

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE TOWNHOMES AT CITADEL ON THE POND

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE TOWNHOMES AT CITADEL ON THE POND

THIS DECLARATION is made this 15th day of February, 1995 by BANK ONE, CHICAGO, N. A., not personally, but as Trustee under Trust Agreement dated November 23, 1994 and known as Trust No. R-3981 (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the title holder of that certain real property situated in the Village of Westmont, Du Page County, Illinois, being commonly known as the CITADEL ON THE POND TOWNHOMES and legally described in Exhibit "A" appended hereto and made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, the Property will consist of one hundred forty-five (145) Townhome Lots (as said terms are hereinafter defined) to be conveyed to individuals who will be purchasing residential single family attached homes to be constructed thereon; and

WHEREAS, the Property also consists of Common Areas, being landscaped areas, driveways, streets, street lights, private roadways, any fencing, walkways, patios, mailbox stations, monument signage and a storm sewer detention system, all as located outside of and between the Townhome Lots (as hereinafter defined), legally

described in Exhibit "B"), appended hereto and made a part hereof (hereinafter referred to as the "Common Areas"); and

WHEREAS, Declarant intends to grant certain easements and convey the Common Areas to an Illinois not-for-profit corporation known as THE CITADEL ON THE POND TOWNHOME OWNERS ASSOCIATION (hereinafter referred to as the "Association"); and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of the subject development to create the Association for the purpose of maintaining the Property, Common Areas and any improvements thereon, for administering and enforcing the covenants, conditions and restrictions and for collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant intends to subject the Property to the covenants, conditions and restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Association;

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, charges and liens which are for the purpose of protecting the value and desirability of, and which shall run with, the property submitted thereto and

be binding on and inure to the benefit of all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns.

ARTICLE I

Definitions

1. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot (as hereinafter defined) which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation. Declarant shall, as long as it owns Lots, be an Owner.

2. "Association" shall mean and refer to the Citadel on the Pond Townhome Owners Association, a not-for-profit corporation under the General Not-for-Profit Corporation Act of the State of Illinois, its successors and assigns, which is hereby established by this Declaration. Said corporation shall be the governing body for all of the Owners with respect to the administration, maintenance, repair and replacement of the portions of the Property as provided by this Declaration and the By-Laws; and said corporation shall be the legal representative for all matters and claims relating directly or indirectly to the Common Areas or matters of common interest for the Property to all Owners. A copy of the initial By-Laws of the Association is attached hereto and

made a part hereof as Exhibit "C" and by reference incorporated herein as if fully set forth.

Each Owner shall automatically become and be a Member (as hereinafter defined) of the Association so long as he continues as an Owner. Upon the termination of the interest of an Owner, his membership shall thereupon automatically terminate and transfer and inure to the new Owner succeeding him in interest.

3. "Property" shall mean and refer to the real estate legally described in Exhibit "A" appended hereto and made a part hereof.

4. "Common Areas" shall mean all real property and improvement, whether now constructed or to be constructed, being all the Property except the Lots, including, but not limited to, landscaped areas, driveways, streets, street lights, private roadways, any fencing, walkways, sidewalks, patios, mailbox stations, monument signage and a storm sewer detention system including all storm inlet pipes, catch basins, drain tile, etc., all located outside of and between Townhome Lots (as said terms are hereinafter defined), and outside of foundation walls of any Townhome, the legal title to which is owned or hereafter owned by the Association and intended for the use and benefit of the Owners, legally described in Exhibit "B" appended hereto and made a part hereof, it being the intent of the Declarant and this Declaration

that all areas outside of a foundation wall of a Townhome Lot are Common Areas.

5. "Lot" shall mean and refer to a planned Townhome lot shown and designated as a part of the Property, and upon which lot one (1) individual Townhome is constructed or to be constructed, either platted or unplatted, with the exception of the Common Areas.

6. "Declarant" or "Developer" shall mean and refer to BANK ONE CHICAGO, N. A., not personally but as Trustee under Trust Agreement dated November 23, 1994 and known as Trust No. R-3981, its successors and assigns who are designated as such in writing by Declarant and who consent in writing to assume the duties and obligations connected therewith. Said terms shall also mean and refer to any party entitled to exercise the rights of Declarant or Developer pursuant to the provisions of Section 12 of Article XII of this Declaration.

7. "Declaration" shall mean the within instrument, together with those exhibits which are appended hereto and made a part hereof, and shall include such amendments, if any, to the within instrument as may be from time to time adopted pursuant to the terms hereof. The within Declaration may be referred to in any other document as The Citadel on the Pond Declaration of Covenants, Conditions and Restrictions.

8. "Occupant" shall mean and refer to any person or persons, other than the Owner or tenant, in possession of a Lot.

9. "Member" shall mean and refer to any person or entity who holds membership in the Association, being the record Owner of a fee or undivided interest in any Lot, including contract Sellers.

10. "County" shall mean and refer to the County of Du Page, its authorized agents and representatives.

11. "Village of Westmont" or "Village" shall mean and refer to the Village of Westmont, a municipal corporation, its authorized agents and representatives, and its successors and assigns.

12. "Townhome" shall mean and refer to the individual structure to be constructed on each Lot.

ARTICLE II

Property Rights in the Common Areas

1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas and a right and easement for ingress and egress to, over, across and from the Common Areas and such easement shall be appurtenant to and shall pass with the title to every assessed Lot subject to the following provisions:

- a. The right of the Association to establish and publish rules and regulations governing the use and enjoyment of the Common Areas and/or other facilities affecting the welfare of Association Members;
- b. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- c. The rights of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded agreeing to such dedication or transfer.
- d. The duly designated officials and employees of the County of DuPage, the Village of Westmont, and of other governmental bodies having jurisdiction over the Property, shall have an easement to enter upon, on and over the Property and the Common Areas for the purposes of maintaining any systems and enforcing the applicable health ordinances, rules and regulations of the said County, Village and governmental bodies and to correct or eliminate nuisances or violations resulting from the failure to exercise maintenance responsibilities by either an Owner or the Association, if state statutes and/or local ordinances so permit. The Declarant, the Association and their successors and assigns hereby agree to indemnify, defend and hold harmless the County of DuPage and the Village of Westmont in the performance or non performance of any said work or any action connected therewith. The County and Village of Westmont shall have the right, in furtherance of its enforcement of its claim for reimbursement in correcting or eliminating said nuisances or violations, to record a lien against the Property, effective upon the date of its recordation.

2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Areas to the members of his family or contract purchases who reside on this property, and their respective guests and invitees.

3. Title to the Common Areas. The Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Areas, subject to covenants, conditions and restrictions of record, public zoning laws, current real estate taxes, if any, which shall be prorated among the parties, utility easements granted or to be granted for sewer, water, gas, electricity or telephone and any other necessary utilities and possibly public dedications, as indicated of record including on a planned unit development plat or any other plat. Said fee simple title shall be free of all encumbrances and liens other than those aforescribed. Title to the Common Areas shall be conveyed to the Association no later than the date seventy-five percent (75%) of the Lots are sold and conveyed by Declarant to purchasers. Even though driveways and patios are part of the Common Areas, the Owner of the Townhome structure appurtenant to said patio or driveway shall be entitled to the exclusive use thereof (or his Occupants, family, guests or invitees).

The Declarant shall maintain from assessments collected at the closings of the Lots, and to the extent additional funds are needed, at its expense, the Common Areas until said time title to said Common Areas is conveyed to the Association.

ARTICLE III

Party Wall Provisions

1. Party Walls. All dividing walls which are placed on the boundary line between Lots (as that term is hereinabove defined) and walls which serve two (2) or more Lots shall at all times be considered party walls. The cost of reasonable maintenance, repair or replacement of said party walls shall be borne equally by the Owners of the Lots served thereby, and easements for the benefit of such uses among the Owners are hereby granted therefor. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. Damage or Destruction to Party Walls. If a party wall is destroyed or damaged by fire or other casualty, any Owners who have used the wall shall restore it and contribute to the cost or restoration in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

3. Liability Due to Negligence. Notwithstanding any other provision of this Declaration, an Owner who by his negligence or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

4. Maintenance of Lots. The Owners shall be responsible for the maintenance, repair or replacement of that portion of the siding, brick and gutter and downspout water drainage system as is located, installed upon or attached to each lot.

5. Right of Contribution. The right of any Owner to contribution from any other Owner under any of the sections as hereinabove set forth shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. Common Use. Any and all facilities of any kind presently existing or hereafter installed, designed for the common use of any two (2) or more Lots, shall be perpetually used in common by the Owners or Occupants thereof.

7. Party Wall Easement Rights. The Owners hereby grant to each other, their grantees and their respective heirs, successors, personal representatives or assigns all easements contained in the sections as hereinabove set forth, including, but not limited to, easements for party walls, support and maintenance, along with the

restrictions, covenants, burdens, uses and privileges attendant with said easements.

ARTICLE IV

Membership

1. Membership in the Association. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one (1) membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification of membership. Nothing herein contained shall be interpreted to exclude Declarant from membership while it or its successors in interest, if any, owns one (1) or more Lots. Voting rights with regard to each Member are set forth in Article III of the By-Laws to the Declaration (Exhibit "C").

ARTICLE V

Voting Rights and Board of Directors

1. Classes of Membership. The Association shall have two
(2) classes of voting membership:
 - a. Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
 - b. Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned; provided, however, that the Declarant shall be entitled to only one (1) vote per Lot upon the happening of the following events, whichever occurs earliest:
 - (i) when seventy-five percent (75%) of the Lots have been sold and conveyed by the Declarant to purchasers; or
 - (ii) upon written notice of election by Declarant sent to the Association as of the date specified in said Notice.
2. Association Membership Mandatory. The provisions of this Paragraph shall be mandatory. No Owner of any interest in any Lot shall have any right or power to disclaim, terminate or withdraw from his shareholding or membership in the Association, or any of his obligations as such shareholder or Member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Owner shall be of any force or effect for any purpose.

3. Board of Directors. The Association shall have a Board of not less than three (3) Directors who shall be elected by the shareholders or Members of the Association at such intervals as the corporate charter and By-Laws of the Association shall provide, except that vacancies on the Board occurring between regularly scheduled meetings of the Members or shareholders may be filled by the remaining Board of Directors and that as long as Declarant owns any Lots, it shall choose one (1) of the three (3) Directors. The Association shall have such officers as shall be appropriate from time to time who shall be elected by the Board who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly otherwise provided by the charter or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board from time to time and its officers under the direction of the Board and shall not be subject to any requirement of approval on the part of its shareholders or Members. The corporate charter and By-Laws of the Association may include such provisions for the protection and indemnification of its officers and Directors as shall be permissible by law.

4. Dividends and Assessment Reduction. The Association, being a not-for-profit corporation, shall not distribute to its shareholders or Members any sums in the nature of dividends upon its shares. To the extent that funds shall not be required for current expenditures or for such reserves, the next monthly

assessments may, in the discretion of the Board, be eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required, but such reinstatement or increase shall not be retroactive.

5. Function and Duties of Association. Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time. Such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Property or any part thereof. The Association itself shall also have power to perform its functions and carry out its duties.

6. Rules and Regulations. The Association, through the resolutions of the Board, shall have the right to adopt rules and regulations governing the Lots, Common Areas and the use thereof.

7. Books and Records of Association. The books and records to be kept by the Board shall be available for inspection by any Owner or any holder of a first mortgage lien on a Lot at such reasonable time or times during the normal business hours as may be requested by the Owner or by the holder of said first mortgage lien.

ARTICLE VI

Maintenance

1. General Maintenance of the Property. The Association shall determine and carry out or cause to be performed certain maintenance, improvements and repair beyond the foundation of the Townhome structure on each Lot, including all driveways, sidewalks, patios and landscaping located within the Lots. All landscaping on the Lots (including mowing of grass located on the Lots and maintenance of planting as provided in Paragraph 3 hereof), and all maintenance and landscaping of all the Common Areas (as hereinabove defined) including snow plowing of all walkways, including interior service sidewalks, and all driveways and private roadways located in the Property, whether or not located on a Lot, shall be an Association expense. Exterior portions of all trim on the Townhomes that require painting (but not the siding itself, which shall be an Owner's expense), painting of the garage doors, outside coach lights by the front doors and garages, roof maintenance and post lights shall be an expense of the Association. The

Association shall also maintain streets, sidewalks, street lights and the storm sewer detention system on the Property, including, but not limited to, all storm inlet pipes drain tiles, catch basins and portions of the Common Areas as designated or delineated on any plat for retention or detention, except to the extent that the Village of Westmont or some other public utility shall perform these functions as designated on delineated or any plat. These Association functions shall be known as Common Expenses as hereinafter defined in Article VII. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, (for example, damage to an Owner's driveway or patio) the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Lot is subject. The cost of such maintenance shall become a lien upon the Lot and be added to and become part of the assessment to which such Lot is subject in the same manner of all assessments due the Association as provided hereinafter in Article VII.

2. Interior-Exterior Improvements. Each Owner shall have the obligation to maintain in good condition and repair the interior and certain exterior portions of his home, including, but not limited to, the maintenance of the garages (except for painting) the gutters and downspouts, exterior brickwork and siding. Exterior portions of all doors (including garage doors) exterior post lights, windows and any outside coach lights on the

garages or by the exterior doors, shall be an Association expense. An Owner shall also be responsible for his portion of any party wall located within his Lot, except for damage to said party wall occasioned by the act or omission of the Owner of the adjacent Lot, which damage shall be repaired by said Owner. Upon the failure of any Owner to maintain the exterior of his Townhome as aforesaid in a manner satisfactory to the Association, the Association, through its agents and employees, is hereby granted the right to enter upon the Lot and make such reasonable repairs, maintenance, rehabilitation or restoration of the Premises as may be necessary, and the costs thereof shall become a lien upon the Lot in the same manner provided hereinafter in Article VII hereof for nonpayment of maintenance assessments.

3. Landscaping on the Lots. The Association shall provide for the mowing of all grass and the maintenance of all planting on the Lots which has been planted by the Declarant in the sale of the Lots as a Common Expense. In the event the Owner installs his own foundation planting or any other planting within his Lots and does not maintain said planting, the Association shall have the right to assess each Owner for any additional cost in providing for the maintenance of such planting. The Association shall have no responsibility to maintain or perform any landscaping in any rear yards which are fenced in by Declarant as part of the construction of a Townhome.

4. Snow Removal and Exterior Maintenance. Anything to the contrary herein notwithstanding, the Association shall provide for the removal of snow from the walks and driveways that are constructed on the Lots and shall further maintain and repair said driveways and walkways. Easements are hereby created for the benefit of the Association over, upon and along each Lot for such purposes, to be a Common Expense.

5. Maintenance of the Common Areas. The Association shall maintain and keep in repair the Common Areas legally described in Exhibit "B", including any improvements thereon. Without limitation, this shall include all landscaping of the Common Areas and any fencing sod, trees, shrubs and plantings thereon, including the planting, maintaining and replacing, as necessary, on any open areas, berms, swails, landscape islands, or around monument or entry signage.

The Association shall provide for road repairs, sidewalk repairs, street and street light repairs and snow removal on all driveways and private roadways (within the Common Areas or otherwise) and for the maintenance, repair and replacement of any monument or entryway signage, postlights and the mailbox stations. All contractors retained by the Association to perform snowplowing shall provide certificates of insurance for liability insurance purposes in accordance with any City, County or other governmental

ordinances.. The Association shall perform all of said maintenance on the Common Areas as a Common Expense. The Association or Owners shall also not conduct any activities which would adversely affect the functioning of the Common Areas as such.

In the event the Association shall not maintain the Common Areas (including the storm sewer detention system) in good physical appearance or in a good state of repair, the County of DuPage and the Village of Westmont, if state statutes and/or local ordinances so permit, shall notify the Association and Owners by mail of the remedial work to be done and if the Association or Owners shall not have commenced the remedial work within ten (10) days of the date of mailing, then the Village shall have the right to go on the Common Areas and do the necessary remedial work relative to appearance, maintenance and repair of said Common Areas, charging the Association the cost of remedial work done by it, and if the Association fails to pay such costs, the Village will pursue all appropriate legal remedies against the Association, and may also seek payment from the Owners on a pro-rata basis for such costs. If payment is not made for costs incurred by the Village, the Village shall have the right to record a lien against the property or against the Lot of any Owner who has failed to pay its prorata share of the costs, and the Village shall be entitled to interest from the date the costs were incurred, at the maximum rate of interest per annum allowable by law on the balance remaining from time to time unpaid. The Declarant, the Association

and their successors and assigns hereby agree to indemnify, defend and hold harmless the County of DuPage and the Village in the performance or non performance of any said work or any action connected therewith.

Upon completion of required utilities and acceptance of maintenance responsibilities therefor by the appropriate governmental agency, the maintenance and repair of the sewer (excluding storm sewer lines) and sanitary lines leading to each Lot shall be the responsibility of the Hinsdale Sanitary District and the maintenance and repair of the water lines leading to each Lot shall be the responsibility of the Village, up to and including the "B box" area of said lines, however the Association shall be responsible for the maintenance and repair of said lines beyond the "B Boxes" to the Townhomes. Within the Townhomes, the Owners shall be responsible for said maintenance and repairs. All water used by the Declarant, Association or Owners for maintenance of the Common Areas shall be deemed a Common Expense. Every Townhome is furnished with an exterior silcock. The Declarant reserves for itself, the Association and their designees, their successors and assigns, the right to attach hoses and other water sprinkling devices to, and obtain water from, the water silcocks on the exterior of the Townhomes on the Property to furnish water to clean and maintain the Common Areas. If said water silcocks are "metered" to a particular Owner, he shall be promptly reimbursed by the Association as to said costs incurred. The duty to maintain, repair and replace the exterior portion of said outside

water silcocks shall remain in the Owner of each Townhome to which said water silcocks are connected, but said Townhome Owner shall be promptly reimbursed by the Association as to said costs incurred. This grant is perpetual and cannot be terminated without the consent of the Board and so long as Declarant owns any Lots in the Property without the consent of the Declarant.

ARTICLE VII

Covenants for Maintenance Assessments

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (except as otherwise specifically provided by the provisions of Article VII, Paragraph 7 hereof), by acceptance of a deed therefor or otherwise, whether or not it shall be so expressed in any such deed, document or other conveyance, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association for each Lot owned (or to a management company or other collection agency designated by the Association):

- a. Monthly assessments or charges to be paid on the first (1st) day of each month or on such other basis as the Board of Directors of the Association shall determine; and
- b. Special assessments for any purpose, including for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The assessments thus collected by the Association shall constitute the maintenance fund of the Association. The first assessments for all Lot Owners shall be collected at the closing of the Lot by Declarant. Thereafter, assessments shall be due on the 1st day of each month following. Assessments collected by Declarant at closing shall be held by the Declarant and used for the benefit of the Association until Declarant relinquishes control of the Association as hereinabove set forth in Article V, Paragraph One. The monthly and special assessments, together with such interest thereon and costs of collection thereof, including, but not limited to, reasonable attorneys' fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, including, but not limited to, reasonable attorneys fees, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the said assessment fell due.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents in the Property, and in particular, for the improvement and maintenance of the Property, including the Common Areas, services and facilities devoted to this purpose and related to the use and enjoyment of the Townhomes situated upon the Property. Said

expenses hereinabove referred to shall be known as Common Expenses. The assessments levied by the Association shall be used to pay Common Expenses. Such uses shall include, but are not limited to, the cost of the maintenance of the Lots and Common Areas as hereinabove set forth in Article VI as may from time to time be authorized by the Board, and other charges required by this Declaration of Covenants, Conditions, Restrictions and Easements or that the Board shall determine to be necessary or desirable to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair and maintenance. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund. At the time of the recording of this Declaration, or at the time each Lot is first occupied, the Owner shall pay to the manager or managing agent, or as otherwise directed by the Board, an amount equal to two (2) times the first monthly assessment for such Owner, which amount shall be used and applied as an operating or maintenance reserve as determined by the Board. The Board shall be authorized to fix the total annual assessment in an amount sufficient to meet the costs and expenses as contained in this Paragraph as hereinafter set forth in Section 3.

3: Computation of Assessments. Payments of assessments shall be in such amounts and at such times as provided below:

a. On or before November 1, 1995 and on or before each November 1st thereafter, the Board of Directors shall estimate the total amount necessary to pay the costs of taxes, wages, materials, insurance services and supplies relating to maintenance of the Property, including the Common Areas, and such other items as provided for herein and in the By-Laws of the Association which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount necessary for a reserve for contingencies and replacements, and shall, on or before December 1st of each year notify each Owner in writing as to the amount of such estimate with reasonable itemization thereto. All obligations of the Owners hereunder, including, but not limited to, the Common Expenses, for assessments, special assessments or other levies by the Association pursuant to this Declaration or the By-Laws of the Association shall be determined at a uniform rate by multiplying the amount of such assessment, special assessment or levy by a fraction, the numerator of which is the number of Lots owned by the Owner and the denominator of which is the number of Lots subjected from time to time to the terms and condition of this Declaration, subject, however, to the provisions of Article IV, Paragraph 7 hereof. On or before January 1st of the ensuing year, each Owner shall be obligated to pay to the Board of Directors, or as it may direct, one twelfth of the annual assessment made pursuant to this Paragraph, and a like amount every month thereafter until the annual assessment changes. On or before the date of the annual meeting of each calendar year, the Board of Directors shall supply all Owners with an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided and showing the net amount over or under the actual expenditures, plus reserves. To the extent, if at all, that any assessments for any fiscal year are not expended by the Association, any such savings shall be applied by the Association in reduction of its budget and the annual assessments to the Owners for the following year, except with respect to amounts held by the Association in trust for the Members for the uses and purposes for which such reserves have been established. Any interest of any Owner in and to such reserve funds shall be deemed appurtenant to such

Owner's membership and shall automatically transfer and inure to such Owner's successor in interest.

b. If said estimated cash requirement proves inadequate for any reason, to defray the operating expenses and costs during any given year, then the Board of Directors shall be authorized to issue a supplemental budget or budgets and shall adjust the assessments accordingly. The Board of Directors shall serve notice of such further or additional assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further or additional assessment shall become due thirty (30) days after the delivery or mailing of such notice. Any increase in the annual assessment in excess of five percent (5%) of the approved assessment must be approved by two-thirds (2/3) of each class of Members voting in person or by proxy at a meeting duly called for such purpose.

c. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any taxes, construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including any fixtures and personal property related thereto, provided, that any such assessments in any assessment year shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for the purpose. Any such assessment shall be levied equally per Lot against each Owner.

d. The Board of Directors shall establish and maintain reasonable reserves for contingencies and replacements as it shall deem necessary and any extraordinary expenditures not included in the estimated cash requirements shall be first charged against such reserve in the year of such expenditure. If such reserves are depleted or, in the opinion of the Board of Directors, significantly reduced, then any supplemental budget or the next regular estimated cash requirements shall provide for the re-establishment of such reserves as the Board shall deem reasonably appropriate.

e. The failure or delay of the Board of Directors to prepare or serve the annual or adjusted estimate, or the itemized accounting or other document on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs, necessary reserves or adjusted assessments as herein provided whenever the same shall be determined, and in

the absences of any annual estimate or adjusted estimate, the owner shall continue to pay the monthly charge at the then existing monthly rate established for the previous period until notice of the monthly maintenance payment which is due more than thirty (30) days after such new annual or adjusted estimate shall have been mailed or delivered.

f. The Board of Directors shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Property specifying and itemizing the maintenance and repair expenses and any other expenses incurred. Such records shall be available for inspection by any Owner or first mortgagee of record at such reasonable time or times during normal business hours as may be requested by the Owner or mortgagee.

g. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property or abandonment of his Lot. Except as otherwise provided elsewhere herein, an Owner shall personally be liable for the annual assessment payable monthly in such year; and the Owner, as of the date of any levy of a special assessment, shall be personally liable for such assessment.

4. Date of Commencement of Annual Assessments; Due Dates.

The annual assessments provided for herein shall commence for all Lots (except as otherwise provided in Paragraph 7 as hereinafter set forth) on the first (1st) day following the conveyance of said Lot from Declarant. The first monthly installment of the annual assessment due from a Lot Owner following the closing of this Lot from Declarant shall be due on the 1st day of the following month. The Association shall, upon demand at any time, furnish a certificate in writing signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. Such certificates shall

be conclusive evidence of payment of any assessment therein stated to have been paid.

5. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of one percent (1%) per month, if allowable by law, otherwise at the maximum rate allowed by law, and the Association may proceed in equity to foreclose the assessment lien and/or bring an action at law against the Owners of the Lot and interest costs and reasonable attorneys fees of any such action(s) shall be added to the amount of such assessment and judgment.

6. Subordination of the Lien to Mortgage. The lien of the assessment provided for herein shall be subordinate to the lien of any bona fide first mortgage (or equivalent security interest) on a Lot recorded prior to the date upon which such assessment became due and a decree of foreclosure under such mortgage or any proceeding or conveyance in lieu of foreclosure thereof shall extinguish the lien of all such assessments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

7. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- a. All properties dedicated to any unit of government, local public authority and granted to or used by a utility company, regardless of the property so dedicated;
- b. All Living units owned by the DECLARANT which are used at any time by DECLARANT as a model home, construction or sales office;
- c. All Lots, regardless of whether such Lots are improved with Living Units, which have not been sold and conveyed by the DECLARANT;
- d. Outlots; and
- e. Any Living Unit in the process of construction, title to which is retained by the DECLARANT.

The DECLARANT shall be responsible for the maintenance of all Lots and Living Units constructed on the property which are owned by the Declarant for which certificate of occupancy have been issued but which have not been sold and conveyed.

ARTICLE VIII

Insurance

1. General Insurance Coverage by the Association. The Association shall be responsible for maintaining comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, Members of the Board, the manager and managing agent of the Property, if any, and their respective employees and agents from liability in connection with the ownership and/or use of the

private streets and driveways on the Property, and insuring the officers of the Association and Members of the Board from liability for good faith actions 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. The Association may also obtain such other kinds of insurance as the Association shall from time to time deem prudent.

2. Insurance for Common Areas. The Board of Directors shall have the authority to and shall obtain insurance for any improvements in or upon the Common Areas against loss or damage by fire and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement costs thereof. The Board of Directors shall also have the authority to and shall obtain comprehensive public liability insurance in such limits as it shall deem desirable and other liability insurance as it may deem desirable insuring the Association and Board of Directors with respect to the Common Areas. The premiums for all insurance purchased pursuant to the provisions of this Paragraph shall be Common Expenses and shall be paid at least thirty (30) days prior to the expiration date of any policy.

3. Individual Insurance. Notwithstanding the fact that the Association shall be partially responsible for exterior maintenance of the siding on the Townhomes and improvements on all Lots beyond foundations, each Owner shall maintain in full force at all times

insurance covering the improvements on his Townhome consisting of, or providing all the protections afforded by, the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief to one hundred percent (100%) of the full insurable value thereof with loss payable on the basis of the cost of replacement without deduction for depreciation, less a deductible amount of no more than One Hundred and no/100) (\$100.00) Dollars. The Association shall be furnished with proof of such insurance and shall prescribe remedies by rules and regulations if it is not furnished, including the right to purchase said insurance coverage and the right to charge the Owner for said insurance coverage as a Common Expense. In the event the improvements, or any portion thereof, shall be damaged or destroyed by fire or other casualty, including any exterior portions thereof, the Owner shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly as possible, to at least as good as condition as existed immediately prior to such damage or destruction and in the same architectural style and design as originally constructed by the Declarant. The Association shall be entitled to the proceeds of any such insurance claim to the extent of any monies expended by it for the repair of any improvements on a Lot.

ARTICLE IX

Interim Procedure

1. Developer to Assume Rights of Owners. Until each of the various Lots shall have been conveyed by the Declarant to the first Owner thereof (or to such Owner's nominee), the Developer shall, with respect to each such unsold Lot, have all the rights granted to the Owners.

2. Developer to Assume Rights of Association. Until the Association shall have been organized and shall have assumed its duties and powers, the Developer shall have all the rights, powers, duties and obligations herein granted to or imposed upon the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized and empowered to take if the Association had then been formed. Alternatively, until the initial meeting of the Members, the Developer may appoint the Board which shall have the same powers and authority as given to the Board generally.

ARTICLE X

Restrictions Relating to Property

1. Separate Legal Descriptions. Each Lot conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.

2. Change in Structures. Other than the structures contemplated and intended to be erected or constructed upon the Property described and designated, or identical structures erected in replacement thereof, no exterior structures (with the exception of original fences as hereinafter described), entrances or additions or additional buildings, awnings, coverings or the like shall be build upon any portion of the Property.

3. Architectural Design. All Townhomes shall maintain the same architectural exterior design and color unless all Owners agree in writing to change said exterior design and/or color. In such case, they shall petition and obtain approval in writing of the Board of the Association. In addition, the consent of Declarant, shall be required as long as Declarant owns any Lot.

4. Fences and Screen Doors. Only the Declarant shall have the right to install fences between and along the rear of the Lots, except that any Lot Owner shall have the right to install a

replacement fence of the same type and color if the original fence installed by Declarant is damaged or destroyed. Any screen doors installed in an exterior door of a Townhome shall be white in color and shall be either full or half glass.

5. Temporary Structures. Except as hereinafter provided in Paragraph 8 hereof, no structure of a temporary character, including, without limiting the generality thereof, any basement trailer, storage building, shed, tent, shack, garage, barn or other outbuildings shall be constructed or used as a residence at any time, either temporarily or permanently, anywhere on the Property, including the Common Areas.

6. Signs. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot and no "For Sale" or "For Rent" signs shall be executed, placed or permitted on any Lot without the consent of the Board.

7. Developer Activities. The covenants of this Article X shall not apply to the activities of Declarant. The Declarant may maintain, while engaged in constructing and selling activities in or upon such portions of the Property as said Declarant determines, such temporary facilities as, in its sole discretion, may be necessary or convenient, including, but without limitation, offices, storage areas, model units, signs and construction trailers, and is hereby granted a general easement for construction and sales purposes throughout the Property.

8. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, or the Common Areas, except dogs, cats or other common household pets (not to exceed a total of two (2) pets); provided, that they are not kept, bred or maintained for any commercial purposes.

9. Rubbish and Debris. All rubbish, trash or garbage shall be kept so as not to be seen from neighboring Lots and private streets and shall be regularly removed from the Property and shall not be allowed to accumulate thereon.

10. Clothes Drying. Drying of clothes shall be confined to the interior of the Townhomes on the Lots.

11. Antennas. No television or radio antennas of any sort shall be placed, allowed or maintained on the exterior of any Lot, or any portion of the exterior of the improvements located on the Property, nor upon any structure situated upon the Property.

12. Impairment of Easements. An Owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other properties or their owners.

13. Nuisance, Unpermitted Activities. No nuisance, noxious or offensive activity shall be carried on anywhere on the Property nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners of occupants of the Lots.

14. Additional Easements. Each Lot is hereby declared to be subject to an easement and right to and in favor of the Association and all of its employees, agents and instrumentalities to go upon such Lot for reasonable inspection thereof from time to time and for the purposes of carrying out any and all of the obligations and functions with respect to such Lot and the structures located thereon as are herein imposed upon or permitted to said Association. Each Lot is further declared to be subject to an easement in favor of any adjoining Lot to the extent necessary to

permit the maintenance, supply, repair and servicing of utility services to the various Lots and structures located thereon.

15. Utility Easements. The Owner of each Lot shall from time to time grant such additional easements and rights over, across, on, under and upon his Lot as may be reasonably necessary in connection with the supply of any utilities required to service any part of the Property.

16. Easements to Maintain Adjoining Structures. Each Lot is hereby subjected to a permanent easement appurtenant to each adjoining Lot to permit the construction, existence, maintenance and repair of structure located on such adjoining Lot, including roof structures which extend upon another Lot; provided, that the construction of such structures is permitted and approved as elsewhere herein provided.

17. Encroachments. In the event that any part of any structure on one Lot encroaches or shall hereafter encroach upon any part or any other Lot, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and

enjoyment of the Lot of another Owner and if it occurred due to the willful conduct of any Owner.

18. Storage of Vehicles and Other Items. The Common Areas and the Lots, including all parking areas and driveways thereon shall be used, for parking operable automobiles only and shall not be used for campers, trailers, vans, pick-up trailers, recreational vehicles, and other types of non-passenger vehicles and accessories, snowmobiles, boats or for any other purpose. Such vehicles and items may be stored in garages if the garage door can be closed. The Board may authorize such vehicles and items parked in violation of this provision to be towed away and any such towing charge shall become a lien upon the Lot of the owner of the vehicle in the same manner as provided in Article VII hereof for nonpayment of maintenance assessments.

19. Garbage and Refuse Disposal. No Lot or any part of the Common Areas shall be used or maintained as a dumping ground for rubbish.

20. Parking. No fuel driven vehicles may be driven or parked in the Common Areas, except in such part of the Common Areas specifically set aside for driving and/or parking.

21. Manufacturing. No part of any Lot or Common Areas shall be used for manufacturing, industrial or business purposes.

22. Rules and Regulations. The Association by the Board shall have authority to establish rules and regulations concerning the Property, including, but not limited to, the driveways, patios and exteriors of the Townhomes, including garage doors as per Article VII, Section 3 of the By-Laws.

ARTICLE XI

Utility Easements Over Common Areas

The Common Areas will be subject to utility easements in favor of the Village of Westmont and any applicable governmental agency and/or public utility company for sewer, water, gas, electricity, telephone and any other necessary utilities. If such utilities are not installed or easements not described for same prior to conveyance of the Common Areas, the Association may grant same at a later date.

ARTICLE XII

General Provisions

1. Easements to Run with the Land. All easements herein described in this Declaration are easements appurtenant to and running with the land; they shall at all time inure to the benefit of and be binding upon the undersigned, all of its grantees and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in the entirety in said documents.

2. Remedies. In the event of any default by any Owner under the provisions of the Declaration, By-Laws or Rules and Regulations of the Association, the Association and the Board of Directors shall have each and all of the rights and remedies which may be provided for in this Declaration, the By-Laws and said Rules and Regulations and those which may be available at law or in equity and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, for specific performance, for judgment for payment of money and collection thereof, for any combination of remedies or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with

interest thereon at the maximum rate permitted by law, from the due date until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his or her respective share of the Common Expenses (to the same extent as the lien provided herein for unpaid assessments) upon the Lot and upon all of his or her additions and improvements thereto and upon all of his or her personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board of Directors.

All of the provisions of this instrument, and those in the Articles of Incorporation and By-Laws of the Association, are mutually enforceable by and among the Members of the Association. Any Member who feels that a provision is being violated may petition the Association to investigate the situation. Should the Association determine that this allegation is true and that corrective action should be taken, the Association shall take whatever action is necessary to end the violation. Should the Association deem the allegation of violation as unworthy of action or fail to investigate the alleged violation within thirty (30) days of notice, then the complaining Member can prosecute his or her claim in whatever legal manner is best suited to the situation.

3. Land Trusts. In the event title to any Lot should be conveyed to a land title-holding trust under which all powers of management, operation and control of the premises remained vested

in the trust beneficiary or beneficiaries, then the trust estate under such trust, and the beneficiaries, thereunder, from time to time shall be liable for payment of any obligation, lien or indebtedness chargeable or created under this Declaration against such Lot. No claim shall be made against any such title-holding trustee personally for payment of any claim, lien or obligation thereby created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof shall continue to be a charge or lien upon the premises notwithstanding any transfers or beneficial interest in the title to such real estate.

Nothing in this Paragraph 3 shall be deemed to alter or diminish the rights or remedies of the Association under Article VII, Paragraph 5 relating to the failure to pay maintenance assessments as such rights or remedies apply to the trust estate under such trust and the beneficiaries thereunder.

4. Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless seventy-five percent (75%) of the votes outstanding shall have been voted to terminate the covenants and restrictions of this Declaration upon the expiration of the initial twenty (20) year period or any extension thereof, which termination shall be by written instrument signed by seventy-five percent (75%)

of the Owners, approved by the Village of Westmont and properly recorded in Du Page County, Illinois. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Owners and by the Declarant if the Class B membership has not theretofore terminated; provided that such instrument shall be approved by the Village and properly recorded in DuPage County, Illinois. Notwithstanding any provisions hereof to the contrary, the Declarant may, with the approval of the Village of Westmont, modify, amend or repeal this Declaration at any time prior to the closing of the sale of the first Lot, provided said amendment, modification or repeal is in writing and properly recorded in Du Page County, Illinois. Declarant further reserves, prior to the closing of the sale of all of the Property, all rights which may be necessary to deal with the Property, including the right to vacate, amend or modify the Plat of Subdivision, subject to the approval of the Village of Westmont.

5. Notices. Notices provided for in the Declaration or By-Laws shall be in writing and shall be addressed to the Association or to any Owner at its respective address. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, return receipt requested, or when delivered in person with written acknowledged of the receipt thereof.

6. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

7. Rights and Obligations. The provisions of this Declaration and the By-Laws and the rights and obligations established thereby shall be deemed to be covenants running the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any interest therein, or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the By-Laws, whether or not mention thereof is made in said deed, provided, however, that the Declarant has agreed with the Village of Westmont that a provision will be included in each deed to notify Owners that the streets, street lights, stormwater drainage and detention facilities, and sidewalks are and will be in private ownership, and that the Owners will be obligated to maintain such improvements as part of the Common Areas.

8. Miscellaneous Provisions. Any provision of the within Declaration or of the By-Laws to the contrary notwithstanding, the following provisions shall control:

a. Upon the request of any first mortgagee of a Townhome on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such Townhome in the performance of such Owner's obligations under the within Declaration or the By-Laws or Association Rules and Regulations which is not cured within thirty (30) days. Any first mortgagee of a townhome who comes into possession of the said Townhome pursuant to the remedies provided in the mortgage, a foreclosure mortgage or deed (or assignment) in lieu of foreclosure shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Townhome which accrued prior to the time such holder comes into possession of the dwelling.

b. No provision of the within Declaration or of By-Laws or Articles of Incorporation of the Association, or any similar instrument pertaining to the Property or the Townhome thereon, shall be deemed to give an Owner or any other party priority over any rights of bona fide first mortgagees of Townhomes 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 the Common Areas or any portion thereof or interest therein.

c. There shall be included in each annual assessment levied by the Association an amount sufficient to establish an adequate reserve fund for the replacement of any improvements comprising a part of the Property.

d. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include the plural and vice versa. Title of articles and paragraphs are for convenience only and neither limit nor amplify the provisions of the Declaration unless specified reference is made to such articles, paragraphs or subdivisions of another document or instrument.

9. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

10. Conflicts. In the event of any conflict between this Declaration and the By-Laws or Articles of Incorporation, this Declaration shall control.

11. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of the rule against perpetuities or some analogous statutory provisions, the rule restricting restraints on alienation or any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the now living lawful descendants of James Edgar, Governor of the State of Illinois and William Clinton, President of the United States of America.

12. Assignments by Developer or Declarant. All rights which are specified in the Declaration to be rights of the Developer or Declarant are mortgageable, pledgeable, assignable or transferable. Upon any exercise of rights by the holder of said mortgage, pledge, assignment or transfer by reason of a default thereunder, any one or more of such holders, its nominee or designee, any party appointed pursuant to such mortgage, pledge, assignment or transfer

and any successor or assign by foreclosure of deed-in-lieu of foreclosure or otherwise, shall from time to time hold or be entitled to exercise the rights of Declarant and Developer hereunder as fully as if named as such party herein. No party exercising rights as Developer or Declarant hereunder shall have or incur any liability for the acts of any other party who previously exercised or subsequently shall exercise such rights.

.....

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on its behalf, attested to and its corporate seal to be hereunder affixed as of the day and year first above written.

BANK ONE, CHICAGO, N. A.,
as Trustee as aforesaid

By: Catherine Ciolino
Its: LAND TRUST OFFICER

ATTEST:

By: Edna W. Ross
Its: EDNA W. ROSS
LAND TRUST ADMINISTRATOR

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that such and all of the representations, covenants, undertakings, warranties, indemnities, and agreements herein made on the part of the Trustee were in fact made and intended as personal representations, covenants, undertakings, warranties, indemnities and agreements by the Trustee or for every one of them, made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but made and intended for the purpose of binding only the trust property, described herein, and this instrument is created and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be assumed or enforceable against BANK ONE, CHICAGO, ILL. under said Trust Agreement, on account of this instrument or on account of any representations, covenants, undertakings, warranties, indemnities or agreements of the said Trustee in this instrument contained, either expressed or implied, all such parties to this instrument and by all parties claiming by, through, or under them.

(S E A L)

STATE OF ILLINOIS)
 Cook) SS.
COUNTY OF DU PAGE)

4 Copies Executed

I, CATHERINE CIOLINO, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT CATHERINE CIOLINO LAND TRUST OFFICER Vice President of BANK ONE, CHICAGO, N. A., and Edna W. Ross LAND TRUST ADMINISTRATOR (Assistant Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such LAND TRUST OFFICER Vice President and (Assistant) Secretary,* respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth;
* LAND TRUST ADMINISTRATOR

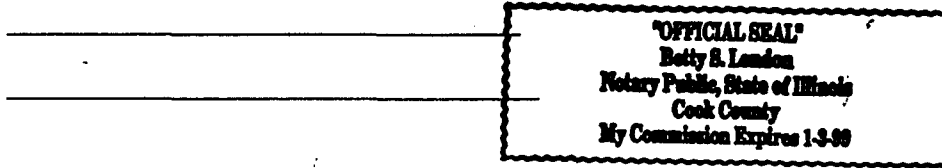
LAND TRUST ADMINISTRATOR

and the said (~~Assistant~~) Secretary did also then and there acknowledge that (s) he, as custodian of the corporate seal of said Corporation, did affix the corporate seal of said Corporation to said instrument as (~~his~~) (her) own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of June, A. D. 1995.

Betty S. London
NOTARY PUBLIC

My Commission expires:



Consent of Mortgagee

DECEMBER 15

BANK ONE, Chicago, N. A., as holder of Development and Construction Notes secured by a Mortgage and Security Agreement to said Association dated ~~November 23,~~ 1994 and recorded ~~AND MODIFIED 12/29/94 & 6/8/95~~, 1995 with the Du Page County Recorder of Deeds as Document No. ~~894-243670 & 89506882~~ hereby consents to the execution and recordation and subordinates its interest to the terms and provisions of the foregoing Declaration, with respect to the Property described in Exhibit "A" thereto.

BANK ONE, CHGO., N. A.,

By: *[Signature]*
Its: Vice President

ATTEST: *[Signature]*
Its: AVP

(S E A L)

STATE OF ILLINOIS)
) SS.
COUNTY OF DU PAGE)

I, MARTIN F. BARBO, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT MR. VINCENT G. LAVENLIN Vice President of BANK ONE, CHICAGO, N. A., and MR. MICHAEL J. MELINA, A.V.P. (Assistant Secretary) thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and (Assistant) Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Association, for the uses and purposes therein set forth;

and the said (Assistant) Secretary did also then and there acknowledge that (s) he, as custodian of the corporate seal of said Association, did affix the corporate seal of said Association to said instrument as (his) (her) own free and voluntary act, and as the free and voluntary act of said Association, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 15TH
day of JUNE, A. D. 1995.



NOTARY PUBLIC

My Commission expires:

2/18/98

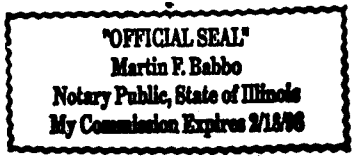


EXHIBIT "A"

Legal Description

LOTS 1 AND 3 IN WEST OAK SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 4, 1994 AS DOCUMENT R94-216733, IN DU PAGE COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 09-03-207-008

EXHIBIT "B"

Legal Description for Common Areas

1/27

AMENDMENT TO DECLARATION

This Amendment to Declaration of Covenants, Conditions and Restrictions for the Townhomes at Citadel on the Pond ("Amendment") is made by Westmont/Oakwood Venture, L.L.C., an Illinois limited liability company, successor in interest to Bank One, Chicago, N.A., n/k/a Bank One, Illinois, NA, not individually, but solely as Trustee of Trust No. M-11259 created under Trust Agreement dated June 6, 1996 ("Declarant").

RECITALS

A. Declarant holds record title to certain property situated in the Village of Westmont, Du Page County, Illinois, being commonly known as the CITADEL ON THE POND TOWNHOMES, which is legally described on Exhibit A attached hereto and made a part hereof ("Property").

B. The Property is subject to a certain Declaration of Covenants, Conditions and Restrictions for the Townhomes at Citadel on the Pond recorded with the Du Page County Recorder of Deeds on June 25, 1995 as Document No. R95-076827 ("Declaration").

C. Declarant desires to correct a typographical error in the Declaration.

NOW, THEREFORE, the Declarant hereby amends the Declaration as follows:

1. Article VI, Section 2 of the Declaration is hereby amended by deleting the end parenthetical mark on the fifth line thereof after the word "painting" and inserting said end parenthetical mark on the sixth line thereof after the word "siding", the revised sentence reading as follows: "Each Owner shall have the obligation to maintain in good condition and repair the interior and certain exterior portion of his home, including, but not limited to, the maintenance of the garages (except for painting, the gutters and downspouts, exterior brickwork and siding).

2. Except as amended above, the Declaration shall remain unmodified and in full force and effect.

Dated: November 20, 1997

DECLARANT:

WESTMONT/OAKWOOD VENTURE, L.L.C.

By: On the Pond, Inc., Its Managing Member

By: *[Signature]*
Its PRESIDENT

RECORDER
DU PAGE COUNTY

R97-195896

97 DEC 18 PM 2:30

[Signature]

gmc 27/26 KC

ll

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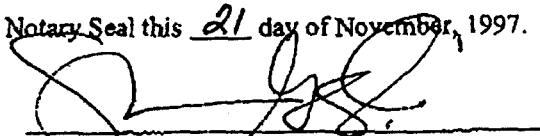
CHARGE C.T.I.C. DUPAGE

R97-195096

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, Maureen Gorski, a Notary Public in and for said County and State, do hereby certify that Anthony J. Tantillo, President of On the Pond, Inc., appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as his free and voluntary act, and as the free and voluntary act of the Company, in its capacity as Managing Member of Westmont/Oakwood Venture, L.L.C., for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 21 day of November, 1997.



Notary Public



This Instrument was prepared by and upon recording should be returned to:

Scott C. Haugh, Esq.
Belz, McWilliams & Haugh
525 Dee Lane
Roselle, IL 60172

R97-195896

CONSENT OF MORTGAGEE

FIRST OF AMERICA BANK - ILLINOIS, N.A., as holder of certain Notes secured by a certain Mortgage, Security Agreement and Assignment of Rents dated as of September 3, 1997, hereby consents to the execution and recordation and subordinates its interest to the terms and provisions of the foregoing Declaration, as so amended, with respect to the Property described on Exhibit A thereto.

FIRST OF AMERICA BANK - ILLINOIS, N.A.

By: [Signature]
Its V.P.

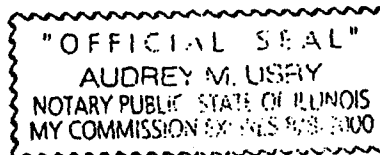
ATTEST: [Signature]
Its V.P.

STATE OF ILLINOIS)
) SS
COUNTY OF Lake)

I, Audrey M. Usery, a Notary Public in and for said County and State, do hereby certify that Randolph W. Webster, Jr. and David A. Smith, Vice President and V.P. Secretary, respectively, of First of America Bank - Illinois, N.A. (the "Bank") and, as such Vice President and as such V.P. Secretary of the Bank appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of the Bank for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 25th day of November, 1997.

[Signature]
Notary Public



R97-195896

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 AND OUTLOT A IN CITADEL ON THE POND, BEING A RESUBDIVISION OF LOTS 1 AND 3 IN WEST OAK SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 26, 1995 AS DOCUMENT R95-064222, IN DU PAGE COUNTY, ILLINOIS.

PERMANENT INDEX NO.: ~~09-03-213-001 THROUGH 146~~

*Property addresses all located on Citadel Dr.
Westmont, Ill 60559*

aka: See attached address pages.

Address

Permanent Tax Index Number

600 Citadel Drive, Westmont, IL	09-03-213-001
602 Citadel Drive, Westmont, IL	09-03-213-002
604 Citadel Drive, Westmont, IL	09-03-213-003
606 Citadel Drive, Westmont, IL	09-03-213-004
608 Citadel Drive, Westmont, IL	09-03-213-005
610 Citadel Drive, Westmont, IL	09-03-213-006
612 Citadel Drive, Westmont, IL	09-03-213-007
614 Citadel Drive, Westmont, IL	09-03-213-008
616 Citadel Drive, Westmont, IL	09-03-213-009
618 Citadel Drive, Westmont, IL	09-03-213-010
656 Citadel Drive, Westmont, IL	09-03-213-029
658 Citadel Drive, Westmont, IL	09-03-213-030
672 Citadel Drive, Westmont, IL	09-03-213-033
670 Citadel Drive, Westmont, IL	09-03-213-034
668 Citadel Drive, Westmont, IL	09-03-213-035
656 Citadel Drive, Westmont, IL	09-03-213-036
676 Citadel Drive, Westmont, IL	09-03-213-039
678 Citadel Drive, Westmont, IL	09-03-213-040
680 Citadel Drive, Westmont, IL	09-03-213-041
682 Citadel Drive, Westmont, IL	09-03-213-042
686 Citadel Drive, Westmont, IL	09-03-213-046
696 Citadel Drive, Westmont, IL	09-03-213-049
698 Citadel Drive, Westmont, IL	09-03-213-050
700 Citadel Drive, Westmont, IL	09-03-213-051
702 Citadel Drive, Westmont, IL	09-03-213-052
704 Citadel Drive, Westmont, IL	09-03-213-053
706 Citadel Drive, Westmont, IL	09-03-213-054
708 Citadel Drive, Westmont, IL	09-03-213-055
710 Citadel Drive, Westmont, IL	09-03-213-056
712 Citadel Drive, Westmont, IL	09-03-213-057
714 Citadel Drive, Westmont, IL	09-03-213-058
716 Citadel Drive, Westmont, IL	09-03-213-059
718 Citadel Drive, Westmont, IL	09-03-213-050
720 Citadel Drive, Westmont, IL	09-03-213-051
719 Citadel Drive, Westmont, IL	09-03-213-052
717 Citadel Drive, Westmont, IL	09-03-213-053
715 Citadel Drive, Westmont, IL	09-03-213-054
713 Citadel Drive, Westmont, IL	09-03-213-055
711 Citadel Drive, Westmont, IL	09-03-213-056

500 " " "
 502 " " "

09-03-213-067
 09-03-213-068

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Address

Permanent Tax Index Number

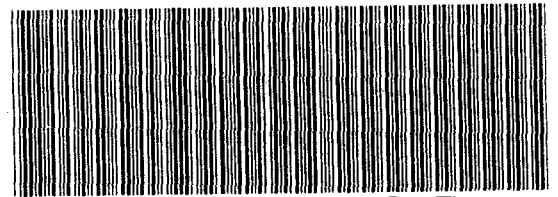
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 639 Citadel Drive, Westmont, IL 09-03-213-136

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 Vacant " " 09-03-213-146

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 633 " " 09-03-213-139

R97 195896

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FRED BUCHOLZ
 DUPAGE COUNTY RECORDER
 OCT. 14, 2009 RHSP 10:22 AM
 OTHER 09-03-213-001
131 PAGES R2009-156853

NOV 02 2009

SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNHOMES AT CITADEL ON THE POND

This instrument, consisting of ~~124~~ ¹³¹ () pages, is recorded for the purpose of amending the Declaration of Covenants, Conditions and Restrictions for the Townhomes at Citadel on the Pond (hereinafter referred to as "Declaration"), which was recorded on June 22, 1995 with the Recorder of Deeds, DuPage County, Illinois as Document number R95-076827.

This Amendment is adopted pursuant to the provisions of Article XII, Section 4 of said Declaration, which provides that this Amendment, the text of which is set forth below, shall become effective upon recordation in the Office of the Recorder of Deeds, DuPage County, Illinois, following the approval of this Amendment by not less than seventy-five percent (75%) of the Owners in the Association as evidenced by the signatures of said required number of Owners attached hereto, and the approval of the Village of Westmont.

PREAMBLE

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for the Townhomes at Citadel on the Pond has been recorded with the Recorder of Deeds, DuPage County, Illinois, on June 22, 1995 as Document number R95-076827;

WHEREAS, the Declaration was amended by the Amendment to Declaration of Covenants, Conditions and Restrictions for the Townhomes at Citadel on the Pond, which was recorded with the Recorder of Deeds, DuPage County, Illinois, on December 18, 1997 as Document number R97-195896;

WHEREAS, the Board of Directors for The Citadel on the Pond Townhome Owners Association and the Owners desire to amend the Declaration to restrict the leasing of individual Townhomes;

WHEREAS, the Amendment has been approved by not less than seventy-five percent (75%) of the Owners in the Association as evidenced by the signatures of said Owners attached to this Amendment; and

WHEREAS, the Amendment has been approved by the Village of Westmont.

NOW THEREFORE, the Declaration of Covenants, Conditions and Restrictions for the Townhomes at Citadel on the Pond is hereby amended in accordance with the text that follows:

AMENDMENT

1. A new "ARTICLE XIII" shall be added to the Declaration after the existing Article XII, "General Provisions". Upon passage of this Amendment, such Article XIII shall contain the following language only:

ARTICLE XIII. Lease of Townhomes.

(a) **Prohibition against Leasing.** Each Owner shall occupy and use his/her Townhome as a private dwelling. Rental or leasing of the Townhome is prohibited, except as hereinafter provided. For purposes of this Section, rentals or leasing to a member of the Owner's immediate family members, including, children, grandchildren, siblings or parents shall not be prohibited or restricted by the Association.

(b) **Hardship Provisions.** In the event that an Owner, due to medical or health reasons or other justifiable cause constituting a hardship, in the sole discretion of the Board, shall be unable to occupy the Townhome for a period in excess of four (4) months and based on said hardship desires to lease said Townhome, the Owner shall make application to the Board which may, by majority vote and review of the application, grant to the Owner an exception to the above leasing restriction, upon such conditions as the Board may establish and uniformly apply.

(c) **Grand-fathered Current Leases.** All Townhomes that are not Owner occupied and are occupied by a tenant(s) pursuant to a lease agreement on the effective date of this Amendment may continue to be leased to said tenant(s) for a period not to exceed three hundred and sixty-five (365) days from the date this Amendment is recorded with the DuPage County Recorder. Any lease entered into by an Owner shall not, by its terms, permit a tenant to reside in a Townhome in excess of three hundred and sixty-five (365) days from the date this Amendment is recorded with the DuPage County Recorder. Upon expiration of the three hundred and sixty-five (365) day period following the recording of this Amendment, all Townhomes in the Association shall be Owner occupied. Any individuals residing in Townhomes at the Association that are not Owners upon the expiration of the three hundred and sixty-five (365) day period following the recording of this Amendment shall be in violation of the Declaration, and subject to the remedies available to the Association to cure such violation as more fully described herein and in the Declaration.

(d) **Association Leases.** The Association shall be exempt from any lease restrictions provided in paragraphs (a), (b) and (c) of this Article XIII, pursuant to the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-101 et. seq.) for the purposes of collecting delinquent assessments, costs, fees and other property assessed expenses to the Townhome.

(e) **General Provisions.** Additionally, all Owners leasing their Townhome under such "hardship" exception or pursuant to paragraph (c) shall deliver a copy of the signed lease to the Board, or if the lease is oral, a memorandum of lease, no later than the date of occupancy or ten (10) days after the lease is signed, whichever comes first. In the event that the Owner fails to comply with such leasing requirements, the Association may seek to evict a tenant from the Townhome under Article IX of the Code of Civil Procedure. Furthermore, all provisions of the Declaration, By-Laws and Rules and Regulations shall be applicable to any person leasing a Townhome and shall be deemed to be incorporated in any lease executed or renewed. The Board may proceed directly against a tenant, at law or in equity under the provisions of Article IX of the Code of Civil Procedure, for any other breach by the tenant of any covenants, rules, regulations or by-laws.

2. The terms used herein, if not otherwise defined, shall have the same meaning described to them in the Declaration.

3. The language of this Amendment shall govern any conflicts between this document and the Declaration.

4. Except as to the extent expressly set forth herein above, and as amended, the Declaration, By-laws and Rules and Regulations shall continue in full force and effect without change.

END OF TEXT OF AMENDMENT

This instrument was prepared by:
KEY & COSTELLO, P.C.
128 South County Farm Road
Wheaton, Illinois 60187
(630) 690-6446