



**PROPOSED  
AMENDED AND RESTATED  
DECLARATION OF COVENANTS  
AND RESTRICTIONS  
FOR  
APPLE CANYON LAKE PROPERTY OWNERS**

**PREAMBLE**

This document is recorded for the purpose of amending and restating the General Declaration (hereafter referred to as the "Declaration") of Covenants and Restrictions for Apple Canyon Lake Property Owners Association (hereafter referred to as the "Association"), which Declaration was dated April 22, 1969 and was recorded on June 6, 1969 as Document No. 117532, Miscellaneous Book 4, Pages 427-442 in the Office of the Recorder of Deeds of Jo Daviess County, Illinois, against the property described therein, and against additions to said property which were recorded as Supplementary Declarations at the times and dates listed on Exhibit A attached hereto, (all of which is hereafter referred to as " the Properties").

This Amended and Restated Declaration is adopted pursuant to the provisions of Article IX, Section 1 of the Declaration which provides that the Declaration may be changed by a recorded instrument signed by the then Owners of two-thirds (2/3) of the Lots agreeing to change said covenants and restrictions in whole or in part; provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

**RECITALS**

WHEREAS, by the Declaration and the Supplementary Declarations recorded in the Office of the Recorder of Deeds of Jo Daviess County, Illinois, the Properties have been submitted to the provisions of the Declaration; and

WHEREAS, BRANIGAR LAKE PROPERTIES, INC., an Illinois corporation, the Developer of Apple Canyon Lake, including all of the Properties, incorporated under the laws of the State of Illinois, on May 6, 1969, as a not-for-profit corporation, APPLE CANYON LAKE PROPERTY OWNERS ASSOCIATION, for the purpose of exercising the functions described in the Declaration; and

WHEREAS, since its creation APPLE CANYON LAKE PROPERTY OWNERS ASSOCIATION, acting through its duly elected Board of Directors, (hereafter referred to as the "Board") has exercised the functions and powers described in the Declaration, and the powers entrusted to it by the laws of the State of Illinois, the Declarations, the Articles of Incorporation and the By-Laws; and

WHEREAS, the Owners of the Lots and Dwellings subject to the Declaration intend and desire to have said APPLE CANYON LAKE PROPERTY OWNERS ASSOCIATION continue to exercise the function and powers entrusted to it; and

WHEREAS, the Board and Owners desire to make changes to the Declaration; and

WHEREAS, the Board desires to prepare, and has caused to be prepared, a single document consolidating the Declaration, the Supplementary Declarations, and desires to make the changes, as reflected herein, all in one document (hereafter referred to as the "Restated Declaration") which provides the Board, Owners, and others with a convenient document that restates the substantive provisions of the Declaration, the Supplementary Declarations and contains additional provisions recommended by the

Board and approved by the Owners as noted herein, which will serve to maintain the Association as a first-class residential community; and

WHEREAS, the Restated Declaration truly and accurately reflects the intent of the Original Declaration, together with the changes contained in the Restated Declaration as approved by all of the Owners of two-thirds of the Lots and Dwellings on the Properties; and

WHEREAS, the approval of the Restated Declaration supercedes all previous covenants and restrictions governing the Lots and Dwellings covered by this Restated Declaration; and

WHEREAS, the Board desires to record the Restated Declaration in order to memorialize the action consenting to its adoption and approval by the Board and the Owners; and

WHEREAS, an Instrument, substantially in the form attached hereto as Exhibit C was signed, in counterparts, by all of the Owners of at least two-thirds ( $\frac{2}{3}$ ) of the Lots agreeing to approve and adopt the covenants and restrictions contained in the Restated Declaration and, written notice of the proposed Restated Declaration was sent to every Owner at least ninety (90) days in advance of any action taken.

NOW, THEREFORE, in furtherance of the foregoing recitals, the attached Restated Declaration is being recorded for the above stated purposes.

BY: BOARD OF DIRECTORS OF APPLE CANYON LAKE  
PROPERTY OWNERS' ASSOCIATION

#### **ARTICLE I DEFINITIONS**

Section 1. The following words when used in this Restated Declaration or any Supplementary Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Apple Canyon Lake Property Owners Association, a non-profit corporation organized and existing under the laws of Illinois, its successors and assigns.

(b) "the Properties" shall mean and refer to such existing properties which were subject to the Original Declaration of Covenants and Restrictions dated April 22, 1969, and recorded as Document No. 117532, Miscellaneous Book 4, Pages 427 - 442 in the Office of the Recorder of Deeds of Jo Daviess County, Illinois and the additional property described in the Supplementary Declarations listed on Exhibit A attached hereto; and any additions thereto as are added under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties as "Tract" followed by an alphabetical designation (By way of Example, "Tract A, Tract B, Tract C, Tract D and Tract E in Winchester Unit of Branigar's Apple Canyon Lake Subdivision according to the plat thereof recorded June 10, 1969, as Document Number 117932 in the Office of the County Recorder.), or by the designation "Open Space" or "Greenway" or other similar term intended to designate a parcel of real estate as devoted to the common use and enjoyment of the owners of the Properties; the lands within and beneath Apple Canyon Lake to the lot lines abutting thereon; and the lake dam conveyed to the Association.

(d) "Lot" shall mean any numbered parcel of land in any subdivision as shown on any Declaration recorded under the provisions of Article II hereof, but not including any of the Common Properties or the Reserved Properties.

(e) "Multifamily Structure" shall mean and refer to any building containing two or more Dwellings under one roof.

(f) "Owner" shall mean and refer to the legal or equitable owner of any Lot or Dwelling situated in The Properties who has all of the power, control and incidents of ownership as would an owner of fee simple title; provided however, that no Lot or Dwelling shall be owned by more than three Natural Persons, except that a married couple shall be deemed to be one Natural Person; and no Lot or Dwelling may be owned by more than one Legal Entity. Notwithstanding any applicable theory of the mortgage, Owner shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (See Article IV.)

(g) "Member" shall mean and refer to all those Natural Persons who are defined as Members of the Association as provided in Article IV, Section 1.

(h) "Dwelling" shall mean any building located on any Lot or an individual living unit in a Multifamily Structure intended for the shelter and housing of a single family.

(i) "Dwelling Accessory Building" shall mean a subordinate building or a portion of a Dwelling, the use of which is incidental to the Dwelling and customary in connection with that use.

(j) "Single Family" shall mean one or more persons each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related, together with their domestic servants, maintaining a common household in a Dwelling.

(k) "Building Height" shall mean the vertical distance measured from the top of the foundation to the highest point of the roof at the front elevation.

(l) "Building Line" shall mean a line on a lot that is delineated in the recorded plat of subdivision which denotes the required depth of a front, side, or rear yard.

(m) "Lot Area" shall mean the area of a horizontal plane bounded by the vertical planes through front, side and rear lot lines.

(n) "Lot Line" shall mean any boundary of a lot.

(o) "Water Facility" shall mean any pier, dock, boat ramp, or related facility. A boat house shall not be a "Water Facility" and shall be deemed to be a Dwelling Accessory Building.

(p) "Parkway" shall mean the unimproved strip of land between a lot line and the improved portion of the street right-of-way.

(q) "Ground Floor Area" shall mean the living area in that story of the Dwelling which is the first story entirely above the established building grade at the building front.

(r) "Living Area" shall mean that portion of a Dwelling which is enclosed and customarily used for dwelling purposes but shall not include open porches, open terraces, breezeways, crawl spaces, attached garages (unless approved in writing by the AECC), carports or Dwelling Accessory Buildings.

(s) "Structure" shall mean anything erected or constructed the use of which requires more or less permanent location on or in the ground, or attached to something having a permanent location on or in the ground.

(t) "Garage" shall mean a Structure, either attached to a Dwelling or constructed as a separate Structure, designed and constructed for the primary purpose of storing motor vehicles, boats, or other items of personal property belonging to the Owner or Occupant of the Dwelling. No Living Area shall be constructed or maintained in any Garage unless the prior written approval of the AECC has been obtained. (See Article III, Sec. 1.)

(u) "Occupant" shall mean any person authorized by the Owner to occupy a Dwelling for any period of time, whether with the Owner or alone, or whether as a guest of the Owner or as a tenant. Occupants shall be bound by all of the obligations of the Restated Declaration, the Bylaws and all Rules and Regulations adopted by the Association. Upon reasonable request, Occupants shall be required to identify themselves to employees or agents of the Association, and to identify the Dwelling they are occupying and the identity of the Owner.

(v) "Driveway" shall mean the surface area by which vehicles regularly enter and exit any Lot, whether paved or not. (See Article III, Section 6.)

(w) "Natural Person" shall mean any human being over the age of 18 who has the legal capacity to be the grantee of a deed conveying legal or equitable title to a Lot or Dwelling in the Association.

(x) "Voting Member" shall mean the Natural Person designated by the Owner or Owners of any Lot or Dwelling as the one person to whom the Association shall send its notices and invoices, and the one person who has the power to vote on all matters requiring a vote under the Restated Declaration or any Supplementary Declaration, unless the context shall prohibit. (See Article IV.)

(y) "Restated Declaration" shall mean the Amended and Restated Declaration of Covenants and Restrictions for the Apple Canyon Lake Property Owners' Association as set forth herein.

(z) "Supplementary Declaration" shall mean any change, revision or amendment to the Restated Declaration approved by a vote of the Voting Members as provided in Article II.

(aa) "Board" or "Board of Directors" shall mean those persons elected to manage the affairs of the Association in accordance with the Restated Declaration, the Articles of Incorporation and the Bylaws of the Association.

(bb) "Legal Entity" shall mean any being that has a legally recognized individual identity, other than a Natural Person, including, without limitation a partnership, corporation, trust, limited liability company, or any other such being recognized at law.

(cc) "Reserved Properties" shall mean any real property owned by the Association which is used in furtherance of the Association's purposes and objectives, but which is not subject to the restrictions imposed by the Restated Declaration, and which shall be put to those uses deemed to be in the Association's best interests. (See Article II, Sec. 3.)

(dd) "Bylaws" shall mean the bylaws duly adopted by the Association, and as amended from time to time, and in effect at the time when any action or conduct of a Member or the Board is taken.

(ee) "Written Ballot" shall mean a written document which clearly indicates the vote of a Voting Member being cast on any issue on which a vote of the Voting Members of the Association is taken. A Written Ballot may be cast by a Voting Member either in person at the meeting called for such vote or by mail or by any other means of delivery, provided that such Written Ballot must be delivered to the offices of the Association prior to the commencement of the meeting called for such vote.

## **ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO AND MERGERS**

Section 1. **Existing Properties.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Restated Declaration is located in Jo Daviess County, Illinois, and is more particularly described in Exhibit A attached hereto.

Section 2. **Other Additions.** Upon approval in writing of the Association pursuant to a vote of its Voting Members, the Owner of any property who desires to add it to the scheme of this Restated Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions; provided that any such addition shall have the affirmative vote of a majority of the votes of the Voting Members voting in person or by Written Ballot at a meeting duly called for this purpose, written notice of which shall be sent to all Voting Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 3. **Reserved Properties.** The Association owns various parcels of land which were conveyed to it by the Developer or which were subsequently acquired by the Association, a complete description of which is set forth in Exhibit B attached hereto, which are not subject to the Restated Covenants, and which are defined as Reserved Properties. The Association may acquire additional Reserved Properties when deemed to be in the best interests of the Association. Any or all of the Reserved Properties may be added to the scheme of the Restated Declaration upon approval in writing of the Association pursuant to a vote of the Voting Members and by the recording of a Supplementary Declaration of Covenants and Restrictions; provided that any such addition shall have the affirmative vote of a majority of the votes of the Voting Members voting in person or by Written Ballot at a meeting duly called for this purpose, written notice of which shall be sent to all Voting Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

The five acre parcel of land on which the marine service center is located and the eighty acre parcel of land south of the dam, the legal descriptions of which are identified in items 2 and 3 on Exhibit B attached hereto, were purportedly made subject to the original Declaration by virtue of the recording of Supplementary Declarations covering those parcels. The attempt to add those parcels to the Properties was likely ineffective because the vote of the members of the Association required to add additional property was neither sought nor obtained. Those aforementioned parcels are owned by the Association as Reserved Properties, and they are not subject to the Declaration or to this Restated Declaration.

Section 4. **Mergers.** In the event of a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Restated Declaration within the Existing Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Restated Declaration within the Existing Properties except as hereinafter provided.

### **ARTICLE III GENERAL RESTRICTIONS**

Section 1. **Land Use and Building Type.** Any Lot which is designated on the Declaration or any Supplementary Declaration listed on Exhibit A with a numeral (without prefix) is intended as a Lot and shall be used for single family residence purposes only. No Structure, except as specifically authorized elsewhere in this Restated Declaration, shall be erected, re-erected or maintained on any Lot except one Dwelling designed for occupancy by a Single Family, a private Garage containing no more than nine hundred (900) square feet for the sole use of the Owners or Occupants of the Dwelling, Dwelling Accessory Buildings as permitted and Water Facilities for the sole use of the Owners or Occupants of the Dwelling. If approved in writing by the Architectural and Environmental Control Committee (AECC), a Garage may have a Living Area in connection therewith for the sole use of the Owner or Occupant, but any such Living Area shall not be rented separately from the rental of the Dwelling. No Structure, Garage, or other Dwelling Accessory Building shall be erected prior to construction of a Dwelling. No Dwelling, Dwelling Accessory Building or Structure may be erected except in such manner and location as hereinafter provided or as approved in writing by the Association.

Section 2. **Quality of All Structures.** It is the intention and purpose of this Restated Declaration to insure that all Dwellings, Dwelling Accessory Buildings and Garages shall be of a quality of design,

workmanship and materials which are compatible and harmonious with the natural setting of the area and the other structures within the immediate area and throughout the Properties. Therefore, prior written approval shall be obtained from the AECC with respect to all matters stated in this Restated Declaration as requiring such approval. All Dwellings and Dwelling Accessory Buildings and Garages shall be constructed in accordance with applicable governmental building codes and with such more restrictive standards or building codes as may be required by the AECC or the Board.

**Section 3. Building Height.** No Dwelling shall be erected, altered or placed upon any Lot which has a Building Height of more than thirty (30) feet. No detached Dwelling Accessory Building, Garage or other Structure shall exceed seventeen (17) feet in height, unless a greater height is approved in writing by the AECC.

**Section 4. Materials To Be Used and Size of Dwellings.** The ground floor area of any Dwelling shall be not less than 1000 square feet, and all Dwellings shall contain a minimum of fourteen hundred (1400) square feet in total Living Area, unless otherwise approved by the AECC. Building exteriors must be made of concrete, masonry, vinyl, brick, frame, log construction, or such other building materials as may be approved by the AECC. All exteriors must be painted, stained or finished in colors that are compatible and harmonious with the natural setting and other buildings within the immediate area, as determined by the AECC. The exterior portion of any Structure must be completed within one year from date of commencement of said construction.

**Section 5. Location on the Lot.** On and after the effective date of this Restated Declaration every Dwelling, Dwelling Accessory Building or Garage, or other Structure, including any overhang, shall be a minimum of twenty-seven (27) feet from the front Lot Line. For corner lots this twenty-seven (27) foot set back shall be applicable to all sides of the Lot which face the street right of way. Roof overhangs of Dwellings, Dwelling Accessory Buildings or Garages and decks attached thereto must be at least ten (10) feet inside any side or rear Lot Line. All Dwellings, Dwelling Accessory Buildings, Garages, decks and sanitary systems constructed on any Lot must be not less than one hundred (100) feet from the existing lake edge as established at pool level of eight hundred (800) feet.

**Section 6. Driveways.** Plans and specifications for driveways and culverts shall be as approved in writing by the AECC. Before any Driveway is constructed or reconstructed a plan describing such work shall be submitted to the AECC for its prior written approval.

**Section 7. Water Facilities.** No Water Facility may be built or maintained on any Lot without the prior written approval of the AECC. In its discretion the Board may approve, prohibit or limit the construction or maintenance or location of any Water Facility and the use thereof.

**Section 8. Home Occupations, Nuisances and Animals.** The Board shall have the power to adopt reasonable rules and regulations governing home based occupations, nuisances and the possession of animals. No home based occupation or profession shall be conducted in any Dwelling, Dwelling Accessory Building or Garage except those expressly permitted by the Board. No noxious or offensive activity shall be carried on, in or upon any Lot or Dwelling, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No animals, other than inoffensive common domestic household pets, shall be domiciled on any Lot or in any Dwelling.

**Section 9. Temporary Structures.** No trailer, basement of an incomplete building, tent, shack, garage, except as permitted in Section 1 of this Article, and no temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during any construction, including repair, remodeling or renovation on any Lot, shall be on the same Lot where the construction is being performed, unless the prior written approval of another location is granted by the AECC. All temporary structures shall be removed upon completion of construction.

**Section 10. Easements.** The recorded plats of subdivision of The Properties have:

(a) Reserved an easement to the Association, as the Developer's successor and assignee, within the area as shown on the plats and marked "Utility Easement", to install, lay, construct, renew, operate and maintain utility pipes and conduits and underground equipment for the purpose of serving the Properties with telephone, electric, water and other utility services; and also reserved the right to cut down and remove any trees or bushes that interfere or threaten to interfere with any such use or right. No Structure or trees shall be placed upon said easement except that said easement may be used for gardens, shrubs, landscaping or other purposes which do not at any time interfere with the uses and rights of the easement;

(b) Created an easement for surface drainage in and along the streets and such other locations as are shown on the plats marked "Drainage Easement".

**Section 11. Wells and Plumbing.** All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank system constructed by the Owner and approved by the AECC and by any state, county or municipal authority having jurisdiction. Septic tank systems and locations must be of registered professional engineer design. Said engineer's design plans must be submitted to the AECC for approval and issuance of permit prior to commencing construction. All systems are to be of the closed type; no domestic wastewater is to be discharged into the lake or any adjacent property. Any such sewage disposal system as installed shall be subject to inspection while being constructed and to final approval by the approving authority before backfilling. All wells, plumbing fixtures, and sewage disposal systems shall be subject to inspection from time to time by the Association for the purpose of determining whether they are in compliance with applicable statutes, ordinances, codes, or rules and regulations. A fee to cover the reasonable costs of such inspections shall be established from time to time by the Board.

**Section 12. Nonconforming Uses.** All existing structures built before the adoption of this Restated Declaration are exempt from the requirements stated in Article III; provided, however, that if any exempt Dwelling, Dwelling Accessory Building, Garage or other Structure is seventy-five percent destroyed and is being reconstructed, restored or replaced it shall, when completed, be in conformance with the requirements of this Article and the then applicable building codes. Any new Structure built upon a Lot after the effective date of this Restated Declaration is subject to the restrictions contained in this Article and the then applicable building codes.

**Section 13. Deviations by Agreement with the Association; Other Permitted Uses.**

(a) The Association, its successors or assigns, shall have the right to enter into agreements with the grantee of any lot or lots without the consent of grantees of other lots or adjoining or adjacent property to deviate from any of the covenants set forth in this Article III for reasons of practical difficulties or particular hardships evidenced by any such grantee. Any such deviation, which shall be manifested by agreement in writing, shall not constitute a waiver of any such covenant as to other lots in the Properties.

(b) Notwithstanding anything herein which is to the contrary, the Association reserves to itself the right to construct and maintain on lots selected by it in the Properties a Structure or Structures for use by it, and its successors and assigns, as an office or offices or other facilities to be used in connection with the operations and programs conducted by the Association for the benefit of the Owners, or as a location for a water well or wells, water storage facility or sewage treatment facility or facilities, provided no such facility shall be maintained in such manner as to interfere unreasonably with the enjoyment of any lot by the Owners thereof.

**ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Membership.** Membership in the Association shall be the privilege of each Natural Person, and his or her spouse, who is the legal or equitable Owner of any Lot or Dwelling; except that no Lot or Dwelling shall have as Owners more than three (3) Natural Persons, including their spouses. Any Legal Entity which owns any Lot or Dwelling may designate one (1) Natural Person, including his or her spouse, as a Member of the Association. Each such designation by a Legal Entity shall be in writing and shall

provide the name, address and telephone number of the Member, including any spouse, which person shall be the Voting Member as defined in Section 2. After the initial designation, changes in the identity of the Voting Member can be made only with the approval of the Board, or upon a showing that the change in the identity of the Voting Member has resulted from a bona fide change in the ownership interest of the Legal Entity making the request. The Board's decision in all such matters shall be binding and final. Any Natural Person or Legal Entity that holds a legal or equitable interest in any Lot or Dwelling as security for the performance of an obligation shall not be a Member. Every Member, including any spouse of a Member, shall provide the Association with his or her current mailing address and telephone number.

**Section 2. Voting Rights – One Voting Member.** The Owners of each Lot or Dwelling shall designate one Natural Person as the Voting Member for said Lot or Dwelling. Only the Voting Member, as defined in Article I, Section 1(x), shall be entitled to vote at any regular or special meeting of the Association, and only the Voting Member shall be sent notice of any regular or special meeting of the Association. In the event there are multiple Owners of a Lot or Dwelling who are Natural Persons, including their spouses, and they fail to designate one Natural Person as the Voting Member, the first person named in the deed conveying title to the Lot or Dwelling shall be deemed to be the Voting Member. In the event a Lot or Dwelling is owned by a Legal Entity, it shall designate one Natural Person to be the Voting Member. The failure of a Legal Entity to designate a Voting Member shall be a bar to the right to vote on any matter, and the vote of such Lot or Dwelling shall not be counted for the determination of a quorum. Owners, other than a Legal Entity, may change the designation of the Voting Member at any time by delivering to the Association a written designation, signed by all of the Owners of the Lot or Dwelling, which contains the Voting Member's name, address and telephone number. Any such change in the designation of the Voting Member shall be effective when received by the Association.

Every Lot or Dwelling shall be entitled to one vote, provided that all assessments, charges, fees and fines which are due the Association are paid in full at the time of the vote. If the Association owns any Lot or Dwelling, it shall not have the right to cast any vote, and the vote of any such Lot or Dwelling shall not be counted for the purpose of determining a quorum. The total number of votes shall not exceed the total number of Lots or Dwellings in The Properties. The vote of a Lot or Dwelling shall not be divisible. If there is a dispute between or among the multiple Owners of a Lot or Dwelling as to who shall be the Voting Member, the vote for any such Lot or Dwelling shall not be counted for any purpose, including determining a quorum. For purposes of determining the votes allowed under this section, when Dwellings in Multifamily Structures are counted, the Lot or Lots upon which such Dwellings are situated shall not be counted.

## **ARTICLE V PROPERTY RIGHTS IN THE COMMON PROPERTIES**

**Section 1. Members' Easements of Enjoyment.** Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties which are accessible by public way or from Apple Canyon Lake, and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling.

**Section 2. Title to Common Properties and Reserved Properties.** The Association has acquired legal title to all of the Common Properties and all of the Reserved Properties, and is the owner of all of the Common Properties and Reserved Properties, free and clear of all liens and encumbrances as of the date of the recording of this Restated Declaration.

**Section 3. Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe rules and regulations for the use of Common Properties, including but not limited to the number, size, type and speed of boats operated on any waters on the Properties; the taking of fish from waters on the Properties; and such other regulations as the Association deems necessary to the health, safety and welfare of the Association and its Members. The

Association may assign specific piers, docks, or other water facilities situated on or adjacent to the Common Properties for the use of specific Lot Owners.

(b) The right of the Association in accordance with the Restated Declaration, the Articles of Incorporation and Bylaws to borrow money for the purpose of improving the Common Properties or the Reserved Properties and in aid thereof to mortgage any or all of the property owned by the Association. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such property, to charge admission and other fees as a condition to continued enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored.

(c) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures.

(d) The right of the Association to suspend the enjoyment rights of any Member for any period during which any assessment, charge or fine remains unpaid; or to suspend the enjoyment rights of any Member for any period not to exceed ninety (90) days, or to levy and assess such fines and penalties for any violation of the Restated Declaration, the Bylaws or the Rules and Regulations, all as determined by the Board.

(e) The right of the Association to charge reasonable admission and other charges or fees for the use, maintenance or preservation of the Common Properties or the Reserved Properties.

(f) The right of the Association to dedicate or transfer all or any part of the Common Properties or the Reserved Properties to any public agency, authority, or utility for the preservation of the public health, welfare and safety and subject to such conditions as may be agreed to by the Association in accordance with its Articles of Incorporation and Bylaws.

(g) The right of the Association, its successors and assigns, to construct on, over and under the Common Properties or the Reserved Properties and to maintain water, electric, gas, telephone, sanitary disposal system and other utility facilities to serve the Properties, the Common Properties or the Reserved Properties or any portions thereof and to grant easements to others in such regard.

## ARTICLE VI COVENANT TO PAY ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot or Dwelling by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of each person who was an Owner of such Lot or Dwelling at the time when the assessment fell due.

Section 2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and, in particular, for the improvement and maintenance of all properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, the Reserved Properties or the Dwellings situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3. Basis and Amount of Annual Assessments.** The Association shall have the power to levy an annual assessment against all of the Lots and Dwellings within the Properties, except only those Lots and properties owned by the Association . The annual assessment shall be fixed in the amount and manner provided herein. The Board may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement or an authorized capital improvement upon the Common Properties or the Reserved Properties, including the necessary fixtures and personal property related thereto; provided that any such assessment shall have the affirmative vote of a majority of the votes of the Voting Members voting in person or by Written Ballot at a meeting duly called for this purpose, written notice of which shall be sent to all Voting Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 5. Change in Basis and Maximum of Annual Assessments.** Each year the Board shall prepare an annual budget which shall identify the Association's projected income and expenses for the next year, which shall include an appropriate amount for the repair and replacement of the Association's facilities and equipment. The annual budget, approved by the Board, shall be acted upon at the November Board Meeting, or at such other meeting as the Board may determine. If the Board determines that to balance the annual budget an increase in the annual assessment must be levied, the Board may increase the annual assessment prospectively for the following year or for any future period, provided that such increase shall have the affirmative vote of the majority of the Voting Members who vote in person or by Written Ballot at a meeting duly called for this purpose, written Notice of which shall be given at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 6. Quorum for Any Action Authorized Under Sections 4 and 5.** The quorum required for any action requiring a vote under Sections 4 and 5 hereof shall be forty percent (40%) of the Voting Members eligible to vote at such meeting. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be thirty percent (30%), provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Due Date of Assessments.** The annual assessments provided for herein shall become due and payable on the first day of March of said year, or on such other date or dates as may be established by the Board. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment. Written notice of the assessment shall be sent to the Voting Member designated for each Lot or Dwelling subject thereto. If the assessment is not paid within ninety (90) days of the date on which it is due, written notice shall be sent to every Owner of that Lot or Dwelling at the last address on file at the Association office.

**Section 8. Proof of Payment.** The Association, upon demand and payment of a service fee of not more than \$25.00, shall at any time furnish to any Owner liable for said assessment a certificate in writing signed by an authorized agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association.** If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the

date of delinquency at a rate as determined by the Board from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

**Section 10. Subordination of the Lien to Mortgages.** The lien for the assessments provided for herein shall be subordinated to the lien of any mortgage or mortgages now or hereafter placed upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

**Section 11. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by local public authority and devoted to the public use; (b) all Common Properties as defined in Article I, Section 1(c) hereof; (c) Reserved Properties as defined in Article I, Section 1(cc) hereof; (d) all properties exempted from taxation by the laws of the State of Illinois, upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

**Section 12. Restricted Lots.** The Owner of any Lot upon which no Structure has been erected may enter into an agreement with the Association wherein the Owner agrees that said Lot shall remain forever vacant open space upon which no Structure of any kind shall be erected, except one requested by the Association and agreed upon by the Owner and the Board. All agreements creating a Restricted Lot shall be in substance and form acceptable to the Board and suitable for recording, and when agreed to by the Association shall be recorded with the Recorder of Deeds of Jo Daviess County, Illinois. Restricted Lots subject to such an agreement shall beginning in the year following the recording of such agreement be liable for only sixty per cent (60%) of any future annual assessments. Restricted Lots shall continue to remain liable for any Special Assessments approved pursuant to Section 4 hereof. The Owner of a Restricted Lot shall have all of the rights and privileges of any other Owner, except as modified by such agreement, and shall continue to remain responsible for the maintenance of such Restricted Lot as is the Owner of any other vacant Lot.

**Section 13. Senior Exemption.** If a Dwelling qualifies for the Senior Citizen Assessment Freeze as provided in the Jo Daviess County, Illinois Ordinances in effect from time to time, such Dwelling shall be exempt from any increase in future annual assessments which become effective the year after the granting of such Senior Citizen Assessment Freeze. The Owner of a Dwelling which qualifies for this Senior Exemption shall before January 1st provide the Association with satisfactory evidence that the Dwelling has qualified for the Senior Assessment Freeze program for the following year. Such Dwelling shall continue to remain liable for any Special Assessments approved pursuant to Section 4 hereof. All such Senior Exemptions shall end on the year immediately following the first to occur of the conveyance or transfer of the Dwelling to a third party or the death of the last surviving Owner entitled to such Senior Citizen Assessment Freeze.

## **ARTICLE VII ARCHITECTURAL AND ENVIRONMENTAL CONTROL COMMITTEE**

### **Section 1. Powers of the Committee.**

(a) **Generally.** No Dwelling, Multifamily Structure, Dwelling Accessory Building, Structure, Driveway, Water Facility, fence, wall or other structure of any type or kind may be commenced, erected nor shall any exterior addition to or change or alteration be commenced or made on any Lot or on any of

the Common Properties or Reserved Properties subject to this Restated Declaration without the prior written approval of the Architectural and Environmental Control Committee (AECC). Such approval shall be obtained only after written application has been made to the AECC by the Owner of the Lot requesting authorization from the AECC. Such written application shall be in the manner and form prescribed from time to time by the AECC and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon said Lot and the location of the improvement proposed to be constructed or placed upon said Lot, each properly and clearly designated; said plans shall also show the building lines shown on the recorded plat of subdivision. Such plans shall set forth the color and composition of all exterior materials proposed to be used, together with any other material or information which the AECC may require from time to time. All plans, drawings and other documentation required to be submitted to the AECC shall be as the AECC may require. There shall also be submitted, where applicable, the permits or reports required under Article III of the Restated Declaration. (See, Art. III, Sec. 12, Wells and Plumbing.) All such plot plans shall be prepared by either a registered land surveyor or engineer or architect; except that plans for Driveways, Water Facilities, walls or fences need not be prepared by such professionals. No grading of the lot shall be permitted without the prior written approval of the AECC. The AECC shall have the power, subject to the Board's approval to adopt building codes, guidelines and standards governing the quality, design, workmanship and materials and colors to be used for all proposed construction or improvements.

**(b) Power of Disapproval.** The AECC may refuse to grant permission to construct, place or make the requested improvements when:

(i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of any of the restrictions contained in the Restated Covenants, or the provisions of any applicable governmental building code, or the codes, guidelines or standards approved by the AECC or the Board.

(ii) The design or the siting of a proposed improvement is not in harmony with the general surroundings of the subject lot or with adjacent buildings or structures.

(iii) The proposed improvement or any part thereof, would in the opinion of the AECC be contrary to the interests, welfare or rights of all or part of the Owners.

**(c) Power to Grant Variances, Adopt Rules.**

(i) The AECC may allow reasonable variances or adjustments of these Restated Covenants where the literal application thereof would result in unnecessary hardship, provided however, that any such variance or adjustment that is granted is in conformity with the general intent and purposes of this Restated Declaration; and that the granting of the variance or adjustment will not be materially detrimental or injurious to other lots in the development. The granting of a variance in any specific case shall not be construed as a precedent or authorization to compel the granting of a variance in any other case, however similar the circumstances may be.

(ii) The AECC may adopt rules, including rules to be applied in requests for variances, building requirement forms, general building procedure requirements including, but not limited to, adoption or acceptance of national or local building codes, either in whole or in part, for use during the construction improvements upon the Lots, the Common Properties or the Reserved Properties, provided that all such rules and general requirements be approved by the majority of the Board of Directors prior to implementation and use.

**(d) Power to Charge Fees.** The AECC shall recommend to the Board of Directors a schedule of fees to be charged to consider the application of any Owner, and a schedule of fees for the inspection services necessary for all improvements, whether performed by the Association or by any outside source. Such fee schedules shall be approved by the Board from time to time, and shall be uniformly charged to all Owners. All funds collected shall be paid to the Association.

**(e) Review of AECC Action by Board.** The Owner of any Lot or Dwelling whose application to the AECC has been denied may, within sixty (60) days of such denial, appeal such denial to the Board. Such appeal shall be in writing and shall state all reasons why the AECC's decision was either erroneous as a matter of fact or arbitrary and capricious. At the next regular meeting of the Board, the Board shall

consider the Owner's appeal and review the AECC's action. The Board shall either affirm the action of the AECC; refer the matter back to the AECC for further consideration; or determine that the action of the AECC was erroneous as a matter of fact or arbitrary and capricious, in which case the Board may direct that the application be granted. The action of the Board shall be final and binding.

**Section 2. Duties of the AECC.** The AECC shall approve or disapprove proposed improvements within sixty (60) days after all required information has been submitted to it. If the AECC fails to approve or disapprove the proposed improvements within sixty (60) days, it shall provide the Owner with a written explanation of the reasons it has failed to act. In acting upon such applications the AECC members may discuss and act on any such applications either at a regularly scheduled meeting or at a special meeting. Members of the AECC may attend such meetings in person or by telephone. One copy of the submitted material shall be retained by the AECC for its permanent file. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

**Section 3. Composition of the AECC.** The AECC shall be comprised of not less than three (3) representatives who shall be appointed by the Board, and who shall be subject to removal by the Board at any time. The Board shall appoint at least one (1) architect, licensed engineer or building contractor to the AECC, if one is available. The majority of the members of the AECC shall be Members of the Association. Any vacancies existing from time to time shall be filled by appointments made by the Board. The AECC, subject to the Board's approval, may engage such inspectors or agents to assist it in the performance of its duties and responsibilities. No member of the AECC shall participate in the review of any application in which the member has any interest either as an owner or as the provider of any services for which the member is compensated.

**Section 4. Liability of the AECC and the Association.** Neither the AECC nor any agent thereof, nor the Association, shall be responsible in any way for the defects in any plans, specifications or other materials submitted to it, nor for any of the work done according thereto.

**Section 5. Duty of Inspection.** The AECC shall have the power and the right to inspect the work being performed to assure compliance with the applicable provisions of the Restated Declaration and all applicable codes and regulations, and the approved drawings. Approval of plans or work by the AECC shall not be deemed to be a determination that the applicable codes and regulations have been satisfied.

## **ARTICLE VIII WATER SERVICE**

**Section 1.** Every Owner of a Lot in the Properties which is subject to this Article shall be presumed conclusively to have covenanted by accepting a deed of conveyance to a Lot, regardless of the means of acquisition of title, to pay charges for water service available to the Lot by a common water system at a monthly rate as fixed by the utility furnishing water service, and approved by the Illinois Commerce Commission from and after the availability of water service for connection to the Lot. At such time as the Owner shall elect to have water service connected, he shall pay a connection charge to the utility in an amount approved by the Illinois Commerce Commission. Thereafter, he shall pay for consumption of water at reasonable rates subject to a minimum monthly charge established by the servicing utility and authorized by the Illinois Commerce Commission. Said availability, consumption and usage rates may be billed quarterly, semiannually, or annually at the option of the serving public utility. Unpaid charges shall become a lien upon the lot or lots served as of the date the same become due. Owner shall not drill or permit the drilling of a water well upon his property, unless the utility furnishing water service is unable to provide adequate water service to that Lot. All water wells must be first approved by the AECC.

## **ARTICLE IX GENERAL PROVISIONS**

**Section 1. Term and Amendment.** The covenants and restrictions of this Restated 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 land subject to this Restated Declaration, their respective legal representatives, heirs, successors and assigns. The Restated Declaration shall be effective for a term of five (5) years from the

date this Restated Declaration is effective. After which time said covenants shall be automatically extended for successive periods of one (1) year, unless this Restated Declaration is amended by the affirmative vote of two-thirds of the Voting Members eligible to vote in person or by Written Ballot at a meeting of the Association duly called for the purpose of changing the Restated Declaration, written notice of which shall be sent to all Voting members at least sixty (60) days in advance. At any such meeting a quorum shall consist of forty percent (40%) of all eligible Voting Members. All such amendments shall be effective upon the filing of a certified copy of a resolution adopted by the Board certifying that the amendment of this Restated Declaration has been approved by the required vote with the Recorder of Deeds of Jo Daviess County, Illinois.

Section 2. **Notices.** Any notice required to be sent to any member or Owner under the provisions of this Restated Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Voting Member on the records of the Association at the time of such mailing.

Section 3. **Enforcement.** Enforcement of this Restated Declaration and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

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