

DECLARATION OF COVENANTS AND RESTRICTIONS
EVERGREEN VILLAS
HOMEOWNERS ASSOCIATION

This Instrument Prepared by and Return to:

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Declaration of Covenants and Restrictions

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DECLARATION OF COVENANTS AND RESTRICTIONS
OF EVERGREEN VILLASHOMEOWNERS ASSOCIATION

PREAMBLE

THIS DECLARATION is made the ____ day of _____, 20__ by EVERGREEN VILLAS, LLC, an Illinois Limited Liability Corporation, hereinafter called Developer.

WITNESSETH:

WHEREAS Developer owns the property described in Exhibit "A" (the subject property); which may eventually be developed in conjunction with other property as depicted on Exhibit "B" or in some other manner as Developer may determine; and

WHEREAS Developer hereby submits the subject property to this Declaration to be used as depicted on the Final Planned Unit Development (PUD) Plan described in Exhibit "C"; and

WHEREAS Developer has and retains the unilateral right to add some or all of the additional property across Beech Street to the north and more specifically legally described in Exhibit "D" to this Declaration. This additional property is owned by Tiehack Development Inc, a member of Evergreen Villas, LLC. Any such addition shall be accomplished by the recording of a Final PUD phase plan depicting the configuration of that portion of the additional property and a description of the lots, common area and limited common area in that phase as amended from time to time, and

WHEREAS Developer has and retains the unilateral right to re-subdivide portions of this subject property and any additions thereto. Any such re-subdivision shall be by the recording of a supplemental declaration containing a legal description of the property subdivided, a supplemental final PUD phase plan depicting the configuration of that portion of the property re-subdivided and a description of the lots, common areas and limited common areas in that re-subdivision as amended from time to time; and

WHEREAS Developer deems it advisable for the efficient preservation of the subject property, and any portion of the additional property made subject to this Declaration, to create an Association to which shall be delegated and assigned the power, authority and responsibility to maintain and administer the common area, including but not limited to, grounds, landscaped and natural areas, private storm sewers, flood routes, common drainage tile, signage, private streets, parking areas, driveways, street lights, private utilities, entrances, berms, and sidewalks; to administer and enforce these covenants and restrictions; to perform the obligations imposed on the agency by this Declaration; and to collect and disburse all assessments and charges necessary to carry out all such responsibilities.

NOW, THEREFORE, Developer declares that the subject property described in Exhibit A, shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations and liens hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1. Definitions. The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context clearly indicates otherwise) have the following meanings:

- A. Occupy, Occupies or Occupancy shall mean staying overnight in a particular living unit for at least 60 days in the subject calendar year.
- B. Architectural Control Committee shall mean the Architectural Control Committee appointed and empowered in Article IV of this Declaration.
- C. Association shall mean and refer to Evergreen Villas Homeowners Association, the Illinois not-for-profit membership corporation described in Article II and V, including its successors and assigns.
- D. Subject Property or Properties shall mean and refer to the property described in Exhibit A and any portion of the property described in Exhibit D which is added in the manner described in the third introductory Whereas clause, all as depicted on Exhibits B, C and E.
- E. Common Area shall mean and refer to all of the property outside the perimeter of the Living Units.
- F. Declaration shall mean the Evergreen Villas Declaration of Covenants and Restrictions, i.e. this document.
- G. Limited Common Area shall mean and refer to a portion of the common area contiguous to and serving one or more single living units as an inseparable appurtenance thereto, including specifically but not by way of limitation any overhang or other part of a living unit extending beyond the foundation wall, any driveway between the private street and the living unit, a patio area or other individual use area at the rear of the unit as depicted on the Typical Unit Plans shown in Exhibit E, any party wall and any pipe, drainage tile, wire or cable, duct or other conduit which crosses one lot to serve another lot. Limited Common Areas may be unilaterally established by the Developer, or may be established by the Association with the prior approval of the Architectural Control Committee. Any additional limited common elements shall be designated by the recording of a supplemental amendment to this Declaration.
- H. Living Unit shall mean and refer to any portion of any building situated upon a lot designed and intended for use and occupancy as a residence by a single family.
- I. Lot shall mean and refer to an improved or unimproved plot of land as shown in the Final Planned Unit Development Plan (Exhibit C) and the Typical Unit Plan (Exhibit E) and as legally described in any conveyance documents of lots in recorded final subdivision plats of all or any portion of the subject property.
- J. Member shall mean every person with an ownership interest in a lot or living unit located thereon.

- K. Operating Fund shall mean the fund created for the receipts and disbursements of the Association pursuant to Article III.

- L. Ownership Interest in a lot or living unit thereon shall mean and refer to the interest held by any joint owner, tenant-in-common, joint tenant, co-owner of an individual interest in a lot or living unit thereon, beneficiary of a title holding trust, or other person who, in connection with other persons, constitutes an owner, legal or equitable, and those with contractual rights in a lot or living unit thereon acquired through an Agreement for Deed in Escrow or comparable escrowed conveyance arrangement.

- M. Party Wall shall mean a common wall, which divides two living units.

ARTICLE II
EVERGREEN VILLAS HOMEOWNERS ASSOCIATION

Section 1. Organization. The Developer will, within sixty (60) days after platting of the first lot, cause an Association to be formed as a not-for-profit corporation under the laws of the State of Illinois. The Association will be called the Evergreen Villas Homeowners Association.

Section 2. Membership. Every person with an ownership interest in a lot or living unit automatically, and without further action, shall be a Member of the Association.

Section 3. Associate Membership. Every person, who is entitled to possession and occupancy of any living unit as a tenant or lessee of a Member, may be an associate Member of the Association and as such, shall be privileged to use the common area, subject to the Rules and Regulations of the Association. Associate Members shall not have voting rights.

Section 4. Voting Rights. Members of the Association shall be entitled to vote in person or by proxy as follows:

- A. one vote for each household;

- B. when more than one person is a lot or living unit Owner, the vote for such a lot or unit shall be exercised as the co-owners among themselves determine;

- C. no Member shall be expelled or have their voting rights canceled by Association, provided, however, that no Member shall be entitled to vote on any matter during such period of time as there is any default in the payment of any assessment on the lot or living unit in which the Member has an ownership interest.

Section 5. Powers and Authority of the Association. The Association shall have and possess all powers of an Illinois not-for-profit corporation subject only to limitations upon the exercise of such

powers as are expressly set forth in these Declaration of Covenants and Restrictions and shall operate pursuant to bylaws adopted by the Board. It shall have the power to do and perform any and all acts which may be proper for or necessary for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety or general welfare of the Members. It shall operate through an appointed and then elected Board of Directors as explained below.

Section 6. Directors and Officers. The Developer shall appoint three (3) directors to the Board of Directors and the necessary interim officers of the Association to manage until 75 lots have been sold by Developer. When 75 lots have been sold a meeting of the Association shall be called for the election of directors and officers by the Members pursuant to the By-Laws of the Association in effect at that time.

ARTICLE III ASSESSMENTS AND FUNDS

Section 1. Creation of the Lien and Personal Obligation of Assessments. By acquiring an ownership interest in any lot, each Member and his or her heirs, executors, and administrators and his, her or its successors and assigns agree to pay to the Association promptly when assessed all assessed amounts. Each Member shall be deemed to have consented to make such payments and to have agreed to all the terms and provisions of this Declaration, whether or not a mention of such a provision was included in the contract, deed or other instrument by which he, she or it acquired an ownership interest in a lot. The annual and special assessments of the Association, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge against and shall constitute a continuing lien upon the lot and living unit located thereon against which each assessment is made. Each such assessment, together with such interest thereon, and costs of collection thereof, as hereinafter provided, shall also be a personal obligation of all Members who held such ownership interest at the time when the assessment became due and payable. In case more than one person has an ownership interest in a unit all of such persons shall be jointly and severally liable.

Section 2. Assessments.

A. Annual Assessment. Annual assessments levied by the Association shall be used to accomplish the following:

- i. To promote the health, safety, pleasure and welfare of the Members of the Association.
- ii. To pay costs and expenses incident to the maintenance function and responsibilities of the Association.
- iii. To pay the cost of services furnished by or to the Association by independent contractors for services such as lawn, landscape and natural area care, street cleaning and snow removal.
- iv. To pay costs and expenses incident to the maintenance and operation of a Club House.
- v. To pay premiums for insurance coverage on the common area and professional fees

for legal, accounting, architectural and similar services.

- vi. To pay all other costs and expenses incidental to the operation and administration of the Association.
- vii. To accumulate funds for the replacement of private roads, storm sewers and other capital improvements maintained by the Association.

- B. Special Assessment. Special Assessments shall be used to pay the cost of capital improvements or extraordinary maintenance, repair or replacement of property maintained by or under the control of the Association, and to reimburse the Association for costs due to the failure of any lot or unit Owner to complete repair or maintenance obligations of that owner's lot or unit.
- C. Additional Assessment. If at any time during any fiscal year the regular operating and maintenance assessment shall prove inadequate for any reason (including nonpayment of any Member's share thereof), the Board of Directors of the Association may levy a further assessment in the amount of such actual or estimated inadequacy with the approval of Members casting votes for 51% of the lots.
- D. Reimbursement Assessment. The Board of Directors of the Association shall levy a "Reimbursement Assessment" against any Member whose failure to comply with the Covenants and Restrictions, the Rules and Regulations or the Architectural Control Committee rules causes funds to be expended by the Association in performing its functions under the above mentioned restrictions and rules. Such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended and shall be due and payable to the Association when levied.

Section 3. Operating Fund. There shall be an operating fund into which the Association shall deposit all monies paid to it as assessments and miscellaneous fees. Disbursements shall be made from this fund in performing the functions for which the foregoing assessments are levied.

Section 4. Budget Preparation.

A. Procedure:

- i. Annually, before the close of the current calendar year, the Association shall prepare a budget showing the projected receipts and expenditures for the next fiscal year. The budget shall include the following:
 - a. The proposed monthly assessment of the Association by lot/unit, which until December 31, 2010 shall not exceed \$2,400.00 per year or \$200.00 per month.
 - b. Any approved Special Assessments of the Association which assessments shall be payable quarterly or as required with the right of prepayment.

- c. All projected expenses for the next fiscal year.
 - d. Any capital improvements, provided that the cost of each such capital item shall not exceed \$100,000 without the prior approval of Members casting votes for 51 % of the lots.
 - e. Any balance or deficit from the prior year.
- ii. The Annual Budget shall be prepared and distributed to each lot/ unit owner not less than 30 days prior to the date of the meeting to approve its adoption.
 - iii. The Association shall give at least ten (10), but not more than thirty (30), days written notice of any meeting at which the proposed Annual Budget is to be adopted or a Special Assessment established.
 - iv. Annually, within 60 days after the close of the Association's fiscal year, the Association shall supply each lot/unit Owner an itemized accounting of the preceding year's actual receipts and expenditures. The accounting shall include a tabulation of the amounts collected by unit, excess or deficit in each income and expense account, the amount of reserves on hand by account, any delinquencies by unit Owner, and other related information.

Section 5. Assessment Period and Payment. The period for which Annual Assessments of the Association are made shall be the twelve-month period extending from January 1 through the next succeeding December 31. The period for the first Annual Assessment shall begin January 1, 2009. Monthly payments by new Members will not be due until the 1st day of the month following date they acquired an ownership interest in a lot and/or unit.

Assessments shall be due and payable by the lot/unit owner to the Association in their entirety. Payments shall be made monthly in advance and shall be due the first day of each month and thereafter shall be delinquent. The Board of Directors, at its option, may require a lot/unit owner to pay a "late charge" in a sum to be determined by the Board for any assessment which is not received by the 15th of each month when due. Each assessment which is not paid within thirty (30) days after it is due shall also bear interest from its due date at a monthly interest rate to be determined from time to time by the Board of Directors.

Section 6. Ledger of Assessments/Certificate of Payment. The Association shall cause to be prepared a ledger of lot/units and all assessments applicable thereto according to unit number, street address and/or legal description. The assessment ledger shall be kept by the Association and shall be open to inspection, upon request, by any Member.

The Association shall, upon request of any Member or of the mortgagee of any lot, furnish a certificate in writing, signed by an officer of the Association, setting forth whether or not such assessment has been paid. Such certificate shall constitute conclusive evidence of the payment of any assessments therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment. If any assessment is not paid promptly on the due date thereof, then such assessment shall become delinquent automatically and shall, together with daily late penalties and interest thereon and costs of collection thereof, as hereinafter provided, become a continuing lien on the lot and the living unit against which it is levied, which lien shall bind such lot, whether in the hands of the then Owner or his, or her heirs, executors, devisees, or personal representatives and/or their successors and assigns. The personal obligation of each Member to pay such assessment, however, shall remain his, her, their or its personal obligation but shall not be a personal obligation of successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, the assessment and the late payment charge, together with the interest on both at the rate prescribed by the Board of Directors may be enforced and collected by the Association by the institution of an action at law against the lot/unit owner or Member personally, or by an action to foreclose the lien against the lot/unit, and in any case and regardless of the method used, shall include court costs, service charges and attorneys fees, and all costs or advancements made in collection and/or foreclosure actions.

Section 8. Exempt Property. The following property, although subject to this Declaration, shall be exempt from all assessments, late penalty and interest charges and lien created herein:

- A. All common areas as defined in Section 1 of Article I hereof except the portion thereof within the limits of any lot, and
- B. All properties owned by the Developer until such properties are sold, rented or leased by the Developer to a third party.

ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose of Architectural Control Committee. It shall be the duty of the Architectural Control Committee to consider and act upon all proposals or plans submitted to it pursuant to the terms of these covenants and restrictions, to adopt architectural rules and guidelines for the community, to carry out all other duties imposed upon it by the Evergreen Villas restrictions and to perform other duties delegated to it by the Board of Directors of the Association.

Section 2. Creation. The Developer shall create an Architectural Control Committee. The committee shall consist of up to three individuals appointed by the Developer, which may include a representative of the Developer.

Section 3. Term. Committee appointees will serve for staggered 3-year terms, subject to reappointment at the end of their three year terms by the interim or elected Board of Directors of the Association.

Section 4. Vacancies. Vacancies in the Architectural Control Committee shall be filled by the Developer. When the Developer no longer owns any lots, units or common area, vacancies on the Architectural Control Committee shall be filled by appointments by the Board of Directors of the Association. The Architectural Control Committee may act through a designated agent, such as an

architect or architectural firm, which designation may be made and revoked by written instrument, placed on record in the office of the McLean County Recorder of Deeds.

Section 5. Authority. Except where final authority is delegated by this Declaration to the Architectural Control Committee, the Architectural Control Committee must forward its recommendations to the Board of Directors for final approval.

Section 6. Review and Approval Procedures/Additions, Alterations or Modifications to Units/Common Areas or Limited Common Areas.

A. The Architectural Control Committee's recommendations and/or certifications require review and final approval by the Board of Directors.

B. Alterations, Additions or Modifications.

- i. The Developer may make additions, alterations or modifications to any unit, the common area or the limited common areas without prior Architectural Review Committee review and approval.
- ii. The Association may make additions, alterations or modifications to unit exteriors, the common area or the limited common area, but only with prior Architectural Control Committee review and approval.
- iii. Any unit owner may make additions, alterations or modifications to his, hers, its or their limited common area, but only with prior Architectural Control Committee review and approval.
- iv. Any unit owner may make additions, alterations or modifications to the exterior of any living unit only with the prior Architectural Control Committee review and approval. Any such approved additions, alterations or modifications must be for the betterment of the community as a whole.
- v. Any unit owner may make additions, alterations or modifications to the interior of any living unit, any party wall or other common element within the unit without prior Architectural Control Committee review and approval.

C. Scope of Authority. Except for improvements constructed by the Developer, no building, dwelling, wall, fence, enclosure, dog run, storage shed, swimming pool, antenna, satellite dish, sidewalk, driveway, tent, awning, sculpture, work of art, pole, hedge, tree, bush, garden, shrub, mass planting or other structure or excavation shall be commenced, erected, planted on, or removed from the property, nor shall any exterior addition to any such existing structure or change or alteration thereof, including painting or staining, be made until detailed plans and written specifications thereof showing the nature, species, kind, shape, height, color, materials and location of the same, with accurate references to lot lines and showing proposed grading, drainage and methods of soil control, (or so much of that information as the Architectural Control Committee deems relevant) shall have been submitted to and approved in writing by the Architectural Control Committee. Proposals submitted for approval must include specifics as to harmony and compatibility

of external design and location, with the surrounding structures, topography and common area.

- D. Basis for Approval. In recommending approval or disapproval of a proposal, the Architectural Control Committee shall consider:
- i. The extent to which the proposal conforms to approved Evergreen Villas Planned Unit Development Plan;
 - ii. The extent to which the proposal conforms with this Declaration;
 - iii. The extent to which the proposal is comparable and/or compatible with the existing and proposed use or uses of adjoining or nearby living units;
 - iv. The extent to which the proposal is consistent with and enhances the overall quality of the Evergreen Villas community;
 - v. The extent to which maintenance and repair of the alteration or improvement will increase maintenance and/or other costs to the Association.
- E. Certificate of Approval. The Architectural Control Committee shall issue its "Letter of Approval" after approval by the Board of Directors on each request. Similarly the Committee shall issue a "Certificate of Completion and Compliance" when the structure, addition, alteration or change is completed and inspected by the Committee for compliance.
- i. Any title company or person certifying, guaranteeing or insuring title to any unit or portion of the property or any lien thereon or interest therein, shall be fully justified in relying upon the contents of the Certificate signed by any person serving on the Architectural Control Committee, or any agent thereof, appointed in accordance with the provisions herein, and any Certificate shall fully protect any purchaser or lender acting in good faith thereon.
- F. Right of Entry. During any construction or alteration required to be approved by the Architectural Control Committee and/or Board of Directors, any person serving on the Board or Committee or any agent of the committee shall have the right to enter upon and inspect, during reasonable hours, any part of the common area, any lot/unit, limited common area or improvements thereon, for the purpose of ascertaining whether or not the provisions herein set forth have been and are being followed. Persons or agents entering and inspecting shall not be deemed guilty of trespass by reason thereof.
- G. Non-Waiver. The approval by the Board after recommendation by the Architectural Control Committee of any plans and specifications, plot plan, grading, planting or any other plan or matter requiring approval as herein provided shall not be deemed to be a waiver by the said Board of its right to withhold approval as to other similar features or elements embodied therein when subsequently submitted for approval by other Members. Neither the Board, committee nor any person serving on the Board or committee, nor the Association, nor the Developer, nor the present owner of said real estate, if not the

Developer, shall be in any way responsible or liable for any loss or damage, or for any error or defect, which may or may not be shown on any plans and specifications, or on any plot or grading plan, or planting or other plan, or any building or structure or work done in accordance with any other matter, whether or not the same has been approved, by said Board, committee, or the Association, or the present owner or Developer of the property.

- H. Exemption. The provisions of this Section shall not apply to the Developer or to property or units owned by the Developer.

ARTICLE V RESPONSIBILITIES OF THE ASSOCIATION

Section 1. Business Operations and Expenses. From Annual Assessments, the Association may provide and pay for the following:

- A. Insurance, including liability and casualty on the common area and improvements thereon, other than those constituting lots and/or living units, and officers and directors liability coverage for those serving on the Board of Directors and/or Architectural Control Committee;
- B. Administrative services, including a manager, office staff, bookkeeping, legal and accounting services;
- C. Utility charges to the Club House, common area lighting, irrigation and any other community amenity requiring utility service;
- D. Real estate taxes on property owned by the Association;
- E. Reasonable reserves for replacements Developer or Association owned common area infrastructure and contingencies;
- F. Other reasonable expenses approved by the Association.

Section 2. Maintenance. From Annual Assessments, the Association may provide and pay for the following:

- A. Maintenance of the Club House and common recreation areas;
- B. Snow removal from driveways, sidewalks and porches located in the common and limited common areas at the front of each living unit and private streets and off-street parking areas;
- C. Lawn care in the common area, including mowing and trimming of grassed areas and maintenance of irrigation system;

- D. Seasonal clean-up and pruning of landscaped areas in the common areas;
- E. Repair, replacement, maintenance and fertilizing/chemical application to the landscaping in common areas;
- F. Maintenance of the privately owned roadways, storm sewers and collector tile system for footing tile;
- G. Maintenance of street lighting and signage, including shared entrance signs and Evergreen Boulevard improvements;
- H. Other maintenance as required to maintain the quality of life at the Evergreen Villas community.

Section 3. Repair and/or Replacement. From Annual and/or Special Assessments, the Association may provide and pay for the current and future repair and/or replacement of the following:

- A. Private streets, walking paths, off-street parking areas, storm sewers, footing tile collection system, street lights and other private utilities including irrigation systems, except sanitary sewer and unit service lines in the common areas;
- B. All landscaping in the common area;
- C. Accumulation of funds for the eventual repair and/or replacement of the private roadways;
- D. Club House and any amenities thereto;
- E. Driveways, sidewalks, front porches, front steps and rear patios in the limited common areas are the sole responsibility and expense of the individual unit owner. As mentioned in Article V, Section 5, all repair or replacement work on the exterior of the unit or in the common or limited common areas require prior approval of the Architectural Control Committee to insure consistency of workmanship and appearance.

Section 4. Exterior and Limited Common Area Repairs. The Association, at the request of the Architectural Control Committee, may require the maintenance, repair or replacement of the roof, windows, party walls, exterior walls and trim, of any living unit and the patio area and/or other improvements in the limited common area at the rear of any unit in one of two ways:

- A. By requiring the lot and living unit owner to have the work done subject to the prior review and approval of the Architectural Control Committee; or
- B. By levying a Special Assessment against the specific lot and living unit on which the work is done and using the assessment to pay a contractor hired by the Association to do the work subject to the review and approval of the Architectural Control Committee.

Section 5. Repairs by Association Occasioned by Members' Neglect. Every Member, by acquiring an ownership interest in a lot or unit, covenants that they will not permit the lot, living unit or anything in the living unit or on or attached to any limited common element to be maintained in other

than good repair and in a safe, neat and attractive condition. In the event any Member shall fail to so maintain his or her or its, living unit or limited common element and such neglect, in the judgment of the Developer, the Association, the Board of Directors, or the Architectural Control Committee, is resulting in a condition of unsightliness tending to adversely affect the value or enjoyment of neighboring properties, or constitutes a hazard to persons or property, the Developer, the Association, the Board of Directors, or the Architectural Control Committee may give notice of such conditions to the owner, demanding that such conditions be corrected within seven (7) days from the date the notice is sent. If the Member, unit owner or lot owner does not rectify the condition at the end of the seven day period, the Developer, the Association, the Board or the Architectural Control Committee may cause such work to be performed as is necessary to rectify the condition. The cost of such work shall be assessed against the lot and living unit upon which the services are performed and shall be reimbursed through the Reimbursement Assessment as explained in Article III, Section 2D to which only that lot/living unit is subject. As part of such assessment, said cost shall be a lien and obligation of each Member with an ownership interest in that lot/living unit in all respects. Payment of the Reimbursement Assessment for any work performed pursuant to this Section shall be due upon presentation of the assessment notice and the supporting invoices to the owner, either in person or by regular mail. If the owner does not make prompt and full payment of the Reimbursement Assessment within fifteen (15) days from the date the notice is presented to the owner, an interest penalty shall be added to the assessed amount due. The rate of interest is to be determined by the Board of Directors. Payments not received within thirty (30) days shall bear additional interest at the prescribed rate. The assessment, penalty and interest shall also constitute a lien upon the lot and living unit and a personal obligation to such Member, which may be collected as any other delinquent assessment.

Section 6. Right of Entry. For the purpose of performing maintenance, repair and replacement, the Developer, the Association, the Board and the Committee, through their authorized agents, servants, employees, or contractors, shall have the right to enter any living unit within the property at reasonable times and after reasonable notice to perform approved and scheduled work or to ascertain whether or not provisions of the Evergreen Villas restrictions and Rules and Regulations are being complied with.

Section 7. Acceptance of Property and Members. As development of the Evergreen Villas progresses, the Developer from time to time may convey by deed common areas or easement interests in limited common areas to the Association. After the conveyance, responsibility for the common areas and easement interests shall rest solely and exclusively with the Association, provided however, no conveyance of any interest in a lot shall be made without the consent of the owner thereof.

Section 8. Rule Making. The Association will, through its Board of Directors, make, establish, promulgate, amend and repeal the Rules and Regulations for the Evergreen Villas Homeowner Association.

Section 9. Enforcement of Restrictions and Rules and Regulations. The Association will take such other action, whether or not expressly authorized by the Evergreen Villas Declaration, as may be reasonably necessary to enforce the Covenants and Restrictions, the Rules and Regulations and the Architectural Control Committee rules of the Evergreen Villas community.

Section 10. Other. The Association will carry out the duties of the Association set forth in other sections of the Declaration of Covenants and Restrictions and By-Laws.

ARTICLE VI
MISCELLANEOUS AUTHORIZED SERVICES

Section 1. Services/Improvements at the Option of the Developer or Association. The Developer of the Evergreen Villas shall have the right to make such improvements and provide such facilities in or on the common area as it considers to be advantageous to the project and Members. The Association shall be obligated to accept and maintain such improvements and facilities at its expense.

The Association, at its expense, shall continue any services initiated by the Developer for the benefit of the property and Association Members.

Section 2. Procedure. All maintenance, repair and replacement work undertaken by the Association shall be subject to review by the Architectural Control Committee as provided in Article IV.

ARTICLE VII
REGULATORY PROVISIONS

Section 1. Permitted Uses and Restrictions. All living units shall be for the exclusive use and benefit of the owners and occupants thereof. Use of such living units, common areas and limited common areas shall be subject to the following limitations and restrictions:

- A. Common Area. The common area other than the limited common area of the Villas at Evergreen Village community shall be improved and used only for the following purposes:
 - i. Vehicular and pedestrian access to and from and movement within the Property;
 - ii. Space for temporary vehicle parking as provided herein;
 - iii. Recreational use by owners and occupants of living units and their guests, subject to the Rules and Regulations promulgated by the Association;
 - iv. Beautification of the property;
 - v. Privacy for the owners and occupants of living units;
 - vi. Such other uses as shall be determined from time to time by the Association for the benefit of Members following approval from the Architectural Control Committee.
- B. Building Location. All structures shall be erected, altered, placed and permitted to remain only in accordance with approved Planned Unit Development plans, for the Villas at Evergreen Village PUD as amended and supplemented from time to time. Typical lots, living unit arrangements and limited common areas are depicted in Exhibit C and Exhibit E.
- C. Attachments. No antennas or satellite receivers for radio, television reception, or over the air transmission, and no clothesline, air conditioning unit (other than the existing condenser unit) or other appliance or apparatus, laundry, bedding garment or other like item shall be placed within the common area or limited common areas or outside any living unit.

- D. Detached Structures. No fence, storage structure, garage, satellite dish, play house, dog run, or pen or other temporary or permanent structure shall be erected or maintained on the common areas or limited common areas except with prior written approval of the Architectural Control Committee.
- E. Use. No business, trade, industry, assembly, fabrication, occupation, or profession of any kind, whether commercial, religious, educational, or otherwise, whether designated for profit, altruism, exploration or otherwise, shall be maintained, conducted or permitted in any living unit.

A home office with electronic transfer of business or professional data, but without customer visits, deliveries, visiting vehicles, noise or other visible pedestrian or vehicular traffic or activity will be permitted unless conditions arise or are present that are in conflict with the general objectives and ambiance of the Evergreen Villas community. All other exceptions to the “no business rule” require the prior approval of the Architectural Control Committee.

F. Rental Restrictions.

- i. Unit owners are prohibited from renting their living units for two years immediately following their purchase except as hereinafter provided. The Owner or a relative of the Owner must occupy the living unit during the two-year period.
- ii. The purchase of a lot/unit is deemed to have occurred on the date the Member acquires an ownership interest in the property.
- iii. Owner for purposes of this Section only is defined to include the following:
 - a. The owner of a fee interest in the lot/unit;
 - b. The owner of greater than a thirty percent beneficial interest in a land trust holding title to the lot/unit;
 - c. The trustee of land trust holding title to the lot/unit;
 - d. A mortgagee which has taken possession of the lot/unit;
 - e. A trustee in bankruptcy;
 - f. The administrator or the executor of the estate of a deceased lot/unit owner.
- iv. The foregoing notwithstanding, any owner may rent to his relative. For purposes of this Section, relative is defined as including and limited to the owner's spouse, parents, children, siblings, grandparents, brothers-in-law, sisters-in-law, mother-in-law, and father-in-law.
- v. Mortgagees who take possession of a lot/unit through foreclosure, or by a deed in lieu of foreclosure, are exempt from the two-year owner occupancy rule, but not from other rental limitation hereinafter stated.
- vi. After occupancy of a unit for two years, an owner may rent his unit to non-relatives

for a maximum of one lease period of not greater than three years. Any such lease shall also count against the one lease period allowed to any subsequent purchaser of the lot/unit who is a relative; in other words, relatives may not avoid the one lease limitation by transferring ownership to another relative.

- vii. This provision may be enforced by the Board of Directors of the Association or the Developer and violations may be remedied in any manner provided in the Declaration, the By-Laws, or by Illinois law.
- viii. To avoid hardship to any owner, the Board of Directors or the Developer of the Association may approve exceptions to these provisions. Requests for exceptions shall be made by the lot/unit owner in writing, stating the extent or nature of the exception requested and the reasons therefore. In considering whether to grant an exception, the Developer or the Board shall consider the extent of the hardship to the owner and the extent to which the hardship may have been foreseen or avoidable by the owner. Difficulty in selling the lot/unit shall ordinarily not be, in and of itself, considered justification for granting an exception. If a lot/unit is being administered by the executor of an estate, a receiver or trustee in bankruptcy proceeding, the two year owner occupancy rule shall not apply during the term of the legal proceedings as long as the estate administrator, executor, receiver, or trustee makes a good faith effort to secure court approval of the sale of the unit and makes a good faith effort to sell the lot/unit.

All rental arrangements must be approved in advance by the Developer or the Board of Directors of the Association and must be documented in writing on lease forms provided by the Association. An executed copy of the lease must be provided at the time of requesting approval.

- G. Signage. No sign of any kind shall be displayed to the public view except standardized signs approved and erected by the Developer or the Association. No other For Sale or For Rent signs shall be permitted.
- H. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any living unit, common area, or limited common area so as to render such lot or portion thereof unsanitary, unsightly offensive or detrimental to other owners. No noxious or offensive activity shall be initiated, allowed or undertaken on any lot or in the living units, the limited common area or the common area, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. No exterior patio speakers, horns, whistles or bells or other sound devices shall be located, used or placed on a living unit except those required for one audible alarm attached to a complete in-house Architectural Control Committee approved security system.
- I. Pets. No animals, reptiles or birds other than one generally recognized house pet shall be maintained in any living unit, and then only if they are kept solely as a household pet and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance. No exterior structure for the care, housing or confinement of any pet shall be permitted. No pet shall be allowed on the common areas except as may be permitted by the Rules and Regulations of the Association. Upon the request of any owner,

the Board of Directors of the Association shall determine, in its sole discretion, whether, for the purpose of this paragraph, a particular animal, reptile or bird shall be considered a house pet or a nuisance.

J. Parking. Evergreen Villas is a maximum two-car community. Because of the clustered placement of living units in the Evergreen Villas community and because all roadways are private to the community, parking restrictions are very important and must be strictly enforced by the Board of Directors of the Association. All owners are encouraged to be aware of and closely adhere to the following:

- i. Garage parking for two (2) vehicles is provided with each constructed unit. In addition, two (2) off-street automobile spaces per living unit are provided at the driveway of each unit. These spaces are for the exclusive use of the unit owner and their invited guests.
- ii. No trailers of any kind, trucks, recreational vehicles, boats or other motor vehicles are to be parked on driveways, private roadways or off-street parking areas for more than twenty-four (24) hours. No trailer, boat or vehicle shall be constructed, reconstructed or repaired within or on any living unit, common area (including roadways) or limited common area. Any trailer, truck or recreational vehicle can be parked in unit garages behind a closed garage door.
- iii. Garage doors shall generally be kept closed except when opened to permit the ingress or egress for vehicles.
- iv. Garages shall be maintained to allow the storage of two (2) automobiles. No garage shall be converted to living, storage or working or recreational space.
- v. Unit owners' cars shall regularly be parked in their respective garages and not in the driveway leading to their garages or community off-street parking areas.

K. Insurance. Each unit owner shall at all times keep his living unit fully insured for its current replacement cost by means of a standard homeowners insurance policy, and shall maintain liability insurance on acts or occurrences on the lot. The policy must provide for replacement coverage with like quality construction. Furthermore, the policy must name the Evergreen Villas Homeowners Association as an additional insured for the purpose of providing funds in case the owner/insured neglects or refuses to rebuild or repair subsequent to fire or casualty loss. Each owner, upon request from another owner in the same building or the Board of Directors, shall deliver to said other owner or the Board a certificate evidencing insurance coverage, timely payment of premium and that the policy remains in full force and effect. Each owner of a living unit shall also procure their own liability and contents insurance coverage.

No unit owner shall permit anything to be done or kept on any lot or in any living unit which will increase the premium rate of insurance on the dwelling structure or which will result in the cancellation of insurance on the building structure, or any part thereof or which would be in violation of municipal, county or state ordinances or law.

L. Trash Containers and Collection. All garbage and trash shall be stored in covered heavy duty plastic containers of a type and style which shall be approved by the Association. Trash containers must be stored inside the living units so as to not be visible to neighboring owners except when placed at the curb for collection by the Town of Normal or a collection contractor for the shortest time reasonably necessary to effect such collection.

M. Easements.

- i. The common area shall be subject to a blanket easement for utility purposes;
- ii. The lots and units within the lots shall be subject to easements as follows:
 - a. For Utilities that serve each unit:
 - b. For Encroachments by Adjacent Units: In the event that by reason of the construction, settlement or shifting of the buildings, or the design and/or construction of any living units, any part thereof encroaches or shall thereafter encroach upon any part of any other lot or living unit, or if the ducts or conduits serving more than one living unit encroach or shall thereafter encroach upon any part of any other living unit, valid easements for the use and maintenance of the encroachment shall be established for so long as all or any part of the building containing the same remains standing; provided however, that in no event shall a valid easement for any encroachment be created in favor of the owner of any unit if such encroachment to be credited in favor of the owner of any unit occurs as a result of the willful conduct of said owner.
 - c. Other: Easements shall be declared and granted to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of the unit, whether or not such walls lie in whole or in part within the unit boundaries.

N. Maintenance and Repair:

- i. Interior and Exterior Maintenance and Repair. The unit owner shall be responsible for the maintenance and/or repair of all of its living unit, both interior and exterior.
- ii. Exterior Appearance. No unit owner shall change the exterior appearance of a living unit except with the prior approval of the Architectural Control Committee. All work must be performed by the Association or by a contractor approved by the Association as provided in Article IV.

O. Party Walls. All dividing walls which straddle any boundary line between units and which stand partly upon one lot and partly upon another and all walls which serve two or more living units shall at all times be considered party walls, and each of the owners upon which any such party wall shall stand, shall have the right to use said party wall below and above the surface of the ground and along the whole length thereof for the support of said dwelling unit and for the support of any building or structures constructed to replace the same and Unit

owner shall have the right to maintain or replace in or on said wall any pipes, ducts or conduits originally located thereon, subject to the restrictions that follow:

- i. No unit owner nor any successor in interest shall have the right to extend said party wall in any manner either in length, height or thickness;
- ii. No owner shall do anything to disturb the right of any other owner to use such party wall;
- iii. In the event of damage or destruction by fire or other casualty of any party wall, including the foundation thereof, the unit owner which abuts such party wall shall have the right to repair or rebuild such wall and the owner of such living unit which abuts such party wall shall pay his allocated portion of the cost of such repair or rebuilding. All such repair or rebuilding shall be done within a reasonable time, in a workmanlike manner, with materials comparable to those used in the original wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall, unless the Architectural Control Committee authorizes otherwise;
- iv. The foregoing provisions of this article notwithstanding, the owner of any living unit or other interested party shall retain the right to receive a larger contribution from another, or others, under any rule of law regarding liability for negligent or willful acts or omissions.

P. Obligation to Rebuild.

- i. In the event of damage or destruction by fire or other casualty of any living unit or any portion thereof, the owner or owners of any such living unit or units, shall, within a reasonable time after such damage or destruction, repair or rebuild the same in a workmanlike manner with materials comparable to those used in the original structure and in strict conformity with all laws or ordinances regulating the construction of buildings in force at the time of repair or reconstruction. The exterior of such living units, when rebuilt, shall be substantially similar to and of the same architectural design in conformity with the exterior of adjacent or nearby dwelling structures. Plans for rebuilding shall be subject to the review and approval of the Architectural Control Committee. In the event of the total or substantial destruction of the exterior of the building, the structures to be rebuilt and the materials to be used shall be subject to approval of the Architectural Control Committee.
- ii. In the event that any unit owner shall fail, after a reasonable time after damage or destruction referred to above, to perform the necessary repair or rebuilding, the Association, or the owner(s) of the remainder of the building structure shall, in the manner described in this covenant, be permitted to cause such repair or rebuilding to be done by a contractor approved by the Association or the Architectural Control Committee. The entity performing the work shall have a continuing lien on that living unit on which any repairs or rebuilding are caused to be made in the aggregate amount of the following:
 - a. The cost of such repairs or rebuilding;

- b. Interest on the cost of repairs or rebuilding at the rate Wall Street Journal Prime interest rate plus 2.00% per annum and;
- c. Reasonable attorneys fees and any court costs or other expenses or charges incurred in connection with the repairs or rebuilding.

The continuing lien shall bind the lot/unit owner of the repaired or rebuilt unit, his heirs, devisees, personal representatives, grantees and any assigns. Further, in the event such owner does not make prompt payment in the full amount of such claim, the other unit owner(s) so repairing or rebuilding shall have the right to foreclose such lien as permitted by Illinois law. The lien of such entity described in this subsection shall be subordinate to the lien of any prior trust deed, mortgage, or mortgages now or hereafter placed upon the lot prior to such repair or rebuilding.

Q. Common Obligations and Expenses.

i. Utility Maintenance Responsibility:

- a. Water. A separate private water service is provided from a public main to each living unit.
- b. Sanitary Sewer. A separate private sanitary sewer service is provided from a public main to each living unit.
- c. Common Footing Tile System. A separate private common footing tile system is provided from a private community system to each living unit.
- d. General Maintenance Provisions:

Maintenance of the utilities within any living unit shall be the responsibility of the unit owner.

Maintenance outside any living unit to the public water main, public sanitary sewer, private common footing tile system or private storm sewer shall be the responsibility of the unit owner but with consent of the Association and under the supervision of the Architectural Control Committee.

Other Situations: Maintenance responsibility shall be as established at the time of initial installation or as the owners of all the living units in a dwelling structure agree.

R. Enforceability of Covenants. In the event that a unit owner fails to perform any obligations set forth in this Article, the remaining unit owner(s) in the same dwelling structure and/or the Board of Directors of the Association may take action to enforce such obligation in the following manner:

- i. Written notice shall be given to such alleged defaulting or violating unit owner setting forth the specific alleged violation of the Declaration of Covenants and

Restrictions.

- ii. If the alleged defaulting or violating unit owner has not taken steps to correct such default/violation or if such unit owner has failed to make any response thereto, setting forth valid reasons for his action or omission to act, then and in such event, the Association or the remaining dwelling unit owner(s) in such dwelling structure may take action to remedy such alleged default/violation and recover the costs thereof as provided elsewhere in these Covenants. If the alleged default/violation is of a nature to require more prompt action, the notice period may be shortened to not less than five (5) days, provided the notice is personally delivered and the time for specific action so specified.
- iii. Notice hereunder shall be given in the manner provided in Article VIII, Sec. 2.
- iv. In the event any work is performed or caused to be performed by the Association or a unit owner upon another owner's unit pursuant to the terms of this Article due to the failure of the defaulting/violating unit owner to perform as required hereunder, the entity contracting for the performance of any such work shall keep and maintain written records, invoices, and the like with respect to the cost of any materials, labor or the like used in making such repair work and shall provide to the defaulting/violating unit owner a copy of all such data and written evidence of the payment thereof, for which reimbursement is sought. Further, the entity performing or contracting for the performance of such remedial work shall be entitled to reimbursement therefore as provided in these Covenants.
- v. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain the violation or to recover damages.
- vi. Units owned by the Developer shall be exempt from the obligations, responsibilities, dues, fees, assessments and other obligations of this Article.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions set forth in this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the Developer, the Association, and the owners of any lot subject to this Declaration, their respective successors, assigns, heirs, executors, administrators, and personal representative, for a period of twenty-five (25) years from the date this Declaration is recorded in the office of the McLean County Recorder of Deeds, at the end of which period such Covenants and Restrictions shall automatically be extended for successive periods of ten (10) years each, unless at least two-thirds of the lot owners at the time of the expiration of the initial period, or of any extension period, shall sign and record an instrument, or instruments, in which they shall agree to change said Declaration of Covenants and Restrictions in whole or in part.

Section 2. Notice. Any notice required to be sent to any lot or unit owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed by

regular post, with postage prepaid, addressed to the lot or unit owner at the last known post office address of the person who appears as an owner on the records of the Association or in the alternative the unit address at the time of such mailing. Notice to one of two or more co-owners of a unit or living unit shall constitute notice to all co-owners. It shall be the obligation of every owner to immediately notify the Secretary of the Association in writing of any change of address.

Notice for the Association should be addressed to President Evergreen Villas Homeowner Association, 115 West Jefferson Street, Suite 401, Bloomington, Illinois 61702-3188 or such other office address as established by the Board of Directors of the Association.

Section 3. Amendment. These Covenants may be amended by the agreement and approval of the following:

- A. The Developer, provided it owns any part of the property; or
- B. Two-thirds (2/3) of the lot owners after the Developer owns none of the property.

Any amendment shall be in writing and made of record by recording a copy thereof in the office of the McLean County Recorder of Deeds.

Section 4. Enforcement. Enforcement of this Declaration of Covenants and Restrictions shall be by any appropriate proceeding in law or equity against any person or persons, firm or corporation violating or attempting to violate or circumvent any such Covenant or Restriction brought in the Circuit Court of McLean County, Illinois. Such suit may seek an injunction to prevent such violation or threatened violation or may seek to recover damages, or may seek to enforce any lien created by this Declaration in any covenant herein contained, or may take any other form authorized by law. Failure by the Association or any unit owner or Member to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

Section 5. Severability. Should any covenant or restriction herein contained, or any Article, Section, Sub-section, sentence, clause, phrase or term of this Declaration be declared to be void, invalid,

illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

IN WITNESS WHEREOF, Evergreen Villas, LLC has caused this instrument to be executed the day and year first above written.

EVERGREEN VILLAS, LLC

BY:

Steven J. Wannemacher, Its Managing Member

CORPORATE NOTARY

STATE OF ILLINOIS)
) SS:
COUNTY OF McLEAN)

I, THE UNDERSIGNED, a Notary Public in and for said County and State aforesaid, do hereby certify that **Steven J. Wannemacher**, personally known to me to be the Managing Member of **EVERGREEN VILLAS LLC**, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as said Managing Member of said Limited Liability Company, as his free and voluntary act and as the free and voluntary act and deed of said Limited Liability Company for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of _____, 20____.

NOTARY PUBLIC

My commission expires: _____