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This instrument was prepared by
and after recording return to:
Schain, Firsell & Burney, Ltd.
222 North LaSalle Street
Suite #1910
Chicago, Illinois 60601

McHENRY COUNTY RECORDER
PHYLLIS K. WALTERS

Phyllis K. Walters

95R 005099

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
THE ARBOR HILLS HOMEOWNERS ASSOCIATION**

THIS DECLARATION (the "Declaration") made this 7th day of February, 1995, by
KENNEDY GROUP LIMITED PARTNERSHIP, an Illinois limited partnership (hereinafter referred to as the
"Declarant").

PREAMBLES:

- A. Declarant is the owner in fee simple of a certain parcel of real estate in the Village of Algonquin, County of McHenry, State of Illinois, legally described in Exhibit "A", attached hereto and incorporated herein (the "Property");
- B. Declarant and Developer (hereinafter defined) desire to develop a single family residential development on the Property to be known as Arbor Hills Subdivision (the "development") and
- C. Declarant is desirous of submitting the Property to the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, transferred, occupied and conveyed subject to the following covenants, conditions, easements and restrictions, all of which shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

**DECLARATION PURPOSES AND
PROPERTY SUBJECT TO DECLARATION**

Section 1.1. The Declarant desires to create on the Property a single family development for future owners of Lots (as hereinafter defined) for the purpose to provide for the maintenance of the Common Area (as hereinafter defined) portions of which may be owned by the Association (as hereinafter defined) and used in common by the Owners (as hereinafter defined) and others of the Property.

Section 1.2. To further the general purposes herein expressed, the Declarant, for itself, its successors and assigns, hereby declares that the Property at all times is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth.

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ARTICLE 2

DEFINITIONS

The following words, when used in this Declaration or in any supplemental Declaration shall, unless the context shall prohibit, have the following meanings:

2.1. "Association" shall mean and refer to the Arbor Hills Homeowners Association, an Illinois not-for-profit corporation, and a Common Interest Community as defined in section 9-102(a)(8) of the Illinois Code of Civil Procedure as from time to time amended, its successor and assigns.

2.2. "Board" shall mean and refer to the Board of Directors of the Arbor Hills Homeowners Association, an Illinois not-for-profit corporation; said entity shall govern and control administration and operation of the Property.

2.3. "By-Laws" shall mean and refer to the By-Laws of the Arbor Hills Homeowners Association. The By-Laws are incorporated into this Declaration by this reference.

2.4. "Common Area" shall mean and refer to Lot 304 as described on the Final Plat of Arbor Hills Subdivision Unit 2 (as hereinafter defined) attached hereto and made a part hereof as Exhibit "B".

2.5. "Declarant and/or Developer" shall mean and refer to Kennedy Group Limited Partnership, an Illinois limited partnership.

2.6. "Lot" shall mean and refer to that portion of the Property indicated upon the recorded subdivision plat or plats of the Property improved or intended to be improved as set forth on Exhibit "B", attached hereto.

2.7. "Owner" shall mean and refer to the record owner, whether one or more persons, individuals or entities, of a fee simple title to any Lot, which is part of the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

2.8. "Member or Membership" shall mean and refer to every person or entity who holds Membership in the Association.

2.9. "Mortgage" shall mean and refer to either a Mortgage or Deed of Trust creating a lien against a portion of the Property given to secure an obligation of the Owner of such portion of the Property.

2.10. "Person" shall mean and refer to a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

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

2.12. "Subdivision Plat" shall mean and refer to the Final Plat of Arbor Hills Subdivision Unit I, the Final Plat of Arbor Hills Subdivision Unit 2 and the Final Plat of Arbor Hills Subdivision Unit 3 (collectively "Subdivision Plat") as recorded with the office of the Recorder of Deeds of McHenry County, Illinois, attached hereto and made a part hereof as Exhibit "B."

2.13. "Single Family" shall mean and refer to one or more persons, each related to other by blood, marriage or adoption, or a group of not more than three (3) persons not all so related, maintaining a common household.

2.14. "Turnover Date" shall mean and refer to the meaning referred to and set forth in Section 4.6 hereof.

2.15. "Additional Property" shall mean and refer to the real estate legally described on Exhibit "C", attached hereto and made a part hereof.

ARTICLE 3

MEMBERSHIP AND BOARD OF DIRECTORS

3.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

3.2. Voting Rights. The Association shall have one class of membership and each member shall have one vote for each Lot such member owns, provided that in no event shall more than one (1) vote be cast with respect to any one (1) Lot. If more than one (1) person is the record owner of any Lot, or if an Owner is a trustee, corporation, partnership or other legal entity, the vote for such Lot shall be exercised as such Owner or Owners of that Lot shall designate. Such designation shall be made in writing to the Board or in such other manner as may be provided in the By-Laws.

3.3. Board of Directors. The Association shall be governed by a Board of Directors comprised of three (3) persons, or such greater number as may be determined by Board resolution. The Board shall maintain and administer the Common Area and improvements thereon in accordance with the terms and provisions of this Declaration and the By-Laws.

3.4. Officers. The Association shall have such Officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board. Except as expressly provided otherwise by the Articles of Incorporation or By-Laws, all power and authority to act on behalf of the Association, both pursuant to this Declaration and otherwise, shall be vested in its Board, from time to time, and its officers under the direction of the Board and shall not be subject to the approval of the Members. The Articles of Incorporation and By-Laws of the Association may include such added provisions for the protection and indemnification of its Officers and Directors as shall be permissible by law. The Directors and Officers of the Association shall not be liable to the Owners or others for any mistake of judgment or any acts or omissions made in good faith as such Directors or Officers.

3.5. Director and Officer Liability. Neither the Directors nor the Officers of the Association shall be personally liable to the Owners or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors or officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Association shall indemnify and hold harmless the Directors and Officers, their heirs and legal representatives, against all contractual and other liabilities to others arising out of contracts made by or other acts of the Directors and Officers on behalf of the Owners or the Association or arising out of their status as Directors or Officers unless any such contract or such act shall have been made fraudulently or with gross negligence. The foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such Director or Officer may be involved by virtue of being or having been such Director or Officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have finally been adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such

Director or Officer, or (ii) any matter settled or compromised unless, in the opinion of independent counsel selected by or in a manner determined by the Board there is no reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his/her duties as such Director or Officer.

3.6. Turnover. The Developer shall, through the Board appointed by it in accordance with Section 3.2, exercise control over all Association matters, until the first to occur of the following events: a) twenty (20) years from the date of this Declaration, b) the sale and conveyance of legal title to all of the Lots to Owners other than Declarant or an assignee of Declarant as provided in Section 8.7 hereof, or (c) Developer elects voluntarily to turnover to the Members the authority to appoint the Board, which election it shall evidence by directing the Declarant to execute and record in the Office of the Recorder of Deeds of McHenry County, Illinois an instrument setting forth its intention to so turnover its authority hereunder. The date upon which the authority to appoint the Board passes to the Members is hereinafter referred to as the "Turnover Date". On or prior to the Turnover Date, the Developer shall cause Declarant to convey to the Association, and the Association shall accept, the Common Area to be owned by the Association hereunder and the Association shall undertake to maintain the Common Area pursuant to the terms hereof.

3.7. Board Powers. The Association, through the Board, shall have the following powers and duties:

- a. Own, maintain and otherwise manage the Common Area and all Improvements thereon and own, maintain and otherwise manage all other property acquired by the Association or which the Association agrees to maintain;
- b. Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same not later than ninety (90) days after the date of the initial meeting of the Members of the Association is held as provided by the By-Laws;
- c. Establish and maintain a working capital and contingency fund in an amount to be determined by the Board; and
- d. Make such improvements to the Common Area and provide such other facilities and services as may be authorized from time to time by the affirmative vote of two-thirds (2/3) of the Members of the Association acting in accordance with its Articles of Incorporation and By-Laws, provided, however, that any such action so authorized shall always be for the express purpose of keeping Arbor Hills Subdivision a highly desirable residential community.

3.8. Insurance. The Board shall also have the authority to and shall obtain comprehensive liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and worker's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its Officers, members of the Board, the Declarant, and their respective employees and agents from liability and insuring the Officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authority. Such insurance coverage shall include cross liability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be common expenses payable out of the proceeds of the Assessments required by and collected in accordance with Article 5. The Association shall be further responsible for maintaining such policies of insurance for the Common Area against loss or damage by fire and such other hazards contained in the customary fire and extended coverage, vandalism and malicious mischief endorsements as the Association may deem desirable and may also obtain such other kinds of insurance as the Association shall from time to time deem

prudent. The coverage shall contain an endorsement to the effect that said coverage shall not be terminated for non-payment of premiums without at least 30 days prior written notice for the Association. The Insurance policies shall contain waivers of subrogation with respect to the Board, its employees, agents, owners and mortgagees.

3.9. Developer Rights.

- a. Until the Turnover Date, the Developer shall have all the rights and powers herein granted to the Association and shall be authorized and empowered to take all such actions as the Board would have been authorized and empowered to take as herein provided.
- b. Until the Turnover Date, Developer may elect to maintain the Common Area and all signs and monuments located thereon and shall pay all expenses and costs in connection with the Common Area, including without limitation, the costs of improving and maintaining the Common Area (and any signs and monuments located thereon) and general real estate taxes payable in connection with the Common Area. To the extent that any real property taxes payable after the Turnover Date are attributable to the period prior to the Turnover Date, Developer shall reimburse the Association, on a pro rata basis, for such real property taxes. Declarant shall, not later than the Turnover Date, convey to the Association that portion of the Common Area to be owned by the Association.
- c. Developer shall be entitled at all times to conduct sales of Lots from the Property and shall have the right, for itself and its agents, employees, guests, invitees, to utilize roads, streets, Common Area and all other portions of the Property, excluding sold Lots, for such purposes until all Lots are sold. Developer may at all times utilize signage, lighting and establish temporary construction and sales offices, buildings and trailers and construct model homes to conduct its construction, sales and marketing of the Property.

ARTICLE 4

EASEMENTS AND PROPERTY RIGHTS

4.1. Easements and Use and Enjoyment. An Easement is hereby declared and created over and upon the Common Area for the benefit of the entire Property, and every Owner shall have a right and easement of use and enjoyment and a right of access to and of ingress and egress on, over, across, in, upon and to the Common Area, and such right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- a. The right of the Association, in accordance with its By-Laws, to adopt rules and regulations governing the use, operation and maintenance of the Common Area.
- b. The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area. Notwithstanding the foregoing, no mortgage shall be placed upon the Common Area unless such mortgage is approved by the Board and by a majority of the Members, voting at a general or special meeting duly called and held in accordance with the By-Laws.

- c. The right of the Association to dedicate or transfer all or any part of the Common Area or any utility system thereon to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, signed by two-thirds (2/3) of the Members of the Board of Directors, has been recorded.

4.2. Rights of Occupants. All persons who reside on a Lot shall have the same rights to use and enjoy the Common Area and all improvements situated thereon as the Owner of that Lot, as provided in the By-Laws.

4.3. Utility Easements. The authorized telephone company, Commonwealth Edison Company, the authorized cable television company, Northern Illinois Gas Company, McHenry County Public Works Department, Village of Algonquin, Illinois, and all other suppliers of utilities serving the Property are hereby granted the right to install, lay, construct, operate, maintain, renew, repair and replace conduits, cables, pipes, wires, transformers, mains, switching apparatus and other equipment, including housings for such equipment, into, over, under, on and through the Property for the purpose of providing utility services to the Property or to any portion of Additional Property, whether or not annexed hereto. Every Owner is also hereby granted an easement of ingress and egress over and upon the Common Area and any other Lot for any and all purposes arising out of the construction, installation, repair, maintenance, replacement and inspection of utilities servicing such Owner's Lot.

4.4. Easements Run With the Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and binding upon any owner, purchaser, mortgagee or to the person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation to the easements and rights described in this Article or in any other part of this Declaration shall be sufficient to create and reserve such easements as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

ARTICLE 5

COVENANT FOR ASSESSMENTS

5.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (excluding Declarant), by acceptance of a Deed therefor, whether or not it shall be so expressed in any such deed or other covenants, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association, for each Lot owned by such Owner, all assessments and charges levied pursuant to this Declaration. Such assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when such assessment fell due.

5.2. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of maintenance, repair, replacement, improvement and additions of and to the Common Area and the improvements thereon, for all taxes, insurance, utilities, professional and other services, materials, supplies, equipment and other costs and expenses incident to the ownership of the Common Area and all facilities and improvements thereon.

5.3. Assessment Procedure - Annual Assessments.

- a. Each year, on or before December 1, the Board shall prepare a budget for the Association for the ensuing twelve (12) months which shall include estimated cash expenditures and reasonable amounts as a reserve for repairs to and replacement of the improvements on the Common Area, and for such other contingencies as the Board may deem proper, and shall, on or before December 15, notify each Owner in writing of the amount of such estimate, with reasonable itemization thereof. The budget shall also take into account the estimated net available cash income for the year, if any, that may be received by the Association. On or before the next January 1, following the preparation of the budget, and on the first day of January of each year, each Owner, jointly and severally, shall be personally liable for and obligated to pay to the Board or as it may direct, the assessment made pursuant to this paragraph. On or before May 1 of each year following the initial meeting, the Board shall supply to all Owners an itemized accounting, on an accrual or cash basis, of expenses for the preceding twelve (12) months together with a tabulation of the assessments and showing net excess or deficit, on an accrual or cash basis, of income over the sum of expenses plus reserves. Any such excess may, at the discretion of the Board, be retained by the Association and shall be placed in a reserve account.
- b. If said annual assessments prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may, subject to the limitations on the use of capital reserves in Paragraph 6.5, charge the deficiency against existing reserves, or levy a further assessment which shall be assessed equally against all Lots subject to assessment. The Board shall serve notice for such further assessment on all Owners by a statement in writing showing the amount due and reasons therefor, and such further assessment shall become effective with the next annual installment which is due. All Owners shall be personally liable for and obligated to pay their respective adjusted annual assessment.
- c. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on any Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided. Whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay his monthly installment at the then existing rate established for the previous period until the monthly installment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

5.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of constructing or purchasing a specified capital improvement upon or to the Common Area and for the necessary fixtures and personal property related thereto, provided that, unless otherwise provided in the By-Laws, any such assessments which in one (1) year exceed Five Thousand and No/100 Dollars (\$5,000.00) for all Lots involved shall first be approved by a majority of the Board and thereafter by a majority of the votes cast by the Members present at a general or special meeting duly called for that purpose or, in lieu of such Member's meeting, by an instrument signed by the Members owning two-thirds (2/3) of the Lots. Special assessments levied hereunder shall be due and payable at such time or times and in such manner as shall be fixed by the Board or, where applicable, as approved by the members, and shall be used only for the specific purpose for which such assessment was levied.

5.5. Capital Reserves. To the extent the annual budget includes an amount specifically designated as a capital reserve, that proportion of each installment of the annual assessments paid to the Association as the amount so designated as a capital reserve bears to the total annual budget shall be segregated and maintained by the Association in a special capital reserve account to be used solely for making repairs and replacements to the Common Area and the improvements thereon which the Association is obligated to repair and replace in accordance with the provisions of this Declaration, and for the purchase of equipment to be used by the Association in connection with its duties hereunder. At the closing of a sale to an initial Owner of a Lot, said Owner shall deposit with the Association an amount equal to One Hundred and 00/100 Dollars (\$100.00) as a start up deposit to be applied to capital reserves.

5.6. Notice and Quorum. Written notice of any meeting called for the purpose of authorizing special assessments which requires approval of the Members shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of voting Members in person or by proxy having sixty percent (60%) of the votes entitled to be cast shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.7. Uniform Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots.

5.8. Collection of Assessments. Any installment of an assessment which is not paid when due shall be delinquent. If said installment is not paid within thirty (30) days after the due date, the Board may, upon notice to such Owner of such delinquency, accelerate the maturity of all remaining installments due with respect to the current assessment year, and the total amount shall become immediately due and payable and commence to bear interest from the date of acceleration at the maximum rate permitted by law. The Board may determine a late charge not to exceed Fifty and No/100 Dollars (\$50.00) per month for all delinquent assessments. The Association may bring an action against the Owner personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in any such action. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and any such accelerated installments, together with interest, late charges as determined by the Board, costs and attorneys' fees as above provided, shall be and become a lien or charge against the delinquent Owner's Lot when payable and may be foreclosed by any action brought in the name of the Association. To the extent permitted by statute, the Board may bring an action in Forcible Entry and Detainer to collect any delinquent assessments.

5.9. No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Any claim by an Owner against the Association shall be by separate action and shall not be used as a defense or counterclaim to an action by the Association to collect assessments.

5.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage placed at any time on a Lot by a bona fide lender. Each holder of a first mortgage on a Lot who obtains title or comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments or charges which become payable prior to such acquisition of title, possession, or the filing of a suit to foreclose the mortgage.

ARTICLE 6

EXTERIOR MAINTENANCE BY ASSOCIATION AND OWNERS

In addition to other rights, powers and duties of the Association under applicable law or as otherwise set forth in this Declaration and in the By-Laws of the Association, the Association shall have the following rights, powers and duties with regard to the Common Area and the cost and expense of which shall be paid for by the Association from assessment funds:

Common Area. The Association shall maintain, repair, replace and manage the Common Area and all facilities, improvements and equipment thereon, including any monument signs, and pay for all expenses and services in connection therewith, including without limiting the generality of the foregoing: landscape maintenance, comprehensive liability, hazard and other insurance, payment of all taxes, assessments and other liens and encumbrances which are assessed to or charged against the Common Area, and such other services for the Common Area as the Board deems to be in the best interests of the Association and its Members.

ARTICLE 7

RIGHTS OF FIRST MORTGAGEES

7.1. In addition to all other rights of first mortgagees pursuant to this Declaration, and notwithstanding any other provisions herein to the contrary:

Unless at least fifty-one (51) percent of the first mortgagees (based upon one vote for each first mortgage owned) of individual Lots (hereinafter referred to as "First Mortgagees") have given their prior written approval, the Association shall not be entitled to:

- a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvement thereon which are owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. The granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association shall not, for purposes of the foregoing, be deemed to be a transfer.
- b. Change the method of determining the obligations, assessments, dues, reserves for maintenance, repair and replacement of Common Areas, or other charges which may be levied against a Lot and the Owner thereof as provided in Article 5, subject, however, to the provisions in Paragraph 7.5 hereof.
- c. By act or omission waive, abandon or materially change any scheme or regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of any dwelling or garage on a Lot, the exterior maintenance of any such dwelling or garage, the maintenance of common fences and driveways, if any, or the upkeep of lawns and plantings on the Property.
- d. Fail to maintain fire and extended coverage insurance on the insurable improvements in the Common Area in an amount not less than one hundred percent (100%) of the full insurable replacement cost.

- e. Use hazard insurance proceeds for losses to any improvements to the Common Area for other than the repair, replacement or reconstruction of such improvements.
- f. Change the responsibility for maintenance and repairs of the Common Area and/or Lots thereof as provided in Article 6.
- g. Change the interests in the Common Area or rights to their use.
- h. Change the voting rights of any Member of the Association.
- i. Impose any restrictions on a Lot Owner's right to sell or transfer his or her Lot.
- j. By act or omission, seek to terminate the legal status of the Association after substantial destruction or condemnation.

7.2. First Mortgagees shall have the right to examine the books and records of the Association at reasonable times upon reasonable notice.

7.3. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

7.4. Any First Mortgagee, at its written request, shall be entitled to written notice from the Board of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations hereunder or under the By-Laws or rules and regulations of the Association which is not cured within thirty (30) days.

7.5. First Mortgagees are entitled to timely written notice, if requested in writing of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage;
- b. Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- c. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the owners' association; and
- d. Any proposed action that requires the consent of a specified percentage or eligible mortgage holders.

The request must include the Owners' Association, stating both its name and address and the Lot address of the Lot it has a mortgage on.

This Article 7 may be amended only with the written consent of seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned).

GENERAL PROVISIONS

8.1. Enforcement. In addition to all other rights herein granted to the Association, the Association may enforce the provisions of this Declaration, the Articles of Incorporation, By-Laws and rules and regulations of the Association by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions. All rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, and failure of the Association to enforce any such provisions shall in no way be deemed a waiver of the right to do so thereafter. All expenses incurred by the Association in connection with any such proceedings, including court costs and attorneys' fees, together with interest thereon at the highest interest permitted by law, shall be charged to and assessed against any Owner violating any such provisions and shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 5. If any Owner, or his guests, violates any provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations of the Association, the Board may, after affording the Owner an opportunity to be heard, levy a reasonable fine against such Owner, and such fine shall be added to and deemed a part of his assessment and constitute a lien on his Lot and be enforceable as provided in Article 5.

8.2. Severability. Invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision hereof, all of which shall remain in full force and effect.

8.3. Title in Land Trust. In the event title to any Lot is conveyed to a title-holding trust under the terms of which all powers of management, operation and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries thereunder from time to time shall be responsible for payment of all obligations, liens or indebtedness and for the performance of all agreements, covenants and undertakings chargeable or created under this Declaration against such Lot. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot and the beneficiaries of such trust, notwithstanding any transfer of the beneficial interest of any such trust or any transfers of title of such Lot.

8.4. Amendments. The provisions of Article 4 and Paragraph 5.1, and this paragraph may be amended only by an instrument in writing setting forth such amendment signed and acknowledged by all Owners. Subject to Article 7, the remaining provisions of this Declaration may be amended by an instrument in writing setting forth such amendment signed and acknowledged by the voting Members having at least fifty-one (51%) percent of the total votes of the Members or that is approved at a duly called and held general or special meeting of Members by the affirmative vote, either in person or by proxy, of the voting Members having a majority of the total votes of the Members and containing a certification by an officer of the Association that said instrument was duly approved as aforesaid. Notwithstanding the foregoing, Article 6 of the Declaration shall not be modified or amended without the prior written consent of the Village of Algonquin, Illinois. No amendment shall be effective until duly recorded in the Office of the Recorder of Deeds of McHenry County, Illinois.

8.5. Special Amendment. Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure,

or guarantee first mortgages encumbering any Lot, or (iii) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In addition, a Special Amendment shall also be deemed to include, until the Turnover Date, such amendment to this Declaration as Declarant elect to record at any time and from time to time for any other purpose, so long as such amendment will not materially impair the rights of the Owners hereunder or materially increase the expenses to be borne by them hereunder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservations of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments.

8.6 Headings. All headings set forth herein are intended for convenience only and shall not be given or construed to have any substantive effect on the provisions of this Declaration. The singular shall include the plural wherever the Declaration so requires, and the masculine the feminine and neuter and vice versa.

8.7 Assignment. Notwithstanding anything herein to the contrary, Declarant and/or Developer reserve(s) the right to transfer, assign, mortgage or pledge any and all of either respective privileges, rights, title and interests hereunder, or in the Property, by means of recording an assignment of such with the Office of the Recorder of Deeds of McHenry County, Illinois. Upon such assignment, Declarant and/or Developer, as the case may be, shall be relieved from any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording of such assignment. No such successor assignee of the rights of Declarant and/or Developer shall have or incur any liability for the obligations or acts of any predecessor in interest.

8.8 Mailing Address. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association and shall notify the Association promptly in writing of any subsequent change of address; provided, however, that if any Owner shall fail to so notify the Association, the mailing address for such Owner shall be the common street address of the Lot owned by such Owner. The Association shall maintain a file of such addresses. A written or printed notice, deposited in the United States mails, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant shall be sufficient and proper notice to such Owner shall be deemed delivered on the third (3rd) day after deposit in the United States mails.

8.9 Notices. Any notice required or desired to be given under the provisions of this Declaration to any Owner shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the person who appears as the Owner at his last known address, all as shown on the records of the Association at the time of such mailing.

8.10 Binding Effect. Except for matters discussed in Article 7 of this Declaration, the easements created by this Declaration shall be of perpetual duration unless cancelled in a written document signed by one hundred percent (100%) of the Owners. This Declaration shall not be cancelled without the prior written consent of the Village of Algonquin, Illinois. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

ARTICLE 9

ADDITIONAL PROPERTY

9.1. In General. Declarant reserves the right at any time and from time to time prior to ten (10) years from the date of Recording of this Declaration to annex, add and subject Additional Property as indicated on Exhibit "C" to the provisions of this Declaration as Additional Property by recording a supplement to this Declaration ("Supplemental Declaration"), as hereinafter provided. Any portion of Additional Property which is subjected to this Declaration by a Supplemental Declaration shall be referred to as "Added Property"; any portion of any Added Property which is made part of the Common Area shall be referred to as "Added Common Area"; and any Lots contained in the Added Property shall be referred to as "Added Lots". After the expiration of said ten (10) year period, Declarant may exercise the rights described herein to annex, add and subject Additional Property to the provisions of this Declaration, provided that the consent of two-thirds (2/3) (by number) of the Owners of all Lots then subject to this Declaration is first obtained.

9.2. Power to Amend. Declarant hereby retains the right and power to Record a Supplemental Declaration, at any time and from time to time as provided in Section 9.1, which amends or supplements Exhibit A. Exhibit A may only be amended or supplemented pursuant to this Article to add Additional Property to Exhibit A and shall not be amended to reduce or remove any real estate which is described in Exhibit A immediately prior to the Recording of such Supplemental Declaration. A Supplemental Declaration may contain such additional provisions affecting the use of the Added Property or the rights and obligations of Owners of any part or parts of the Added Property as the Developer deems necessary or appropriate.

9.3. Effect of Supplemental Declaration: Upon the Recording of a Supplemental Declaration by Declarant which annexes and subjects Added Property, Added Common Area, or Added Lots to this Declaration, as provided in this Article, then:

- a. The easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property and inure to the benefit of and be binding on any person having at any time any interest or estate in the Added Property in the same manner, to the same extent and with the same force and effect that this Declaration applies to the Property, and Persons having an interest or estate in a Lot, subjected to this Declaration prior to the date of the Recording of the Supplemental Declaration.
- b. Every Owner of an Added Lot shall be a Member of the Association on the same terms and subject to the same qualifications and limitations as those Members who are Owners of Lots immediately prior to the Recording of such Supplemental Declaration;
- c. In all other respects, all of the provisions of this Declaration shall include and apply to the Added Property (including the Added Common Area or the Added Lots, if any) made subject to this Declaration by any such Supplemental Declaration and the Owners, mortgagees, and the lessees thereof, with equal meaning and of like force and effect and the same as if such Added Property were subjected to this Declaration at the time of the Recording hereof;
- d. The Recording of each Supplemental Declaration shall not alter the amount of the lien for any charges made to a Lot or its Owner prior to such Recording;

- e. The Declarant shall have and enjoy with respect to the Added Property all rights, powers and easements reserved in this Declaration, plus any additional rights, powers and easements set forth in the Supplemental Declaration; and
- f. Each Owner of an Added Lot which is subject to assessment hereunder shall be responsible for the payment of assessments pursuant to Article V, but shall not be responsible for the payment of any special assessment which was levied prior to the time that the Added Lot became subject to the Declaration hereunder.

ARTICLE 10

COMMON INTEREST COMMUNITY

The Association shall act and operate as a Common Interest Community as defined in Illinois Revised Statutes, 735 ILCS 5/9-102), as from time to time amended. The Declaration and By-laws shall be deemed to be amended as necessary to comply with any statute relating to Common Interest Communities, and the Developer or Board may record such documents as are necessary to effect this compliance.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date and year first above mentioned.

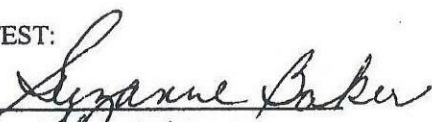
KENNEDY GROUP LIMITED PARTNERSHIP, an
Illinois limited partnership

BY: Kennedy Construction, Inc.
ITS: General Partner

BY: 
Its: President



ATTEST:

BY: 
Its: Treasurer

glp/declarat/arbr-hil dec
draft #2/01-23-95/glp

STATE OF ILLINOIS)
) SS.
COUNTY OF ~~COOK~~)
 McHenry

I, Kathleen A. Kupka, a notary public in and for said County, in the State aforesaid, DO **HEREBY CERTIFY** that William R. Gronow, _____ of **KENNEDY CONSTRUCTION, INC.**, an Illinois corporation, as the General Partner of **KENNEDY GROUP LIMITED PARTNERSHIP**, an Illinois limited partnership, and Suzanne Baker, _____ of said corporation, personally known to me to be the same persons whose names are subscribed to the foregoing Declaration of Covenants, Conditions, Easements and Restrictions for the Arbor Hills Homeowners Association, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Declaration, on behalf of the corporation and as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 7th day of February, 1995.



Kathleen A. Kupka
Notary Public

LEGAL DESCRIPTION

PARCEL 1:

LOTS 16 THROUGH 48, BOTH INCLUSIVE, LOT 101, LOT 102 AND LOT 303 IN ARBOR HILLS SUBDIVISION UNIT 1, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST, OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 28th, 1993 AS DOCUMENT 93R065805

PARCEL 2:

LOTS 1 THROUGH 15, BOTH INCLUSIVE, LOTS 103 THROUGH 106, BOTH INCLUSIVE, LOTS 120 THROUGH 124, BOTH INCLUSIVE, LOTS 155 THROUGH 171, BOTH INCLUSIVE, AND LOT 304 IN ARBOR HILLS SUBDIVISION UNIT 2, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST, OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1994 AS DOCUMENT ~~94R060270~~ 94R055463

PARCEL 3:

LOTS 55 THROUGH 93, BOTH INCLUSIVE AND LOT 305 IN ARBOR HILLS SUBDIVISION UNIT 3, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST, OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS. ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1994 AS DOCUMENT 94R055464.

EXHIBIT "B"

(SUBDIVISION PLAT)

RECORDED WITH THE RECORDER OF DEEDS
OF MCHENRY COUNTY, ILLINOIS AS DOCUMENT
NUMBERS: 93 R 065804, 94 R 055463 and 94 R 055464

EXHIBIT "C"

ADDITIONAL PROPERTY

THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, TAKEN AS A TRACT, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 29, AS PER MONUMENT RECORD RECORDED MAY 11, 1989 AS DOCUMENT NUMBER 89R014335; THENCE SOUTH 89 DEGREES 39 MINUTES 23 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER 1215.41 FEET TO THE WEST LINE OF THE EAST HALF OF SAID SOUTHWEST QUARTER OF SECTION 29; THENCE NORTH 01 DEGREES 10 MINUTES 22 SECONDS EAST ALONG SAID WEST LINE 1,930.95 FEET; THENCE NORTH 89 DEGREES 31 MINUTES 37 SECONDS EAST 330.00 FEET; THENCE NORTH 01 DEGREES 10 MINUTES 22 SECONDS EAST 660.44 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF HUNTLEY-ALGONQUIN ROAD PER DEDICATION RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF MCHENRY COUNTY ON JANUARY 25, 1950 AS DOCUMENT NUMBER 227882; THENCE NORTH 89 DEGREES 28 MINUTES 11 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 660.02 FEET; THENCE SOUTH 00 DEGREES 26 MINUTES 19 SECONDS EAST 570.20 FEET; THENCE NORTH 89 DEGREES 33 MINUTES 41 SECONDS EAST 763.12 FEET; THENCE SOUTH 00 DEGREES 53 MINUTES 00 SECONDS EAST 775.00 FEET; THENCE SOUTH 07 DEGREES 02 MINUTES 00 SECONDS EAST 594.37 FEET; THENCE SOUTH 01 DEGREES 44 MINUTES 00 SECONDS EAST 211.88 FEET; THENCE SOUTH 48 DEGREES 40 MINUTES 00 SECONDS EAST 171.00 FEET; THENCE SOUTH 37 DEGREES 26 MINUTES 00 SECONDS EAST, 72.00 FEET; THENCE SOUTH 17 DEGREES 45 MINUTES 00 SECONDS EAST 107.00 FEET; THENCE SOUTH 01 DEGREES 19 MINUTES 00 SECONDS EAST, 170.00 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 29; THENCE SOUTH 89 DEGREES 23 MINUTES 32 SECONDS WEST ALONG SAID SOUTH LINE 895.00 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 94.883 ACRES, ALL IN MCHENRY COUNTY, ILLINOIS, EXCEPTING THEREFROM THE FOLLOWING:

PARCEL 1:

LOTS 16 THROUGH 48, BOTH INCLUSIVE, LOT 101, LOT 102 AND LOT 303 IN ARBOR HILLS SUBDIVISION UNIT 1, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST, OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1 THROUGH 15, BOTH INCLUSIVE, LOTS 103 THROUGH 106, BOTH INCLUSIVE, LOTS 120 THROUGH 124, BOTH INCLUSIVE, LOTS 155 THROUGH 171, BOTH INCLUSIVE, AND LOT 304 IN ARBOR HILLS SUBDIVISION UNIT 2, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST, OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.

PARCEL 3:

LOTS 55 THROUGH 93, BOTH INCLUSIVE AND LOT 305 IN ARBOR HILLS SUBDIVISION UNIT 3, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 43 NORTH, RANGE 8 EAST, OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.