

205855

STATE OF ILLINOIS
JO DAVIESS COUNTY as Instrument Number
Filed for Record on the 4th day of October
19 90 at 9:35 o'clock A. M.
Recorder of Deeds Sam Miller
By Jean Stump Deputy Recorder

TTL\04796\002\DECLAR.BRN
09-21-90

HICKORY RUN TOWNHOUSE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration dated this 28th day of September, 1990, is made and entered into by The Branigar Organization, Inc., an Illinois corporation ("Declarant").

RECITALS: Declarant is the owner of the real estate in The Galena Territory in Jo Daviess County, Illinois, legally described on Exhibit A attached hereto (the "Premises"). Declarant desires to develop the Premises with a residential community of townhouses with open spaces and other common facilities for the benefit of the community. Declarant desires to subject the Premises to this Declaration and to the covenants, restrictions, conditions, rights, easements, burdens, uses, privileges, charges and liens (sometimes referred to as "Covenants and Restrictions") described in this Declaration for the benefit of all the Premises and each owner of a Townhouse Unit thereon, and which shall attach to and constitute covenants running with the land. The real estate subject to this Declaration will require uniform and continuing care and maintenance for the privacy, benefit and enjoyment of the persons residing in the community. In order to provide for the orderly and proper administration of the community formed by the townhouse buildings to be constructed on the Premises, and for the preservation and enhancement of those portions of the Premises which are improved by Declarant from time to time with townhouse buildings and which are incorporated into the Hickory Run Townhouse development ("Hickory Run Townhouses"), Declarant will form the Hickory Run Townhouse Association, to which the responsibility of administering the affairs of the community formed by the townhouse buildings and other matters will be delegated and assigned.

The Premises is hereby made subject to the General Declaration of Covenants and Restrictions dated July 23, 1973, and recorded July 25, 1973, in Book 7 of Misc. Records, Pages 780-798; Supplemental Declaration dated July 23, 1973, and recorded July 25, 1973, in Book 7 of Misc. Records, Pages 799-802; Amendment to Declaration of Covenants and Restrictions dated September 10, 1973, and recorded September 14, 1973, in Book 7 of Misc. Records, Pages 864-866; Second Supplemental Declaration dated September 24, 1973, and recorded October 3, 1973, in Book 7 of Misc. Records, Pages 884-885; and Amendment to General Declaration of Covenants and Restrictions dated October 26, 1978, and recorded October 26, 1978, in Book 12 of Miscellaneous Records, Pages 145 and 146 and any subsequent amendments. The By-Laws of the Galena Territory Association, Inc. and The General Declaration of Covenants and Re-

restrictions as amended and supplemented are incorporated herein and by reference made a part hereof.

NOW THEREFORE, Declarant hereby declares that the Premises and such additions thereto as may hereafter be made pursuant to Article VIII is and shall be transferred, held, sold, conveyed and accepted subject to this Declaration.

ARTICLE I DEFINITIONS

The following words and terms when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

1.01 Property Owners' Association: The Galena Territory Association, Inc., an Illinois Not-for-Profit Corporation, its successors and assigns.

1.02 Townhouse Association. Hickory Run Townhouse Association, as provided in paragraph 4.01, its successors and assigns.

1.03 Owner: A record owner, except the Declarant, whether one or more persons or entities, of a fee simple title to any Townhouse Unit.

1.04 Family: One or more persons each related to the other by blood, marriage, or law, and including foster children, together with such relative's respective spouses, who are living together in a single Townhouse Unit and maintaining a common household; or up to and including three persons not so related, provided that such unrelated persons maintain a common household in a single Townhouse Unit.

1.05 Member: Every person or entity who holds membership in the Townhouse Association.

1.06 Premises: The real estate legally described in Exhibit A and such other real estate as may be added thereto pursuant to Article VIII.

1.07 Possible Additional Development Area: The real estate as shown on Exhibit B which may, at Developer's discretion, be added to the Premises pursuant to Article VIII.

1.08 Board: The Board of Directors of the Townhouse Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article 4.04.

1.09 Townhouse Unit: Each residential unit identified by number and described in a recorded plat for the Hickory Run Townhouses in the Office of the Recorder of Deeds for Jo Daviess County, Illinois, each of which units Declarant hereby subjects to the provisions of this Declaration; and such other units as hereafter are identified and described in a recorded plat for a townhouse development made subject to this Declaration. A Townhouse Unit is one single family residential dwelling in a Townhouse Building and its accompanying Townhouse Unit Exterior. One family may occupy more than one Townhouse Unit; however, such use shall in no way affect the rights, duties and obligations under this Declaration and for the purposes of determining membership in the Townhouse Association, each such Townhouse Unit shall be considered as a separate and individual unit. If two or more Townhouse Units are combined and occupied by a family, each Townhouse Unit shall nevertheless be considered a separate Townhouse Unit under this Declaration.

1.10 Townhouse Building: A structure containing Townhouse Units, with party walls straddling the boundaries between such units.

1.11 Common Area: All of the Premises except the property included in Townhouse Units.

1.12 Townhouse Unit Exterior: The roof, foundation, exterior steps, footings and outer surface of exterior walls (except glass) of the Townhouse Unit and all portions of the Townhouse Unit which are not improved with the residence or garage including, without limitation, the following:

(a) Driveways, walkways, patios, grass, shrubbery and other landscaping; and

(b) Those portions of water, sewer, electric and other operating systems which serve more than one Unit and/or the Common Area (but not including those portions of such systems which serve only the residence or garage located on the Townhouse Unit).

1.13 Common Expense: Cost of maintaining and repairing the Common Area and all other expenses incurred by the Townhouse Association or the Board which pertain to the Hickory Run Townhouses.

ARTICLE II PROPERTY RIGHTS AND RESTRICTIONS

2.01 Conveyances Subject to Declaration: All covenants and restrictions shall be deemed to be covenants appurtenant,

running with the land and shall at all times inure to the benefit of and be binding on any person having any interest or estate in the Premises, and their respective heirs, successors, personal representatives or assigns.

2.02 Access Easement: Every Owner shall have a perpetual nonexclusive easement for ingress and egress from his Townhouse Unit over and across the Common Area.

2.03 Delegation of Use: Subject to this Declaration, the By-Laws and the reasonable rules and regulations of the Townhouse Association, any Owner may delegate his right to use and enjoy the Common Area to persons in his Family, or to his guests or tenants who reside in his Townhouse Unit.

2.04 Townhouse Association's Right of Ingress and Egress: The employees and agents of the Townhouse Association shall have the right to ingress and egress over and upon the Common Area and Townhouse Unit Exteriors for any and all purposes connected with any duties or powers of the Association hereunder with respect to the Common Area and Townhouse Unit Exteriors.

2.05 Declarant's Reserved Right: Notwithstanding any provision herein to the contrary, Declarant, and its successors and assigns shall have the following rights:

(a) The right for its employees, agents, licensees and invitees to have ingress and egress over, in, through and upon the Common Area and Townhouse Unit Exteriors for the purpose of showing the Common Area to prospective purchasers or lessees of Townhouse Units;

(b) The right to retain legal title to all or any part of the Common Area; provided that Declarant shall convey, or cause to be conveyed the Common Area to the Townhouse Association, no later than 5 years after the conveyance of the last Townhouse Unit subject to the terms and conditions of this Declaration, whether located on the Premises or the Possible Additional Development Area. The Declarant reserves a nonexclusive, perpetual access easement over and across the Common Area or parts thereof; such easement shall run with and bind the land and inure to the benefit of real estate located adjacent to or near the Common Area;

(c) The right to grant easements, through, across, under and over the Common Area, to any public or private utilities, cable television companies or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, television cable and related equipment, gas pipes, sewers or water pipes, or any other utility services serving any Townhouse Unit or the Common Area;

(d) The right to place and maintain on the Premises model Townhouse Units, sales offices, business conference facilities which may be Townhouse Units designed or remodeled to accommodate such functions, advertising signs, and lighting in connection therewith, at such locations and in such forms as the Declarant may, in its discretion, determine and to use available parking facilities for its guests, employees, agents, contractors, or any one claiming by or through it.

(e) The right of ingress and egress in, through and upon the Common Area, the right to make alterations and additions to the Common Area, and the right to temporarily store construction material on the Common Area with respect to any of Declarant's activities in connection with construction, promotion, sale or lease of the Townhouse Units or of additional residential housing units located or to be located adjacent to or near the Premises.

Declarant, at its expense, shall be responsible for the repair of any damage caused by it, or its agents and invitees, to the Common Area or the Townhouse Units as a result of the exercise of any of the Declarant's rights under this Section.

2.06 Easement for Unintentional Encroachment: Notwithstanding any other provisions contained herein, in the event that any Townhouse Unit or any Townhouse Building or any improvements thereto or any facilities servicing primarily one or more Townhouse Units encroaches upon any of the Common Area or any other Townhouse Unit where such encroachment results from the design, construction, reconstruction, or shifting of any such Townhouse Unit or structure containing such Townhouse Unit, then a perpetual easement appurtenant to such Townhouse Unit or structure shall exist for the continuance of any such encroachment on the Common Area or such other Townhouse Unit.

2.07 Rights of Board: After the Common Area is conveyed to the Townhouse Association, the Board shall have the right and power (i) to grant easements over the Common Area to public or private utilities, cable television companies or governmental bodies for the installation and maintenance of electrical and telephone conduit lines, television cables and related equipment, gas pipes, sewers or water pipes, or any other utility services serving any Townhouse Unit or the Common Area and (ii) to execute all documents and all other actions affecting the Common Area.

ARTICLE III
COVENANTS AND RESTRICTIONS AS TO USE AND MAINTENANCE

3.01 Maintenance of Common Area: Maintenance, repairs and replacements of the Common Area shall be furnished by the Townhouse Association as part of the Common Expenses and shall include, without limitation, the following:

(a) The maintenance (including snow removal), repair and replacement of the streets, walks, paths, parking areas, access facilities, playgrounds, and all other recreational facilities and improvements located on the Common Area; and

(b) The planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Common Area.

3.02 Maintenance of Townhouse Unit Exterior: The Townhouse Association shall be responsible for the maintenance, repair and replacement of the Townhouse Unit Exterior and may use insurance proceeds, if any, pursuant to paragraph 5.02.

3.03 Maintenance of Dwelling Units: Except as otherwise provided in this Section, each Owner shall be responsible for the maintenance, repair and replacement of its Townhouse Unit.

3.04 Damage Caused by Owner: If, due to the act of or the neglect of an Owner, or a member of such Owner's Family or household pet or a guest or other authorized occupant or invitee of such Owner, damage shall be caused to the Common Area or a Townhouse Unit Exterior and maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board. The amount necessary for such repairs shall, if not paid by the Owner, shall be charged to such Owner as a special assessment, which shall be a lien on such Owner's Townhouse Unit. In the event that any Owner alters any of the landscaping or that portion of its Townhouse Unit Exterior for which the Townhouse Association is responsible so as to increase the cost of the maintenance of said landscaping or to require additional work to repair any damage caused thereby or to restore to original condition, then the Board shall charge the cost thereof to such Owner as a special assessment, which shall be a lien on such Owner's Townhouse Unit.

3.05 Residential Use:

(a) Each Unit is hereby restricted to use by its Owner, the Owner's family, servants and guests, tenants or lessees, as a residence only and shall in no event be used at

any time for any purpose other than residential purposes. The rental or leasing by an Owner of its unit for residential purposes shall not be prohibited, regardless of the term of occupancy.

(b) The foregoing restrictions as to residential use shall not be construed in such a manner as to prohibit an owner, or anyone in possession of the Townhouse Unit by, through or under the Owner, from: (i) maintaining a personal professional library; (ii) keeping personal business or professional records or accounts; (iii) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said restriction.

Except as provided under Section 2.05 and other portions of this Declaration, no industry, business, trade, occupation or profession shall be conducted on any part of the Premises and no "For Sale" or "For Rent" signs or any window display advertising shall be permitted on any part thereof.

3.06 Obstructions. Except as permitted under Section 2.06, there shall be no obstruction of the Common Area, and nothing shall be stored in the Common Area without the prior written consent of the Board.

3.07 Proscribed Activities: No nuisance or noxious or offensive activity shall be carried on the Premises nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of the Townhouse Units. No animals, livestock or poultry shall be raised, bred or kept on the Premises, except that dogs, cats or other household pets may be kept in Townhouse Units, subject to rules and regulations adopted by the Board, provided they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Premises upon three (3) days' written notice from the Board.

3.08 No Unsightly Uses: No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of the Premises. No outdoor T.V. or radio antennas shall be allowed. Garbage cans and wood piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Townhouse Units and streets. Campers, trucks, motor homes, snowmobiles, inoperable vehicles, boats or buses shall not be parked anywhere on the Premises except in garages. This restriction shall not apply to service vehicles servicing the residents of the Premises and the Declarant. The Common Area shall

be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed therein.

3.09 Architectural Controls:

(a) The purpose of architectural control is to secure and maintain attractive, harmonious residential Townhouse Buildings and Townhouse Units which will have continuing appeal. No construction, reconstruction, alteration or addition of a building, fence, wall, patio or other structure shall be commenced, erected or maintained, except interior alterations, nor shall any exterior color changes be made, until the construction plans and specifications, showing the nature, kind, shape, height and materials, color scheme, location and approximate cost of such building, improvements, or other structure shall have been submitted to and approved in writing by the Board. The Board may refuse to approve any such construction plans or specifications, or color changes, which are not suitable or desirable, in the sole opinion of the Board for aesthetic or other reasons; and in so passing upon construction plans and specifications or color changes, the Board shall have the right to take into consideration the compatibility of the proposed building or other structure with the surroundings, and the effect of the building, other structure, or color change on the outlook from adjacent or neighboring properties. All such changes shall also be approved, pursuant to Article IV of the General Declaration of Covenants and Restrictions of The Galena Territory Architectural Committee.

(b) All plans, specifications and other materials shall be filed in the office of the Townhouse Association. A report in writing setting forth the decisions of the Board and the reasons therefor shall thereafter be transmitted to the applicant by the Townhouse Association 30 days after the date of filing the plans, specifications and other material by an applicant.

(c) This paragraph 3.09 shall not apply to the Declarant, and the Declarant shall not be bound by any of the terms and conditions as set forth in paragraph 3.09(a) and (b).

In the event (1) the Board fails to approve or disapprove within 30 days after submission of the final plans, specifications and other material, as required in this Declaration, and (2) no suit to enjoin construction has been filed within 45 days after commencement of such construction, approval shall not be required, and the related requirements of this Declaration shall be deemed to be complied with.

3.10 Nameplates: There shall not be more than one nameplate on each Townhouse Unit. A nameplate shall conform in size, color, content and location as provided by the Board.

3.11 Rules and Regulations: The use and enjoyment of the Common Area shall be subject to reasonable rules and regulations duly adopted by the Board pursuant to the power granted in this Declaration and the By-Laws.

ARTICLE IV
THE TOWNHOUSE ASSOCIATION

4.01 The Association: Declarant may, and any Board shall have the right without the approval of Members, to cause the Townhouse Association to be incorporated as a Not-for-Profit corporation. The Townhouse Association, through the Board, shall be the governing body for all of the Owners for the administration and operation of the Common Area and for the maintenance and architectural control of the exterior of the Townhouse Units.

4.02 Powers: In addition to all powers as from time to time provided by law, the Townhouse Association shall have the following powers:

(a) To own and lease such real estate as may be reasonably necessary in order to carry out the provisions of this Declaration and the purposes and powers of the Townhouse Association and to be taxed on such real estate as may be owned by it;

(b) To procure liability, fire and extended coverage insurance covering the claims from loss of or damage to a Townhouse Unit, Common Area or Townhouse Unit Exterior for and on behalf of its Owner, as necessary;

(c) To exercise the architectural controls vested in the Townhouse Association under Article III, paragraph 3.08 of this Declaration;

(d) To engage the services of a manager or managing agent approved by the Board, who shall manage and operate the affairs of the Townhouse Association for all of the Owners upon such terms and with such authority as the Board may approve;

(e) To formulate policies for the administration, management and operation of the Association;

(f) To adopt rules and regulations, with written notice thereof to all Owners, governing the administration, management, maintenance, operation, use, conservation and beautification of the Common Area, Townhouse Buildings and Townhouse Units and for the health, comfort, safety and general welfare of the Owners, and to amend such rules and regulations from time to time;

(g) To provide for any construction, alteration, installation, maintenance, repair, painting and replacement for which the Townhouse Association is responsible under this Declaration and the By-Laws and for such purposes to enter and to authorize entry upon any Townhouse Unit, following reasonable notice to the Owner when feasible, causing as little inconvenience to the Owners as practicable and repairing any damage caused by such entry at the expense of the Townhouse Association;

(h) To provide for the designation, hiring and removal of employees and other personnel, including lawyers and accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Townhouse Association and to delegate any such powers to the manager or managing agent (and any such employees or other personnel as may be employees of the managing agent);

(i) To have access to each Townhouse Unit from time to time as may be necessary for making emergency repairs therein to prevent damage to the Common Area, Townhouse Unit Exterior, and other Townhouse Units.

(j) The Board or its agents, upon reasonable notice, may enter any Townhouse Unit when necessary in connection with any maintenance or construction for which the Townhouse Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practical.

(k) To estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners their respective shares of such estimated expenses as hereinafter provided;

(l) To pay out of the assessments hereinafter provided for, the following:

(i) Water, waste removal, electricity and telephone and other necessary utility services for the Townhouse Association and (if not separately metered or charged) for the Townhouse Units.

- (ii) The services of a manager or managing agent of any other person or firm employed by the Board.
- (iii) The construction, maintenance, repair and replacement of property for which the Townhouse Association is responsible.
- (iv) Such other costs and expenses as are specifically authorized or approved by the Board or the Members.
- (m) To delegate the exercise of its powers to committees appointed in accordance with its By-Laws;

4.03 Membership: Subject to the further provisions of this Section, each Owner shall be a member of the Townhouse Association. There shall be one membership per Townhouse Unit. If the record ownership of a Townhouse Unit shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the membership attributable thereto shall be designated by such Owner or Owners in writing to the Board at the time such Owner or Owners become record Owners of the Townhouse Unit. Membership shall be appurtenant to and may not be separated from ownership of a Townhouse Unit. Ownership of a Townhouse Unit shall be the sole qualification for membership.

4.04 Board of Directors: The Board shall be elected by the Members as provided in the By-Laws of the Townhouse Association, subject to paragraph 4.05. The Board shall direct and administer the Townhouse Association affairs in accordance with the terms and provisions of this Declaration, and when not inconsistent therewith, the charter and the By-Laws of the Townhouse Association. All matters requiring action by the Board shall be decided by majority vote. Until the Townhouse Association is incorporated or the Turnover has occurred, as set forth in paragraph 4.05, the Board shall consist of two (2) persons. Upon incorporation of the Townhouse Association or upon the Turnover of the Association, pursuant to paragraph 4.05, the Board shall consist of three (3) members, or as amended from time to time pursuant to the By-Laws of the Townhouse Association.

4.05 Declarant's Rights: Notwithstanding any of the other provisions of this Declaration or of the By-Laws of the Townhouse Association to the contrary, the first and all subsequent Boards shall consist solely of those persons designated by the Declarant, which persons may but need not be Members, until the first to occur of:

- (a) No later than five (5) years after the conveyance of the last Townhouse Unit subject to the terms and con-

ditions of this Declaration, whether located on the Premises or the Possible Additional Development Area.

(b) The date Declarant elects to terminate its sole control, by written notice of such election to the Townhouse Association, heretofore and hereafter referred to as the "Turnover." Declarant may consent to the appointment or election of one or more directors in the manner provided in the By-Laws of the Townhouse Association, but such consent may be revoked or withdrawn at any time or from time to time without cause, so long as Declarant otherwise has the right to designate those persons who will be the directors of the Board as provided in this paragraph 4.05.

(c) Upon the termination of the Declarant's right to designate directors, pursuant to subparagraphs (a) and (b) hereof, the Members of the Townhouse Association shall elect a new Board pursuant to the terms of this paragraph, paragraph 4.08, and the then existing By-Laws of the Association (hereinafter referred to as the "Initial Election"). The Initial Election shall be called and held in one of the two following manners;

- (i) The Declarant shall have the right to notify all Members of the meeting for the Initial Election. Said notice shall state the time, place, reason for meeting, and any other information which the Declarant wishes to communicate to the Members. Said notice shall be sent no less than one (1) month, but no more than six (6) months, prior to the date the meeting is to be held. The cost of mailing said notices shall be a Common Expense and shall be paid for by the Townhouse Association.
- (ii) If, the Declarant does not call the meeting for the Initial Election within three (3) months of the termination of the Declarant's right to designate board members, any Member of the Townhouse Association shall have the right to call the said meeting by giving notice to all of the Members of the Association and the Declarant. Said notice shall state the time, place, reason for meeting, and any other communication which the Member wishes to communicate to the other Members and the Declarant. Said notice shall be sent no less than one (1) month but no more than six (6) months prior to the date the meeting is to be held. Notice to the Declarant shall be sent by certified mail, postage prepaid, return receipt requested, to the address of the sales office located on any property subject to the Galena Territory Declaration, and if

none, then to the registered agent of the Declarant as set forth in the records of the Illinois Secretary of State.

- (iii) In order to insure an orderly and systematic procedure for the administering of the affairs of Initial Election, the following procedures shall be followed;
 - (1) If the Declarant calls the meeting pursuant to subparagraph 4.05 (c) (i) and if any of the board members appointed by the Declarant still hold office, these board members shall conduct the meeting. In the alternative, if all of the directors appointed by the Declarant have either resigned or been removed, the meeting shall be conducted by a corporate officer or other person designated by the Declarant. If neither a board member appointed by the Declarant, corporate officer of the Declarant or representative appointed by the Declarant attends the meeting, and the meeting was called pursuant to paragraph 4.05 (c) (ii) then the person calling said meeting shall be designated the chairman of the meeting and shall serve in that capacity until the election of the new Board. If none of the individuals so named are in attendance at the meeting, then the Members in attendance shall immediately elect a temporary chairman and secretary to conduct the election and record the minutes thereof.
 - (2) For the initial Election only, each member entitled to vote pursuant paragraph 4.08 hereto shall have one (1) vote for each position open for election and said voting shall be cumulative Voting for the directors at large and the individuals receiving the highest number of votes shall be deemed to be elected and shall serve on the Board until the next annual meeting.
- (iv) The method of notification, voting and conduct of the Initial Election as set forth in this subparagraph 4.05 (c) shall be utilized only for the purposes of calling, holding and conducting the Initial Election and shall not be construed or interpreted as expanding or limiting any other provision of this Declaration or the By-Laws of the Association. All prior and subsequent meetings shall be governed by the other appropriate provisions of this Declaration and the By-Laws of the Association.

4.06 Board Liability: The directors from time to time constituting the Board shall not be liable to the Members for any mistake of judgment or for any acts or omissions made or omitted in good faith as such directors.

4.07 Governing Laws: In all other respects, the Townhouse Association, its directors, officers and Members shall be governed by the laws of the State of Illinois.

4.08 Voting Rights: Whenever a vote of the Members of the Association is required, at any meeting of such Members or otherwise, such votes shall be cast by the Members and each Member shall have one (1) vote for each Townhouse Unit owned.

ARTICLE V INSURANCE

5.01 Common Area Insurance:

(a) The Board shall have the authority to and shall obtain insurance covering the Common Area against loss or damage by fire and such other hazards in such amounts as the Board may deem desirable. Premiums for such insurance shall be Common Expenses.

(b) The Board shall also have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Townhouse Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, from liability in connection with the Common Area and Townhouse Unit Exteriors and insuring the Directors and officers of the Association from liability for good faith actions beyond the scope of their respective authorities. Such insurance coverage shall include cross liability claims of one or more insured parties. The premiums for such insurance shall be Common Expenses.

(c) The Association and each Owner hereby waive and release any and all claims which they may have against any Owner, the Association, its directors and officers, the Declarant, the managing agent, if any, and their respective employees and agents, for damage to the Common Area or to any personal property located in the Common Area, caused by fire or other casualty, to the extent that such damage is covered

by fire or other form of casualty insurance, and to the extent this release is allowed by policies for such fire or other casualty insurance. To the extent possible, all policies secured by the Board under this Section shall contain waivers of the insurer's rights to subrogation with respect to the Owners and members of their Families, directors and officers of the Townhouse Association, the managing agent, the Declarant, and their respective employees and agents.

5.02 Townhouse Unit Insurance:

(a) Each Owner shall be responsible for procuring fire and all risk coverage insurance upon its Townhouse Unit from a carrier designated by the Association for not less than the full insurable replacement value thereof under a policy or policies of insurance with said designated company, in such form, and for such premiums and periods as each Owner may determine to be appropriate. The Association shall be named as an insured where its interest appear. Each Owner shall also be responsible for its own insurance on the contents of its Townhouse Unit and furnishings and personal property therein, and its personal property stored elsewhere on the Premises.

(b) In order to avoid conflicting claims from the same loss, to obtain better insurance coverage for itself and all members and to achieve savings for all members, the Association shall designate from time to time an insurance carrier qualified to do business in the State of Illinois as the standard fire and extended coverage carrier for the Townhouse Units and if such carrier so requires, the Association shall designate which agent of such carrier shall be the standard agent for such Owners. The Association may also designate which agent of such carrier shall be the standard agent for such Owners may also designate a new carrier and/or agent at any time, such change to be effective sixty (60) days thereafter. *

(c) When the Association chooses to designate a standard insurance carrier for the Townhouse Units, each Owner of a Townhouse Unit shall obtain fire and extended coverage insurance from such carrier (and from the standard agent if one is designated by the Association), to the extent of full replacement value of the Townhouse Unit. Any policy obtained shall provide that it may not be cancelled except upon thirty (30) days' written notice to the Association.

(d) Each Owner shall deliver to the Association a certificate of insurance certifying that a policy of insurance covering such Owner's Townhouse Unit, as required under this Section, is in effect. In the event an Owner fails to

HRTA

procure or keep in effect a policy of insurance, as required under this Section, after written demand for the same is made upon such Owner by the Board, then the Board may on behalf of and as agent for such Owner procure such insurance on the Owner's Townhouse Unit with the designated company and the premium for such insurance shall be charged to such Owner as a special assessment and shall be a lien on the Townhouse Unit.

(e) No Owner shall cause or permit anything to be done or kept in the Owner's Townhouse Unit or upon the Premises which will result in the cancellation of insurance on such Owner's Townhouse Unit, on any other Townhouse Unit or on the Common Area.

(f) Notwithstanding any provisions of this Section to the contrary, neither the Townhouse Association nor its Board, officers, employees or agents shall be liable to any Owner nor to any party claiming by, through or under an Owner or by reason of any interest in title to an Owner's Townhouse Unit for any act or omission to act under this Section by the Townhouse Association, its Board, officers, employees or agents.

5.03 Rebuilding of Damaged Townhouse Unit:

(a) In the event of damage to or destruction of any Townhouse Unit by fire or other casualty, the Owner thereof shall within a reasonable time after such damage or destruction, repair or rebuild the same in substantial and workman-like manner with materials comparable to those used in the original structure, and in conformity in all respects to the laws and ordinances regulating the constructing of buildings in force at the time of such repair or reconstruction. The Townhouse Unit Exterior, when rebuilt, shall be to the extent possible substantially similar to and of architectural design and landscaping in conformity with the surrounding Townhouse Units which are not so damaged or destroyed.

(b) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in Subsection (a) to perform the necessary repair or rebuilding, then the Board may cause such repairs or rebuilding to be furnished, provided and installed, in the manner as provided in Subsection (a) and the cost thereof shall be charged to such Owner and shall be a lien on such Owner's Townhouse Unit.

ARTICLE VI
ASSESSMENTS

6.01 Creation of Lien and Personal Obligation:

(a) Each Owner of any Townhouse Unit by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and hereby agrees to pay to the Townhouse Association such assessments or other charges or payments as are levied pursuant to the provisions of this Declaration. Such assessments, or other charges or payments, together with interest thereon and costs of collection, if any, as herein provided, shall be a charge on the Townhouse Unit and a continuing lien upon the Townhouse Unit against which each such assessment is made. Each such assessment, or other charge or payment, together with such interest and costs, shall also be the personal obligation of the Owner of such Townhouse Unit and all persons, jointly and severally who have any beneficial interest in such Townhouse Unit at the time when the assessment is due.

(b) Upon a voluntary conveyance, the grantee of a Townhouse Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor as provided in this Article up to the time of the conveyance, without prejudice to the grantee's rights to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Townhouse Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the Townhouse Unit conveyed be subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth.

(c) The lien created by paragraph 6.01(a) on the property shall be a continuing lien and shall automatically attach to the respective Townhouse Unit without need or requirement for a specific notice or filing of lien to be made by the Townhouse Association; and, except for the provisions set forth in paragraph 6.09, the lien created hereby shall be superior to all other liens and encumbrances.

6.02 Purpose of Assessments: The assessments levied by the Townhouse Association shall be used exclusively to promote the recreation, health, safety, and welfare of Members of the Townhouse Association, to administer the affairs of the Townhouse Association, and to pay the Common Expenses.

6.03 Annual Assessment: Each year on or before December 1, the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year which shall show the following:

(a) The estimated Common Expenses (the initial budget shall include previous expenses) including without limitation, the estimated cost of management fees, wages, materials, supplies, insurance, taxes, and services (the "Cash Requirement");

(b) The estimated amount, if any, to maintain adequate reserves for Common Expenses (the "Reserve Requirement");

(c) The amount of the annual assessment ("Annual Assessment") which is hereby defined as the Cash Requirement, plus the Reserve Requirement, minus any unspent cash from the prior year; and

(d) That portion of the Annual Assessment which is attributable to such Owner, which is determined by dividing the Annual Assessment by the number of Townhouse Units for which transactions have been closed by December 31 of the previous year. On or before the 10th day of January of the ensuing year, and on or before the 10th day of each and every month thereafter until the effective date of the next Annual Assessment, each Owner shall pay to the Board, or as it may direct, one-twelfth (1/12) of that portion of the Annual Assessment which is attributable to such Townhouse Unit Owner. Each Townhouse Unit shall begin being assessed and each Owner shall begin paying its Assessment upon the delivery of the deed of conveyance by the Declarant to the first Owner. The amount to be paid monthly shall be one-twelfth of the Annual Assessment attributable to each other Unit until the next Annual Assessment is determined.

6.04 Basis and Limitation of Annual Assessments: Declarant shall pay the cost of operating the Townhouse Association, but not reserves, until the first to occur of:

(a) Eight (8) of the Townhouse Units shall be conveyed;
or

(b) March 30, 1991.

Thereafter, the Townhouse Association shall pay such costs and expenses.

6.05 Property Owners' Association Assessments: Pursuant to the Galena Territory Declaration Members of the Townhouse Association are subject to assessment by The Galena Territory Association, Inc. Such assessments made upon members of the

Property Owners' Association shall be paid by each member individually and shall not be a Common Expense as used herein.

6.06 Special Assessment: Extraordinary expenditures not originally included in the annual budget which may become necessary during the year, shall be charged first against the reserve. If the Annual Assessment and the reserve prove inadequate for any reason, including nonpayment of any Owner's assessment, the Board may at any time or from time to time levy a special assessment on the Owners. The Board shall serve written notice of such special assessment on all Owners giving the amount and reasons therefor.

6.07 Uniform Assessment: The Annual Assessment shall be fixed and levied equally among all Townhouse Units, share and share alike. Assessments, annual and special, shall be due and payable at such time or times as shall be fixed by the Board from time to time subject to the provisions of this Declaration and of the By-Laws.

6.08 Nonpayment of Assessments: If an assessment or other charge or payment is not paid within thirty (30) days after the due date, there shall be assessed an administrative service fee in the amount of \$15.00 which may be adjusted from time to time by the Board, and in addition, the assessment, shall bear interest from the due date at the rate of nine percent (9%) per annum, and the Board may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Townhouse Unit or both, for any such assessments and fees including interest, costs and reasonable attorney's fees of any such action, which shall be added to the amount of such assessment or other charge or payment and included in any judgment rendered in such action, If the Board has provided for collection of assessments in installments, upon default in the payment of any one or more installments, the Townhouse Association may accelerate payment and declare the entire balance of said assessment due and payable in full. No Owner may waive or otherwise escape liability for the assessments or other charges or payment provided for herein by nonuse of the Common Area or by abandonment of its Townhouse Unit. Any owner who is more than thirty (30) days in arrears at the time of any meeting of the Association, will not be permitted to vote at such meeting.

6.09 Association's Lien Subordinated to Mortgages: The lien provided for herein shall be subordinate to the lien of any first mortgage at any time placed upon any Townhouse Unit. Such lien shall not be affected by any sale or transfer of a Townhouse Unit except that a sale or transfer pursuant to a decree of foreclosure or in lieu of foreclosure shall extinguish the lien as to assessments which became payable prior to such sale or transfer. The extinguishment of the lien pursuant to this paragraph 6.09

shall not extinguish nor relieve any personal liability created by any provision of this Declaration. No sale or transfer shall relieve the purchaser or transferee of a Townhouse Unit from liability for, nor the Townhouse Unit so sold or transferred, from the lien of any assessment thereafter coming due.

ARTICLE VII
PARTY WALL

7.01 Party Wall: Every wall, including the foundations therefor, which is built as a part of the original construction of a building and placed on the boundary line between separate Townhouse Units in a building, shall constitute a "Party Wall", and to the extent not inconsistent herewith, the general rules of law regarding party walls, shall apply thereto.

7.02 Rights in Party Wall: Each Owner of a Townhouse Unit which is adjacent to a Party Wall shall have the right to use the Party Wall for support of the structure originally constructed thereon and all replacements thereof and shall have the duty to keep, maintain and repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

7.03 Damage to Party Wall: If any Party Wall is damaged or destroyed through the act of any Owner or its agents, servants, tenants, guests, invitees, licensees, or members of its Family, whether such act is willful, negligent or accidental, such Owner shall forthwith diligently proceed to rebuild or repair the same to as good a condition as it existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Townhouse Unit. Any Party Wall damaged or destroyed by some act or event other than one caused by the adjacent Owner, its agents, servants, guests, invitees, licensees, or Family, shall be diligently rebuilt or repaired by both Owners of adjoining Townhouse Units to as good a condition as it existed prior to such damage or destruction at the joint and equal expense of such Owners.

7.04 Change in Party Wall: Any Owner who proposes to extend, alter or modify any Party Wall shall first obtain the written consent of the Owner of the other adjacent Townhouse Unit, in addition to meeting any other requirements which may apply.

7.05 Arbitration: In the event of a disagreement between Owners of Townhouse Units adjoining a Party Wall with respect to their rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the

matter shall be submitted to the Board and the decision of the Board shall be final and binding.

ARTICLE VIII
ANNEXATION OF ADDITIONAL PROPERTY
TO THE PREMISES

8.01 Additions to the Premises: Declarant, its successors and assigns, shall have the right, but not any obligation, to bring within this Declaration, from time to time, portions of the Possible Additional Development Area.

8.02 Supplementary Declarations: The additions authorized under this Article shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the covenants and restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

ARTICLE IX
MISCELLANEOUS

9.01 Owners' Easement of Enjoyment: Subject to the provisions herein, every Owner 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 Townhouse Unit.

9.02 Duration:

(a) The covenants and restrictions of this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by a Recorded instrument executed by not less than 75% of the then Owners.

(b) All easements described in this Declaration are easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owners, the mortgagees from time to time of any Townhouse Unit or the Common Area, and their respective heirs, successors,

personal representatives or assigns, perpetually in full force and effect.

9.03 Severability: Invalidation of all or any portion of any of the covenants and restrictions by legislation, judgment or court order shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

9.04 Amendment: The provisions of this Declaration may be abolished, amended, modified, enlarged or otherwise changed in whole or in part and any part or all of the Premises or the Common Area may be removed from the provisions of this Declaration by Declarant until December 31, 1990, or by an instrument executed by not less than 75% of the then Owners; except that the provisions relating to the rights of Declarant may be amended only upon the written consent of Declarant, and the provisions of Sections 3.05 and 6.05 and this Section 9.04 may be amended only by an instrument executed by all of the Owners. No amendment shall become effective until properly recorded.

9.05 Enforcement: Enforcement of the provisions contained in this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provisions, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Board, any mortgagee or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

9.06 Mergers:

(a) Upon a merger or consolidation of another association with the Townhouse Association, its properties, rights and obligations may, as provided in its Articles of Incorporation, by operation of law be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may by operation of law be added to the properties, rights and obligations of the Townhouse Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the Premises together with the covenants and restrictions established upon any properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration within the Premises except as hereinafter provided.

(b) The Declarant reserves the right, prior to the Turnover, as set forth in paragraph 4.05, to merge, without

approval of the Owners, the Townhouse Association with any other association which Members are or will be members of the Property Owners' Association (specifically excluding any condominium associations).

9.07 Notices: Any notice to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, certified mail, return receipt requested, to the last known address of such Owner as it appears on the records of the Association at the time of such mailing, or if none appears in said records, then to such Owner's Townhouse Unit, or upon personal delivery and written receipt therefor given by the Owner.

9.08 Captions: The Article and paragraph headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration.

9.09 Declarant's Easement to Correct Drainage: For so long as the Declarant owns or has an interest to any portion of the land described in Exhibits A and B, the Declarant reserves a blanket easement and right on, over and under the Premises to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary, following which the Declarant shall restore the affected property to its original condition as nearly as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the date first above written.

THE BRANIGAR ORGANIZATION, INC.

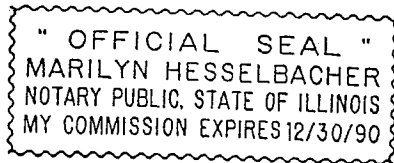
By: *M. Cechnich*
Vice President

Genevieve M. Rowe
Assistant Secretary

STATE OF Illinois)
)
COUNTY OF Jo Daviess) SS.

I, Marilyn Hesselbacher, a Notary Public in and for said County, in the State aforesaid, do hereby certify that A. J. Cechvala, Vice President of THE BRANIGAR ORGANIZATION, INC., an Illinois corporation, and Genevieve M. Rowe, Assistant Secretary thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that he, as custodian of the corporate seal of said Corporation, did affix the said corporate seal of said Corporation to said instrument as his own free and voluntary act, and as the free and voluntary act of said Corporation for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th
day of September, A.D., 1990.



Marilyn Hesselbacher
Notary Public
Marilyn Hesselbacher

HICKORY RUN TOWNHOUSE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT A

Legal Description:

"BRANIGAR'S PLAT OF EAGLE RIDGE UNIT "U" OF THE GALENA TERRITORY", A SUBDIVISION LOCATED IN THE NW 1/4 AND SW 1/4 OF SECTION 19, T28N, R2E OF THE FOURTH PRINCIPAL MERIDIAN, GUILFORD TOWNSHIP, JO DAVIESS COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED JULY 11, 1990, AS DOCUMENT NO. 204470 IN PLAN HOLD C OF PLATS, NO. 56, WHICH IS BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE S.E. CORNER OF SAID SECTION 19; THENCE N35°43'48"W 1781.85' TO THE POINT OF BEGINNING.

THENCE N30°00'W 66.00'; THENCE 25°30'W 135.00'; THENCE N37°40'E 569.00'; THENCE N23°00'E 291.67'; THENCE N78°00'E 193.05'; THENCE S12°00'E 66.00'; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, RADIUS = 442.26'; CHORD BEARS 57°00'W 287.97, A DISTANCE OF 293.32'; THENCE S26°00'W 200.00'; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, RADIUS = 749.20'; CHORD BEARS S43°00'W 438.09'; A DISTANCE OF 444.58'; THENCE S60°00'W 175.00' TO THE POINT OF BEGINNING.

HICKORY RUN TOWNHOUSE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT B

POSSIBLE ADDITIONAL DEVELOPMENT AREA

Lands to which The Branigar Organization, Inc., is in title in the following described areas:

Section 19, Guilford Township, Jo Daviess County, Illinois.

Section 30, Guilford Township, Jo Daviess County, Illinois.

Section 31, Guilford Township, Jo Daviess County, Illinois.

The South 1/2 of Section 24, East Galena Township, Jo Daviess County, Illinois.

The East 1/2 of Section 25, East Galena Township, Jo Daviess County, Illinois.

The East 1/2 of the Northeast 1/4 of Section 36, East Galena Township, Jo Daviess County, Illinois.