

**THIS INSTRUMENT  
PREPARED BY AND MAIL  
TO:**

James E. Olguin  
Goldstine, Skrodzki, Russian,  
Nemec and Hoff, Ltd.  
835 McClintock Drive  
Second Floor  
Burr Ridge, IL 60527-6483  
630/655-6000

DRAFT  
NOT FINAL  
4/19/06

(The Above Space For Recorder's Use Only)

**IVANHOE SUBDIVISION**

**DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made on this \_\_\_\_ day of \_\_\_\_\_, 2006, by FOX PRAIRIE DEVELOPMENT, LLC, an Illinois limited liability company (herein the "Developer").

**W I T N E S S E T H:**

**WHEREAS**, Developer is the Owner of approximately 124.92 acres of real property generally located on the northeast corner of US Route 52 and Bruns, and legally described on attached Exhibit "A", in the Village of Manhattan, County of Will, State of Illinois (herein the "Property"), which real property has been annexed to the Village;

**WHEREAS**, Fox Prairie Development, LLC, an Illinois limited liability company (herein the "Developer"), is a developer of single-family homes throughout the Chicago suburban area and is the developer of the Property; and

**WHEREAS**, Developer desires to provide for the preservation of the distinctive residential quality of the Property and for the maintenance of the entranceway monuments and landscaped island medians, the drainage easements and, for these purposes, Developer desires to subject the Property to the conditions, covenants, restrictions, reservations, grants and easements herein set forth (all of which are hereinafter referred to collectively as the "Covenants and Restrictions"); and

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers of administering and enforcing the Covenants and Restrictions.

**NOW, THEREFORE**, Developer, for the purposes above set forth, hereby declare as follows:

**ARTICLE I**  
**General Purpose of this Declaration**

1.1 Statement of Purpose: The purpose of this Declaration and of the Covenants and Restrictions contained herein is to insure use and development of the Property consistent with the desire and intention of Developer to establish a residential community of high quality, to protect the owners of homes therein against use of the Property or of any part of the Property inappropriate to a fine residential community and incompatible with the proper enjoyment of such a community; to prevent the construction of buildings which, because of their design or construction or materials, are not in aesthetic harmony with other buildings on the Property; to encourage the construction of fine quality homes compatible with the architectural character of the Property; to make certain that homes are so located on sites within the Property that each home enjoys light, air, and free and open space; to protect Owners of property within the Property against any improper use of proximate Lots as may depreciate the value of their property; and to insure that the Property is at all times carefully and efficiently maintained and that the facilities, lawn, ponds, walks and open spaces are always so maintained and operated that they may be enjoyed and used with comfort and pleasure by the Owners of homes within said Property. It is the purpose of the Declaration, in general, to provide that the Property will be so managed, maintained and preserved, and that it will at all times be regarded as a residential community of outstanding excellence.

1.2 Declaration and Description of the Property: Developer does hereby declare that the Property is and shall be subject to the uses and purposes herein set forth. Developer declares further that this declaration shall be managed and administered on the terms and conditions hereinafter set forth. The Property to which said declaration relates, and which is subject to this declaration, is the real property which Developer is developing, and said Property is described in attached Exhibit "A".

**ARTICLE II**  
**Definitions**

2.1 Association: The name of the Association is the Ivanhoe Homeowners' Association, an Illinois not-for-profit corporation, its successor and assigns.

2.2 Board of Directors: The Association shall have a board of five (5) directors who shall constitute the Board of Directors. All rights, titles, powers, privileges and obligations vested in or imposed upon the Board of Directors, pursuant to the Illinois general Not-For-Profit Corporation Act of 1986, (805 ILCS 105 et seq.), and upon the Association in this Declaration shall

be held and executed by this Association through the duly elected members of the Board of Directors and their successors in office.

2.3 By-Laws: The By-Laws of the Association, attached hereto as Exhibit “B”.

2.4 Community Area: Entrance landscape islands, all entranceway landscaping and monuments and drainage easements as shown on the Plat for maintenance purposes by Owners and their agents.

2.5 Community Expenses: The expenses of administration (including management and professional services), maintenance, operation, repair, replacement and landscaping of the entranceway monuments, drainage easement; any expenses designated as Community Expenses by this Declaration or the By-Laws; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.

2.6 Declaration: This instrument as amended or supplemented from time to time.

2.7 Developer: Fox Prairie Development, LLC, an Illinois limited liability company, its successors and assigns, if any successor or assignee acquires the undeveloped portion of the Property from Developer for the purpose of development.

2.8 Lot: A portion of the Property shown on the Plat which is improved or intended to be improved with one single family residence. The “Lots” are those portions of the Property which are designated on the Plat as Lots \_\_\_\_\_ through \_\_\_\_\_ (excluding Lots \_\_\_\_\_).

2.9 Member or Membership: Shall mean or refer to every titleholder of a Lot within the Ivanhoe Subdivision.

2.10 Owner: The record holder of fee simple title to any Lot on the Property, other than the Developer, whether such Owner shall be one or more persons or entities, the beneficiary of beneficiaries of a trust, shareholder of a corporation, or partner of a partnership, but excluding those persons or entities having any interest merely as security for the performance of an obligation.

2.11 Plat: The Plat of Subdivision of the Ivanhoe Subdivision recorded in Will County, Illinois, on \_\_\_\_\_, 2006, as Document No. \_\_\_\_\_, a copy of which is attached hereto as Exhibit “C.”

2.12 Property: The use of the term “Property” shall mean and refer to the Lots and Community Area within the Ivanhoe Subdivision, either improved, unimproved or both, whichever reference is appropriate in context, and all easements, rights and appurtenances belonging thereto.

2.13 Rules and Regulations: The Rules and Regulations adopted from time to time by the Board governing the Ivanhoe Subdivision and the use of the Ivanhoe Subdivision by the Owners and by all other persons.

2.14 Turnover Date: Turnover Date shall mean the date the Association is turned over to the Members, which shall be the first to occur of the Following events:

- (a) Voluntary turnover by the Developer to the Members;
- (b) 60 days after the date that 75% of all Lots have been occupied by Owners;
- (c) Three (3) years from the date of recording of this Declaration.

2.15 Village: Village of Manhattan, an Illinois municipal corporation.

2.16 Voting Member: The person entitled to membership in the Association and who shall be entitled to vote at meetings of the Owners, as more fully set forth in Section 10.2(b).

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### **ARTICLE III**

#### **Architectural Control**

3.1 Architectural Review and Approval: No improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, deck, gazebo, landscape device or object structure or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Architectural Review Board (“ARB”). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. No foundation shall be poured nor shall construction commence in any manner or respect until the layout for the structure is approved by the ARB.

3.2 Architectural Review Board: The Architectural Review Board shall consist of three (3) members who need not be a member of the Association. The term of the members of the ARB shall be 2 years. The Developer shall have the right to appoint the members at any time prior to the turnover date as long as it owns at least one Lot in Property. The Members of the ARB after the Developer no longer owns at least one Lot in the Ivanhoe Subdivision shall be appointed by, and shall serve at the pleasure of, the Board of Directors of the Association. At any time that the Board of Directors has the right to appoint one or more members of the ARB, the Board shall appoint at least one (1) architect or building contractor thereto. In the event additional members are added, a majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors, except that the Developer, to the exclusion of the Board of Directors, shall fill any vacancy created by death, resignation, removal or other termination of services of any member of the ARB appointed by the Developer.

3.3 Powers and Duties of the ARB: The ARB shall have the following powers and duties:

(a) To require compliance with the Pattern Book approved by the Village and any requirements for Through Lots, Key Lots and Key-Through Lots as those terms are defined by the Planning and Architectural Design Guidelines of the Village.

(b) To require submission to the ARB of two (2) site grading plans and complete sets of all plans and specifications drawn by a licensed architect or structural engineer for any improvement or structure of any kind, including, without limitation, any building, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, structure or other improvement the construction or placement of which is proposed upon any Lot in the Ivanhoe Subdivision. The ARB may review and pre-approve preliminary plans of a proposed Owner prior to the submission of plans and specifications from an architect or structural engineer with the final review and approval contingent upon submission of plans and specifications from a licensed architect or structural engineer provided for herein. The ARB may required submission of samples of building and construction materials proposed for use on any Lot and such additional information as reasonably may be necessary for the ARB to completely evaluate the proposed structure or improvement in accordance with this Declaration including but not limited to, a site plan showing location of the buildings and improvements including fences, gas or electric yard light and other structures upon the Lot. The ARB shall encourage the use of natural siding materials, such brick, stone and wood. The ARB may in its sole discretion waive or modify this requirement when the ARB determines that unique architectural features warrant.

(c) The ARB shall have the unrestricted right to prevent the building of and to disapprove of any construction plans submitted to it as aforesaid if, in the sole opinion of the ARB:

i. Such construction plans are not in accordance with all of the provisions of this Declaration.

ii. If the design, exterior and interior size, exterior shape, exterior construction materials or color scheme of the proposed building or other structure is not in harmony with the adjacent buildings, structures or the character of the Development; or

iii. If such construction plans as submitted are incomplete; or

iv. If the ARB deems the construction plans or any part thereof or any material used on the exterior of the building to be contrary to the spirit or intent of these conditions and restrictions, or contrary to the interest, welfare, or right of all or any part of the real property, subject hereto, or the Owners thereof, or of the adjacent property Owners, all in the sole and uncontrolled discretion of the ARB; or

v. If the ARB shall, within it sole and unlimited opinion and discretion, deem the construction plans or any party thereof or the building or structure to be unacceptable or of such design or proportions, or to be constructed of such unsuitable materials or exterior color schemes as shall depreciate or adversely affect the values of other sites or buildings in the Development.

The decisions of the ARB shall be final. Neither the Developer nor any architect or agent of the Developer nor any member of the ARB shall be responsible in any way for any defects in any construction plans submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such construction plans. The ARB may charge a fee not to exceed \$250.00 for the review of each set of plans submitted to the ARB.

#### **ARTICLE IV Restrictions and Responsibilities**

4.1 Land Use and Building Type: All Lots shall be used for single-family purposes only, and no dwellings other than a single-family private residence shall at any time be constructed or maintained on a Lot. Each home shall be occupied by only one family. One family shall be defined as one or more persons each related to the other by blood, marriage, guardianship or legal adoption, or a group of less than four (4) persons not so related.

4.2 Violations: Violation of the restrictions described in this Declaration shall entitle Developer or the Association to enforce the rights and remedies hereinafter specified, whether or not said violation constitutes a legal nuisance.

4.3 Single Family Residential Buildings Only: No business or profession of any nature shall be conducted on any Lot or in any residence constructed on any Lot in this subdivision, except the business of sale of lots and houses in the subdivision constructed by the Developer of the Property or its successors or assigns. None of said Lots as heretofore platted shall be divided or re-subdivided except for the purpose of combining portions thereof with adjoining Lots, provided that no additional building site is created thereby. Any single ownership or single holding by any person or persons which comprises the whole or one of said Lots (as heretofore platted and subdivided) and a part of or parts of one or more adjoining Lots shall, for all purposes of this Declaration, be deemed to constitute a single Lot upon which only one residential building may be erected, constructed, or allowed to exist.

No room or rooms in any residence or parts thereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing contained in this paragraph, however, shall be construed as preventing the renting or leasing of an entire residence as a single unit to a single family.

Anything to the contrary notwithstanding, nothing herein contained shall be construed so as to prevent the Developer or its successors, or assigns from erecting a single family residential building or buildings as a sales office, model home, business office, storage area, construction area, for the purpose of the development and sales of the Lots or homes in the subdivision and any adjoining property.

4.3.1 Exterior Finish Material: All exterior finishes shall remain as constructed with respect to the finish material. All residential buildings shall be exterior faced with brick, stone, cut

stone, cedar siding, clapboard, Hardee Board, or with vinyl siding. All vinyl siding shall be foam backed of an architectural style.

4.3.2 Two and a Half Car Garage Required: As appurtenant to the residential building permitted by Paragraph 4.3 hereof and to be used exclusively in connection with such residential building, a private garage of sufficient size to house not fewer than 2.5 standard size automobiles, but no less than 22'x22', shall be constructed or erected, which garage must be attached to the main residence. Such garage shall not be used at any time as a residence, or for use as related living or for domestic servants of the occupants of said residential dwelling. No carports will be permitted.

4.3.3 Minimum Living Area: In addition to all other requirements in this declaration, the following shall be the minimum sizes for the homes in the Development, unless the ARB has the opinion of extraordinary circumstances that would justify a waiver of such requirements:

- (a) A one story residence shall contain a minimum of One Thousand Six Hundred (1,600) square feet of living area, exclusive of garage, breezeway, porches and basement.
- (b) A two story residence shall contain a minimum of One Thousand Nine Hundred (1,900) square feet of living area, exclusive of garage, breezeway, porches and basement.

It is specifically declared that although a residence sought to be erected on any Lot in this unit may conform to or exceed the minimum square foot living area requirements set out in this paragraph, if such residence does not conform to all the requirements set out in this Declaration, the ARB may disapprove of such construction plans. All homes residences erected on any Lot shall also be required to have a basement sized, at least, fifty percent (50%) of the first floor square footage area.

4.3.4 Mailboxes and Posts for Mailboxes: In the event curbside mailboxes (boxes not attached to a residence) are required for the delivery of the U.S. Mail, the Owner of each Lot upon which a residence shall be constructed shall install, erect, or place upon such Lot or within any other Lot or any right of way such mailbox or receptacle as the ARB shall approve. Under no circumstances shall non-decorative, rural curbside mailboxes be installed anywhere in the Property. The street number shall be affixed to the mailbox. A standardized style shall be established by the ARB in order to maintain the character of the community.

4.3.5 No Temporary Building, Out Buildings, Campers, Trailers, Etc.: No temporary house, campers, habitable motor vehicles, trailer, tent, stand, recreational appurtenances, shack, basement, or other structure or building of a temporary character shall be constructed, placed, allowed to exist or used on any Lot at any time as a residence either temporarily or permanently and no residence erected on any Lot shall be occupied in any manner at any time prior to its full completion.

Nothing herein contained shall be construed so as to prevent the Developer from using such temporary facilities for the purpose of the development and sale of the Lots or homes in the subdivision and any adjoining property.

4.3.6 Fences and Walls: Fences and walls shall be restricted to the rear yard area of Owner's home. No fence shall encroach the side or front yard area of any home. Under no circumstances shall any type of "chain link" or similar type of fencing be allowed.

It is the intent of the Developer to establish a uniform standard of fence material, color and height which will compliment the subdivision. No fence or wall shall be installed in any portion of a retention, detention, drainage area, or floodway, as designated by the Developer's plat of subdivision and drainage plan. No fence shall be installed without approval of the ARB and a permit from the Village of Manhattan.

4.3.7 Parking: No semi-truck, tractor, bus, motor home, trailer or recreational vehicles, snowmobiles, boats, utility vehicle, camper, truck (other than a personal pick-up truck) and no vehicle with the exception of a personal pick-up truck owned by a resident of the dwelling shall be permitted to be parked on any Lot in the subdivision for more than forty-eight (48) hours out of any consecutive fifty-four (54) hour period unless placed inside a garage. It being the intent that parking of the foregoing restricted objects be confined as much as possible to the interior of garages.

4.3.8 No Trucks, Buses, Campers, etc. to be Kept on any Lot or on any Street: No trucks, truck-mounted campers, motor homes, trailers, house trailers, buses, boat trailers, campers, junk automobiles, dilapidated or disabled vehicles of any kind shall be maintained, stored, or parked on any dedicated or undedicated street or right-of-way in the subdivision, and the dedication of such right-of-way or street in the plats incorporated herein shall be subject to this provision.

4.3.9 Junk, Machinery and Materials: No implements, machinery, lumber, building materials or similar items shall be permitted to remain exposed upon any Lot so they are visible from the street or any neighboring Lot, except as necessary during the period of construction of a building thereon. No part of the subdivision shall be used for storage or display of junk or unsightly items or materials. Burning of construction debris or material, etc., shall NOT be permitted any time.

4.3.10 Out-Buildings: Construction of out-buildings must be architecturally designed to compliment the main residence with the use of the same building materials - roof shingles, siding and exterior matching colors. The maximum allowable outbuilding size shall be one hundred and fifty (150) square feet which is further limited to a single story structure. No outbuilding shall be allowed without a building permit from the Village of Manhattan and approval of the ARB.

4.3.11 Dogs and Cats: No more than a total of two (2) dogs or two (2) cats or one (1) dog and one (1) cat can be maintained, kept or housed in any residential unit whether or not such animal is the property of the Owner of such residential unit. No such animal shall be allowed outside of a residential unit unless accompanied and attended at all times by an occupant of such residential unit

and no dogs shall be allowed to bark as to create any type of a nuisance to neighbors. No dog run shall be allowed on any Lot in the subdivision unless approved by the ARB.

4.3.12 Roofing: All roof shingles shall have a minimum 25 year warranty and be shadow lined granular design or equal. Cedar roof shingles, and roof tiles are allowed. The roof pitches shall be a minimum of 8/12 with any front gables or hips ranging from 10/12 to 12/12.

4.3.13 Parkway Trees and Maintenance Responsibilities of Owners: No landscaping is permitted in the Parkway/Right-of-Way other than sod and trees as required in this Section. All Owners shall be responsible for the immediate care including proper watering, weeding, etc., of the parkway tree placed in front of their home. Any parkway tree that dies shall be immediately replaced by the Owner with another that meets the same specifications of the same aforementioned variety. The Developer, the Village of Manhattan or the Association may elect upon prior written notice to Owner to replace any dead parkway tree in front of Owner's home at the Owner's expense. The Developer, the Village of Manhattan and the Association shall further have the right to enforce reimbursement of all cost associated with the replacement of any parkway tree through any and all means including, but not limited to, applicable lien rights on the basis of this Declaration. Any attempt to plant or place a tree of another type or variety shall be considered a code violation and the Developer, the Village of Manhattan and the Association shall have the right to remove said tree and seek reimbursement and/or lien Owner and his Lot.

4.3.14 Final Grading and Landscaping Requirements: Within ninety (90) days after a residence is occupied or within such additional time as the ARB may allow due to seasonal requirements, the Owner shall establish a lawn and complete the landscaping plan which shall be approved by the ARB. Prior to occupancy, Owner shall install no less than two (2) street trees of a diameter and of a variety approved by the ARB, and in the case of a corner no less than four (4) street trees. All landscaping shall also be done in conformance with the requirements of the Pattern Book approved by the Village. The ARB may establish a reasonable bond to be posted by the Owner to insure completion of landscaping in accordance with this provision. **All landscape contractors hired by Owners shall adhere to Developer's final grading plan during the course of landscaping of any residence of said Owner.**

4.3.15 Landscape Completion Guarantee: Owner guarantees the completion of landscaping as described in 4.3.14. Landscaping will be considered complete if installed according to the terms of 4.3.14 and any other applicable Section of this Declaration of Covenants and Restrictions.

Owner must notify Developer in writing when Owner has completed landscaping. Said notice must be postmarked by the 91<sup>st</sup> day after closing. If Owner has not completed its landscaping within ninety (90) days after closing or sent notice of completion by the 91<sup>st</sup> day after closing, Owner begins incurring a fine of Fifty Dollars (\$50.00) per day. The Association shall have the right to collect fines assessed against Owner through any and all means including, but not limited to, applicable lien rights against Owner's Property on the basis of this Declaration. Owner shall be

liable to Developer and Association for any and all attorney's fees, court costs or others expenses associated with enforcement of this or any other provision of this Declaration.

4.3.16 Detention and Retention Areas: No type of structure, fencing, buildings, or similar items may be placed in any designated detention, retention or critical drainage area, nor shall the finished grade elevations of these areas be altered by any Owner.

4.3.17 Signs: No advertising or signs of any type or character shall be erected, placed, permitted or maintained on any home. This provision shall not apply to any sign which the Developer may erect identifying and/or advertising the subdivision which may be deemed necessary by the Developer for the operation and sale of the subdivision houses or Lots therein, which said signs only the Developer may erect and maintain.

4.3.18 Other Types of Structures and Miscellaneous Items: No swing sets, playhouse, or children's type of structure shall be placed closer than fifteen (15) feet from any property line and shall be further restricted to the rear yard of Owner's home. No washing, drying, or clothing type lines shall be allowed. The displaying or hanging of clothing and garments in the exterior yard area of any home in subdivision is prohibited. No swing sets or children type of structures shall be allowed to become a detraction or unsightly due to neglect of any Owner to properly maintain, repair, or manage such items.

4.3.19 Satellite Dishes, Television Antennas and All Other Antennas: No satellite dishes shall be allowed upon a roof or roof of other structure or be allowed to be installed anywhere on Owner's Lot other than the rear yard area and at a minimum of eight (8) feet from side property lines. Satellite dishes shall be shall be limited to "mini dish" types, satellites over thirty-six (36) inch diameter are prohibited. Furthermore, no form of antenna, including, but not limited to, television antennas, radio antennas, ham radio antennas, etc., shall be placed on the exterior of Owner's home or Lot.

4.3.20 Garbage Containers, Garbage Cans and Storage of Garbage: No garbage, garbage containers or garbage shall be stored on the exterior of Owner's home with the exception only to the evening of, or the morning of, garbage pickup by the Village.

4.4 Owner's Individual Maintenance Obligation: As provided in Article VI, each Owner is responsible for the maintenance of his or her Lot and the improvements thereon. This responsibility shall be known as "Owner's Maintenance Obligation". If any Owner defaults in his or her Owner's Maintenance Obligation, Developer or the Association is hereby granted all rights and powers necessary to perform such reasonable repairs, maintenance, rehabilitation or restoration as may in Developer's or the Association's opinion be reasonably necessary to correct such default. All cost and expenses incurred in the performance of any such work shall be charged to the defaulting Owner, and shall constitute a lien against said Owner's Lot.

4.5 Community Association Maintenance Obligations: The Owners as members of the Association shall be solely responsible for all costs and expenses for the maintenance and upkeep of the Community Area.

4.6 Maintenance Assessment: The Association shall annually prepare and distribute a budget for each calendar year to all Owners of record of the Ivanhoe Subdivision. The Association shall have the right to assess each Lot a prorata share of the cost of maintenance, upkeep, operation, safeguarding and repair for the Community Area. Each Owner, by acceptance of a deed to a parcel, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, whether such acceptance shall occur before or after the conveyance of the Outlots to the Association: (1) periodic assessment or charges; and (2) special assessments for maintenance, repair, removal of liens and capital improvements.

4.7 Temporary Structures: Trailers and temporary buildings or structures may be located on a Lot only during the course of the construction of a home upon the Lot, but they shall be so located only because the convenience or necessity of the contractor in charge of construction requires their use, and all such trailers, temporary buildings or other structures shall be removed from the Lot promptly upon termination of the necessity or convenience therefor, or completion of the home, whichever first occurs.

4.8 General Appearance: Owner shall be responsible to properly maintain all aspects of the Owner's Real and Personal property on Owner's Lot and to not detract, devalue, or create any kind of nuisance to the other Owners or residents in . All temporary holiday decorations shall be installed no earlier two weeks before a holiday(except in the case of Christmas when decorations may be installed four weeks prior to Christmas) and removed within two weeks of the holiday.

4.9 Covenants and Restrictions - Running with Land: The Covenants and Restrictions created by this Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting the Property from and after the execution hereof shall be deemed subject to these Covenants and Restrictions and bound thereby as fully and as firmly as if said Covenants and Restrictions were fully set forth in each said conveyance or other instrument.

## **ARTICLE V**

### **Use of the Community Area**

5.1 Use by Owners and Developer: The Owners, their families, guests and invitees have the joint right of access and the shared right to use the Community Area. Developer, its agents, employees and invitees also have the right to use the Community Area. Use of the Community Area shall be subject to the Rules and Regulations which may be amended from time to time by the Developer or the Association.

5.2 Use to Comply with Declaration and Rules and Regulations: No use of the Community Area shall be made by any person, whether Owner or otherwise, which does not comply

with, and conform to, the requirements of this Declaration, and which does not comply with, and conform to, the Rules and Regulations.

## **ARTICLE VI Maintenance and Repair**

6.1 Individual Responsibility of Owner: Each Owner of a Lot in the Ivanhoe Subdivision shall provide at his or her own expense and be liable for the following:

- (a) All of the maintenance, decorating, repairs and replacement as to his or her own Lot. Owner shall keep same in good condition.
- (b) Installation of grass sod as specified in Section 4.3.15 herein.
- (c) Final grading on each Lot, including maintenance of surface water drainage swales as shown on the final engineering plans, as approved by the Village.
- (d) Installation of parkway trees.

6.2 Responsibility of Association: The Association shall be responsible for the management, maintenance, repair and replacement of the Property and Community Area as specified in Article 11 of this Declaration.

6.3 Liability for Damage to Property: Each Owner of a Lot in the Ivanhoe Subdivision may be liable for the expense to the Association of any maintenance, repair or replacement of any of the Property including, but not limited to, any and all public improvements, the storm water detention facilities and structures and surface water drainage ways. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

## **ARTICLE VII Maintenance Assessments for The Ivanhoe Subdivision**

7.1 Creation of the Lien and Personal Obligation for Assessments: The Developer hereby covenants that each Owner, by acceptance of a deed for a Lot or other document of conveyance therefor, whether or not it shall be so expressed in any deed or other document of conveyance, shall be deemed to covenant and agree to pay to the Association regular assessments or charges and special assessments for capital improvements and maintenance expenses as provided herein. Such assessments shall be fixed, established and collected from time to time as hereafter provided. The regular and special assessments together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge against and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due.

7.2 Purpose of Assessments: The assessments levied by the Association shall be used for any purpose of the Association as specified in this Declaration or its Articles of Incorporation.

7.3 Regular Assessments: The Association, through the Board of Directors, shall levy for each assessment year an assessment, applicable to that year only, for the purpose of enabling the Association to exercise its powers and duties and to fulfill its responsibilities as delineated herein. The regular assessments shall be at a uniform rate for each Lot.

7.4 Procedures: The Board of Directors of the Association shall determine the amount of the assessment for each assessment year. The Board of Directors shall notify in writing each member of the Association of the amount of the assessment against the member's Lot no later than December 1 of each year. The annual assessment shall be paid on or before January 1 of each calendar year. The Board of Directors shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. The office of the Association shall be deemed the address of the Secretary of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.5 Change in Basis of Regular Assessments: The Board of Directors of the Association may change the amount and/or basis of the regular assessment during any assessment year, provided that any increase in the assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.6 Special Assessments for Capital Improvements and Maintenance Expenses: In addition to the regular assessments authorized by Section 7.3 hereof, the Association, through the Board of Directors, may levy from time to time in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or unexpected repair or replacement of any of the Community Areas provided that any such assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.7 Quorum for any Action Authorized under Sections 7.5 and 7.6: The quorum required for any action authorized by Sections 7.5 and 7.6 hereof shall be the presence in person at the meeting of the Board of Directors a majority of that number of directors having the total votes that could be cast by the Board. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be the same number, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Effect of Non-Payment of an Assessment: If any regular or special assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection including reasonable attorneys' fees as hereinafter provided, thereupon become a continuing lien on the Lot and equitable charge running with the land touching and concerning it, which shall bind upon the Lot in the hands of the then Owner, his heirs, devisees, personal representatives, assigns, successors, and grantees. If title to a Lot is held by an Illinois land trust, the trustee shall not have any personal liability for the assessment, but all beneficiaries of the trust shall be jointly and severally so liable. In the event title to a Lot is held by more than one Owner, all Owners shall be jointly and severally liable. The lien shall attached to rents due from parties in possession to the record Owners, provided that it shall be subordinate to an assignment of rents held by a mortgagee delivered in connection with a first mortgage loan to a purchaser of a Lot.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay same and/or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment all the costs of preparing and filing the complaint and maintaining and concluding such action, including the cost of title reports, and in the event a personal judgment or decree of foreclosure is obtained, such judgment or decree shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with all costs of the action. The venue for all legal actions shall be in Will County, Illinois. The persons in possession shall be authorized to accept summons for the Owners of the Lot.

In the event that title to any Lot is conveyed to a land trustee, upon the demand of the Association, the trustee shall furnish the Association with a certified copy of the trust agreement so that the Association shall be advised of the beneficiaries entitled to vote and who will be personally liable for the regular and special assessments.

7.9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein may for any reason be subordinated by the Association by written document executed by its duly authorized officers and shall without any writing be subordinate to the lien of any mortgage placed upon the Lots subject to assessments for the purpose of purchasing the subject Lot or Lots provided, however, that such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the mortgage or mortgages, and provided further that such subordination shall apply only to the assessments which have become due and payable prior to sale or transfer of such property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The Owners agree upon accepting title that the lien of the assessments shall be prior to the homestead rights of the Owners since it runs with the land and is in existence before commencement of ownership interests.

## **ARTICLE VIII**

### **Easements**

8.1 Easements Reserved by Developer: Notwithstanding any provision herein to the contrary, until such time as the Developer is no longer vested with or controls title to any part of the Ivanhoe Subdivision or any Lot in the Ivanhoe Subdivision, the Developer and its agents and contractors shall have the right (a) to place and maintain on the Property model residences, sales offices, advertising signs, construction trailers, parking spaces and lighting in connection therewith, at such locations and in such forms as the Developer may determine, in its discretion, to be used by the Developer in connection with the promotion, sale, or lease of the residences constructed or to be constructed on any part of the Ivanhoe Subdivision, (b) to come over, across and upon the Property for the purposes of making alterations or improvements to the residences, Lots or Community Area, and (c) to store on the Community Area or any Lot owned by it equipment and materials used in connection with such work on the residences, Lots or Community Area, all without the payment of any fee or charge whatsoever.

8.2 Perpetual Easement in Gross to Association: The Community Area shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association to properly perform its duties and responsibilities. The Association further has a perpetual easement in gross to enter upon a Lot where reasonably necessary in the judgment of the Association for the purpose of properly performing or executing a duty or responsibility of the Association in respect of the Community Area. Without limiting the above easement in gross, the Association has a perpetual easement in the Community Area and the Lots for the purpose of installing, repairing, maintaining, and inspecting the Community Area or any other systems, if any, which the Association has the duty or responsibility to operate or maintain for the benefit of the Owners or the Association. Developer also has an easement in gross for the purpose of enabling and permitting Developer properly to perform its duties and responsibilities as Developer. Developer further has an easement in gross to enter upon a lot where reasonably necessary in the judgment of Developer for the purpose of properly performing or executing a duty or responsibility of Developer in respect of the Community Area.

In the event the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration and such delinquency shall exist on the part of the Association for a period of thirty (30) days after the date of delivery by the Village to the Association of written notice advising the Association of the existence and nature of such delinquency, the Village shall succeed to and become the beneficiary of the easement rights described in the preceding paragraph and such easement rights shall be exercised by the Village in support of the exercise of its rights described in Article XVI of this Declaration.

8.3 Easements for public Utilities, Sanitary and Storm Sewers: Developer initially, and the Association thereafter, has the right to establish easements over (a) the Property for public utilities, drainage, and ingress and egress to and from the Community Property; and (b) portions of the Property for sanitary and storm sewers, storm water facilities, and for all other public utility purposes including but not limited to electricity, gas, water, cable television, and telephones, and

Developer and the Association have the concomitant right, in connection with such grants of easements, to grant the right and power to do all things necessary or appropriate in connection with said grant of easements, including, but without limitation, the right of maintenance, repair and replacement. Developer and the Association are fully authorized and empowered to execute and deliver any and all documents necessary to implement these provisions, and the Owners shall be deemed to have approved and confirmed such documents, and to be bound thereby.

8.4 Easements: How Created: Easements for all public utilities or other purposes, including, but without limitation, electricity, gas, water, cable television, security, and telephone, shall be initially created by the recording of the Plat in the Recorder's Office of Will County, Illinois, and, if necessary, individual grants of easements to which shall be appended plats of easements showing the location of the easements being initially created. Thereafter, easements for public utilities shall be created by the recording of separate plats or grants of easements, each of which shall show the location, within the Community Area and within any Lots covered by such subsequent plats or grants of easements, of the easements being newly created. The utility easements created by the filing of plats or grants of easements shall be deemed to have been created upon, and subject to, all of the terms and conditions of the Plat and initial grants of easements to the respective utilities or services, so that upon the recording of a plat or grant of easement subsequent to the recording of the Plat or an initial grant of easement, each utility or service company shall forthwith have all the rights, powers and obligations contained in the Plat or in the initial grants of easements, as fully and as effectively as if all the terms of said grant of easements were contained within the subsequently recorded plat or grant of easements.

## **ARTICLE IX**

### **Developer's Reserved Rights**

9.1 Developer's Rights, Powers and Obligations – Duration: Until such time as required by law, or sooner at the option of Developer, all of the rights, powers and obligations which by this Declaration are to be vested in the Board of Directors shall be deemed vested in and possessed by Developer.

9.2 Easement Grants: Developer shall grant such easements and convey Lots in the Property subject to such easements, as are necessary for the benefit of the Association for the performance of its obligations pursuant to this Declaration, including, but not limited to, maintenance, repair or replacement of the landscaped areas, including grass, trees and vegetation, and for access to maintain, repair or replace in any Community Area, and for public utilities, monuments, landscaping and drainage easements are located.

9.3 Construction and Advertising by Developer: Prior to Developer's completion of improvements on the Property, sale of all Lots owned by Developer and Developer's transfer of all of its rights, powers and obligations to the Board, Developer shall have the right and power to erect and maintain dignified advertising and to use and employ on the Property other sales devices and arrangements, all to be in good taste and consistent with the quality and character of the development, and for the purpose of advertising Lots and residences in and upon the Property.

Developer shall have the further right and power to maintain for the aforesaid period, sales, business and construction offices.

9.4 Developer's Successors and Assigns: Developer's successors and assigns shall have without limitation, qualification or exception, all rights, powers and authority of the Developer itself.

9.5 General Rights: The Developer shall have the right to execute all documents or undertake any actions affecting the Ivanhoe Subdivision which, in its sole discretion, are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to it by this Declaration.

## **ARTICLE X**

### **The Ivanhoe Homeowners' Association**

10.1 The Association: The Ivanhoe Homeowners' Association shall be organized under the Illinois General Not-For-Profit Corporation Act, in a manner that allows such organization to function under this Declaration. The Association shall be the governing body for all of the Owners and for the administration and operation of the Ivanhoe Subdivision as provided in this Declaration and the By-Laws of the Association as identified in attached Exhibit "B."

10.2 Membership: Membership shall be as follows:

(a) There shall be only one class of membership in the Association. The Owner of each Lot shall be a member of the Association, but there shall be only one member per Lot. Membership shall be appurtenant to and may not be separated from Ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of Ownership of a Lot within ten days after such change.

(b) One individual shall be designated as the "Voting Member" for each Lot. The Voting Member, or his proxy, shall be the individual who shall be entitled to vote at meetings of the Owners. If the record Ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board and, if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot. The Association shall have the right to suspend the voting rights of any member for any period during which any assessment levied by the Association against the member's Lot remains unpaid.

10.3 Election of a Board of Directors (the "Board"): When Developer notifies the Owners that Developer is ready to transfer and assign to the Association all of its rights, powers and

obligations under this Declaration, the Owners shall proceed to elect a Board of Directors pursuant to Illinois law. If in the judgment of Developer, the Owners fail to elect an initial Board after notice authorizing such election has been given by Developer, then Developer shall have the right to designate, in its discretion, any five of the Owners as an initial Board. A director shall serve for one year, and thereafter until his successor is elected.

10.4 Adoption of Rules and Regulations: The Board may from time to time adopt rules and regulations governing the Community Area and use of the Community Area by the Owners and by all other persons. Developer shall have the right to adopt Rules and Regulations prior to their adoption by the Board. All users of the Community Area and all use of the Community Area shall comply with the Rules and Regulations, and no use shall be made of the Community Area by any person which does not comply with the Rules and Regulations. Although the Rules and Regulations shall apply to, and be effective throughout the Ivanhoe Subdivision, including the Lots located therein, the rights, powers and duties of the Board shall be primarily concerned with the Community Area, and the primary responsibility of the board is the management and the operation of the Community Area and enforcement of the provisions of this Declaration. The Rules and Regulations to be adopted by the Board in respect of the Community Area and Lots may cover, among other things and without limitation, matters pertaining to use, pets, discipline and disciplinary measures against violators of said Rules and Regulations.

10.5 Vacancies, Compensation and Other Matters: The Board shall receive no compensation for its services. A vacancy in the Board, whatever the reason for the vacancy, shall be filled by vote of the remaining members of the Board. If there are two or more vacancies in the Board, the vacancies shall be filled by majority vote of the Owners at a special meeting called for that purpose. The Board shall act by majority vote of those present at its meetings when a quorum is present.

10.6 Officers of the Board of Directors: The Board shall elect from among its members a President, a Vice President, a Secretary and a Treasurer. Each officer shall perform the duties which commonly attach to the office he or she holds.

10.7 Meetings of the Owners: When Developer is prepared to transfer and assign all of Developer's rights, powers and obligations to the Association, Developer shall give due notice to Owners of said transfer by certified mail. Owners shall meet within fifteen (15) days of said notice at a place designated by the Owners at which, by majority vote of all Owners present at said meeting, the Owners shall elect the Board hereinabove referred to. Thereafter, the Owners shall meet annually for the purpose of electing Directors at a place to be designated by the Board in Will County. Developer shall give due notice to Owners of said transfer by certified mail. Owners shall meet within fifteen (15) days of said notice at a place designated by the Owners at which

The first annual meeting of the Owners shall be held one year, as nearly as practicable, after the date of the first meeting of the Owners, and subsequent meetings shall be held at yearly intervals thereafter.

10.8 Meetings of the Board: The Board shall meet promptly after the first meeting of the Owners and annually thereafter, at a place to be designated by the Board in Will County for the purpose of electing officers and transacting any other business which may properly come before the annual meeting. In addition to the said annual meeting, the Board may hold special meetings when business before the Board makes it necessary. Special meetings of the Board shall also be held on the written request of one-third of the Owners, delivered to the Board. The request of the Owners shall state the purpose of the special meeting for which a request has been made, and in response to a proper request by one-third of the Owners, the Board shall set a suitable date for a special meeting and shall give not less than 10 days notice to each Owner, of the date, time and place of the special meeting.

## **ARTICLE XI**

### **Rights, Powers and Obligations of Association**

11.1 Rights, Powers and Obligations of Association: For the benefit of all the Owners, the Association shall have all powers relating to the maintenance, repair, improvement, management, and operation of the Property including, but not limited to, the power set forth in this Article XI, and all the rights and powers possessed by Developer under the terms of this Declaration including, but not limited to, those rights and powers set forth in Article IV hereof. The power of the Association shall include the power to acquire and pay out funds as hereinafter provided for the following community expenses and/or residence expenses:

- (a) Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, insuring the Association itself, its manager, if any, agents and employees, the Owners, including each member of the Board personally, the Trustee and the Developer, its agents and employees, from any liability in connection with the Community Area or the public spaces adjoining the Community Area. Such insurance coverage shall also cover cross liability claims of one insured against another. The insurance coverage provided for Developer, its agents and employees, shall continue in force and effect only until the time of the transfer by Developer to the Association of all of the rights, powers and obligations of Developer, and said coverage may then be canceled;
- (b) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Association in its judgment shall elect to effect;
- (c) General real estate taxes, assessments or other charges of governmental bodies against the Community Area;
- (d) The services of any person or firm employed by the Association. The Association may employ the service of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments, and in connection with any other matter where

the respective interests of the Owners are deemed by the Association to be similar and non-adverse to each other;

(e) Landscaping, gardening, painting, cleaning, maintenance, decorating, repair and replacement in the Community Area as the Association shall determine are necessary and proper;

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations or assessments, tax or otherwise, which the Association is required to secure or pay for pursuant to the terms of this Declaration or the By-Laws; and

(g) All funds collected hereunder shall be held and expended for the purposes designated herein;

11.2 Alterations and Improvements of Community Area: The Association shall have the right to make or cause to be made alterations and improvements to the Community Area. The costs of such alterations and improvements shall be assessed as community expenses in the manner hereinafter set forth.

11.3 Books and Records: The Association, through its Treasurer or Manager, if any, shall keep complete and correct books of account of the receipts and expenditures relating to the Community Area, specifying and itemizing the maintenance and repair expenses of the Community Area and any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten days' notice to the Association and payment of a reasonable fee, any Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner for community expenses.

11.4 Employment of Professional Management: The administrative duties of the Board may be performed by a Manager (which may be a professional management firm) employed by the Association, and the Association has the right to pay reasonable compensation to a Manager so employed. The Developer has the right, but not the obligation, on behalf of the Owners, to engage the initial Manager and to enter into a contract with said Manager expiring not later than one year after the voluntary turnover to the members of the Association the authority to elect the Board. The professional manager hired may be the Developer, but is not required to be the Developer.

11.5 Execution of Agreements, Contracts, etc.: All agreements, contracts, vouchers for payment of expenditures and other instruments shall be signed by the President of the Board, or by such other persons and in such manner, as from time to time may be determined by the Board.

11.6 No Business Activity: Nothing in the Declaration shall be construed to give the Association authority to conduct a business for profit on the Community Area or any part hereof.

11.7 Non-Liability of the Board: The Board, Directors, Officers and Developer shall not be personally liable to the Owners or to any others for any mistake in judgment or for any acts or omissions except for any acts or omissions found by a court of competent jurisdiction to constitute criminal conduct, gross negligence or actual fraud. The Owners shall indemnify and hold harmless each member of the Board and the Developer against all contractual liability to others arising out of contracts made by the Board or the Developer on behalf of the Owners unless any such contract shall have been made by criminal conduct, gross negligence, or actual fraud. The liability of the Owners based upon a contract made by the Board or by Developer, or based upon Owners' agreement to indemnify and hold harmless, shall be several, and not joint, and no Owner shall be liable for more than his or her equal proportionate share of any such contract or indemnity liability. Every agreement made by the Board or Developer shall provide that the Board or the Developer, as the case may be, are acting only as agents for and on behalf of the Association and the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be several, and not joint, and shall not exceed the Owner's equal proportionate share of such contract liability. The indemnity herein provided for shall extend to and be operative in favor of the Manager and all other agents and employees of the Association and the Developer.

11.8 Delegation of Power: The maintenance, repair, and improvement of the Community Area shall be the responsibility of the Association, but the Association has the right to delegate to the Manager or others such authority and duties as may be granted and imposed upon the Board by this Declaration.

11.9. Funds and Titles for the Owners: All funds and all properties acquired by the Association, and the proceeds thereof, shall belong to the Owners and shall be held for the benefit of the Owners subject to this Declaration for the purposes herein stated.

## **ARTICLE XII**

### **Conveyance of Title by Developer to Association**

12.1 Developer's Rights, Powers and Obligations Prior to Transfer to Association: Until such time as Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, all of the rights, powers and obligations which by this Declaration are to be vested in the Association or its Board shall be deemed vested in and possessed by Developer.

12.2 Transfer of Rights, Powers and Obligations by Developer to Association: When Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, it shall transfer and assign to the Association all of its rights, powers, and obligations under this Declaration.

12.3 Developer's Successors and Assigns: Developer's successors and assigns shall have, without limitation, qualification or exception, all the rights, powers and authority of Developer itself.

12.4 No Capital Reserve to be Maintained by Developer: **THE DEVELOPER SHALL**

**NOT BE OBLIGATED TO COLLECT OR FUND CAPITAL RESERVES. BY PURCHASE OR OCCUPATION OF A DWELLING UNIT, OWNERS HEREBY ACKNOWLEDGE THAT ANY AMOUNTS NECESSARY FOR CAPITAL RESERVES SHALL BE THE SOLE AND EXCLUSIVE OBLIGATION OF THE OWNERS THROUGH THE ASSOCIATION AND NEITHER THE OWNERS, ASSOCIATION, NOR THEIR SUCCESSORS AND ASSIGNS SHALL HAVE ANY CAUSE OF ACTION AGAINST DEVELOPER, ITS OFFICERS, AGENTS OR EMPLOYEES FOR ANY DEFICIENCY IN CAPITAL RESERVES.**

### **ARTICLE XIII**

#### **Compliance, Breach of Covenants, and Default**

13.1 Rights and Remedies of Association: Each Owner is bound by and shall comply with the terms of this Declaration, the By-Laws, and the Rules and Regulations adopted pursuant thereto, and by all amendments to them. A failure by an Owner other than the Developer to comply with this Declaration, or with the By-Laws, and Rules and Regulations of the Association or any authorized amendment to said Declaration, By-Laws, or Rules and Regulations shall constitute a default by such Owner. If a default occurs, the Association shall have the right to recover damages at law, to procure injunctive relief, to foreclose on any lien rights the Association may have, or to avail themselves of any other rights or remedies permitted at law or in equity including, but not limited to, filing suit pursuant to the Forcible Entry and Detainer Act. All expenses of the Association in connection with any actions or proceedings described herein, including attorney fees incurred in collection and court costs and attorneys' fees and all other expenses of the proceeding, and all damages, liquidated or otherwise, together with interest thereon at the rate set forth in Section 7.8 herein 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 annual expenses and the Association shall have a lien for all of the same, as well as for non-payment of his or her respective share of the annual expenses upon the Lot of such defaulting Owner and upon all of his or her additions and improvements thereto and upon all of his or her personal property located on his or her Lot or elsewhere on the Property. The rights and remedies of the Association shall be cumulative and shall be enforceable concurrently in a single proceeding. By virtue of the provision of this Declaration which give Developer all rights and powers of the Association prior to transfer of Developer's rights to the Association, Developer has every right and power and every right and remedy which the Association is given by this Article.

13.2 Liability of Owners for Negligence: Each Owner shall be liable for any damage caused by such Owner's act or negligence, or by the act or negligence of any party whose right to be upon the Community Area is derived from such Owner, but only to the extent that such damage is not covered by insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by an insurance company of rights of subrogation.

13.3 Recovery of Suit Expenses: In any proceeding commenced by the Association or an Owner based upon or arising out of an alleged default by the Association or an Owner, the prevailing party, whether Association or Owner, shall be entitled to recover all expense of the proceeding,

including reasonable attorneys' fees and costs such as but not limited to filings fees, depositions, experts, etc.

**ARTICLE XIV**  
**Amendment and Termination of Declaration**

14.1 Amendment Prior to Sale of a Lot: Prior to the sale of any Lot, Developer itself has the right to amend or to terminate this Declaration at any time and in any manner. If Developer elects to terminate this Declaration, Developer may evidence its election by recordation of an appropriate statement of termination with the Recorder of Deeds of Will County, Illinois, and upon such recordation, the entire title in the Property shall stand free and clear of this Declaration.

14.2 Amendment After Sale of a Lot: After one or more Lots have been sold, but prior to Developer's turnover to the Members of the Association the authority to appoint the Board, Developer itself, acting without concurrence of any other party, has the right to amend this Declaration as often as Developer deems necessary, but no such amendment shall unfairly or unreasonably affect any rights of the Owners of Lots already sold.

14.3 Amendment After All Lots Have Been Sold: After Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, all Lots having been sold by Developer, this Declaration may be amended by a two-thirds (2/3rds) vote of the Owners, but such amendment shall not unfairly or unreasonably affect the rights of the Owners and shall be no less restrictive than this Declaration.

14.4 Procedure on Amendment or Termination:

(a) If this Declaration is to be amended or terminated by the Developer solely, pursuant to the above provisions of this Article XIV, which provides for amendment or termination by Developer solely, Developer shall amend or terminate by due execution of an appropriate written instrument setting forth the terms of the amendment, or stating that this Declaration is terminated, as the case may be.

(b) If this Declaration is to be amended before the Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board, the amendment shall be effected by an appropriate written instrument setting forth the terms of the amendment and duly executed by the Developer.

(c) If an amendment is to be effective after Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board, and after the rights and powers of Developer have been transferred to the Association, then the amendment may be evidenced by a written instrument executed on behalf of sixty-six (66%) percent of the Owners, and participation by the Developer may be required only as the Owner of a Lot or Lots.

(d) The instrument effecting an amendment of this Declaration shall, after execution, be recorded promptly in the Office of the Recorder of Deeds of Will County, Illinois, and the amendment provided for therein shall become effective and operative upon recordation.

14.5 Notices with Respect to Amendment or Termination: All parties who have a right to participate in the amendment of this Declaration, subject to Covenants and Restrictions, shall have the right to initiate proceedings for amendment of this Declaration. Any such party desiring to initiate proceedings for amendment shall give at least ten (10) days' prior written notice of the meeting at which amendment or termination is to be considered. If Developer solely amends this Declaration, in pursuance of the foregoing provisions providing for such amendment solely, then within fifteen (15) days after adoption of the amendment, notice of the amendment shall be given by Developer to all Owners, and each Owner, promptly upon receipt of such notice, shall give notice of the amendment to his mortgagee.

14.6 Amendment Affecting the Rights of the Village: No amendments to the Association's duties and obligations relating to the rights of the Village or the Village's rights may be adopted without the prior written consent of the Village by Ordinance duly passed and approved by the Corporate Authorities of the Village.

## **ARTICLE XV**

### **General Provisions**

#### 15.1 Notices - In General:

(a) Notices given pursuant to this Declaration or in connection therewith shall be written and shall be delivered in person or by regular mail. Notices of default or formal demands by any party hereunder to any other party shall be sent by certified or registered mail, with respect of return receipt. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing. Notice to an Owner may be given to the Owner at his or her Lot, unless the Owners has informed the Association otherwise. Notice may be given to the Association at its registered office, or sent to the home of the President of the Board of Directors. Until Developer has transferred all its rights, powers and obligations to the Directors, all notices which the Board would be entitled to receive shall be given to Developer. Notices in respect of meetings or Special Meetings of the Board of Directors or of the Owners shall be given in accordance with the provisions of this Declaration.

(b) Notice to the personal representative of a deceased Owner shall be sent to the address furnished by such personal representative to the Board, and if no address is furnished by said personal representative, the notice to a deceased Owner shall be given to the deceased by a writing directed to the Owner at such Owner's Lot.

(c) Upon request of a mortgagee of a Lot, and payment of a reasonable charge therefor, the Board shall supply to said mortgagee a copy of any amendment to this Declaration.

15.2 Non-Waiver Except by Written Instrument: No conditions, covenants, restrictions, reservations, grants or other provisions of this Declaration shall be deemed to have been waived by silence, or inaction, or failure to enforce rights or by any other matters whatsoever, other than a writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived. No waiver shall be deemed to have been affected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights which have occurred.

15.3 Liberal Interpretation: This Declaration shall be liberally construed so as to effectuate and facilitate the objectives of this Declaration as hereinabove set forth. Narrow, technical and literal construction of this Declaration inconsistent with the objectives of the Developer or the Association shall be avoided.

15.4 Rule Against Perpetuities: Should any provision of this instrument be unlawful or void for violation of : (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then, and in that event, such provisions shall be deemed to be operative only until twenty-one (21) years after the death of the last survivor of the now living descendants of Rod Blagojevich, Governor of the State of Illinois, and of George W. Bush, President of the United States of America.

15.5 Partial Invalidity – Severability: The invalidity of any of the conditions, covenants, restrictions or reservations herein contained, or of any other provision or provisions, of whatever nature, of this Declaration shall not in any way impair or affect the validity or enforceability of any other provision or provisions of this Declaration, and any such invalidity or enforceability of other provision of this Declaration as remains, and any such invalidity shall be deemed partial and separable, and all of this Declaration shall be deemed valid, enforceable and binding except for the invalid provision.

15.6 Gender, Usage of Singular and Plural Forms and Other Usage: Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders. Prior to completion of development of the Property and sale of all Lots by Developer and to Developer's transfer of its rights, powers and obligations to the Board and Association, all references to the rights, powers and obligations of and to the Board or Association shall be read as references to the rights, powers and obligations of the Developer. The term "sale" means a sale consummated by delivery of a Trustee's Deed to a Lot to an Owner other than Developer.

15.7 Captions: Captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text thereof.

15.8 Recordation: Prior to consummation of the sale of the first Lot in the Property by delivery of a Deed to said Lot, this Declaration shall be recorded in the Office of the Recorder of Deeds of Will County, Illinois. All amendments to the Declaration shall also be recorded in said Recorder's office.

15.9 Conflicts Between Declaration and Village Ordinance Provisions: In the event there is at any time a conflict between any provision of this Declaration and any provision of any then effective ordinance, rule or regulation of the Village, the ordinance, rule or regulation of the Village then in effect shall prevail, but only to the extent it is more restrictive than this Declaration.

## **ARTICLE XVI**

### **Village**

The following covenants and provisions are intended to inure to the benefit of the Village and it is specified and provided as follows:

16.1 Right of Village to Perform Obligations of Association: In the event the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration and such delinquency shall exist on the part of the Association for a period of thirty (30) days after the date of delivery by the Village to the Association of written notice advising the Association of the existence and nature of such delinquency, the Village shall have the right, but not the obligation, to perform the obligations required to be performed by the Association pursuant to this Declaration. In the event the Village elects so to do, the Association shall pay promptly to the Village the amount of the cost and expense incurred by it in the performance of such work, including compensation for staff time, the use of Village equipment, as well as materials and outside services.

16.2 Right of Village to Levy Assessment: In the event the Village performs any of the Association's duties and obligations and the Association fails to pay the Village any costs it incurred as aforesaid, within thirty (30) days after the date of the Village's demand for payment or date of any statement, the Village shall have the right to levy an assessment on all Lots for the costs and expenses incurred by it in the performance of such work to the same extent and as fully as the association might do pursuant to the provisions contained herein. Should any Owner fail to pay to the Village such Owner's portion of any assessment levied pursuant to this paragraph upon the due date thereof, then the Village shall have the right to exercise all rights, powers, privileges and remedies granted to the Association by this Declaration, and any other remedies provided by law. This paragraph is not a limitation on other remedies that may be pursued by the Village.

16.3 Dormant Special Service Area: Developer and Owners their respective successors, assignees and grantees, shall not object to and agree to fully cooperate with the Village in establishing a Special Service Area ("SSA") over the residential portion of the Property to be utilized as a backup mechanism for the care and maintenance of the Community Areas and subdivision monument signage. If at any time such Homeowners' Association fails to conduct the Community Area Maintenance, then the Village shall have the right, but not the obligation, to undertake such maintenance or work upon the Common Areas, and utilize the SSA to provide sufficient funds to pay the costs of the Community Area Maintenance undertaken by the Village. The SSA shall provide for the authority of the Village to levy up to one dollar and seventy-five cents (\$1.00) per \$100.00 of assessed valuation ("Rate Cap") to fund the payment of the aforesaid costs and expenses. Notwithstanding the foregoing, the Special Tax Roll shall not be levied hereunder, and the SSA shall be "dormant," and shall take effect only if the Village finds that the Homeowners' Association has failed to conduct the Community Area Maintenance.



EXHIBIT "A"  
TO  
DECLARATION FOR  
IVANHOE SUBDIVISION

LEGAL DESCRIPTION:

PINs:

@PFDesktop\::ODMA/MHODMA/IMANAGE;DOCS;289386;2 4/19/06