association's books, records, and financial statements;

(b) Detailed and accurate records in chronological order of the receipts and expenditures affecting the Common Open Space, specifying and itemizing the maintenance and repair expenses of the Common Open Space and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the Association;

(c) The minutes of all meetings of the Owners and Directors of the Association for not less than seven (7) years;

(d) Ballots and proxies related thereto, if any, for any election held for the Board of Director of the Association and for any other matters voted on by the Owners, for not less than one (1) year;

(e) Such other records of the Association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not for Profit Corporation Act of 1986; and

(f) With respect to Units owned by a land trust, if a trustee designated in writing a person to cast votes on behalf of the Unit Owner, the designation shall remain in effect until a subsequent document is filed with the Association.

Where a request for records under this Section 1 is made in writing to the Association or its agent, failure to provide the requested record or to respond within thirty (30) days shall be deemed a denial by the Association. A reasonable fee may be charged by the Association for the cost of copying records. If the Association fails to provide records properly requested under this Section 1 within thirty (30) days, the Owner may seek appropriate relief, including an award of attorneys' fees and costs.

ARTICLE X

MEETINGS AND FINANCES

Section 1. Annual Budget. Each Owner shall receive, at least thirty (30) days prior to the adoption thereof by the Board of Directors, a copy of the proposed annual budget. The Board of Directors shall annually supply to all Owners an itemized

accounting of the common expenses for the preceding year actually incurred or paid, together with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the next excess or deficit of income over expenditures plus reserves. Each Owner shall receive written notice mailed or delivered no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board of Directors concerning the adoption of the proposed annual budget or any increase in the budget, or establishment of an assessment.

Section 2. Meetings of the Board of Directors. Meetings of the Board of Directors shall be open to any Owner, except for the portion of any meeting held:

(a) to discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board of Directors finds that such an action is probable or imminent;

(b) to consider information regarding appointment, employment, or dismissal of an employee; or

(c) to discuss violation of rules and regulations of the Association or unpaid common expenses owned to the Association.

Any vote on the foregoing matters shall be taken at a meeting or portion thereof open to any Owner. Any Owner may record the proceeding at meetings required to be open by this Section 2 by tape, film, or other means; the Board of Directors may prescribe reasonable rules and regulations to govern the right to make such recordings.

3603236

Notice of meetings shall be mailed or delivered at least forty-eight (48) hours prior thereto, unless a written waiver of such notice is signed by the persons entitled to notice before the meeting is convened. Copies of notice of meetings of the Board of Directors shall be posted in conspicuous places in the Community at least forty-eight (48) hours prior to the meeting of the Board of Directors.

In the event of a resale of a Unit upon which a residential dwelling unit has been constructed, the purchaser of a Unit, pursuant to an installment contract for purchase shall, during such times as he/she resides in the Unit, be counted toward a quorum for purposes of election of members of the Board of Directors at any meeting of the Owners called for purposes of electing members of the Board of Directors, and shall have the right to vote for the election of members of the Board of Directors and to be elected and to serve on the Board of Directors unless the seller expressly retains in writing any or all of these rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office, or be elected and serve on the Board of Directors. Satisfactory evidence of the installment contract shall be made available to the Association or its agents. "Installment Contract" shall have the same meaning as set forth in subsection (e) of Section 1 of the Dwelling Unit Installment Contract Act.

ARTICLE XI

ADMINISTRATION PRIOR TO ELECTION OF
INITIAL BOARD OF DIRECTORS

Section 1. Association. Until the election by Owners of the Board of Directors, the same rights, titles, powers, privileges, trusts, duties, and obligations that are vested in or imposed on the Board of Directors by this Amended and Restated Declaration shall be held and performed by the Developer.

Section 2. Election of Initial Board. The election of the initial Board of Directors by the Owners shall be held not later than thirty (30) days after conveyance by Declarant of 50% of the Single Family Units, or three (3) years after the recording of this Amended and Restated Declaration, whichever is earlier. Developer shall give at least twenty-one (21) days notice of the meeting to elect the initial Board of Directors and shall upon request provide any Owner within three (3) working days of the request, the names, addresses, telephone numbers (if in the records of the Association), and weighted vote of each Owner entitled to vote at the meeting. Any Owner shall upon request be provided with the same information, within three (3) working days of the request, with respect to each subsequent meeting to elect members of the Board of Directors. If the initial Board of Directors is not elected by the Owners at the time established above, Developer shall continue in office for a period of thirty (30) days, whereupon written notice of his designation sent to all Owners entitled to vote at an election for members of the Board of Directors.

Section 3. Delivery of Records. Within sixty (60) days after the election of a majority of the Board of Directors other than Developer by Owners, Developer shall deliver to the Board of Directors:

(a) All original documents as recorded or filed pertaining to the community, its administration, and the Association, such as this Amended and Restated Declaration, the articles of incorporation, other instruments, annual reports, minutes, rules, and regulations and contracts, leases, or other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the Developer, or an officer or agent of Developer as being a complete copy of the actual document recorded or filed.

(b) A detailed accounting by Developer, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance, and operation of the community, copies of all insurance policies, and a list of any loans or advances to the Association which are outstanding.

(c) Association funds, which shall have been at all times segregated from any other moneys of the Developer.

(d) A schedule of all real or personal property, equipment, and fixtures belonging to the Association, including documents transferring the property, warranties, if any, for all real and personal property and equipment, deeds, title insurance policies, and all tax bills.

(e) A list of all litigation, administrative action, and arbitrations involving the Association, any notices of

governmental bodies involving actions taken or which may be taken concerning the Association engineering and architectural drawings and specifications as approved by any governmental authority, all other documents filed with any governmental authority, all governmental certificates, correspondence involving enforcement of any association requirements, copies of any documents relating to disputes involving Owners, and originals of all documents relating to everything listed in this subparagraph (e).

Section 4. Agreements. Any contract, lease, or other agreement made prior to the election of a majority of the Board of Directors other than Developer by or on behalf of the Owners, which extends for a period of more than two (2) years from the recording of this Amended and Restated Declaration, shall be subject to cancellation by more than 50% of the votes of the Owners, other than Developer, cast at a special meeting of members called for that purpose during a period of ninety (90) days prior to the expiration of the two (2) year period. At least sixty (60) days prior to the expiration of the two (2) year period, the Developer shall send notice to every Owner, notifying them of this provision, of what contracts, leases, and other agreements are affected, and of the procedure for calling a meeting of the members for the purpose of acting to terminate such contracts, leases, or other agreements. During the ninety (90) day period, the other party to the contract, lease, or other agreement shall also have the right of cancellation.

Section 5. Statute of Limitations. Pursuant to 765 ILCS 605/18.5(f)(6), the statute of limitations for any actions in law

or equity which the Association may bring shall not begin to run until the Owners have elected a majority of the members of the Board of Directors.

ARTICLE XII

RESALE OF UNITS

In the event of any resale of a Unit by an Owner other than Declarant, the Owner shall obtain from the Board of Directors and shall make available for inspection to the prospective purchaser, upon demand, the following:

(1) A copy of this Amended and Restated Declaration, other instruments, and any rules and regulations.

(2) A statement of any liens, including a statement of the account of the Unit setting forth the amounts of unpaid assessments and other charges due and owing.

(3) A statement of any capital expenditures anticipated by the Association within the current or succeeding two (2) fiscal years.

(4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specific project by the Board of Directors.

(5) A copy of the statement of financial condition of the Association for the last fiscal year for which such a statement is available.

(6) A statement of the status of any pending suits or judgments in which the Association is a party.

(7) A statement setting forth what insurance coverage is provided by the Association.

The principal officer of the Association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing within thirty (30) days of receiving the request. A reasonable fee covering the direct out-of-pocket costs of copying and providing such information may be charged by the Association to the Unit seller.

ARTICLE XIII

ERRORS AND OMISSIONS

Section 1. Omissions or Errors. If there is an error or omission in this Amended and Restated Declaration or other instrument of the Association, the Association may correct the error or omission by an amendment to this Amended and Restated Declaration or other instrument, as may be required to conform it to 765 ILCS 605/18.5, to any other applicable statute, or to this Amended and Restated Declaration. The amendment shall be adopted by vote of 2/3 of the members of the Board of Directors or by a majority vote of the Members at a meeting called for that purpose, unless the Amended and Restated Declaration specifically provides for greater percentages or different procedures.

Section 2. Ratification. If an omission or error or a scrivener's error in this Amended and Restated Declaration or other instrument is corrected by vote of 2/3 of the members of the Board of Directors pursuant to the authority established in Section 1 of this Article, the Board of Directors, upon written petition by Owners with 20% of the votes of the Association, received within 30 days of the board action, shall call a meeting of the Owners within 30 days of the filing of the petition to

consider the board action. Unless a majority of the votes of the Owners are cast at the meeting to reject the action, it is ratified whether or not a quorum is present.

Section 3. Affected Owners' Consent. The procedures for amendments set forth in Sections 1 and 2 of this Article cannot be used if such an amendment would materially or adversely affect property rights of the Owners unless the affected Owners consent in writing. This Section shall not restrict the powers of the Association to otherwise amend this Amended and Restated Declaration, the by-laws, or other instruments, but authorizes a simple process of amendment requiring a lesser vote for the purpose of correcting defects, errors, or omissions when the property rights of Owners are not materially or adversely affected.

Section 4. Correction by Court Action. If there is an error or omission in this Amended and Restated Declaration or other instruments that may not be corrected by an amendment procedure set forth above, then the Circuit Court in the County shall have jurisdiction to hear a petition of one or more Owners thereon or of the Association, to correct the error or omission, and the action may be a class action. The court may require that one or more of the methods to correct be submitted to the Owners to determine the most acceptable correction. All Owners must be joined as parties to the action. Service of process on Owners may be by publication, but the plaintiff shall furnish all Owners not personally served with process with copies of the petition

and final judgment of the court by certified mail, return receipt requested, at their last known address.

Section 5. Legal Requirements. Nothing contained in this Article shall be construed to invalidate any provision of this Amended and Restated Declaration authorizing the Declarant to amend an instrument prior to the latest date on which the initial members meeting must be held, whether or not it has actually been held, to bring the instrument into compliance with the legal requirements of the Federal National mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veteran Administration, or their respective successors and assigns.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Enforcement. These Covenants shall run with, and be binding upon all land which by Amended and Restated Declaration, as elsewhere herein provided for, is brought within these Covenants and shall inure to the benefit of and shall be binding upon the Association and all persons owning, leasing, subleasing, or occupying any such land and their heirs, executors, administrators, personal representatives, successors, and assigns. These Covenants may be enforced by the Association, which shall have the right to expend Association monies in pursuance thereof, and may also be enforced by the Owner of any Unit in the Community or any one or more of the aforesaid persons benefited thereby. If these Covenants are enforced by appropriate proceedings by any such Owner or Owners, such Owner

or Owners, if successful in such enforcement and if the Association had theretofore refused such enforcement, shall be reimbursed by the Association for all or any part of the cost incurred, but such reimbursement shall be solely in the discretion of the Board of Directors of the Association. Enforcement of these Covenants shall be by any proceeding at law, equity, or otherwise against any person or persons violating or attempting to violate any of these Covenants either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and failure by the Association or any Owner to enforce any of the Covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one or more of the provisions of these Covenants or portions thereof by judgment or court order shall in no way affect the validity of any of the other provisions or portions thereof, which shall remain in full force and effect.

Section 3. Terminology. The word "he" wherever used in this instrument, shall be deemed to be synonymous with the words "she," "it," and "they," and the word "his" shall be deemed to be synonymous with the words "her," "its," and "their." The word "person" may refer to an individual, corporation, partnership, or other legal entity except when the context provides otherwise.

Section 4. Duration. Subject to the provision of Section 5 of this Article, these Covenants shall remain in full force and effect for a period of thirty-five (35) years from the date

hereof, and thereafter they shall be deemed to have been automatically renewed for successive terms of ten (10) years except that at any time, and from time to time, they may be amended or terminated by the vote of the Owners of not less than sixty-seven percent (67%) of the Units then in the Association. Any termination or amendment of a material nature shall require the prior written approval of the County and of Eligible Mortgage Holders representing at least 51% of the votes of Units that are subject to mortgages held by Eligible Mortgage Holders. A change to any of the following shall be considered as material:

- (a) Voting Rights;
- (b) Increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) Reductions in reserves for maintenance, repair, and replacement of Common Open Space;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the general or limited Common Open Space, or rights to their use;
- (f) Redefinition of the boundaries of any Unit;
- (g) Convertibility of Units into Common Open Space or vice versa;
- (h) Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Units;

3603236

- (k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her unit;
- (l) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder; or
- (m) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

Any termination of the legal status of the project for reasons other than substantial destruction or condemnation must be approved by Eligible Mortgage Holders representing at least 67% of the votes of the Units then in the Association. Any amendment to these Covenants which relates to Common Open Space or the maintenance thereof shall require the approval of the County. Any such amendment or termination shall be effected by recording in the office of the Recorder of Deeds of the County a document executed by the required number of Owners, setting out such amendment(s) or stating that these Covenants shall be terminated or amended as provided therein. It shall be the duty of the Association to notify the County or Eligible Mortgage Holders (where applicable) and all Owners of any action under this Section by mail at least thirty (30) days prior to the date of any meeting called to decide any such action. Implied approval of an Eligible Mortgage Holder shall be assumed when the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal provided the notice was

delivered by certified or registered mail, with a "return receipt" requested.

Section 5. Powers retained by Declarant. A power coupled with an interest is hereby retained by and granted to Declarant, its successors, assigns or designees, as attorney-in-fact, to amend this Amended and Restated Declaration, the By-laws of the Association, or the Articles of Incorporation of the Association, for any of the following purposes: (a) compliance with requirements of the Veterans Administration, the Department of Housing and Urban Development, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, any successor to any of such organizations and any other federal, state or local governmental entity or agency; (b) correcting any typographic or scrivener's error; and (c) meeting requirements of the Internal Revenue Code as now, or hereafter amended, (i) relating to organizations exempt from tax or (ii) specifically exempting homeowners' association from any Federal income tax; provided that Declarant shall have no obligation to cause any such amendment to be made. The acceptance of each deed, mortgage or other instrument with respect to any Unit which is subject to these Covenants shall be deemed to be a confirmation of such power to such attorney-in-fact and shall be deemed to constitute a consent and agreement to and acceptance, confirmation and ratification of all such amendments, which shall be effective upon the recording in the office of the Recorder of Deeds of the County within which the Community is located of an appropriate

instrument, setting forth the amendment, and its authorization pursuant to this Section 5, which instrument shall be executed and acknowledged by Developer.

Section 6. Notices. Any notice or other communication required to be sent to any Owner or First Mortgagee under the provisions of this instrument shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner or First Mortgagee on the records of the Association at the time of such mailing. Notice to the Association shall be sent in the manner addressed to its President or Secretary at the addresses for such persons set forth in the Association's Annual Report filed with the State of Illinois, or to such other address of which the Association shall have notified the Unit Owners in the aforesaid manner.

Section 7. Captions. The paragraph captions in this instrument are for convenience only and do not in any way define, limit, describe or amplify the terms and provisions of this instrument or the scope or intent thereof.

Section 8. Professional Management Contracts. Declarant shall not directly or indirectly bind the Association to any professional management contract unless such contract includes a right of termination without cause that the Association can exercise at any time after transfer of control. Said right of termination shall not require any payment of any penalty or advance notice of more than ninety (90) days.

Section 9. County Ordinances Prevail. None of the covenants, conditions, restrictions or provisions of the Amended

and Restated Declaration are intended to supersede or prevail over the ordinances of general or specific applicability of the County as they currently exist or as they may be amended from time to time, and in the event of any conflict, the applicable ordinances of the County shall supersede and prevail over the covenants, conditions, restrictions and provisions of this Amended and Restated Declaration.

IN WITNESS, FIRST MIDWEST TRUST CO., N.A., as trustee aforesaid, has caused its corporate seals to be affixed hereunto and has caused its name to be signed to this instrument by its _____ President and attested by its _____ Secretary this 12th day of October, 1994.

FIRST MIDWEST TRUST CO., N.A., as trustee under Trust No. 484

By Kara H. Ok _____
President

Attest: Way B. Skay _____
Secretary

SEE TRUSTEE'S RIDER ATTACHED HERETO AND MADE A PART HEREOF

RIDER ATTACHED TO AND MADE A PART OF AN INSTRUMENT DATED October, 1994 UNDER TRUST NO. 484

This instrument is executed by FIRST MIDWEST TRUST COMPANY, National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by FIRST MIDWEST TRUST COMPANY, National Association, are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against FIRST MIDWEST TRUST COMPANY, National Association, by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

3603236

3603236

3603236

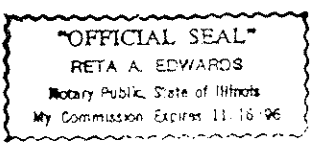
STATE OF ILL)
) SS
COUNTY OF LAKE)

I, RETA A. EDWARDS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that LAURA GILSON and MARY STRANG, personally known to me as the VICE President and Secretary respectively, of First Midwest Trust Co., N.A., personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the same instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by said corporation as their free and voluntary act and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and seal this 14th day of October, 1994.

Retta A. Edwards
Notary Public

My commission expires: 11-16-96



Prepared by and Return to:

Virginia M. Harding
Gould & Ratner
222 North La Salle Street
Suite 800
Chicago, Illinois 60601
Phone: (312) 236-3003

3603236
45

3603236

EXHIBIT "A"

TO

AMENDED AND RESTATED DECLARATION

Lots 1 through 92, inclusive, Out-Lot 96, Out-Lot 97 and Out-Lot 98 in Country Towne II as depicted on the Final Plat of Subdivision recorded in the Office of Recorder of Deeds for Lake County, Illinois on February 28, 1994 as Document No. 3498430.

3603236

4/6