

Ⓟ

2001R23009

PREPARED BY AND  
RETURN TO:

05-24-2001 12:19 PM

Sorling, Northrup, Hanna, Cullen  
and Cochran, Ltd.  
R. Lee Allen, of Counsel  
Suite 800 Illinois Building  
P. O. Box 5131  
Springfield, IL 62705  
Telephone: (217) 544-1144

SANGAMON COUNTY  
ILLINOIS

37.00  
19 CHRISTIE

MARY ANN LAMM  
SANGAMON COUNTY RECORDER

**OWNER'S DECLARATION OF RESTRICTIVE COVENANTS  
IN MILL CREEK ESTATES, PHASE II, SECOND PLAT  
ADDITIONS TO THE CITY OF SPRINGFIELD, ILLINOIS**

Dated: May 17, 2001

*Union Planters Bank, N.A. F/W/A*

*DJA*

WHEREAS, MAGNA BANK, N.A., f/k/a Magna Trust Company, as Trustee under Trust No. 01-90-0199-00 dated May 11, 1995, hereinafter referred to as "Declarant", as owner of the premises described in Article II hereof, does hereby subdivide said tract of land and does designate such subdivisions Mill Creek Estate, Phase II, Second Plat, being additions to the City of Springfield, Illinois, part of the Northeast Quarter of Section 2, Township 15 North, Range 6 West of the Third Principal Meridian, Sangamon County, Illinois, for the purpose of the sale of lots therein by description and number appearing and designated on said plats. Streets and parkways as marked and identified thereon are dedicated to public use as thoroughfares and for use incident to the installation of sewers, water mains and all other public utility purposes. Easements as marked and identified thereon are dedicated for use incident to the installation of sewers, water mains and all other public utilities and for use in providing surface water drainage; and

WHEREAS, Declarant is the Owner of the real property described in Article II and desires to create thereon additional subdivisions with permanent common areas for the benefit of said subdivisions; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common areas and to that end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and the subsequent owners thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned

the powers of maintaining and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Illinois, as a not-for-profit corporation, the Mill Creek Estates, Phase II, Homeowner's Association, Inc., for the purpose of exercising the function aforesaid;

NOW THEREFORE, Declarant hereby declares that the real property described in Article II of this Declaration is and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

### ARTICLE I

(a) "**Association**" shall mean and refer to Mill Creek Estates, Phase II, Homeowner's Association, Inc., an Illinois not-for-profit corporation, its successors and assigns.

(b) "**Properties**" shall mean and refer to the real estate described in Article II.

(c) "**Common Areas**" shall mean and refer to all real and personal property, facilities and improvements now or hereinafter owned by the Association for the common use and enjoyment of the owners.

(d) "**Lot**" shall mean and refer to a portion of the property intended for independent ownership and use as may be set out in this declaration and shall be shown on the Plat of Subdivision.

(e) "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless and until such person acquired title pursuant to foreclosure or any such proceeding or conveyance in lieu of foreclosure.

(f) "**Member**" shall mean and refer to every owner who therefore is a member of the Association.

(g) "**Developer**" shall mean and refer to the Declarant and its assigns if such assigns should acquire a portion of the land described in Article II, from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.

(h) "**Area of Common Responsibility**" shall mean and refer to the Common Areas together with those areas, if any, upon a Lot the maintenance, repair or replacement of which is made the responsibility of the Association by this Declaration.

(i) "**Board**" shall mean and refer to the Board of Directions of the Association.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

**Section 1. Property Subject to Declaration.** The real property which is, and shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to this Declaration is located in the City of Springfield, Illinois, and is more particularly described in the Plat of Subdivision of Mill Creek Estates, Phase II, Second Plat, Sangamon County, Illinois, attached hereto and incorporated herein by reference.

**Section 2. The Common Areas.** The Common Areas owned by the Association as shown on the Plat, attached hereto and incorporated herein by reference.

**ARTICLE III**

**Section 1. Board of Directors.** The Directors named in the Association's Articles of Incorporation constitute the Association's first Board which shall hold office and which shall adopt Bylaws consistent with the terms of this Declaration. The Board shall hold and exercise all of the rights, duties, powers and functions of the Board set forth in this Declaration, and the By-Laws, until the first election of Directors by the Members of the Association at the first annual membership meeting.

The Board shall have all powers for the conduct of the affairs of the Association which are enabled by law, the Bylaws or the Articles of Incorporation ("Governing Documents") which are not specifically reserved to Members or the Developer by said Governing Documents. The Board shall exercise its powers in accordance with the Governing Documents. Without limiting the generality thereof, the Board shall have the power and obligation to perform the following duties:

(a) **Real and Personal Property.** To acquire, hold, own, improve, maintain, manage, lease, insure, pledge, convey, transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association, except the acquisition, mortgaging or disposal of Common Area and/or improvements shall be subject to the provisions of Article II and Article IV, respectively;

(b) **Rule Making.** To establish, modify and enforce rules and regulations for the use of the properties as provided herein, and to review, modify and approve architectural standards as recommended by the Architectural Control Committee;

(c) **Assessments.** To fix, levy and collect assessments as provided in Article VI;

(d) **Easements.** To grant and convey easements to the Common Area as may become necessary and as provided in Article VIII;

(e) **Employment of Agents.** To employ, enter into contracts with, delegate authority to and supervise such persons or entities as may be appropriate to manage, conduct and perform the business obligations and duties of the Association;

(f) **Enforcement of Governing Documents.** To perform acts, as may be reasonably necessary or appropriate, including bringing suit, causing a lien to be foreclosed or suspending membership rights, and to enforce or effectuate any of the provisions of the Governing Documents; and

(g) **Membership Meetings.** To call the first annual meeting of the Members of the Association, within 180 days after the first to occur of (i) all Lots in all Plats of Phase II having been transferred from Declarant to Class "A" Members, or (ii) the Developer voluntarily surrendering its Class "B" membership rights, by written notice to all Class "A" members. Written notice of the first annual membership meeting shall be sent to the Members at least ten (10) days in advance of such meeting. Notwithstanding anything to the contrary in this Declaration provided, until such time as the first to occur of (i) the date of said first annual membership meeting, or (ii) Developer voluntarily surrenders its Class "B" membership rights by written notice to all Class "A" members, no Class "A" members shall have any voting rights, and the right of each such Class "A" member to vote on any matter is hereby denied until such first annual membership meeting. Each annual meeting of the Members of the Association following such initial annual membership meeting shall be held at the time and place specified in the By-Laws of the Association.

#### **ARTICLE IV PROPERTY RIGHTS**

**Section 1. Owner's Easement of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities;

(b) The right of the Association to suspend the voting rights and right to use the common areas and facilities by any Owner for any period during which any assessment of the Association against said Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's published rules and regulations for the duration of the infraction, and for an additional period thereafter not to exceed sixty (60) days;

(c) The right of the Declarant with regard to the Properties which may be owned with the Properties to any public agency, authority or utility for such purposes as will benefit the Properties or parties thereof and Owners of Lots contained therein;

(d) The right of the Association by a majority vote of all of the members of the Board to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common area, or any portion thereof, for repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage covering all or any portion of the Common area; provided, however, that the lien and encumbrance of any such mortgage given by the

Association shall be subject and subordinate to any and all rights, interest, options, easement and privileges herein reserved or established for the benefit of Declarant or any Owner, or the holder of any mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the properties;

(e) The right of the Association to dedicate or transfer all or any portion of the Common area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless such dedication or transfer has been approved (i) by at least two-thirds (2/3) percent of the votes which the Class "A" members present or represented by proxy are entitled to cast at a meeting duly called for such purpose, and (ii) by the Class "B" membership of the Association, so long as such membership shall exist; and

(f) The right of the Association with regard to the Properties which it may own to grant easements to Declarant; any public agency, authority or utility for such purposes as benefit the properties or portions thereof and Owners or Lots contained therein.

## ARTICLE V ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every person or entity who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No owner, whether one or more persons, shall have more than one membership per Lot. In the event of multiple Owners of a Lot, votes and right of use and enjoyment shall be as provided herein. 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. The rights and privileges of membership including the right to vote and to hold office may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast nor office held for each Lot.

**Section 2. Voting.** The Association shall have two classes of membership, Class "A" and Class "B", as follows:

(a) **Class "A".** Class "A" members shall be all Owners with the exception of the Developer. Class "A" members shall not be entitled to vote on any matter coming before the Association until the date of the first annual membership meeting. At such time that Class "A" members are entitled to vote hereunder, Class "A" members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1 hereof. When more than one persons holds such interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise in writing the Secretary prior to any meeting. In the absence of such advise, the Lot's vote shall be suspended in the event more than one person seeks to exercise it. If a Lot is owned by a corporation, partnership or trust, such entity shall designate in writing the person authorized to vote on behalf of such entity;

(b) **Class "B"**. The Class "B" member shall be the Developer. The Class "B" member shall be the sole voting member of the Association until such time as (i) the Class "B" member no longer holds the interest required for membership by Section 1, Article V or, (ii) at such time as Developer voluntarily surrenders its Class "B" membership rights, by written notice to all Class "A" members, following which the Class "B" membership shall cease and become converted to Class "A" membership.

## **ARTICLE VI COVENANT FOR MEMBERSHIP FEE AND ASSESSMENTS**

**Section 1. Purpose of Assessments.** The assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environment of the properties for the common benefit and enjoyment of the Owners and occupants of residences, improvements and maintenance of the common areas and other common facilities and areas of common responsibility including but not limited to repair, replacement and additions thereto, and for the cost of labor, equipment and materials, management and supervision thereof, all as may be authorized from time to time by the Board of Directors.

**Section 2. Creation of Lien and Personal Obligations of Assessments.** Each Owner of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or other conveyance agree to pay the Association:

- (a) An entering membership fee,
- (b) Annual assessments following such time said Owner becomes a voting Class "A" member as provided for in Article V, Section 2,
- (c) Special assessments, and/or
- (d) Individual assessments against any particular lot shall be established and collected pursuant to the terms of this Declaration, including but not limited to reasonable fines as may be imposed herein.

All such assessments, together with interest thereon, late charges and costs of collection thereof, including reasonable attorney's fees (i) shall be a charge and a continuing lien upon the Lot against which any such assessment is made, and (ii) shall also be the joint and several personal obligation of each person who was an Owner of said Lot at the time when any such assessment made against said Lot fell due.

No owner shall be entitled to a refund of any portion of the entering membership fee, or any annual or special assessment, or installment of a special assessment, paid by him, even though said Owner's membership in the Association terminates prior to expiration of the period covered by any such assessment or installment theretofore paid by him. No owner may avoid or escape liability for the entering membership fee, or any annual or special assessment, or individual assessments, imposed or levied pursuant to this Article VI by abandonment of his Lot or by attempted waiver of

non-user of the benefits of membership in the Association, or of the Common Areas and facilities.

**Section 3. Entering Membership Fee.** Each home owner-occupant or entity who holds an ownership interest in a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association within ten (10) days after first becoming a Member of the Association, an entering membership fee of One Hundred Dollars (\$100.00) to be used by the Association for the same purposes for which annual and special assessments may be levied, provided, however, that no home owner-occupant or entity shall be required to pay the entering membership fee more than once, without regard to the number of Lots in which said home owner-occupant from time to time may hold an ownership interest, and without regard to the number of times said Owner may again become a Member of the Association after said Owner's initial membership therein terminates.

**Section 4. Annual Assessment.** At such time there is no longer a Class "B" member, it shall be the duty of the Board at least thirty (30) days prior to the Association's first annual meeting and each annual meeting thereafter to prepare a budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the proposed budget and the assessments to be levied against each Lot for the following year to be delivered to the last known residence address of each member at least thirty (30) days prior to the meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of at least fifty-one percent (51%) of the total Association voting membership who are entitled to vote hereunder. Notwithstanding the foregoing, however, in the event the members disapprove the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

**Section 5. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy in any calendar year, a special assessment for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the total membership who are entitled to vote hereunder who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days in advance of the meeting setting forth the purpose of the meeting. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.

**Section 6. Individual Assessments.** In the event that the need for maintenance or repairs of the Common Areas is caused through the willful or negligent act of an Owner, his family, Lessee's guests or invitees or in the event that an Owner of any Lot shall fail or refuse to maintain such Lot, or repair or replace the improvements located thereon in a manner satisfactory to the Board, or to the Architectural Control Committee, then, the Association, after approval by vote of 75% of all members of the Board, shall give such written notice of the Association's intent to provide the required maintenance, repair or replacement, at such Owner's sole cost and expense.

The Owner shall have fifteen (15) days within which to complete said maintenance, repair or replacement, or if such work cannot be accomplished within said fifteen (15) day period, to commence said maintenance, repair or replacement. If such Owner fails or refuses to discharge properly said obligations as outlined above, the Association shall have the right, through its duly authorized agents or employees to enter at reasonable hours of any day, upon said Lot to perform such work. The Association may levy an individual assessment upon any Lot, except as provided in Section 7 of this Article, to cover the cost and expense incurred by the Association in fulfilling the provisions of this section.

**Section 7. Exemption from Assessment.** The following property subject to this declaration shall be exempt from all assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by any public authority and devoted to public use;
- (b) All Common Area as defined in Article I hereof; and
- (c) Any vacant land or Lots owned by a Class "B" member unless a Lot is occupied as a residence. Any such land or lots owned by a Class "B" member shall be maintained by such Class "B" member at such member's sole cost and expense.

**Section 8. Assessment Due Dates.** The annual assessment installments for each Lot shall commence on the first day of the month following the last to occur of (i) the transfer of ownership of the Lot from Declarant to the Owner, and (ii) first annual meeting of the Association, and shall become due and payable on the first day of each month thereafter. The method of payment and due dates for special assessments shall be as established by the Association in accordance with Section 5 of this Article VI. The method of payment and due dates for individual assessments shall be as determined by the Board in accordance with Section 6 of Article VI. The Association shall prepare a roster of lots and assessments applicable thereto, which shall be open to inspection by any member upon reasonable notice to the Board.

**Section 9. Computation.** Annual and special assessments shall be charged equally against each Lot.

**Section 10. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. Any assessment or assessment installment delinquent for a period of more than ten (10) days may incur a late charge in an amount as the Board may determine from time to time. The Association shall cause a notice of delinquency to be given to any member who has not paid within the ten (10) days following the due date. If the assessment or assessment installment is not paid within thirty (30) days, the Association may declare the entire balance of such assessment for the remainder of such annual period due and payable in full, and a lien shall include the late charge, interest on the principal amount due at the maximum allowable rate from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts or to foreclose its lien. Each Owner, by acceptance of a deed



or other conveyance of a Lot, vests in the Association or its agents the right and power to bring all actions against such Owner or Owners personally for the collection of such charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, abandonment of the Lot.

**Section 11. Subordination of Lien.** The lien provided for in this Declaration shall be subordinate to the lien of any first mortgage now or hereafter placed upon the Lot subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

**Section 12. Estoppel Certificates.** The Association shall, upon request of a member, at any reasonable time, furnish an Estoppel Certificate signed by an officer or other authorized agent of the Association, setting forth the amount of unpaid assessments and/or other charges, if any, against said member's Lot, up to a given date or time of conveyance. Also, said estoppel certificate will certify as to whether or not there are violations of the governing documents on the Lot as of the date of preparation of the certificate. Said certificate shall be delivered to the place of closing, and all outstanding assessments and other charges, if any, and a reasonable charge, as determined by the Board, to cover the cost of providing such certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

## ARTICLE VII EASEMENTS

**Section 1. Utility Easements.** There is hereby created an easement upon, across, over, through and under the properties for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on the property, to excavate for such purposes and to fix and maintain wires, circuits and conduits on, in and under the land providing such company restores disturbed areas to the condition in which they were found.

**Section 2. Easements for Drainage.** For a period of two years from the date of conveyance of each Lot, the Developer reserves an easement and right on, over and under the ground within that Lot to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to

all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

**Section 3. Detention Pond.** There is a pond for detention water as shown on the Plat of Subdivision. All members of the Association shall have access to the detention pond from the public area as depicted on the plat. The private lots surrounding the detention pond are reserved for private use by the owner of that lot. The cost of maintaining the detention pond shall be included in the Association budget and included in the annual assessment.

**Section 4. Construction Easements and Rights.** Notwithstanding any provision of this Declaration, so long as the Developer or participating builders are engaged in developing or improving any portion of the properties, such persons shall have an easement of ingress, egress and use over any lands not occupied by an Owner for (1) movement and storage of building materials and equipment, (2) erection and maintenance of directional and promotional signs, and (3) conduct of sales activities. Such easement shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of the properties.

**Section 5. Easement to Inspect.** There is hereby created an easement in favor of the Association for ingress and egress on any Lot to inspect such property for alleged violations of the Governing Documents, based on formal, written complaints, and/or compliance with architectural standards and/or approved plans for alterations and improvements.

**Section 6. Easement for Landscaping and Related Purposes.** There shall be and is hereby reserved to the Developer for as long as it retains its rights as Developer, a non-exclusive easement over all Lots and Common Areas (whether public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, street lights, entrance features and/or "theme areas", lighting, stone, wood, or masonry wall features and/or related landscaping.

## ARTICLE VIII RESTRICTIVE COVENANTS

**Section 1. Land Use.** The properties committed to this Declaration as described in Article II shall be used for residential purposes only, and no trade or business of any kind may be carried on therein.

**Section 2. Nuisances.** No nuisance or offensive activity shall be permitted upon the properties as to jeopardize property values or be detrimental to the enjoyment, comfort and well-being of the members. Each Owner shall refrain and prohibit any act or use of a Lot which could reasonably cause embarrassment or annoyance to other Owners or occupants, and the Board shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

**Section 3. Architectural Standards.** No construction or erection of any nature whatsoever shall be commenced or maintained upon any part of the properties except as is installed

or approved by the Declarant in connection with the initial construction of buildings on the properties, unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved as to harmony of external design and location in relation to surrounding structures and topography, in writing by the Board, or by an Architectural Control Committee composed of three or more representatives appointed by the Board. A land engineer of the Architectural Control Committees choice shall approve setback of the main residence and set the grade prior to the commencement of construction. The Architectural Control Commission shall have the right to prevent the clearing of the Lot and subsequent excavation and grading prior to construction of the main residence upon such a Lot according to the following:

Prior to the construction of the main residence, a lot owner is required to seek approval of building plans through the Architectural Control Committee. The committee shall consider quality of workmanship and materials, external design, location with respect to topography and finished grades, elevations and building lines, location of driveways and walk ways and the preservation of certain existing trees and wooded areas. To comply with this requirement, each lot owner, prior to any construction on the lot, shall first submit a preliminary plan to the Architectural Control Committee stating in general the type, style, size and general design of the residence to be constructed, along with its location on the building site and the name of the lot owner's designated General Contractor. After approval in writing of the preliminary plan by the Architectural Control Committee, the lot owner shall then submit two (2) sets of the actual plans and specifications which shall include the floor plan, exterior color schemes, and materials, elevations and actual plat plan showing distances from easements and lot lines and the location of the finished grade height of the first floor. The lot owner agrees that he/she will not obtain a building permit until the Architectural Control Committee shall approve or disapprove in writing any plan submitted to it or any member of the committee within seven (7) calendar days of the actual submission of the plan.

No alterations, repairs, excavations, fences, awnings, patio cover, swimming pool, light pole or fixture, mailbox, landscaping or other work which in any way alters the exterior of any Lot or Common area or the improvements located thereon shall be commenced, made or done on such property without the prior written approval of the Board or the Architectural Control Committee. In the event said Board, or its designated committee, fails to approve or to disapprove such construction, additions or alterations within seven (7) days after said plans and specifications shall have been submitted to it, approval will not be required and this Article IX will be deemed to have been fully complied with.

(a) No Lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot or lots or part or parts thereof exceeding two and one-half stories in height.

(b) The total floor area of the main structure, exclusive of basement, one story open porches and garages shall:

(i) Have a ground floor area of not less than 1850 square feet for a one story dwelling;

(ii) Have a ground floor area of at least 1250 square feet with a total of at least 2200 square feet for a one and one-half story, two story bi-level or tri-level;

(iii) All driveways located upon a Lot shall be constructed of concrete. Driveways shall be no less than 20 feet in width; and,

(iv) Garages shall be attached to residence and be either two or three car in size.

(c) No building, exclusive of eaves and steps, shall be located on any Lot nearer to the front Lot line or side line than the minimum building line shown on the recorded plat of subdivision, and nearer than seven (7) feet to any interior lot line.

Interior lot lines as used herein means the lot lines having no street frontage shown on the recorded plat of said subdivision, except when a single tract in said subdivision consists of more than one lot contiguous to all or part of another lot with the ownership of all of such tract in common, then the exterior lines of such tract that has no street frontage shall be considered to be the entry or lot lines for all of such tract.

(d) No residential building shall be permitted to remain on any lot or lots or parts thereof, having an area of less than 10,000 square feet, or width of less than 80 feet at the front building line, shown on the recorded plat of said subdivision.

The grade line of any lot shall be maintained to correspond with that of surrounding property. All grade lines will be set by the engineering company employed by the Developer prior to any construction. The scale of the lot shall not be altered so as to keep water from flowing as designed.

(e) No trailer, basement, tent, shack, garage, barn or other outbuilding placed on any lot shall, at any time, be used as a residence, temporarily or permanently.

All vacant lots shall be kept free of weeds and shall not be permitted to fall into an unsightly condition. Any vacant lot which falls into an unsightly condition may be mowed and cleaned up by the Association at the expense of the owner.

(f) No outside television or radio aerial or antenna, or other serial or antenna or dish or signal receptacle, for reception or transmission, shall be maintain on the exterior of any lot, living unit, or the Common Area without the prior written consent of the Architectural Control Committee.

(i) Swimming pools on lots containing single family residences shall not be nearer than 10 feet to any lot line and must be located in the rear of the single family residence. If located above ground, pool must be fenced so as not to be visible from any angle.

(ii) Stationary outside clotheslines will not be permitted and clothes

hanging devices such as lines, poles, frames, etc. shall not be stored outside when not in use.

(g) No spirituous, vinous or malt liquor shall be sold, or kept for sale, on any lot.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except dogs, cats or other generally recognized household pets may be kept; provided that they are not kept, bred or maintained for any commercial purposes. Such domestic pets shall not be permitted to cause or create a nuisance, disturbance or unreasonable amount of noise which may affect any resident or other person on the owner's lot or must be on a leash held by a person when allowed upon the Common Area. Notwithstanding any other provision to the contrary, the Architectural Control Committee may adopt binding rules and regulations from time to time pertaining to the keeping of any and all pets upon the properties (including the inside of a residential building) when the Architectural Control Committee determines such action to be in the best interest, well being and enjoyment of any and all of the residents of the Mill Creek Estates Subdivision, all plats.

(i) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become any annoyance or nuisance to the neighborhood, disturb the peace and quiet thereof, or annoy any occupant of the neighboring property.

(j) No lot, or any part hereof, shall be used, either temporarily or permanently, to sell, store or accumulate used cars, parts therefrom or junk of any kind or character whatever. No owner, tenant, guest or other person shall park, store or keep on any lot or Common Area any commercial vehicle, boat or other water craft, motor home, trailer, camper or other transportation devices of any kind; provided, however, that an Owner or tenant may park his other privately owned automobile in such Owner's or tenant's garage. No Owner, tenant or other person shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. Notwithstanding any provisions heretofore stated in these covenants and restrictions, the Architectural Control Committee shall have the power and authority from time to time to adopt additional rules regarding the parking and storage of vehicles.

(k) Rubbish, trash, garbage or other waste shall be kept in sanitary containers, and shall not be stored, kept, deposited or left on any lot or any other part of the properties, except such garbage and rubbish which shall necessarily accumulate from the last garbage and rubbish collection. Sanitary containers shall not be permitted to remain in public view except on days of collection.

(l) No sign of any kind shall be maintained or displayed on any lot except one sign of not more than one (1) square foot in area, identifying the occupants of the dwelling, one sign of not more than ten (10) square feet in area advertising the property for sale or rent, and signs used by contractors during the construction of any improvements thereon.

(m) The Architectural Control Committee shall have the right and power to prescribe and enforce uniform mail receptacles throughout the Subdivision.

(n) From time to time the Association shall adopt additional rules and amend existing rules, including but not limited to rules to regulate potential problems relating to the use of the Properties and the well-being of the residents, tenants, guests, and invites. Such additional rules may only be adopted or amended by a two-thirds vote of the Members, following a hearing for which due notice has been provided to all lot owners of record. As such additional rules and any subsequent amendments hereto shall be furnished in writing to all lot owners of record prior to the effective date of such rules and shall be binding on each lot owner and all actual residents and their guests when furnished in writing. Copies of such rules may also be filed for record with these covenants and when files, shall become a part hereof.

(o) Any fencing construction on any lot shall conform to the City of Springfield ordinances; however, no fencing shall be permitted in front yards. All fences must be erected at least six inches inside property or lot lines.

(p) There shall be installed and planted upon each Lot and maintained by each lot owner landscaping as may be approved by the Architectural Control Committee and which shall be in an amount of not less than \$500.00 exclusive of sod. Owner shall not destroy any trees that already exist on the lot unless such trees hinder construction of the residence being built. If no trees exist on the lot, the owner shall plant at least two trees in the front yard. Owner shall sod front and side yards and seed or sod back yards within thirty (30) days of the conclusion of construction.

(q) During cleaning and construction, until all exposed dirt from excavation has been removed from the Lot or brought to an approved final grade surrounding the dwelling unit and until the Lot is permanently landscaped with vegetation or landscaping material, the Lot owner shall take such steps as are necessary to prevent the erosion and washing of soil from the Lot.

(r) Soils, mud and landscape waste carried from the Lot onto other properties and Common Areas such as easements, rights of way and roadways, by erosive forces or by vehicles leaving a construction site, shall be cleaned up daily or as necessary, at the expense of the Lot owner.

(s) The contractor is responsible for putting in sidewalks. After the construction of the sidewalk in front of a lot and acceptance by the City Engineer or his representative, the lot owner shall be responsible for replacing at his own expense, any and all cracked sections of said sidewalk adjacent to his Lot.

(t) All construction of a dwelling by a home owner-occupant must be diligently pursued to completion within a one year period. All construction of a dwelling by a contractor must be completed within two (2) years. No building shall be occupied for living purposes which is not functionally complete throughout and which is not complete in detail

as to the exterior.

## **ARTICLE IX INSURANCE AND INDEMNIFICATION**

**Section 1. Common Area Insurance.** The Board shall have the authority to and shall obtain insurance for the Common Areas and all improvements situated thereon, and for any other real or personal property of the Association against loss or damage by fire and such other hazards as the Board may deem desirable to insure against, for the full insurable replacement cost of said Common Areas, improvements situated thereon and other real and personal property of the Association. The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death to persons, and property damage, in such limits as the Board shall deem desirable, insuring the Association, its Directors, officers, committee members, employees, and agents from liability in connection with Common Areas, improvements located thereon, and other real and personal property of the Association, and insuring the Directors, officers and committee members of the Association from liability for good faith acts or omissions beyond the scope of their respective authorities. Such insurance coverage shall include cross-liability claims of one (1) or more insured parties against other insured parties. Premiums for all such insurance shall be a common expense of the Association.

**Section 2. Indemnification.** The Directors, officers and committee members of the Association shall not be liable to any Owner or any Member, or any person claiming by or through any such Owner or Member, for any act or omission to act in the performance of their duties, and the Association shall indemnify all such directors, officers and committee members from all claims, demands, actions and proceedings, and any expense in connection therewith, except if such Director, officer or committee member shall be adjudged in any such action or proceeding to be liable for willful misconduct in the performance of his duties.

## **ARTICLE X ENFORCEMENT AUTHORITY AND PROCEDURE**

**Section 1. Authority.** The Board shall be authorized and empowered to:

(a) make and enforce reasonable rules and regulations governing the conduct, use and enjoyment of the properties;

(b) impose reasonable fines, which shall constitute a lien upon the Lot of a member, and/or suspend such member's right to use the Common Areas and the right to vote, for not more than thirty (30) days, or such time as a violation may continue and sixty (60) days thereafter for violation of this Declaration, the Bylaws or any rules and regulations which have been duly adopted by the Association;

(c) begin any action in any court on behalf of the Association and all owners to abate any nuisance, or otherwise to protect the values and integrity of the community.

**Section 2. Procedure.** The Board shall not impose a fine, suspend voting, begin court

action or infringe upon any other rights of a member or other occupant for violation of rules unless and until the following procedure is followed:

(a) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period, not less than ten (10) days, during which the violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of sanction after notice and hearing if the violation is not continuing.

(b) **Notice.** Within twelve (12) months of such demand, if the violations continue past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statements, evidence and witnesses on his or her behalf; and

(iv) The proposed sanction to be imposed.

(c) **Hearing.** The hearing shall be held in executive session pursuant to this notice affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

## ARTICLE XI GENERAL PROVISIONS

**Section 1. Articles and Bylaws of the Association.** The Articles of Incorporation and Bylaws of the Association have been appended hereto and by this reference are incorporated herein and made a part hereto.



**Section 2. Severability.** If any provisions of this Declaration or the Bylaws of the Association or any section, sentence, clause, phrase or word or the application thereof in any circumstance, is held invalid by the judgment or order of any court of general jurisdiction, the validity of the remainder of the Declaration and said Bylaws, and the validity of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby.

All applicable restrictions, covenants, laws, and ordinances of the County of Sangamon or, if applicable, the City of Springfield, shall be considered a part of these restrictions and covenants and nothing herein shall be construed to approve or permit anything prohibited by law or such ordinance.

**Section 3. Title-holding Trust.** In the event title to any Parcel is conveyed to a title-holding trust, under the terms of which trust the powers of management, operation and control of said Parcel remain vested in the trust beneficiary or beneficiaries thereunder the Beneficiaries shall be deemed the Owner or Owners of said Parcel and subject to all of the terms and provisions of this Declaration and the Bylaws of the Association. No claims shall be made against any such title-holding trustee personally for payment of any entering membership fee, assessment, lien or other charge created by this Declaration or said Bylaws, and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such entering membership fee, assessment, lien or other charge, provided, however, that the amount of such entering membership fee, assessment, lien or other charge shall continue to be a charge and lien upon each Parcel conveyed to such title-holding trust, and the joint and several personal obligation of the beneficiaries of said trust at the time any entering membership fee, assessment, lien or other charge with respect to any such Parcel become due and payable, notwithstanding any transfers of the beneficial interest of said trust, or any transfers of title to any such Parcel.

**Section 4. Notice of Sale, Lease or Mortgage.** In the event an Owner sells, leases or "executes a contract for deed" of the Owner's property, the Owner will be required to give to the Association in writing the name of the purchaser or lessee of the property.

**Section 5. Right of Declarant – Indemnification.** For such time as the Declarant or assigns shall hold Class "B" votes, or has an interest in any portion of the property described in Article II, Section 1, the Association shall not impose the development activities thereon, and the Association shall indemnify Declarant against any and all expenses, including reasonable legal fees imposed upon the Declarant in connection with any action, suit or other proceeding (including settlement of any such suit or proceeding) to which he may be made a party, if such action or suit is brought by any member or group of members. Any such member or members who shall have a grievance of any kind or nature against the Declarant in respect to the properties or the Development thereof, shall file such grievance in writing with the Association.

(a) **Hearing.** If the Board determines the grievance to be a matter of sufficient substance it shall give not less than a ten (10) day written notice to Declarant, outlining, the nature of the grievance and the name or names of the member or members who have filed such grievance, and establishing a time and date of the hearing to be conducted by the Board, in executive session, with each of the grieved parties in attendance.

(b) **Professionals Appointed.** If the parties fail to mutually agree upon a solution of the matter, the Board upon behalf of such member or members, and the Declarant shall each select a professional as their respective representatives to analyze the area or areas of contention and to make recommendations at a subsequent hearing in executive session, upon no less than ten (1) days written notice.

(c) **Arbitration.** If the professionals are unable to resolve the matter, it shall then be submitted to the American Arbitration Association for settlement, which determination shall become final and finding upon the parties.

(d) **Protection of Values.** The provisions of this Section 5 are for the benefit of the Declarant and all owners and members as a vital means of avoiding adverse publicity associated with legal action and court proceedings which can diminish sale and resale value of all lots and homes within the properties.

**Section 6. Amendments.** The covenants and restrictions of this Declaration may be amended by an instrument signed by not less than seventy-five (75%) of the Class "A" and "B" then entitled to vote hereunder, acknowledging that until such time as the first annual membership meeting, Class "A" members shall have no votes. Any amendment must be properly recorded in the public records of Sangamon County, Illinois. Notwithstanding the provisions of this Section 6, the covenants and restrictions relating to maintenance of Common Areas shall not be amended without written approval of the City of Springfield Engineer.

**Section 7. Duration.** The covenants and restrictions of this Declaration shall run and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at the expiration of any such period the covenants and restrictions are expressly terminated by an instrument signed by the Owners of not less than seventy-five (75%) of the Class "A" and "B" members then entitled to vote acknowledging that until such time as the first annual membership meeting, Class "A" members shall have no vote, and such termination is approved by a Resolution of the City Council and City of Springfield, Illinois, and be recorded in order to become effective.

**Section 8. Exculpatory Clause.** It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee which in form purporting to be the representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Trustee and any of the beneficiaries under said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS WHEREOF, the undersigned Declarant and Owner has caused this instrument

