

RS-1508

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
SUMMERLAKES HOMEOWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by
CONTINENTAL HOMES OF CHICAGO, an Illinois Corporation, hereinafter
referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of, or has interest in,
certain real property located in the City of Warrenville, County of
DuPage, State of Illinois, which property is legally described on
Exhibit "A" attached hereto and made part hereof; and

WHEREAS, Declarant intends to convey or cause to be conveyed
all or part of said property subject to certain covenants,
conditions, restrictions, reservations, liens and charges as
hereinafter set forth; and

WHEREAS, Declarant and/or its successors and assigns (or the
Members of the Association), intend, from time to time, to execute
and record certain "Declarations of Inclusion," pursuant to the
terms of which all or part of said property described in Exhibit
"A" shall be subjected to and bound by such covenants, conditions,
restrictions, reservations, liens and charges as hereinafter set
forth;

NOW, THEREFORE, Declarant hereby declares that, subject to the
provisions of Article II below, upon the execution and recording of
any such Declaration of Inclusion as described above, then all of
the property described therein (being all or any part of the
property described in Exhibit "A") shall, upon such recording, be
held, sold and conveyed subject to the easements, restrictions,
covenants and conditions hereinafter set forth, all of which are
for the purpose of enhancing and protecting the value, desirability
and attractiveness of the subject property, and maintaining the
common recreational facilities thereon. These elements, covenants,
restrictions and conditions shall run with the real property as
part of a general plan of development and shall be binding upon all
parties having or acquiring any right, title or interest in the
described properties or any part thereof, and shall insure to the
benefit of each owner thereof. The Declaration of Inclusion
referred to above shall state the Declarant's intention to subject
the property legally described in such Declaration to the
covenants, easements, restrictions and conditions set forth below.

ARTICLE I
Definitions

Section 1. "Association" shall mean and refer to the Summerlakes Homeowners' Association, an Illinois not-for-profit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property hereinbefore referred to, subject to the terms of this Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all the real property and improvements thereon, owned by the Association for the common use, enjoyment and convenience of the Members of the Association. The Common Area to be owned by the Association shall be designated and conveyed by the Developer, free and clear of liens, of the Association. Such Common Area shall include such recreational facilities, retention lakes, walkways, parking areas and streets as the Developer may construct thereon.

Section 4. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 5. "Owner" shall mean and refer to the record owner (or the beneficiaries of a Land Trust which may be a record owner) whether one or more persons or entities, of a fee simple title to any Unit which is constructed on the Property, including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" and "Developer" shall mean and refer to Continental Homes of Chicago, an Illinois corporation, its successors or assigns (other than the purchaser of a Unit for use as his or her own residence) if such successor or assign shall be so specifically designated by Declarant with reference to this Declaration.

Section 7. "Unit" shall mean and refer to any residence constructed for use by a single family, including, but not limited to, Townhouses, patio homes, condominiums or single family dwellings, whether attached or detached from another similar or dissimilar unit which is constructed on the Property. If a single Unit is constructed on a single lot of record (being a lot so designated on a recorded plat of subdivision) then for the purpose of this Declaration, the term "Unit" shall include such lot. If Declarant shall subject additional lots of record to the terms hereof pursuant to Article II below, then such lots shall be deemed to be Units for the purposes of this Declaration.

ARTICLE II

Inclusion of Additional Development Properties

Section 1. Consent Required. Inclusion of additional development property by the recording of a Declaration of Inclusion as described above shall, except as provided below, require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for

this purpose, written notice of which, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership (if there shall then be more than one such class) shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. Declarant's Options. Notwithstanding *Section 1* above, if within ten (10) years of the date of incorporation of this Association, the Declarant (or its successors or assigns as defined herein) should develop additional lands within the area described on Description Rider A attached hereto and incorporated herein, such additional lands may be annexed to said Property without the assent of the Class A members pursuant to the recording of a Declaration of Inclusion, as set forth above, by Declarant, its successors or assigns.

Section 3. Burden Upon the Property. Declarant hereby declares that this Declaration and the covenants and restrictions and easements established herein shall be covenants to run with the land. Said covenants and restrictions shall inure to the benefit of and shall be binding upon each and every Owner and his or her respective heirs, representatives, successors, purchasers, lessees, grantees and Mortgagees. By the recording or acceptance of the conveyance of a Unit or any interest therein, the person or entity to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration and the By-Laws of the Summerlakes Homeowners Association.

Section 4. Rights of Unit Owners Upon Annexation. Upon the inclusion of additional property pursuant to the above, all rights, obligations, easements, restrictions and liabilities of the Owners, Occupants and Developer, shall apply to the entire Property as then constituted (including the Additional property and Units) in the same manner as if the entire Property was originally subjected to the terms of this Declaration on the date of its recordation.

Section 5. Non Severability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of a Lot and Unit as more specifically set forth below, and may not be severed or alienated from such ownership.

ARTICLE III
Membership

Section 1. Incorporation of Association. The Developer has caused to be incorporated a not-for-profit corporation known as the Summerlakes Homeowners Association, and said corporation, herein referred to as the Association, shall be the governing body for the administration, and operation of the Common Area. Pursuant to this Declaration, the Board of Directors of such corporation shall constitute the final administrative authority and all decisions of the Board with respect to the administration of the Property shall be binding. All rights, titles, privileges and obligations vested or imposed upon the Association by this Declaration shall be held and performed by the Board of Directors. The By-laws for governing the Association shall be those duly charted by the Association.

Section 2. Membership in Summerlake Homeowners Association. Every Owner of a Unit constructed on the Property subjected to the terms of this Declaration shall automatically be a member of the Association, as more fully described herein. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership for each Unit owned. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to the terms hereof. Ownership of such Unit shall be the sole qualification of membership.

Section 3. By Laws. As a member of the Association, each Unit Owner hereby covenants and agrees to be bound by the provision of By Laws of the Association as they may be adopted and properly altered or amended from time to time pursuant to the terms hereof.

ARTICLE IV
EASEMENTS

Section 1. Easements for Utilities. Easements for the installation, construction, reconstruction, maintenance, repair, operation and inspection of sewer, water, gas, drainage, electric, telephone, or other public utility services shall be granted as shown on any plat filed in connection with the Common Area. Further, any additional easements for such purposes, over, across and through the Common Area, may be granted by the Developer and/or the Board of Directors at any time for the purpose of obtaining such utility services.

The Developer, its successors and assigns, shall at all times have the right of ingress and egress over said easements for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating and inspecting any sewer, gas, water and/or drainage facilities within said easements.

The provisions of this Declaration concerning rights, violations, enforcement and severability are hereby made a part of the foregoing provisions relating to perpetual sewer, water, gas drainage and other easements, and notwithstanding any amendment to any other provision of this Declaration, the aforesaid easement rights contained herein shall be perpetual and run with and bind the land forever.

Section 2. Easements, Non-Interference. No building, fence or structure shall be erected nor any paving laid within any utility easement areas, nor any trees or shrubs planted in such easement areas, without the written consent of the grantee of such easement or the commission, municipality, utility or other entity controlling such sewer, water, gas or drainage facilities, as the case may be.

Section 3. Easement Rights. The Developer, its successors and assigns, and any party for whose benefit easements are granted pursuant to the terms hereof, shall have the right to do whatever may be requisite for the enjoyment of the easement rights herein granted, including the right to clear said easement areas of timber, trees, or shrubs, or any building, fence, structure or paving erected on or installed within the easement areas, and no charge, claim or demand may be made against such parties for any such activities in the exercise of such rights.

Section 4. Easements-Municipal Authorities. Police, fire, water, health and other authorized municipal officials, employees and vehicles shall have the right of ingress and egress to the Common Area for performance of official duties. It is hereby further declared that the provisions of the traffic ordinances and regulations of the City of Warrenville shall apply to the Property and all of the residents therein. period of constructing and/or marketing on the Property, the Developer shall have the right of ingress and egress, and the right to install any improvements, over, across and through the Common Area. Further, Developer shall have the right to store such equipment and materials as Developer deems necessary for the purpose of construction and marketing during said period.

Section 6. Easement for Ingress and Egress. The Declarant, Developer, and every Unit Owner, and their guests, agents, invitees and licensees, shall have an easement for ingress and egress over, across and through the Common Areas.

Section 7. Easements Running with the Land. All easements herein described are easements appurtenant, running with the land; they shall at all times inure to the benefit of and be binding on the undersigned, all its grantees and their respective heirs, successors, personal representatives or assigns, perpetually and in full force and effect.

Reference in the respective deeds of conveyance, or in any mortgage or trust deeds or other evidence of obligation, to the easements and covenants to the respective grantees, mortgagees or devisees of said parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.

ARTICLE V
Voting - Administration

Section 1. Membership and Voting. Membership and voting in the Association shall be as follows:

- (a) Class A - Class A members shall be all Owners (other than Developer) and shall be entitled to one vote for each Unit owned. Each Owner shall become a member upon taking legal title to a Unit (provided that such title is not held merely as a security interest), and shall remain a member so long as he shall be an Owner. Membership and Ownership shall not be severed, and membership shall automatically terminate upon the transfer of ownership. Subsequent Owners shall likewise succeed to Membership. When more than one person holds an interest in any Unit all such persons shall be Class A members, but in no event shall there be more than one vote for any one Unit owned by Class A members. Developer shall not be a Class A member, except as provided in Paragraph (b).
- (b) Class B - Class B members shall be the Developer and the Class B member shall be entitled to three (3) votes for each Unit owned. The Class B Membership shall cease and be converted to Class A Membership with one vote for each Unit owned, on the occurrence of either of the following events, whichever happens earlier:
 - i. When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership; or
 - ii. Seven (7) years from the execution of this Declaration;
- (c) In the case of additional memberships being created because of additional property and Units added to the Association as provided above, the test in (i) above shall be applied cumulatively (i.e., taking the total votes of all of the Units then subject to the Declaration).

Section 2. The Board of Directors. The administration and operation of the Property shall be vested in the Board of Directors of the Association ("Board"). Prior to the first annual meeting of members, the Board shall be appointed by the Developer. Subsequent to said meeting, the Board shall be elected by the Unit Owners in accordance with the By-Laws and this Declaration. All funds collected by the Board shall be held and expended for the purposes designated in this Declaration and the By-Laws and shall be deemed to be held for the benefit, use and account of all Owners. Said funds shall be administered pursuant to the provisions of this Declaration and By-Laws.

Section 3. Rules and Regulations. The Board shall have the authority from time to time to adopt rules and regulations governing the administration and operation of the Property, subject to the terms of this Declaration. Further, the Board shall have the authority to lease or grant licenses or concessions with respect to portions of the Property; provided that such grants or

leases shall not be inconsistent with the rights of the Owners or the other provisions of this Declaration.

Section 4. Indemnification of the Board. The members of the Board, the officers of the Association and the managing agent shall not be liable to the Owners for any mistake in judgment or acts or omissions not made in bad faith, as members or officers. The Owners shall indemnify and hold harmless said parties against all contractual liabilities to others arising out of agreements made by such members or officers on behalf of the Owners or the Association unless such agreements shall have been made in bad faith or with knowledge that same was contrary to the provisions of this Declaration. The liability of any Owner, as described above, shall be limited to an amount determined by dividing the total liability by the total number of Owners subject to the terms of this Declaration. All contracts and agreements entered into by the Board, officers, or the managing agent shall be deemed executed by said parties as the case may be as agent for the Owners or the Association.

Section 5. Board's Determination Binding. In the event a disagreement arises between the Owners related to the property or the interpretation and application of this Declaration or the By-Laws, the review and determination thereof by the Board shall be final and binding upon each and every Owner.

Section 6. Management. The Board shall initially retain a professional management company, professional manager, or full time employee to manage the Common Area and supervise the maintenance and operation thereof. The Association may itself subsequently elect to assume management responsibility for the Common Area and terminate any professional management upon an affirmative vote of 75% of the total Membership votes entitled to be cast, either in person or by proxy, at a special meeting called for such purpose.

Further, the Board shall enter into management contracts only if such contracts shall (i) permit the termination thereof by the Association upon 30 days prior written notice; and (ii) be for a period of not more than one year and permit renewals for periods not to exceed one year at a time, by mutual consent.

ARTICLE VI
Property Rights

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment and use in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Unit, subject to the following provisions:

- (a) The right of the Association to limit the number of guests of members.

- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (c) The right of the Association, in accordance with its Articles or By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property.
- (d) The right of the Association to suspend the voting rights and right to the use of the recreational facilities by a member for any period during which any assessment against his Unit remains unpaid and for any period established by the Association for any infraction of its published rules and regulations.
- (e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members and first mortgagees of record (as set forth below). So long as there shall be a Class B membership, no such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class B membership, have been recorded, agreeing to such dedication or transfer.
- (f) As part of the overall program of development of the Property and annexed lands into a residential community and to encourage the marketing thereof, the Declarant shall, for sales purposes only, have the right of use of the Common Area and facilities thereon, including any community building, without charge during the sales and construction period on the Property and annexed lands, to aid in its marketing. Further, during the period of construction of sales, Declarant, its successors and assigns shall have an easement over, across and through the Common Areas for the purpose of marketing and/or the development of any portion of the Property.

Section 2. Delegation of Use. Any member may delegate, subject to the terms hereof, his right of enjoyment to the Common Area and facilities to the member of his family, his tenant, or contract purchasers who reside on the property.

Section 3. Maintenance, Repairs and Replacement of the Common Areas. Maintenance, repairs, reconstruction and replacements of the Common Areas shall be performed by the Association and the expenses relating thereto shall be Common Expenses paid by assessments as provided below.

Section 4. Mechanic's Liens. The Board may cause to be discharged any Mechanic's Lien or other encumbrance which in the

opinion of the board may constitute a lien against the Common Areas. Where less than all of the Unit Owners are responsible for the existence of said lien, the Unit Owners' responsible shall be jointly and severally liable for the amount necessary to discharge the same, and for all costs and expenses including attorney's fees and court costs incurred by reason of the lien, and such costs and expense may be added to such Owner's assessments.

Section 5. Alterations to the Common Areas. No Owner shall make any alterations to the Common Areas. In addition to any repair or reconstruction required elsewhere hereunder, the cost of which is paid for with insurance proceeds, the Board may authorize as Common Expense any alterations, improvements or additions to the Common Areas; provided, however, that the cost of such shall be paid from the Common Assessments as more specifically described below. Further, no such expenditure in excess of \$7,500.00 shall be made without the prior approval of a majority of the owners.

Section 6. Unit Owner's Neglect. If, due to the act of neglect of an Owner, or of a member of his family or household pet or of a guest or other authorized occupant, or visitor of such Unit Owners, damages shall be caused to the Common Areas, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, but only to the extent such liability would be imposed on such Owners under the law of the State of Illinois.

ARTICLE VII Insurance

Section 1. Acquisition of Insurance Coverage. The board shall obtain insurance coverage for the Common Area to cover against loss or damage by fire or other hazards. The insurance shall be for the full insurable value (based upon current replacement cost) of the Common Area and the insurance premiums shall be Common Expense. Such insurance coverage shall be written in the name of, losses under such policies shall be adjusted by, and the proceeds of such insurance shall be payable to, the Association. The insurance coverage shall, if possible, provide that the insurance as to the interest of the Association shall not be invalidated by any act or neglect of any Owners.

The coverage shall contain an endorsement to the effect that said coverage shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Association. If available, such policy shall contain a replacement clause endorsement.

Section 2. Appointment of Trustee for Proceeds. The Board may, at its discretion, retain any bank or trust company to act as Trustee, agent or depository on its behalf for the purpose of receiving or distributing any insurance proceeds resulting from any loss. The distribution of the proceeds shall be determined by the Board and said determination shall be consistent with the

provisions of this Declaration. The fees of said corporate trustee shall be Common Expenses. In the event of a loss in excess of \$10,000.00, the Board must engage a corporate trustee as aforesaid.

Section 3. Appraisals. The Board shall obtain, at least every two (2) years, an appraisal, for insurance purposes of the Common Area and, upon receipt of any such appraisal, shall readjust, renegotiate, or obtain new insurance consistent with the appraisal as provided.

Section 4. Reconstruction of the Properties. The insurance proceeds shall be applied by the Board or corporate trustee on behalf of the Association for the reconstruction or restoration of the Common Areas.

Section 5. Board Acceptance of Insurance Proceeds. Payment by an insurance company to the Board or corporate trustee or any insurance proceeds coupled with the receipt and release from the Board of the company's liability under said policy shall constitute a full discharge of said insurance carrier and said carrier shall not be under any obligation to inquire into the terms of any trust under which the proceeds may be held pursuant hereto.

Section 6. Other Insurance. The Board shall also obtain comprehensive public liability insurance including liability for injuries or death to persons, and property damage, in such limits as it shall deem desirable, and workman's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, members of the Board, the Developer, the manager and managing agent, if any, and their respective employees and agent, if any, and their respective employees and agents, from liability in connection with the Common Area and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. The premium for such insurance shall be a Common Expense.

ARTICLE VIII Use Restriction

Section 1. General. No business of any kind shall be conducted on the Common Area except as authorized by the Board. No motor vehicles shall be operated or stored anywhere on the Common Area, except as may be specifically provided by the Board. No noxious or offensive activity shall be carried on anywhere on the Common Area, nor shall anything be done thereon which may become an annoyance or nuisance to the Owners. No boat, trailer, minibike, snowmobile, camper, tent, shack or other vehicle or structure shall be located, erected, or stored on the Common Area temporarily or permanently, except if areas for such are specifically designated by the Board. Nothing in this Article shall be deemed to apply to the Developer so long as a sales and/or construction office is maintained on the Property.

Section 2. Architectural Control. No building, fence wall, antenna, above ground utility line, or other structure shall be commenced, erected, or maintained upon the Common Area nor shall any addition to, or change or alteration of the Common Area or any building thereon be made unless authorized by the Board of Directors. Nothing in this paragraph shall be construed as to be applicable to the Developer.

Section 3. Signs. No signs of any kind shall be displayed on the Common Area except as specifically authorized by the Board. The foregoing to the contrary notwithstanding, the Developer may maintain signs on the Common Area during the period it maintains a sales office, or such permanent signs as Developer shall erect identifying the project.

Section 4. Animals No animals, or livestock of any kind shall be permitted on the Common Area, except domesticated household pets which shall be subject to reasonable regulation by the Board.

Section 5. Garbage and Rubbish. Garbage and rubbish shall not be dumped or allowed to remain on the Common Area except in those areas specifically provided, or designated by the Board, and no such storage shall be permitted unless screened from view.

Section 6. Sport Vehicles. The operation of minibikes and snowmobiles on the Property is expressly prohibited.

Section 7. Drainage and Waterways. No drainage ditch, lake, retention pond, or any other facility designed to carry or hold natural water shall be constructed within the Property, nor shall any such existing facility be altered in any manner, without the express approval of the Board.

Section 8. Topography. No grading, cutting, filling, stockpiling or alteration of any grade shall be permitted anywhere within the Property unless specifically approved by the Board.

Section 9. Planting. No tree or shrub shall be removed from the Property without the express consent of the Board. No planting of any kind shall be placed on any lot in such manner as to interfere with use of neighboring lots or Common Area, or to present any visual safety hazard.

Section 10. Developer. The foregoing restrictions shall not apply to the Developer during the period of marketing or construction of the property.

ARTICLE IX

Common Expenses and Assessments

Section 1. Common Expenses - Assessments. Each Owner shall pay to the Association, assessments representing his proportionate share of the expenses of maintenance, repair, replacements

administration and operation of the Common Areas. Said expenses hereinabove referred to shall be known as "Common Expenses." Payments of assessments shall be in such amounts and at such times as provided below.

Section 2. Annual Assessments.

- (a) Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be Twelve Dollars (12.00) per Unit.
- (b) Each year on or before December 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, taxes, services and supplies, relating to maintenance of the Common Area as set forth herein, which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Such annual budget shall also take into account any estimated not available cash income for the year from the operation or use of the Common Areas. Such budget shall constitute the annual assessment for the ensuing year and shall be assessed equally to each Owner. On or before January 1 of such year, and every month thereafter, each Owner shall be obligated to pay to the Association one twelfth (1/12) of the annual assessment established pursuant to the paragraph.
- (c) The foregoing notwithstanding, commencing with January 1 of the year following the conveyance of the first Unit to an Owner, the annual assessment may be increased each year by an annual amount equal to the greater of:
 - (i) Ten percent (10%) of the previous year's assessment; or
 - (ii) A percentage of the previous year's assessment equal to three percent (3%) plus the percentage increase in the "Consumer Price Index for Urban Wage Earners and Clerical Workers" published by The Bureau of Labor Statistics, applicable to Chicago, for the 12 month period ending November 30 of the preceding year.Any increase in the annual assessment in excess of the foregoing must be approved by two-thirds (2/3) of each class of members voting in person or by proxy at a meeting duly called for such purpose.
- (d) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any taxes, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures

and personal property related thereto, *provided that* any such assessments in excess of a total of Five Dollars (\$5.00) per Unit in any assessment year shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

- (e) Written notice of any meeting called for the purpose of taking any action authorized under Section 2(c) or (d) above shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, 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 60 days following the preceding meeting.
- (f) Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.
- (g) On or before the date of the annual meeting of each calendar year, the Board shall supply all Owners with an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the Estimates provided, and showing the net amount over or under the actual expenditures plus reserves. In any given year, any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited equally to each Unit Owner by applying any such excess to expenses and or reserves for the subsequent year.
- (h) The Board shall establish and maintain reasonable reserves for contingencies and replacements as it shall deem necessary, and any extraordinary expenditure not included in the annual assessment shall be first charged against such reserves in the year of such expenditure. If such reserves are depleted or, in the opinion of the Board, significantly reduced, then the next regular annual assessment shall provide for the re-establishment of such reserves as the Board shall deem reasonable appropriate.
- (i) The failure or delay of the Board to prepare or serve the annual budget or the itemized accounting or other documents on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the assessments as herein provided whenever the same shall be determined. In the absence of any new annual assessment, the Owner shall continue to pay the monthly charge at the then existing monthly rate established for the previous year until the first monthly assessment payment which is due more than thirty (30) days after such new annual assessment shall have been determined.

- (j) The Board shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the Property, specifying and itemizing the maintenance and repair expenses of the Property and any other expenses incurred. Such records shall be available for inspection by any Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Unit Owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charge due and owing from such Owner.
- (k) No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Unit. Except as otherwise provided elsewhere herein, the Owner of a Unit on the first day of the month shall personally be liable for the one twelfth (1/12) of the annual assessment payable in such month; and the Owner as of the date of any levy of a special assessment shall be personally liable for such assessment.

Section 3. Commencement of Assessments. The obligation for payment of the assessments provided for herein shall commence as to all Units on the first day of the month following the later of:

- (a) The conveyance of the first Unit to the Owner; or
- (b) Either the deeding of the Common Area to the Association or the completion of the recreational facilities to be constructed thereon (in the extent such are available for use by the Members).

Upon the taking of office of the first Board selected pursuant to the terms hereof, such Board shall prepare an estimated budget for the operation and maintenance of the Common Area for the balance of that calendar year. On January 1 of the subsequent year, such budget shall provide the basis for any assessments due and payable, pursuant to this Article IX.

Section 4. Failure to Pay Common Expenses. The amount of each assessment shall constitute a lien on the interest of such Owner in his Unit, and upon the recording of notice thereof by the manager or Board of Directors, it shall be a lien upon such Owner's interest in the property prior to any other liens or encumbrances, recorded or not recorded, except only

- (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or Federal taxes which by law are a lien on the interest of such Owner prior to pre-existing recorded encumbrances thereon; and
- (b) encumbrances on the interest of such Unit Owner recorded prior to the date such notice is recorded, which by law

would be a lien thereon prior to subsequently recorded encumbrances.

The lien for Common Expenses shall be in favor of the association and it shall be for the benefit of all other Owners who may bring any action authorized under this Declaration, By-Laws or otherwise in law or equity. Where the Owner's interest is sold at a public or private sale pursuant to this Declaration or the By-Laws because of the failure to pay the Common Expenses, the Board of Directors and their successors in office, acting in behalf of the other Unit Owners, shall have the power to bid in the interest so foreclosed and to acquire and hold, lease, mortgage or convey same.

Section 5. Exempt Property. All property dedicated to and accepted by any governmental authority, and all properties owned by any charitable, educational, religious or other non-profit organization exempt from taxation under the laws of the State of Illinois, shall be exempt from all assessments hereunder; if such property shall not be used as a dwelling.

ARTICLE X

Remedies

Section 1. Remedies - Generally: In the event of any default or violation by any Owner, his agent, invitee, occupant, guest, lessee, or family, under the provisions of the Declaration, By-Laws or rules or regulations of the Board, the Board or its agents shall have all of the rights and remedies which may be provided for in the Declaration, By-Laws or said rules and regulations, or which may be available in law or in equity, and may take any action or proceeding against such defaulting Owner and/or others for enforcement of any lien and the appointment of a receiver for the Unit and ownership interest of such Owner, or for such damages or injunction for specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Unit and to sell the same as hereinafter in this Article provided, or for any combination of remedies or for any other relief. In addition to all other remedies, the Board shall have the right to suspend a defaulting owner from exercising voting and other rights of Association members, upon 30 days prior written notice to such Owner, if th default is not remedied in such time. Nothing herein shall prohibit any Owner from seeking damages or injunctive relief from or against another Owner for injury or damage arising from the failure to comply with the terms of this Declaration.

Section 2. Default in Payment of Assessment. Proceedings may be instituted by either the Board of Directors of the Association, the Developer, or by any Owner or group of Owners of any Unit to enforce the collection of assessments, both annual and special, provided for in this Declaration. Any such proceeding shall be

brought in the name of the Association and the Association shall be deemed to be acting for and on behalf of all parties in interest. The Association in addition to an action for the collection of assessments and foreclosure of the lien, shall have the right to institute proceedings for possession of the defaulting Unit pursuant to the Illinois Forcible Entry and Detainer Act, and the Board or its agents shall have each and all of the remedies provided for in the Declaration, By-Laws, or at law or equity.

Section 3. Expenses of Default. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees, and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the rate of eight percent (8%) per annum until paid, shall be added to and deemed to be a part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same, as well as for non-payment of his respective share of the Common Expenses, upon the Unit of such defaulting Owner and upon all of his additions and improvements thereto and upon all of his personal property in his Unit or located elsewhere on the Property. In the event of any such default by any Owner, the Board and the manager or managing agent, if so authorized by the Board, shall have the authority to correct such default, and to do whatever may be necessary for such purpose, and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner. Any and all rights and remedies may be exercised at any time any from time to time, cumulatively or otherwise by the Board.

ARTICLE XI

General Provisions

Section 1. Leasing of Units. If any Owner shall lease his Unit, then:

- (a) Such lease shall provide that the lease and lessee shall be subject to all of the terms, conditions, and restrictions of this Declaration and the applicable By-Laws, and any breach thereof shall constitute a default under such lease by lessee.
- (b) The Owner shall remain bound by all obligations set forth in this Declaration.

Section 2. Notices. Notices provided for in this Declaration or the By-Laws shall be in writing and shall be addressed to the Association at such address as may be or from time to time designated by the President of the Board. The Board of Directors may designate such address for notices to the Association and to Unit Owner at his Unit address, but any Unit Owner may also designate a different address at which he is to be notified. Further, any mortgage may from time to time designate an address to which notices required hereunder shall be directed. Any notices required pursuant to the provisions of this Declaration shall be deemed to have been properly served when mailed, postage prepaid,

certified mail or registered mail, return receipt requested, to the last known address of the Addressee, or when delivered in person with written acknowledgement of the receipt thereof.

Section 3. Severability and the Rule Against Perpetuities. If any provision of this Declaration or the By-Laws shall be held invalid it shall not affect the validity of the remainder of the Declaration or the By-Laws. If any provision of the Declaration or By-Laws is deemed to violate the rule against perpetuities or any other rule, statute or law imposing time limitations, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of Richard J. Daley, Mayor of Chicago, plus twenty-one (21) years thereafter.

Section 4. Failure to Enforce Provisions. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration or the By-Laws shall be deemed to be abrogated or waived by reason of any failure to enforce same irrespective of the number of violations or breaches which may have occurred.

Section 5. Land Trusts. If in the event title to a Unit is held by a land trust under which all powers of management, operation and control remain vested in the trust beneficiary or beneficiaries then the trust estate under said trust and the beneficiaries thereunder from time to time shall be liable for payment of any obligation, lien or indebtedness created under this Declaration against the Unit. No claim shall be made against any such title-holder trustee personally for any claim or obligation created hereunder and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation but the amount thereof shall continue to be a charge or lien upon the premises notwithstanding any transfers or beneficial interest or in the title to such real estate.

Section 6. Captions. The articles and paragraph captions are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

Section 7. Initial Operation. Until such time as the Board provided for in this Declaration is formed, the Declarant shall exercise any and all of the powers and functions of the Association and the Board.

Section 8. Developer - Declarant. As used within the context of this Declaration, the terms "Declarant" and "Developer" shall be deemed to be interchangeable with respect to the rights and remedies reserved thereto. In other words, the Developer may exercise all rights reserved to Declarant, and Declarant may exercise all rights reserved to Developer.

ARTICLE XII

Rights of First Mortgage Holders

Anything in this Declaration to the contrary notwithstanding, the following shall be applicable with respect to any institutional holder of a first mortgage lien of record on any Unit which is subject to the terms hereof.

Section 1. Notice. The Association shall, if so requested by any first mortgagee of record of a Unit, give written notification as follows:

- (a) Notice of any default of the Owner of a Unit which is the subject of such mortgage if such default is not cured within 30 days after its occurrence;
- (b) Five (5) days prior written notice of any annual or special meetings of the Association. The mortgagee may designate a representative to attend any such meeting.
- (c) Notice of any proposed amendment to the Declaration or By-Laws which will substantially alter the administration of the property, the assessments or collection thereof, or any other matter affecting the property as governed by the terms of this Declaration. Such notice shall be given at least ten (10) days prior to the submission of same for approval by the members of the Association.
- (d) Timely notice of substantial damage or destruction of any Unit or any portion of s.
- (e) Notice of any condemnation or eminent domain proceeding affecting any portion of the Common Area.
- (f) The request by a mortgagee for any or all of the above notices may be submitted to the Association via the Board of Directors and in such event, the giving of such notices shall continue until such time as the mortgagee shall request the same to be terminated, or until the interest of the mortgagee in the property is terminated; whichever shall be first in time.

Section 2. Claims for Assessments. Any first mortgagee of record who takes title to a Unit or comes into possession of a Unit pursuant to remedies provided in such mortgage (including foreclosure, or a deed or assignment in lieu thereof) shall take possession free of any claims for unpaid assignments or charges which may have accrued prior to the date of such possession; provided, however, that such mortgage shall be liable for a pro-rata share of such assessments and charges if the Board shall elect to reallocate same among all the Units.

Section 3. Sale of Common Area. The Association shall not, by act or omission, seek to abandon, portion, subdivide, encumber, sell or transfer any of the real estate or improvements thereon, owned by it, directly or indirectly, without the express written consent of the mortgagees representing at least 75% of the first mortgages recorded against those Units which are subject to the terms of this

Declaration. Grants of easements for utilities and other public purposes shall not be considered a sale or encumbrance for purposes of this Section 3.

Section 4. Books and Records. Any first mortgagee of record of a Unit shall have the right, upon 24 hours notice, to examine any and all books and records of the Association at any time during normal business hours, and shall be entitled to receive, at its request, a copy of any and all annual audited financial statements within ten (10) days from the date of such request or the date of preparation of such statement, as the case may be.

Section 5. Priority as to Proceeds. Nothing in this Declaration, By-Laws or Articles of Incorporation of the Association shall be construed to in such manner as will entitle any Owner or other party priority over an institutional first mortgage lien holder of record (or the holder of an equivalent security interest) with respect to (i) any insurance proceeds distributable to a Unit of damage or destruction; or (ii) any distribution to a Unit of any award or proceeds of a condemnation or eminent domain proceeding or settlement.

ARTICLE XIII Amendments to Declaration

Section 1. Approval of Amendments. Except as provided below, provisions of this Declaration may be amended by an instrument in writing setting forth the amendments and executed by the Owners representing not less than seventy-five percent (75%) of the outstanding membership votes entitled to be cast. If said Declaration is so modified by the Association, a notice of said modification shall be given to all first mortgage lien holders of record by certified mail, return receipt requested. Said notice shall contain a complete text of any such modification or amendment.

Section 2. Approval of Mortgagees. Notwithstanding the provisions of Section 1, no amendment of Article V, Sections 1 and 4, Article VII, Article IX, Article XI, Article XX, Article XIV and this Article XIII shall be effective without the express written consent of the holders of seventy-five percent (75%) of the first mortgage liens recorded against the Units which are subject to this Declaration.

Section 3. Restriction on Alienation. Notwithstanding anything contained herein to the contrary, no amendment to the Declaration, Articles of Incorporation or By-Laws, shall be effective if such shall seek to vest a right of first refusal as to sale or lease of a Unit, or any similar restriction in favor of the Association, other owners or related entities.

Section 4. Termination of Restrictions. Except as specifically provided below, in Article XIV, no action by the Association or Owners, whether by amendment or otherwise, shall be

effective to remove the Property (once subjected by recording to the terms hereof) from the terms and conditions of this Declaration, without the express written consent of seventy-five percent (75%) of the institutional holders of the first mortgage liens recorded against the Units.

Section 5. Rights of Developer. The foregoing notwithstanding, no amendment which shall adversely affect the rights of the Developer (including, but not limited to, the right to maintain sales facilities, signs and access for construction storage set forth in this Declaration) shall be effective without the Developer's express written consent thereto.

Section 6. Validity of Amendments. No amendments approved pursuant to this Article XIII shall become valid until a true and correct copy of same, attested by the Secretary of the Association, shall then have been placed of record.

ARTICLE XIV

FHA and VA

Section 1. Submission for Approval. Declarant contemplates the submission of the subject Property to the Federal Housing Administration and Veterans Administration for approval of the development plan in order to market and sell the Units pursuant to certain governmental mortgage insurance and purchase programs administered by said Administrations. If the Declarant does so submit the property, and if Units are sold by the Declarant pursuant to any such program, then, notwithstanding anything herein to the contrary, the following Sections shall constitute binding provisions of this Declaration.

Section 2/ Inclusion of Additional Property. Notwithstanding the provisions of Article II, no additional Units or Lots may be added or subjected to the terms of this Declaration unless the FA and VA first determine that such annexation is compatible with the general plan previously approved by them.

Section 2. So long as there shall be a Class B Membership as provided herein, the following actions will require the prior approval (in addition to other approvals as may be required elsewhere herein) of the FHA or VA:

- (a) Dedication or other alienation of the Common Area.
- (b) Any amendment to this Declaration.

IN WITNESS WHEREOF, the Declarant has affixed its hand and seal this 28th day of January, 1975.

CONTINENTAL HOMES OF CHICAGO, INC.

Attest:

BY _____

The undersigned, being the mortgagee of record of the property described on Exhibit A attached hereto, pursuant to Document No. R 74-33989 recorded on July 8, 1974 in the Office of the Recorder of Deeds, DuPage County, Illinois, hereby consents to the terms and recordation of the foregoing Declaration.

FIRST CHICAGO REALTY SERVICES
CORP.

BY _____

Attest:

Asst Sect.

GIVEN under my hand and Notarial Seal this _____ day of _____, 1974.

Notary Public

My Commission Expires: _____
was: _____, Range 9, East of the Third Principal Meridian described as

Beginning at the Northeast corner of Lot 9 of Robert Bartlett's Green Acres being a subdivision in the East 1/2 of Section 33 and in Principal Meridian; (as per plat thereof recorded October 23, 1943 Document No. 454584): Thence S. 87°-26' W. along the North line Bartlett's Green Acres, aforesaid, a distance of 1457.10 feet (1458.30 recorded) to the Northwest corner of Lot 1 in said subdivision: Thence 9°-52'-30" E., a distance of 1286.70 feet: Thence S. 89°-42'-00" W., distance of 356.23 feet to the Easterly line of Elgin-Joliet and Eastern Co. R.O.W.: Thence N. 1°-50'-00" E., along said Easterly line, distance of 4070.02 feet: Thence S. 88°-04'-00" E., a distance of 1079.62 to the NE corner of Lot 13 in commissioner Partition Plat of the Israel Mather Estate, as recorded in Circuit Court Chancery of Du Page County, Illinois, March 14, 1867 in Book 5, Page 214. Thence S. 1°-42'-00" along the East line of said Lot 13, a distance of 348.04 feet (348.50 recorded) to the southwest corner of Lot 3 in Unger Farm Assessment recorded November 16, 1943 as Doc. No. 455882, being also the southwest corner of Lot 10 in said Commissioners Partition Plat of the Israel Mather Estate: Thence N. 88°-03'-30" E., along the North line of Lot 10, being also the South line of Lot 3 in Unger Farm Assessment aforesaid a distance of 1578.52 feet (1578.50 feet recorded) to the underline of Illinois Rte. 59 as laid out and dedicated for Public Highway Doc. No. R71-24124: Thence S. 7°-07'-00" E., along aforesaid centerline a distance of 456.85 feet, to the North line of Robert Bartlett's Riverside being a subdivision of part of lot 15 of the Commissioner's Partition of the Israel Mather Estate, Record 3 or 5, Page 214, Circuit Court, in subdivision 27 and 28, Township 39 North, Range 9, East of the Third Principal Meridian, a per plat thereof recorded April 26, 1948 as Doc. No. 543778; _____, a per _____ 24 feet recorded) to the Northwest corner of said subdivision: Thence _____°-16'-54" E., along the West line of said Robert Bartlett's Riverside, _____ Road (S. A. Rt. 32), as dedicated for Public Street per Doc. No. 149 recorded April 15, 1953: Thence S. 68°-03'-00" E. along said center a distance of 880.99 feet to the Northwest corner of Pattermann's 2nd Assessment Plat, recorded March 19, 1958, as Document No. 873881. Thence _____°-15'-30" W., along the Westerly line of said Pattermann's 2nd Assessment Plat, a distance of 780.56 feet (780.64 feet recorded) to the Southwest _____ thereof, being on the North line of Lot 1 in John T. Kuhn's Assessment, as per plat thereof recorded August 17, 1966 as Doc. No. R66-32478: Thence N. 82°-54'-40" W., along said North line, a distance of 271.56 feet centerline of Illinois, Rte. 59, as laid out and dedicated for Public Highway per Doc. No. R71-24124: Thence Southerly along the centerline of 3819.71 feet, the chord thereof having a bearing S. 9°-39'-34" W., and length of 200.94 feet an arc distance of 200.96 feet to a point of tangency: Thence S. 11°-10'-00" W., and continuing along said centerline, a distance of 2053.84 feet to the

North line extended East of Lot 34 of Robert Bartlett's Green Aces aforesaid: Thence N. 83°-30'-00" W., along a North line of said subdivision, a distance of 1309.17 feet (1310.49 feet recorded) to an angle in said North line: Thence N. 87°-43'-00" W. and continuing along division: Thence N. 9°-33'-30" E., along said Easterly line a distance of 1295.40 feet (1295.58 feet recorded) to the place of Beginning:

Also:

That part of the East half of 100 foot right-of-way of Illinois Route 59, laid out and recorded by Document No. R71-24124 bounded in the North of the North lined extended East of Lot 10 in Commissioners Partition Plat the Israel Mather Estate (as recorded in Circuit Court chancery of Du Page County, Illinois, in Book 5, page 214), being also the South line extended first of Lot 3 in Unger Farm Assessment Plat, recorded November 16, 1943 Document No. 455882, and bounded in the South by the South line extended first of Lot 10 aforesaid, being also the North line of Robert Bartlett's Riverside, begin a Subdivision of part of Lot 15 of the Commissioner's Partition _____ of the Israel Mather Estate Record 5, page 214, Circuit Court, in Sections 27 and 28, Township 39 North, Range 9, East of the Third Principal Meridian, as per Plat thereof recorded April 26, 1948 as Document No. 543778; containing 0.5242 acre, more or less.

Also

Branch Avenue, as dedicated for public street Robert Bartlett's Riverside, being a Subdivision of part of Lot 15 of the Commissioner's Partition Plat of the Israel Mather Estate, Record 5, page 214; Circuit Court, in Sections 27 and 28, Township 39 North, Range 9, East of the Third Principal Meridian as per Plat thereof recorded April 26, 1948 as Document No. 543778.

also,

That part of 100 foot right-of-way of Illinois Route 59, as laid out and recorded by Document No. R71-24124, lying North of the South line extended of Branch Avenue aforesaid and South of the North line of Robert Bartlett's Riverside aforesaid, containing 0.7553 acre, more or less.

Also:

That part of the Northeasterly 1/2 of 100 foot R.O.W. of Batavia Road ad dedicated for Public Street in Robert Bartlett's Riverside, being a subdivision of part of Lot 15 of the Commissioner's Partition Plat of the Israel Mather Estate, Record 5, Page 214, Circuit Court, in Sections 27 and 28. Township 39 North Range 9. East of the Third Principal Meridian, as per Plat thereof recorded April 26, 1948 as Doc. No. 543778: lying Northwesterly of a line drawn at right angles to the Northeasterly R.O.W. line of Batavia Road aforesaid, from the Northeast corner of Pattermann's 2nd Assessment Plat, as per Plat thereof recorded March 19 1958, as Doc. No. 3881 (said line intersecting the centerline of said Batavia Road 880.99 _____ 68°-03'-00" E., from the Southwest corner of Robert Bartlett's Riverside aforesaid) containing 1.0236 acres more or less.

Also:

That part of the East 1/2 of 100-foot R.O.W. of Illinois Rt. 59 as laid out and recorded by Doc. No. R71-24124 lying North of the North line extended East of Lot 34 in Robert Bartlett's Green Acres, being subdivision in the East 1/2 of Section 33 and _____ the West 1/2 of Section 34 Township 39 North, Range 9, East of the Third Principal Meridian, as per Plat thereof recorded October 23, 1943, as Document No. 454884 and Southerly of the South line extended East of Lot 1 in John T. Kuhn's Assessment Plat recorded August 17, 1966 as Doc. No. R66-32478, containing 2.5878 acres more or less all in Du Page County Illinois.