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JOSHUA A. LANGFELDER  
SANGAMON COUNTY RECORDER

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE HIGHLANDS  
CHATHAM, ILLINOIS**

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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION dated this 1<sup>st</sup> day of November, 2017, by BENCHMARK DEVELOPMENT CORP., an Illinois Corporation, (the "Declarant").

- A. The Declarant owns a 38 acre tract of land, more or less, located in Sangamon County, Illinois and legally described on Exhibit A attached hereto (hereafter called the "Property"). A portion of the Property is shown on the subdivision plat entitled "The Highlands," recorded among the Land Records of Sangamon County, Illinois, as 2017R26708 on October 17, 2017.
- B. The Declarant desires to subject the Property, and the lots located therein (the "Lots"), to the Covenants, Conditions and Restrictions set forth below which are for the purpose of protecting the value and desirability of the Property and the Lots, and are for the purpose of distributing among the lot owners the cost of maintaining and operating the Common Areas located within the Property and any improvements constructed thereon.
- C. The Declarant hereby declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Conditions and Restrictions set forth below.

### **ARTICLE I**

#### **DEFINITIONS**

- A. "Association" means The Highlands Homeowners Association, Inc., an Illinois Not-For-Profit Corporation, its successors and assigns.
- B. "Common Area" means those land areas, designated on the recorded subdivision plats of the Property as "Common Areas," intended to be owned by the Association and devoted to the common use and enjoyment of the owners of the Lots.
- C. "Declarant" means Benchmark Development Corporation ("BDC") and any successor or assign thereof to whom BDC shall convey or otherwise transfer all of the rights, title and interest in the Property then owned by it, and to whom BDC shall expressly transfer and assign all of its rights, title and interest under this Declaration, or any amendment or modification thereof.
- D. "Owner" means the person, or legal entity, or the combination thereof, including contract sellers, holding the record fee simple or perpetually renewable leasehold title to a Lot in the Property, as the Lot is now or may from time to time hereafter be created or established. If more than one person, or other legal entity or any combination thereof, holds the record title to any Lot, all of them shall be deemed a single record owner and shall be a single member of the Association by virtue of their ownership of the Lot. The term "Owner" shall not mean any contract

purchaser, or the owner of any redeemable ground rent reversion issuing out of any Lot, nor shall it include any mortgages or other person or legal entity hold any interest in a Lot as security for the performance of an obligation.

- E. "Property" means all of the land shown on the "Plat of The Highlands," more particularly referred to in Paragraph A of the Recitals to this Declaration and such additional land as may be subjected to this Declaration under the provisions of Article II below.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

All of the land shown on the Plat referred to in Paragraph A of the Recitals to this Declaration (the "Existing Property") shall be held, transferred, sold, conveyed and occupied subject to the terms of this Declaration.

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

#### **Section 1**

Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, the ownership of the Lot. An Owner may not decline membership in the Association nor may an Owner resign from membership: an Owner may have his voting rights suspended by the Board for any period in which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for failure to comply with all rules, regulations and bylaws of the Association.

#### **Section 2**

Class A. Except for the Declarant (which shall initially be a Class B member), the Class A members shall be all of the Owners of the Lots. Each Class A member shall be entitled to one vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three votes per Lot for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

The vote of any Class A member comprised of two or more persons, or other legal entities, or any other combination thereof, shall be cast in the manner provided for in the Articles of Incorporation of the Association, or as the several constituents cast more than one vote per Lot for each Lot owned by them.

The Class B membership in the Association shall cease and be converted to Class A membership in the Association on the fifteenth anniversary of the date of this Declaration or at such earlier time as the total number of votes entitled to be cast by Class A votes exceeds those entitled to be cast by the Class B member of the Association.

#### ARTICLE IV

#### **COMMON AREA**

##### **Section 1**

The Declarant shall grant and convey to the Association, and the latter shall take and accept from the Declarant, the Common Areas shown on a subdivision plat which is subject to this Declaration, not later than the date the first Lot shown on the subdivision plat which is improved by a dwelling is conveyed to an Owner. At the time of the conveyance, the Common Area shall be free of any mortgages, judgment liens or similar liens or encumbrances.

The Association shall hold the Common Area conveyed to it subject to the following:

- (a) The reservation to the Declarant, its successors and assigns, of the right to lay, install, construct and maintain, on, over, under or in those strips across land designated on the subdivision plat, as "Drainage and Utility Easement," "Sewer Reserved for Future Road," or otherwise designated as an easement areas, or on, over, under or in any portion of any Common Area, pipes, drains, mains, conduits, lines and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone and other public utilities or quasi-public utilities deemed necessary or advisable to provide adequate service to any Lot now or hereafter laid out or established on the Property, or the area in which the same is located, together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations therein.
- (b) The reservation to the Declarant, its successors and assigns of the right to enter upon any Common Area conveyed to the Association for the purpose of construction or completing the construction of improvements and the landscaping of the Common Area.
- (c) The reservation to the Declaration, its successors and assigns, of the right to continue to use and maintain any storm water management ponds and any sediment control ponds or facilities located on any Common Area conveyed to the Association.

The Common Areas conveyed to the Association shall be deemed property and facilities for the use, benefit and enjoyment, in common, of each Owner. Except as otherwise permitted by the provisions of this Declaration, no structure or improvement of any kind shall be erected, placed or maintained on any Common Area except: 1) structures or improvements designed exclusively for community

use, including, without limiting the generality of the foregoing, shelters, benches, chairs or other seating facilities, fences, and walls, walkways, roadways, playground equipment, swimming pools and tennis courts, and 2) drainage, storm water and utility systems and structures. The Common Areas may be graded, and trees, shrubs or other plants may be placed and maintained thereon for the use, comfort and enjoyment of the Owners, or the establishment, retention or preservation of the natural growth or topography of the Common Areas, or for aesthetic reasons. No portion of any Common Area may be used exclusively by any Owner for personal gardens, storage facilities or other private uses without the prior written approval of the Association.

## **Section 2**

No noxious or offensive activity shall be carried on upon any Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the neighborhood.

## **Section 3**

The Association shall improve, develop, supervise, manage, operate, examine, inspect, care for, repair, replace, restore and maintain the Common Area as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense.

## **Section 4**

The right of each Owner to use the Common Areas shall be subject to the terms, conditions, and provisions as set forth in this Declaration and, to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Areas. All such terms, conditions, provisions, rules and regulations shall inure to the benefit of, and be enforceable by, the Association and the Declarant, or either of them, their respective successors and assigns, against any Owner, or any other person, violating or attempt to violate the same, whether by an action at law for damages or a suit in equity to enjoy a breach or violation, or to enforce performance of any term, condition, provision, rule or regulation. The Association and the Declarant shall each have the right summarily to abate and remove any breach or violation by any Owner at the cost and expense of the Owner.

# **ARTICLE V**

## **PROPERTY RIGHTS**

### **Section 1 - Title to the Common Area**

The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the herein designated Common Area, free and clear of all liens and encumbrances but subject to these Covenants and Restrictions (as easements, covenants, conditions and restrictions of record) to the Association.

## Section 2 - Owners' Easements of Enjoyment

Every owner, in common with all other Owners, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area (including the Recreational Common Area) and in aid thereof to mortgage said property, and the right of the Owners hereunder shall be subordinate to the rights of the mortgage in said properties, provided, however, that no mortgage of the Common Area shall be valid or effective unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote per mortgage) shall have given their prior written approval, and unless an instrument consenting to said mortgage has been signed by Members entitled to cast a majority of the Class B membership, if any, and has been recorded;
- (b) the right of the Association to take such steps as are reasonably necessary to protect the Common Areas against mortgage default and/or foreclosures;
- (c) the right of the Association to suspend the voting rights and rights to use the Recreational Common Area by an Owner for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;
- (d) the right of the Association, if it so determines to permit the use of the Common Area by non-members and to charge reasonable admission and other fees for the use either by Members or non-member of any Recreational Common Area situated upon or within the Common Area;
- (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 a majority of the Members (based upon the number of votes entitled to be cast) or by the Board of Directors. Except as hereinafter provided, no such dedications or transfer shall be effective unless the Village of Chatham and at least seventy-five percent (75%) of the first Mortgagees (based upon one vote per mortgage) shall have given their prior written approval and unless an instrument consenting to said dedication or transfer has been signed by Members entitled to cast a majority of the votes of the Class A membership and a majority of the Class B membership, if any, and has been recorded, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance. Without the approval of the Village and without notice to, or the assent of signatures of, the Membership being required, the Board of Directors shall have the right to grant easements, rights-of-way, and licenses and to dedicate streets and roads in and through the Common Areas, as it shall from time to time deem necessary or desirable. Without the

approval of either the Village or the First Mortgagees being required, and without notice to, or the assent and signatures of, the membership being required, the Board of Directors shall have the right to grant easements in and through the Common Area for public utilities or for other public purposes consistent with the intended use of the Common Area;

- (f) the right of the Association to limit the number of guests of Members using the Common Area;
- (g) the right of the Declarant to impose reasonable covenants and restrictions with respect to the Common Area, in addition to those set forth herein, at the time of conveyance of such Common Area to the Association and such covenants and restrictions are hereby incorporated by reference and made part of this Declaration.

### **Section 3 - Declaration of Use**

Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and any facilities thereon, to the members of such Owners' tenants or contract purchasers who reside on his Lot, and to such other persons as may be permitted by the Association.

### **Section 4 - Reservation by Declarant**

Declarant reserves unto itself the right to grant easements, rights of way and licenses to any person, individual, corporate body or municipalities to install and maintain pipeline, underground or above ground lines, with the appurtenances necessary thereto, for public or quasi-public utilities, and to grant such other licenses or permits as Declarant may deem necessary, in all cases for the improvement of The Highlands Subdivision, in, over, under, through, upon and across any and all of the roads, streets, avenues, alleys, Lots and Common Areas.

### **Section 5 - Grading**

Declarant reserves unto itself the sole and exclusive right to review and approve the grades and slopes on all Properties and to review and approve the grade at which any Dwelling Unit shall be erected or placed thereon so that the same shall conform to a general plan, subject only to compliance with the regulations of public authorities have control thereof.

## **ARTICLE VI**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

#### **Section 1 - Creation of the Lien and Personal Obligation of Assessments**

Each Owner of any Lot in The Highlands Subdivision by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) the hereinafter provided applicable annual assessments charges ("Regular Assessments") and (2) special assessments or charges for capital improvements

("Capital Assessments"), such Regular and Capital Assessments to be fixed, established and collected from time to time as hereinafter provided. The Regular and Capital Assessments, together with such interest thereon and costs of obligation thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest thereon at the rate of twelve percent (12%) per annum, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person or entity who was the Owner of such property at the time when the Assessment fell due.

### **Section 2 - Purpose of Assessment**

The Assessments levied by the Association shall be used exclusively for the following purposes; the promotion of the recreation, health, safety and welfare of the residents in the Properties; the payment of all costs relating to the maintenance and operation of the Association, the operation, improvement, maintenance, replacement and repair of the Common Area, including but not limited to, the maintenance, improvement and establishment of any piers, roads, walkways, parking areas, and any and all other facilities located or established from time to time carried on the Common Area or the facilities located thereon; and the improvement and maintenance of the Properties, services and facilities devoted to the promotion of the health, recreation, safety and welfare of the residents in the Properties. The foregoing shall not be deemed to be a representation by Declarant that any of the foregoing described improvements will be established within the Common Area by Declarant.

### **Section 3 - Annual Assessment**

- (a) Until January 1 of the calendar year immediately following the date of commencement of Assessments as set forth in Section 7 hereof, the maximum Regular Assessment shall be Seventy-Five Dollars (\$75.00) per lot per year, whether improved or unimproved, adjusted in accordance with Section 7 of this Article.
- (b) From and after January 1 of the calendar year immediately following the commencement of Assessments as set forth in Section 7 of this Article, the Board of Directors may increase maximum Regular Assessments each year by an amount not greater than ten percent (10%) of the maximum Regular Assessment for the immediately preceding year by a vote of one-half (½) of each class of Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.
- (c) Subject to the limitations of Section 3 of this Article, and for the periods therein specified, the Association may change the maximum and the basis of the Assessments fixed by Section 3 of this Article prospectively for any period provided that any such change shall have the assent of one-half (½) of each class of Members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.



- (d) The Board of Directors shall fix the actual Regular Assessment at any amount not less than Fifty Dollars (\$50.00) per lot, per year and not in excess of the maximum Regular Assessment for that said year, after consideration of (i) current maintenance requirements and costs; (ii) requirements for an adequate reserve fund for replacement of improvements on and to the Common Area, and (iii) future needs of the Association.
- (e) An adequate reserve fund for the replacement of the improvements upon and for the care of the Common Area shall be established and funded by the Regular Assessments.
- (f) Regular Assessments shall be payable monthly, quarterly, semi-annually or annually in advance, as determined from time to time by the Board of Directors of the Association at the time of initial filing. At the time of initial filing, regular assessments shall be due annually.

#### **Section 4 - Special Assessments for Capital Improvements**

In addition to the Regular Assessments authorized by Section 3 of this Article, the Association may levy in any assessment year a Capital Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of any capital improvements upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such Capital Assessment shall first be approved by two-thirds (2/3) of the votes of each class of Members, voting in person or by proxy, at a meeting duly called for this purpose.

#### **Section 5 - Notice and Quorum for any Action Authorized Under Sections 3 and 4**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all Members not less than thirty (30) days, nor more than sixty (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 sixty (60) days following the preceding meeting.

#### **Section 6 - Assessment of Declarant and Security Holders**

Any provision of this Declaration or of the Articles of Incorporation, or Bylaws of the Association to the contrary notwithstanding, commencing with the commencement of Assessments, the Declarant shall not be required to pay any Assessment, whether Regular or Capital, for any Lot in which it has the interest otherwise required for membership with the exception that if Declarant owns houses that are occupied, it shall be liable for the assessment on such land or improvement devoted to dwelling use. No Assessment, whether Regular or Capital,

## **Section 7 - Date of Commencement of Regular and Capital Assessments: Due Dates**

The Regular Assessments provided for herein shall commence on the date designated by the Board of Directors or the Association as the "Assessed Commencement Date."

The first Regular Assessment shall be adjusted according to the number of months remaining in the Assessment year, which shall be the calendar year unless otherwise determined by the Board of Directors. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. The due date of any Capital Assessment authorized under Section 4 of this Article shall be fixed in the resolution authorizing such Assessment. Written notice of the Regular and any Capital Assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish to Owner, to any mortgagee or to any contract purchaser, a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for issuance of these certificates except as to a First Mortgagee. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

## **Section 8 - Effect of Non-Payment of Assessment**

### **The Personal Obligation of the Owner, the Lien, Remedies of the Association**

If an Assessment is not paid on the date when due (being the dates determined pursuant to Section 7 of this Article), then such Assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot assessed which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such Assessments shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the Assessment is not paid within thirty (30) days after the due date therefore (the "delinquency date"), then the Assessment shall bear interest from the delinquency date at the rate of the lesser of twelve percent (12%) per annum or the highest rate of interest allowed by applicable law, and the Association may bring an action at law against the Owner personally obligated to pay the same or at equity to foreclose the lien against the such Owner's Lots, and there shall be added to the amount of such Assessment the cost of preparing and filing the complaint or bill in equity in such action, and in the event of a 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 cost of action. In addition to the aforesaid, the Board of Directors may charge a reasonable late payment fee on all delinquent Assessment accounts. No Owner may waive or otherwise escape liability of the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

## **Section 9 - Subordination of the Lien to Mortgagee**

The lien of the Assessments provided for herein shall be subordinate to the lien of any bona fide first mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for all such Assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof. The term mortgage or mortgages shall include deed of trust or deeds of trust.

## **Section 10 - Exempt Property**

The following property subject to this Declaration shall be exempt from the Assessments created therein: (a) all properties dedicated to and accepted by a local public authority; and (b) the Common Area. No land or improvements devoted to dwelling use shall be exempt from said Assessments.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL AND APPROVED BUILDER**

#### **Section 1 - Administration**

The Highlands Subdivision Architectural Review Committee referred to herein and in the succeeding sections of this Declaration (the "ARC") shall have all the rights, powers and duties granted to it by the Board of Directors of the Association and by this Declaration. The ARC is composed of the following members: Gregory P. Sgro, Benjamin M. Sgro and M. Hay Brown, each of whom shall act and serve for a term of five (5) years from the date hereof, and thereafter until his successor shall be duly appointed. At any time after the expiration of the aforesaid five (5) year period, then the members of the Board of Directors of the Association, upon a majority vote of the Board of Directors, shall appoint, by a duly executed instrument, new members to, or otherwise change the membership of, the ARC, so long as the ARC shall at all times be comprised of at least three (3) members. In the event of the death or resignation of any member of the ARC during the aforesaid five (5) year period, the Board of Directors shall appoint a successor by a duly executed instrument. All questions shall be decided by a majority of the members of the ARC, and such majority shall be necessary and sufficient to act in each instance and on all matters. In the event of a foreclosure of all or any part of the Properties by the Trustee or the Lender, the initial ARC members specified in this Section shall promptly prepare and submit to such foreclosing party their irrevocable written resignations from the ARC, which resignations shall be effective immediately upon receipt. The Declarant hereby grants to the ARC the right to waive, on a case by case basis, such portion or portions of covenants and by Restrictions contained in this Declaration placed upon The Highlands Subdivision as the ARC, in its sole discretion, may deem advisable in the best interest of The Highlands Subdivision.

## **Section 2 - Architectural Review**

No building, addition to a building, fence, wall, storage shed, tank, or other structure of any kind, nature or size, including any driveway, walkway and outside lighting, shall be commenced erected or maintained upon the Properties, nor shall any exterior addition to or change (including, but not limited to, change of exterior house color) or alteration therein be made nor shall any work be commenced or performed (other than landscaping) which may result in a change of the exterior appearance of any of the above mentioned structures until the complete plans and specifications, in duplicate, showing the nature, color, kind, shape, dimensions, materials, floor plans, exterior plans and details, driveway plans, location and proposed topographical change, together with the estimated costs of such work and a designation of the party or parties to perform said work, have been submitted to, and approved in writing by, the ARC.

The ARC shall consider applications for approval of plans, specifications, etc., on the basis of conformity with this Declaration and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance with existing and proposed structures within The Highlands Subdivision. The ARC shall have the right to adopt and publish guidelines or policies with respect to all architectural requirements (and repeal or amend the same from time to time) which in the ARC's opinion are appropriate for The Highlands Subdivision.

The ARC shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its sole opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the ARC from time to time shall be submitted to the ARC by registered or certified mail or in person in which case a written receipt shall be obtained. The ARC has the authority to hire a professional architect to review the plans and specifications. The ARC will assess the Owner a fee of \$100.00 for such review of the plans and specifications as compensation for the architectural review service.

In the event the ARC fails to approve or disapprove the plans and specifications within sixty (60) days after such plans and specifications and other information have been submitted to the ARC as required herein, approval will not be required and this Article will be deemed to have been fully complied with.

Approval hereunder shall in no way be construed as passing judgment or making a determination with respect to the correctness of the location, structural design, suitability of water flow or drainage, location of utilities or other qualities of the item being reviewed.

Notwithstanding anything contained herein to the contrary, the construction undertaken by or at the direction of Declarant or any successor or additional declarant shall not be subject to the terms of this Article and shall not require the approval of the ARC.

## ARTICLE VIII

### USE RESTRICTIONS AND EASEMENTS

#### Section 1 – Use

Except for those Lots designated otherwise on Exhibit A attached hereto, the Lots and Dwelling Units shall be used exclusively for private and residential purposes only. No building or structure of any kind whatsoever shall be erected, altered, converted, maintained or operated on any Lot except for one (1) Dwelling Unit for occupancy by not more than one (1) family, with only a garage for not more than three (3) non-commercial vehicles and a swimming pool (hereinafter defined) as accessory structures for the sole and exclusive use of the Owner or occupants of the Lot.

Notwithstanding anything contained herein to the contrary, Declarant reserves the right to (i) erect, alter, or convert any building within The Highlands Subdivision for house, playground or for other similar purposes; and (ii) erect, maintain and operate a real estate sales, or construction office or trailer on any Lot, or in any building or structure now or hereafter located thereon, provided such office or trailer is used and operated only in connection with development and sale of Dwelling Units and Lots within The Highlands Subdivision.

#### Section 2 - Architectural Requirements

Each Dwelling Unit shall contain not less than One Thousand Eight Hundred (1,800) square feet of habitable area, exclusive of basements, porches (open and screened), patios, terraces, decks and garages. Each Dwelling Unit shall have a garage for not less than two (2) non-commercial vehicles.

All improvements shall be maintained in accordance with applicable building lines, setback and height provisions set forth in the Zoning Ordinance of the Village of Chatham, Illinois, except where more stringent requirements are imposed by the Record Plats, the deed of conveyance for a particular Lot or the ARC.

Construction must commence on each and every Lot within three (3) years from the date of transfer of title from the Declarant to the Purchaser, unless the Declarant specifically waives such requirement with respect to such Lot in writing. Any violation of this restriction shall subject the Owner to a charge payable to the Declarant at the rate of five percent (5%) per annum of the original purchase price of the Lot, to be paid by the Owner to the Declarant, for such time as the violation of the restriction exists. The charge shall, until paid in full, be a lien against the lot and collection of the penalty shall be made in the same manner as herein provided for collection of delinquent Assessments. All structures shall be completed in accordance with the approved plans and specifications within eighteen (18) months after construction thereon has commenced, and such construction shall proceed with all due diligence and be continuous without delay, except where such completion is impossible or would result in great hardship to the Owner or the Builder due to strikes, fire, national emergency or natural calamities. Notwithstanding anything contained herein to the contrary, the provisions of this paragraph with respect to the requirement

of commencement of construction within three (3) years and the imposition of a five percent (5%) per annum charge if construction is not commenced within such period shall be inapplicable in the event that the Trustees or the Lender foreclose upon all or any part of the Properties.

No residence can be temporarily or permanently occupied until the exterior thereof has been fully completed. During the construction period, the Owner of any Lot shall require the Builder to maintain the Lot in a reasonably clean and uncluttered condition and to take necessary action to control any erosion of or from disturbed site areas. Cessation of work on any structure once started, and prior to complete, for a period of sixty (60) days shall be prima facia evidence of an attempt to abandon the same in its partially completed state, and the same shall be deemed to be both a public and private nuisance.

Each Lot Owner shall construct such sidewalk as may be required by ordinances of the Village of Chatham, Illinois, at such Owner's sole expense. Failure to conform with such requirement or ordinance shall vest Declarant or Association with the right to do so and to file a lien and/or legal action for reimbursement therefor. Declarant or Association shall expressly be entitled to pre-judgment interest and attorney's fees resulting from any such action.

### **Section 3 - Signs**

No signs of any nature shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings.
- (b) Temporary signs, including for rent, for sale, sold signs or signs during construction of a residence or other improvement indicating the nature of the improvement and the persons or firm responsible therefor, which sign shall be consolidated into a single frame having not more than six (6) square feet of face area and shall be subject to the prior written approval of the ARC as to the location, size, color, material and content; such temporary signs to be removed within ten (10) days after rental or sale of the subject property or completion of the improvement.
- (c) Community or street identification signs which may be located on private property.
- (d) Signs erected by Declarant.

### **Section 4 - Destruction**

Should any residence or structure on any Lot be destroyed in whole or in part, it must be reconstructed or the debris therefrom removed from the site and the property restored to a neat and tightly condition within three (3) months, or the area shall be deemed to be both a public and private nuisance.

## **Section 5 - Appearance**

All garbage and trash containers, incinerators, fuel tanks, mechanical swimming pool equipment, utility meters, air conditioning equipment, clothes lines and other similar outdoor maintenance, storage and service facilities shall be stored in or concealed by a solidly screened, enclosed or covered receptacle in order to conceal said maintenance, storage and service facilities from view from the roads and neighboring properties. Garbage and trash containers and fuel tanks need not be screened if located underground. The placement of all of the aforesaid items, whether located above or below ground, shall require the prior written approval of the ARC.

## **Section 6 - Temporary Structures**

No structure of a temporary character, tent, trailer, mobile home, shack or other outbuilding, except as provided herein, shall be placed or permitted to remain on any Lot or Common Area at any time, except that temporary construction shelter may be erected and maintained during and used exclusively for construction of any approved work or improvement and such shelters shall not in any event be used for living quarters and shall be removed from the premises promptly upon completion of the approved work or improvement.

## **Section 7 - Vehicles**

No motorized vehicles shall be operated within the Properties unless (i) licensed or (ii) used primarily for maintenance purposes (i.e., lawn mowers, tractors or snowplows). No snow mobiles, dune buggies, motorcycles or other similar vehicles shall be operated off the paved roads. The ARC has the right to establish and enforce such rules for operation of any type vehicle as it shall in its sole discretion see fit.

Campers, recreational vehicles, commercial vehicles, trucks, horse trailers, travel trailers or utility trailers and similar vehicles may only be maintained on a Lot within an enclosed or screened area which renders such objects non-visible from the roads or neighboring properties. During construction of Dwelling Units, however, the Owners and builders may maintain commercial vehicles and trailers on the Lots for the purpose of construction, and for use as a field or sales office. Commercial vehicles, private passenger vehicles, trailers, buses, campers, tractors or trucks shall not be regularly parked or maintained upon any streets. No trailer, camper or mobile home of any kind shall be used on any Lot as a temporary or permanent dwelling.

No inoperable junk or junked cars or any motor vehicles other than private passenger vehicles, tractors or trucks in regular operation shall be permitted on the Properties of The Highlands Subdivision and no commercial vehicles shall be left parked on any part of the Properties, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of commercial vehicles upon any part of the Properties for a time greater than that which is necessary to accomplish the aforesaid business purposes. No automobile or vehicles of any kind and no boat or trailer of any kind shall be constructed, restored or repaired upon any Lot in such a manner that said construction, restoration or repair is visible from the roads or neighboring properties.

### **Section 8 - Boats**

No un-garaged boat may be maintained and/or stored on any Lot, unless the ARC determines, in its sole discretion, that the storage of such un-garaged boat will not be detrimental to the overall character of The Highlands Subdivision.

### **Section 9 - Lighting**

Any exterior lighting on structures and Lots shall be directed downward so that direct light rays shall not extend beyond the lot lines of the Lot on and for which they were installed.

### **Section 10 - Mailboxes**

The size, type, style, composition and location of mailboxes, newspaper containers, and like structures, if placed apart from the Dwelling Unit, must be approved in writing by the ARC. The owners shall comply with any directive of the United States Postal Service.

### **Section 11 - Noxious Activity**

No noxious, dangerous or offensive thing, trade, business or activity shall be carried on upon any Lot or Common Area, nor shall anything be done or placed thereon which, in the sole opinion of the ARC, would cause embarrassment, discomfort, annoyance or a nuisance to any adjoining owner or to the community generally. There shall not be maintained on any lot or Common Area any plants or animals or devices or things of any kind, the normal activities or existence of which is in any way noxious, offensive, dangerous, unsightly, unpleasant or of a nature that would diminish or destroy the enjoyment of other property in the community by the Owners thereof.

### **Section 12 - Animals**

No animals, livestock or poultry of any kind, including pigeons, shall be raised, bred, kept or maintained within The Highlands Subdivision except dogs, cats or any other household pets, not exceeding four (4) in the aggregate, may be kept or maintained on a Lot for non-commercial purposes only. All pets must be secured by leash or lead, or under the control of a responsible person and obedient to that person's command at any time they are permitted outside of a house, dwelling or enclosed area used for their maintenance and confinement.

### **Section 13 - Compost**

Accumulated waste plant material may not be accumulated on a Lot except as part of an established compost pile which is maintained in such a manner as not to be visible from the roads and neighboring properties and not closer than fifty (50) feet from any neighboring residence or established outdoor living area of an existing or future residence.



#### **Section 14 - Antennae**

No exterior antennae, aerials, poles, towers, discs or similar structures of any type shall be erected on any Lot within The Highlands Subdivision without prior written approval of the ARC.

#### **Section 15 - Outdoor Courts**

No tennis, basketball or other outdoor courts or recreational game or sport facilities may be installed, constructed or maintained on any Lot without the prior written approval of the ARC.

#### **Section 16 - Other Easements, Conditions and Restrictions**

Declarant reserves the right prior to the settlement of any Lot to file additional covenants, conditions and restrictions pertaining to use of the Lots and other conditions and restrictions relating thereto, provided such covenants, conditions and restrictions comply with the Village of Chatham Law.

#### **Section 17 - Right of Association to Remove or Correct Violation of this Article**

The Association or its duly authorized agents, officers and employees may, in the interest of the general welfare of all the Owners of the Properties and after reasonable notice to the Owner, and without liability to the said Owner or occupant for trespass or otherwise, enter upon any Lot or the exterior of any Dwelling Unit at reasonable hours on any day for the purpose of removing or correcting any violations or breach of any attempted violation of any of the Covenants and Restrictions, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association or the ARC. Any costs incurred by the Association or the ARC directly attributable to taking necessary corrective actions shall be the sole personal responsibility of the Owner and shall also become a lien against such Owner's Lot until satisfied.

#### **Section 18 - Declarant's Exemption**

During the period of development, the Declarant shall be exempt from the provisions of this Article.

#### **Section 19 - Easements**

The Properties herein described shall be subject to all easements and restrictions of record.

## **ARTICLE VIII-A**

### **MAINTENANCE**

#### **Section 1 - Lot Maintenance**

Owners shall, at all times, maintain their property and all appurtenances thereto in good repair and in a state of a neat appearance. Each Lot owner shall be responsible for the suitable appearance of his Lot including cutting grass, weeds and brush and removing trash and rubbish therefrom at all reasonable times and maintaining same in good condition and repair, in a manner that does not decrease the beauty, value, health or safety of the community as a whole or specific areas within the community. Should any such Owner fail to maintain the appearance of his Lot in accordance with the aforesaid criteria and as determined solely by the Board of Directors of the Association, the said Association is hereby and herewith granted the right and privilege to enter upon such Owner's Lot for the purpose of maintaining the suitable appearance of such Owner's Lot (whether improved or un-improved), the cost of which is to be borne by the Owner or Owners thereof pursuant to the same procedures and conditions as set forth in Section 4 of this Article.

#### **Section 2 - Exterior Maintenance**

In addition to maintenance of the Common Areas, the Association may, at its option and upon agreement with the Owner, provide exterior maintenance to any Lot which is subject to assessment under Article V hereof, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

#### **Section 3 - Assessment of Cost**

The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is performed and shall be added to and become part of the Regular Assessment to which such Lot is subject under Article V hereof and, as part of such Regular Assessment, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article III hereof. The Board of Directors of the Association, when establishing the Regular Assessment against each Lot for any assessment year as required under Article VI hereof, may add thereto the estimated cost of any exterior maintenance for the year but shall, thereafter, make such adjustment with the Owner as it necessary to reflect the actual cost thereof. The assessments of charges provided for hereunder shall not be considered for computation purposes as part of the maximum Regular Assessments under said Article VI.

#### **Section 4 - Access at Reasonable Hours**

For the sole purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agent or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

## **ARTICLE IX**

### **DRAINAGE PROVISIONS**

In addition to the foregoing, and notwithstanding anything herein contained to the contrary, the following provisions shall govern drainage within The Highlands Subdivision.

#### **Section 1**

No owner of any lot shall change or permit to be changed the contours and the gradeline of any lot. The gradeline and contour of any lot shall conform with that of surrounding property. No swale within any easement of any lot shall be altered or wholly or partially filled so as to interfere with or prohibit the free flow of surface water; however, if such swale shall be altered, it shall be restored at the expense of such lot owner of the lot where such alteration occurs.

#### **Section 2**

If the owner fails to restore any swale to the approved grade upon request of the Developer, Architectural Control Committee or Association, the Developer, Architectural Control Committee or Association shall make all necessary repairs and restorations to the swale as they determine in their sole discretion and may bill the lot owner for the cost of the repair. Should the lot owner fail to pay the bill within thirty (30) days, the Developer, Architectural Control Committee, or Association may file a lien in the amount of such repair costs against the lot in the office of the Recorder of Deeds of Sangamon County, Illinois, and may foreclose such lien in the same manner as a lien for unpaid Association dues or expenses.

#### **Section 3**

When required by the Architectural Control Committee, prior to activating any sump pump on any lot, the sump pump shall be connected to the existing storm or drainage pipe in the swale located within the easement area of each lot at the expense of the lot owner.

#### **Section 4**

The Village of Chatham is an intended third party beneficiary of Sections 1 and 2 of this Article, in the event the Developer, Architectural Control Committee or Association does not take reasonable steps to enforce those Sections against a property owner within 45 days after the Village's written demand, the Village may in its sole discretion bring an appropriate action against the property owner, the Developer or Association to compel compliance.

## **ARTICLE X**

### **JOINT DRIVEWAYS**

#### **Section 1 - Joint Driveways**

Any driveway which is built or installed as part of the original construction upon the Properties and which is situated on the dividing line between Lots or partly on one Lot and partly on another Lot or other Lots, shall constitute a joint driveway for the equal and common use and benefit of the Owners of any Lots or other portions of the Properties which is reasonably designed to serve, and to the extent no inconsistent with the provisions of this Article, the general rules of law regarding joint driveways and of liability for property damage due to negligent or willful acts or omissions regarding the same shall apply thereto.

#### **Section 2 - Repair and Maintenance**

The cost of reasonable repair and maintenance of any joint driveways shall be shared by the Owners who make use of the same in equal amounts.

#### **Section 3 - Damage or Destruction**

In the event any joint driveway is destroyed or damaged, any Owner who has used the same may restore it and if the other owner thereafter makes use of the same, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

#### **Section 4 - Easement**

There shall be a perpetual and non-exclusive easement in, through and over any such joint driveway reserved to the Owners of any Lot or Lots upon which the same has been built or installed or which the same has reasonable been designed to serve and no person shall in any way interfere with the free and unobstructed use thereof by said Owners.

#### **Section 5 - Right to Contribute Runs with Land**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE XI

### **GENERAL PROVISIONS**

#### **Section 1 - Enforcement**

The Association, or any Owner, or any First Mortgagee shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration 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 Restrictions set forth in this Declaration shall automatically be extended for successive periods of ten (10) years each unless the members entitled to cast not less than sixty-six percent (66%) of the total vote of the membership execute, acknowledge and record a document terminating the Covenants and restrictions of this Declaration. Except as hereinafter provided, this Declaration as from time to time amended, and the Covenants and Restrictions of this Declaration may be amended by a document executed, acknowledged and recorded by the members entitled to cast not less than sixty-six percent (66%) of the total votes of membership. In the event that any portion of the herein described Properties shall be financed by or shall be sought by Declarant or any successor or additional declarant to be financed by loans insured by the Veteran's Administration or Federal Housing Administration or in the event that any loans secured by a first mortgage on any "Lots" and/or "Dwelling Units" are purchased by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or a similar type of organization, as the case may be so long as such revision or modification complies with the laws of Sangamon County in effect at the time of such change. Prior to January 1, 1994, no amendment shall become effective until approved in writing by Declarant. Any instrument altering, amending, canceling, annulling or abrogating these Covenants and Restrictions, in whole or in part, must be in writing, properly executed, acknowledge and recorded among the Land Records.

#### **Section 2 - FHA/VA Approval**

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veteran's Administration, should same have a financial interest in the Properties arising out of initial financing to an Owner: dedication of Common Area and amendments to this Declaration.

#### **Section 3 - First Mortgagees' Approval**

Notwithstanding any provision of this Declaration or of the Articles of Incorporation or Bylaws of the Association or Laws of Illinois expressly or impliedly to the contrary, neither the membership of the Association nor the Board of Directors of the Association shall without the prior written approval of at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each mortgage) be entitled to:

- (1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Area or improvements thereon which are owned, directly or indirectly, by the Association; provided, however, that the granting of easements for public purposes consistent with the intended use of the Common Area by the Association shall not be deemed to be a transfer within the meaning of this clause;
- (2) fail to maintain fire and extended coverage or insurance on normally insured Common Area improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);
- (3) use hazard insurance proceeds for losses to any Common Area improvements for other than the repair, replacement or reconstruction of such improvements.

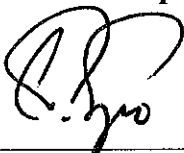
#### **Section 4 - Assignability**

Declarant, its legal representative, successors and assigns, notwithstanding any other provision herein to the contrary, shall at all times have the unlimited right to fully or partially transfer, convey and assign its rights, title, power and interest under this Declaration as Declarant, and its transferee, grantee or assignee shall take such rights subject to any and all obligations of a Declarant herein. Any such assignment shall be made by an instrument in writing, duly recorded among the Land Records and signed by the assignee for the purpose of evidencing acceptance of such rights, title, power and interests.

**IN WITNESS WHEREOF**, Declarant has caused these presents to be executed and sealed on the date first above written.

**DECLARANT:**

**Benchmark Development Corporation**

By:  \_\_\_\_\_  
Its Secretary

## EXHIBIT A

Part of the Northeast Quarter of Section 12, Township 14 North, Range 6 West of the Third Principal Meridian, bounded as follows:

Beginning at a stone at the Northwest corner of Lot 2 of a Subdivision of the Northeast Quarter and the East Half of the Northwest Quarter of Section 12, as shown in Surveyor Book B, page 98; thence South 89 degrees 18 minutes 20 seconds East along the North line of Lot 2, 609.71 feet to an iron pin; thence South along the West line of Chatham Knolls, 521.37 feet to an iron pin; thence North 89 degrees 50 minutes West along the North line of Glenwood Lane, 115.22 feet to an iron pin; thence along a curve to the left, having a radius of 75 feet and being tangent to the last described course, to an iron pin, being South 54 degrees 52 minutes West, 86.55 feet from the last described point; thence South 86 degrees 11 minutes 20 seconds West, 144.17 feet to an iron pin at the Northwest corner of Chatham Knolls, Second Plat; thence South 419.00 feet to an iron pin at the Northeast corner of Chatham Knolls, Third Plat; thence North 89 degrees 50 minutes West, 229.91 feet to an iron pin; thence South 0 degrees 07 minutes West along the West line of Chatham Knolls, Third Plat, 590.9 feet to an iron pin; thence North 89 degrees 33 minutes 20 seconds West, 51.11 feet to an iron pin on the East line of Lot 3; thence North 0 degrees 05 minutes 15 seconds East along the East line of Lot 3, 120.20 feet to an iron pin; thence South 44 degrees 21 minutes 45 seconds West, 866.38 feet along the Southeasterly line of a tract conveyed to Lewis Johnson et al, as recorded in Deed Record 49, page 623, to an iron pin 24 feet North of the South line of the Northeast Quarter of Section 12; thence North 42 degrees 25 minutes 50 seconds West, along the Southeasterly line of a tract conveyed to the Village of Chatham, as recorded in Deed Record 529, page 75, 710.2 feet; thence North 0 degrees 09 minutes East, 149.8 feet to an iron pin; thence North 89 degrees 10 minutes 20 seconds West along the apparent North line of said tract, 702.35 feet to an iron pin; thence North 0 degrees 09 minutes West, along the West line of Lot 3, 1421.22 feet to an iron pin at the Northwest corner of Lot 3; thence South 89 degrees 20 minutes 20 seconds East, 827.10 feet to the point of beginning.

Except for parts thereof heretofore conveyed of record.

Subject to all covenants, easements and restrictions of record, if any.

Situated in Sangamon County, Illinois.

Parcel No. 28-12-201-040

Vacant Ground