

**DECLARATION OF  
RESTRICTIONS**

**MCLEAN COUNTY**

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**DECLARATION OF RESTRICTIONS**  
**HARVEST POINTE SUBDIVISION**

THIS DECLARATION OF RESTRICTIONS is made this \_\_\_\_ day of December, 2006, by Harvest Developers, Inc., an Illinois corporation (“Developer”).

**I. RECITALS**

WHEREAS, the Developer is the owner in fee simple and the developer of certain real estate known as the Harvest Pointe Subdivision in McLean County, Illinois (“Subdivision”), which is legally described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Developer desires to establish certain rights and easements in, over and upon said real estate for the benefit of itself and all future owners of any part of said real estate, and any Lot therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the real estate;

WHEREAS, Developer intends to, and does hereby declare that such real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, shall be sold and conveyed subject to the following easements, restrictions, covenants and conditions; which such easements, restrictions, covenants and conditions shall run with the real estate and be binding on all parties having any right, title or interest in the described

properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof;

WHEREAS, Developer desires to preserve the integrity of the design, the continuation and enhancement of the landscape elements and other aesthetic additions on the property and provide for controls necessary to maintain the Property which if not maintained would adversely affect the Property and the Lot Owners.

NOW, THEREFORE, Developer declares as follows:

## **ARTICLE I DEFINITIONS**

Certain words and terms used in this Declaration are defined as follows:

- (a) **Association:** The Association of all the Lot Owners acting pursuant to the By-Laws through its duly elected Board. Until such time as the Association is formed by the Developer, the Association and Board shall be the Developer. Each lot shall be entitled to one vote and each Lot owner shall automatically become a Member of the Association.
- (b) **Board:** The Board of Managers of the Association as constituted at any time and from time to time. In the event the Association is incorporated, the Board shall mean the Board of Directors of the incorporated Association. Nothing herein requires the Association to be incorporated.
- (c) **By-Laws:** The By-Laws of the Association, which are adopted by the Association.
- (d) **Developer:** Harvest Developers, Inc., or its successor or assigns.
- (e) **Dwelling Unit:** A structure or portion thereof designed and constructed for the residential use of one household as defined by the City of Bloomington, including both detached single-family homes and attached single-family homes sharing a common wall but located on separate lots. There shall be only one home on a single lot unless otherwise approved by the Developer in writing.
- (f) **Lot:** Any parcel of land or other tract in Harvest Pointe Subdivision against which this Declaration is recorded, as well as any parcel of land or other tract added to this Declaration pursuant to Article II, Section 4, together with any and all improvements thereon.
- (g) **Lot Owner:** The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Lot.
- (h) **Majority or Majority of Lot Owners:** The owners of more than fifty percent (50%) of the Lots comprising the subdivision.

- (i) **Occupant:** A person or persons, other than a Lot Owner, in possession of a Lot.
- (j) **Person:** A natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.
- (k) **Plat:** The Final Plat of Harvest Pointe Subdivision recorded in McLean County, Illinois on October 31, 2006 as Document No. 2006-00030281, as well as the plat or plats of survey of any parcel of land or other tract added to this Declaration pursuant to Article II, Section 4.
- (l) **Property:** That certain real estate herein described in Exhibit A and such additions thereto as may be brought within the jurisdiction of the Association or subject to this Declaration.
- (m) **Record:** To record in the Office of the Recorder of Deeds of McLean County, Illinois.
- (n) **Reserves:** Those sums paid by Lot Owners which are separately maintained by the Board for purposes specified by the Board.
- (o) **Single Dwelling Lots:** Lots 101-158 of the Subdivision and any Lots to be added to this Declaration as additional property pursuant to Article II, Section 4, on which Developer intends for a separate and detached Dwelling Unit to be built. Single Dwelling Lots include zero lot line lots which share a Common Wall with an adjoining Dwelling Unit.
- (p) **Subdivision:** Harvest Pointe Subdivision, and all other subdivisions as shown on the Plat.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS  
THERE TO AND DELETIONS THEREFROM**

1. Declaration. Developer declares that the real estate described on Exhibit A attached hereto and made a part hereof, together with all improvements and structures now and hereafter erected, shall be occupied subject to the covenants restrictions, easements, uses and privileges, changes and liens hereafter set forth which shall be binding on all parties having or acquiring any right, title or interest therein and shall inure to the benefit of each owner, Developer and the Association.

2. Platting and Subdivision Restrictions. Developer has caused the preparation of the final plat of Harvest Pointe Subdivision, which such plat is recorded as Document No. 2006-00030281 in the Office of the Recorder of Deeds of McLean County (the "Subdivision"). Developer shall be entitled at any time and from time to time to plat and/or replat all or any part of the Property and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the above described Property and to record a document which

makes any or all of the Property subject to these restrictions.

3. Description of Lots. All Lots are or shall be delineated on the Plat. The legal description of such Lot shall consist of the identifying number of such Lot as shown on the Plat.

4. Additional Property. Developer reserves the right to add my real estate to the Property by recording an amendment to this Declaration executed solely by Developer, at which time the additional Property shall become subject to this Declaration. All improvements on the additional property shall be of a character compatible with the initial improvements on the Property.

5. Outlot 100. Developer shall deed the parcel of real estate designated on the Plat as Outlot 100 to the City of Bloomington for use as open space drainage and underground utilities located in easements as shown on the Plat.

### **ARTICLE III CONSTRUCTION REQUIREMENTS**

1. Construction Requirements on Single Dwelling Lots. The construction of residences on the Single Dwelling Lots in the Subdivision shall be governed by the following specifications:

(a) Setback Lines. The setbacks being 25' unless otherwise noted on the Plat shall comply with the zoning ordinance of the City of Bloomington and in addition shall meet the following: The exterior walls of any Building, garage, enclosed porch, swimming pool or other outbuilding shall not be erected or maintained closer to the front lot line than the setback lines shown on the Plat. The side yard and rear yard set backs are as provided in the City of Bloomington Code.

(b) Footage Requirements. One-story ranch style residences shall have a total living area of not less than one thousand seven hundred (1,700) square feet. Two-story residences shall have a total living area of not less than two thousand one hundred (2,100) square feet. One and a half story residences shall have a main level of not less than one thousand five hundred (1,500) square feet. Split-foyer and split-level style residences shall not be permitted. Each Dwelling Unit sharing a Common Wall with another Dwelling Unit shall have a minimum living area of (1,500) square feet.

(c) Permitted Exteriors. No wall board, aluminum siding, sheet metal, tar paper, or roofing paper shall be used for any exterior wall covering or roofs. Aluminum may be used for gutters and downspouts, soffit and fascia boards. Stone, brick, wood, vinyl and stucco style materials, shall be permitted exteriors, provided such materials are of suitable quality, grade and coloration so as to conform and harmonize with other improvements in the Subdivision. No excessively bright colors or light shadings shall be permitted on the exteriors of any building in the Subdivision. The front elevation of each Single Dwelling shall have at least 2,300 bricks or a stone facing approved in writing in advance of construction by the Architectural Control

Committee. Each Dwelling Unit sharing a Common Wall with another Dwelling Unit shall have at least 650 bricks on the front elevation of each Single Dwelling Unit or stone facing approved in writing in advance of construction by the Architectural Control Committee. Modular construction shall be permitted only with express written approval of Developer, which may be withheld in Developer's sole discretion.

(d) Garages. Each Dwelling Unit constructed on a Single Dwelling Lot in the Subdivision shall contain an attached, enclosed garage adequate to store, at a minimum, two (2) standard-sized passenger vehicles, or, as a maximum, three (3) standard-sized passenger vehicles. Any such garage shall be in conformity with the attached residence as to exterior, architecture and location. The minimum size for any garage shall be twenty feet by twenty-two feet (20'x22').

(e) Shingle Requirements and Roof Pitch. Only architectural shingles are allowed to be used on each residence. The color of the shingles must be approved by Developer. No three tab shingles are allowed. Minimum roof pitch of six/twelve is required unless Developer approves an alternate.

(f) Party Wall: All dividing walls which straddle any boundary line between lots and which stand partly upon one lot and partly upon another and all walls which serve two or more living units or garages shall at all times be considered party walls, and each of the owners of lots upon which any such party wall shall stand, shall have the right to use said party wall below and above the surface of the ground and along the whole length of any part of the length thereof for the support of said dwelling unit or garage and for the support of any building or structures constructed to replace the same, and shall have the right to maintain or replace in or on said wall any pipes, ducts, or conduits originally located thereon, subject to the restrictions herein contained, to-wit:

1. No lot owner nor any successor in interest shall have the right to extend said party wall in any manner either in length, height or thickness.

2. No lot owner shall do anything to disturb the right of any other owner to use such party wall.

3. In the event of damage or destruction by fire or other casualty of any party wall, including the foundation thereof, the owner of any dwelling unit which abuts on such party wall shall have the right to repair or rebuild such wall and the owner of each dwelling unit which abuts on such party wall shall pay his aliquot portion of the cost of such repair or rebuilding. All such repair or rebuilding shall be done within a reasonable time in a workmanlike manner, with materials comparable to those used in the original wall, and shall conform in all respects to the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. Whenever any such wall or

any portion thereof shall be rebuilt, it shall be erected in the same location and on the same line and be of the same size as the original wall.

2. Architectural Control.

(a) Developer shall be solely responsible for architectural control until Developer has assigned his rights under this Declaration to the Association in accordance with Article VI, Section 6 of this Declaration. Thereafter, an architectural control committee shall be appointed by the Board (“Architectural Control Committee”) and shall have the same rights as Developer under this Article III, Section 2.

(b) Developer shall have right and power to reject approval of plans submitted if they do not benefit and enhance the residential development of the area; such approval, however, shall not be unreasonably withheld.

(c) No Building, tower or swimming pool shall be erected, placed, or altered on any Lot in the Subdivision until the following are submitted to and approved by Developer: the building plan, the specifications thereof, showing the proposed construction, nature, kind, shape, height, material and color scheme thereof, building elevations, a site plan showing the Lot lines, boundaries of the building site, distance from the boundaries of the building site to the Buildings, and the grading plan of the building site shall have been submitted to and approved by Developer. A minimum of two (2) copies of all building plans, specifications, and site plans shall be submitted before commencement of any construction on a Lot.

(d) Developer, as part of the approval process, shall evaluate the proposed improvements as to conformity and harmony of external design with existing structures in the Subdivision and as to location of the building with respect to topography and finished ground elevation. One copy of said building plans, specifications, and site plans shall be retained by Developer. Developer, at Developer’s option, may require that samples of all exterior materials be submitted for examination prior to approval. If Developer fails to give written approval or disapproval to such plans and specifications within thirty (30) days after same has been received by Developer, the plans and specifications shall be deemed approved. All improvements shall be constructed in strict conformity with approved plans and specifications. Any changes during construction of the size or exterior of the Building, either as to materials or colors, must be approved in writing by Developer prior to continuation of construction. Panelized construction and modular construction are allowed only with and subject to Developer approval. Developer shall have no liability to any Lot Owner for the failure of a Lot to comply with the restrictions set forth herein or for approving any plans which do not comply. Written approval of Developer of plans and specifications and construction in accordance with those specifications shall be deemed to constitute compliance.

(e) The approval by Developer of any plans and specifications, site plan, grading or any other plan or matter requiring approval as herein provided, shall not be deemed to be a waiver by Developer of its right to withhold approval as to similar other features or elements embodied therein when subsequently submitted for approval as in connection with the same Lot.

3. Commencement of Construction. Any individual or entity acquiring a vacant Lot from Developer must commence construction within twenty-four (24) months after the conveyance of title, unless a written extension is granted by Developer. If Developer elects to grant any such extension, as a condition to any such extension, Developer may demand reimbursement of any utility deposits which remain unrefunded due to failure to hook up a Dwelling Unit on such Lot, with the right to any future refund for such Lot to be assigned to the Lot Owner. All construction must be completed in accordance with approved plans, including all landscaping work, within nine (9) months after commencement of construction. In the event such construction is not commenced within the allotted time, Developer shall have the absolute right, at its sole option, to repurchase the lot by repayment of the original purchase price, in cash, with no interest to have accrued thereon. In the event a Dwelling Unit is commenced but not completed within the allotted time after written notice to the Lot Owner and failure of the Lot Owner to cure within sixty (60) days, Developer shall have the absolute right, at its sole option, to repurchase the Lot for the original purchase price.

4. Non-Occupancy and Diligence during Construction. The work of construction of any Building shall be prosecuted diligently and continuously from the time of commencement until the exterior construction is substantially completed. No Dwelling Unit shall be occupied as a residence until the exterior of such Dwelling Unit is completed in accordance with the approved plans and a certificate of occupancy has been issued.

5. Driveways and Curb Cuts. All driveways leading from the street to the garage must be made of concrete, or other materials permitted by Developer. Curbs which are removed for the purpose of making a driveway entrance shall be replaced as far as the nearest construction or expansion joint to ensure a smoothly joining entrance, with a radius of return of at least five (5) feet.

6. Sidewalks. Sidewalks must be installed by and at the expense of a Lot Owner upon the earlier of (i) three (3) months after completion of construction of a residence on the Lot, (ii) when required by governmental authority, or (iii) within two (2) years of completion of construction of Dwelling Units on eighty percent (80%) of the Lots constituting the Subdivision. Details as to sidewalk size, placement, and materials are to be supplied by Developer, with all sidewalks to be in conformity with other sidewalks in the Subdivision and shall meet City design requirements.

**ARTICLE IV  
USE AND OCCUPANCY OF LOTS**

1. Property Use. No Building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family Dwelling Unit on the Single Dwelling Lots, and not more than one attached Dwelling Unit on Lots 135 through 158 inclusive. No portion of the Subdivision, improved or unimproved, shall be used for any commercial, manufacturing, professional, religious, fraternal, or other business purpose.

2. Landscape Requirements.

(a) Sodded Yards. The front yard, including both yards fronting on a street, and on a corner lot, will be sodded by the Owner of each Dwelling Unit after construction of the Dwelling Unit. The first occupant of a Dwelling Unit shall be responsible for doing the landscaping, sodding, and seeding. The side and back yards shall be seeded.

(b) Trees. A tree of one of the following species not smaller than two and a half inches (2½") in diameter (measured four feet above the ground) shall be planted and maintained in the front yard. The approved species are red sunset maple, autumn blaze maple, autumn purple ash and red oak. Comparable trees recommended by a landscaper and approved in writing by the Developer may be substituted.

(c) Plantings. The area between the Dwelling Unit and the sodded yard shall be covered in stone or bark. The first Dwelling Unit occupant shall be required to plant a minimum of fifteen (15) plantings in such area.

(d) Completion. Landscaping must be complete within six (6) months of occupancy, including final grading, sodding, mulching and front planting.

(e) Maintenance. Landscaping that dies shall be replanted and all landscaping shall be maintained in a healthy condition.

3. Sewer Requirements. All Dwelling Units shall connect with the sanitary sewer system in accordance with all applicable health codes. No individual on-site sewage disposal system or water supply well shall be installed or maintained on any Lot.

4. Excavation. No materials excavated from any Lot in the Subdivision shall be removed from the Subdivision unless permission is otherwise granted in writing by Developer. Compliance shall be made with the soil erosion control ordinance of McLean County.

5. Swimming Pools. In-ground swimming pools are permitted on Single Family Lots only. Above-ground pools shall not be permitted anywhere in the Subdivision. All swimming pools must be enclosed by fencing approved by Developer and shall, in all respects, comply with applicable ordinances and building codes. All devices used in connection with the swimming pool, including the filter and circulating pump, shall be located inside the required fence and concealed from view.

6. Signage. Any residential for sale or builder signage used on any Lot shall be limited to a maximum area of eight square feet. Only two signs shall be permitted on each Lot.

7. No Accessory Structure. Except as otherwise described in this Declaration, no accessory structure or outbuildings are permitted in the Subdivision, including playhouses or sheds. Lot Owners are permitted to erect a maximum of one play structure on each Lot provided that said play structure does not exceed one of the following dimensions: sixteen (16) feet in length, ten (10) feet in height and twelve (12) feet in width.

8. Sump Drain Line. If a sump pump drain line is provided by Developer, it must be connected to the sump pump by Lot Owner at Lot Owner's expense. All drain lines must discharge to the front or rear of the residence. Side discharge is not permitted.

9. Dumpster. During construction a dumpster is required to be on the property for disposal of construction materials. The Lot Owner and Lot Owner's contractor are both responsible for seeing that no open flame or burning of construction materials occurs at the construction site. All trash must be deposited in the dumpster, and contractors are required to sweep the streets to remove all mud, dirt and gravel deposited by their construction. No dirt shall be removed from the Subdivision without approval by Developer.

10. Subsidence Insurance. All Lot Owners are required to carry mine subsidence insurance on the Lots and Dwelling Units.

11. Drainage. All Lots shall be graded according to the drainage plan of the City of Bloomington. Each Lot Owner shall be solely responsible for compliance with this Section. Developer shall have no liability for ensuring compliance or enforcement.

12. Temporary Structures. No trailer, basement, tent, shack, garage, barn or other outbuilding shall be at any time used as a residence, temporarily or permanently, in the Subdivision.

13. Replatting. No Lot or Lots as platted shall be divided so as to result in creating additional lots. Developer, at Developer's sole discretion, may permit a Lot or a

portion of a Lot to be added to an adjacent Lot to create a larger Lot, provided that any remainder of a Lot is of sufficient size to construct a residence upon it in accordance with the construction requirements detailed herein, and further provided that the location of the building setback lines shall be modified to reflect the new size of each Lot.

14. Foliage Removal. No trees or other significant foliage, other than trees or foliage which are dead, hazardous, or reasonably impede construction of a Dwelling Unit or interfere with an easement, shall be destroyed or removed from any Lot without the consent of Developer.

15. Offensive Activities. No noxious, hazardous, or offensive trade, object, or activity which may be or may become a nuisance, hazard or danger to the neighborhood, by site, sound, odor, or otherwise, shall be performed or maintained on any Lot or other part of the Subdivision.

16. Animals. No animal other than domesticated house pets shall be kept or maintained within the Subdivision. No pet runs shall be permitted in the Subdivision. Invisible fences are permitted. All pets must be leashed or kept in an improved enclosure approved by the Developer on a case by case basis. Each Lot shall be limited to no more than two dogs and two cats unless otherwise approved by Developer.

17. Property Maintenance. All Lot Owners shall keep their Lots well maintained and in a presentable condition. In the event a Lot presents a nuisance or an unattractive appearance because of accumulated debris, weeds or grasses, Developer shall attempt to notify the Lot Owner in writing of the objectionable condition of the Lot, with said notice to be mailed by certified mail, if more current information is not available, to the address listed with the McLean County Supervisor of Assessments for the mailing of tax bills for said Lot. If the condition of said Lot is not adequately improved within ten (10) days of the mailing of such notice, Developer may undertake such reasonable acts as may be necessary to improve the condition of the Lot. Any charges sustained by Developer may be charged to the Lot Owner, and, at the option of Developer, may constitute and be recorded as a lien against said Lot. Such liens may be enforced against the Lot Owner's property as permitted by law. Such liens must be recorded within two (2) years of the time the debt was incurred and, unless enforced, shall expire within two (2) years of recording. Attorneys' fees and court costs shall be recoverable for filing and enforcement of such lien. All owners of vacant Lots are required to maintain the front forty feet (40') of each lot so that it is mowed to a height of a maximum four inches (4"). The owner of corner Lots must mow not less than forty feet (40') back from any curb.

18. Vehicle Storage. All Lot Owners shall provide and use at all times off-street parking for the number of automobiles in use by the Lot Owner or residents of the Lot. No recreational vehicles, trailers, vans, mobile homes, boats, or other objects of substantial size, whether operative or inoperative, may be parked or stored on a regular

basis or for more than three (3) days at any time (and solely for the purpose of loading and unloading) within the confines of the Subdivision unless same is enclosed and concealed from view within a garage on the Lot Owner's property. This provision, to the extent permitted by law, shall apply to those parts of the Subdivision dedicated as public roadways. No disabled automobiles shall be stored on a Lot except within a garage concealed from view.

19. Supply Storage. On Lots, no new or used construction materials, supplies, unused machinery, or the like shall be kept or allowed to remain in the Subdivision unless stored inside a Building and concealed from view. In the event the Lot Owner fails to comply with the provisions of this Section 19, the Association may give said Lot Owner written notice requesting cure of said violation. In the event the Lot Owner fails to cure said violation within fifteen (15) days of the date of the written notice, the Association shall have the right to enter onto the property and remove said materials and charge the Lot Owner for the costs thereof. The Association shall have the right to file and enforce a lien against said Lot for the amount of said charge as well as administrative and reasonable attorneys fees incurred by the Association pursuant thereto.

20. Garbage Service. Garbage shall be placed on the curb for pickup only on the night before or morning of pickup.

21. Fencing. Developer reserves the right to install a perimeter fence to the subdivision. Developer reserves the right to regulate all types of fencing. Developer hereby approves cedar fences if treated, vinyl fences if same color scheme as the home, and black ornamental fencing. Additional types of fencing may be approved in writing. Fencing shall not exceed a maximum height of five feet (5') except fences surrounding in-ground swimming pools which shall be the height required by City Code. No Lot Owner may damage or impair the farm fence located on the East side of the subdivision.

22. Patios and Privacy Screens. Lot Owners may erect privacy screens on their respective Lots provided that said screens do not exceed 6 feet in height or eight feet in width provided said screens are approved in advance of their construction in writing by the Developer. A patio is permitted on each Lot, located to the rear of the Dwelling Unit.

23. Hazardous Substances. No Lot Owner shall cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in their respective Lot. Lot Owners shall not do, nor allow anyone else to do, anything affecting their Lot that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on their Lot of small quantities of Hazardous Substances that are generally recognized to be appropriate to maintenance of the premises.

Lot Owners shall promptly give the Association written notice of any

investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving their Lot and any Hazardous Substance or Environmental Law of which Lot Owners have actual knowledge. If the Lot Owners learn, or are notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting their Lot is necessary, the Lot Owners shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Section 23, "Hazardous Substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 23, "Environmental Law" means federal laws and laws of the jurisdiction where the real estate is located that relate to health, safety or environmental protection.

24. Items Affixed to Exterior; Window Coverings; Hanging of Laundry. Lot Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the buildings and no sign, awning, canopy, shutter, radio or television antenna or satellite dish shall be affixed to or placed upon the exterior wall or roof or any part thereof or on the Lots without the prior written consent of Developer, except that no prior approval shall be required for satellite dishes not exceeding a 22 inch diameter placed in the rear of the Lot and obscured from view by landscaping. No clothes, sheets, blankets, laundry, windsocks or other articles of any kind shall be hung out or exposed on any part of the Lot. The coverings of interior surfaces of windows, whether drapes, shades or other items visible on the exterior of the building shall be of a solid light neutral color on the side that is visible from the exterior.

## **ARTICLE V EASEMENTS**

1. Utility Easements. Developer hereby reserves easements for public utility installation and maintenance as shown on the Plat. Said utilities shall be permitted access to the indicated easements for the purpose of serving individual lots, the Subdivision, and adjoining property with standard public utilities, including, without limitation, electric, gas, water, sewer, television cable and telephone service. No permanent buildings, structures, or significant foliage shall be placed on said easements, but the easements may be used for gardens, shrubs, landscaping, and other purposes that do not interfere with the maintenance or use of the easements. Fences installed on easements shall be at Lot Owner's risk. If the fence is required to be removed for work in an easement, repair or replacement shall be at the Lot Owner's cost. In the event Developer should elect to construct a fence along the perimeter of the Subdivision, affected Lot Owners shall grant

an easement to Developer for construction and maintenance of such fence, provided that any damage to the Lot Owner's property by such construction or maintenance shall be repaired by Developer at Developer's expense.

**ARTICLE VI**  
**APPLICATION, AMENDMENT AND ENFORCEMENT OF DECLARATION;**  
**ASSIGNMENT OF DEVELOPER'S RIGHTS**

1. Application of Restrictions. All persons, corporations, trusts or other entities that now hold or shall hereafter acquire any interest in any part of the Subdivision shall comply with and shall be bound by the covenants, conditions, restrictions and stipulations contained herein as to the use of the Subdivision and the construction of Dwelling Units and improvements therein, as hereinafter set forth.

2. Amendment of Restrictions/Plats. Until Developer divests himself of all interest in all Lots of the Subdivision, Developer shall retain the right to amend, modify or annul any of the restrictions detailed herein or on the Plat by a written instrument to be recorded in the Office of the Recorder of Deeds, McLean County, Illinois. Upon the sale of all of Developer's interest in the Subdivision, these restrictions may be amended by the affirmative vote of two-thirds (2/3) of the total Lot Owners in the Subdivision, with the collective owners of each Lot to have one vote in regards to any such amendment.

3. Enforcement of Restrictions. Any Lot Owner in the Subdivision, the Developer, and/or the Association when formed shall be entitled, but not required, to prosecute, in any proceeding in law or equity, any owner violating or attempting to violate any of the restrictions or covenants contained herein, to either prevent said Lot Owner from committing said violation or to recover damages for such violation. In the event the Developer, a Lot Owner, or the Association is required to undertake legal action for the enforcement of these Restrictions or a lien filed in accordance with these Restrictions, the Developer, Lot Owner or Association shall be entitled to any and all costs, expenses, and fees, including attorneys fees and costs of litigation, which may be paid or incurred in enforcing these Restrictions or foreclosure of lien.

4. Invalidation of Restrictions. Invalidation of any portion of these restrictions by judgment of court order shall not affect any remaining restrictions, which shall remain in full force and effect and be construed, as closely as possible, with the original intent of Developer.

5. Limitation of Liability. In no event shall any action or inaction by Developer in regards to Developer's powers or duties expressed herein constitute or give rise to any liability against Developer, provided such action or inaction does not

constitute fraud or gross negligence.

6. Assignment of Rights by Developer. Developer shall have the right to sell, assign, transfer, or convey all of the rights of Developer. Any such transfer shall be in writing and recorded in the Office of the Recorder of Deeds, McLean County. Developer may, from time to time, appoint a designated agent to act for Developer, and shall, upon request, furnish satisfactory evidence concerning the appointment and authority of said representative. Upon the formation of the Association and the recording of written authorization from Developer, all rights, duties, and obligations of Developer herein contained shall be transferred to the Association unless certain rights are specifically retained. Until the sale of one hundred percent (100%) of the Lots, Developer, in such written transfer of rights, duties, and obligations may retain specific rights, including, without limitation, the right to approve construction plans and grant extensions for commencement of construction. Upon the sale of all Lots in the Subdivision, such transfer of all such rights, duties and obligations set forth in these restrictions to the Association shall be automatic.

## **ARTICLE VII HARVEST POINTE HOMEOWNERS' ASSOCIATION**

1. Membership in Association. Upon its formation, all Lot Owners in the Subdivision shall become members of the Association. Membership in the Association shall run with the land, and any conveyance of an interest to property in the Subdivision shall be deemed a conveyance of the associated membership in the Association.

2. Formation of the Association. The Association shall be formed the earlier of a) the sale of all of the Developer's interest in the Subdivision, or b) the sale of seventy-five percent (75%) of the Lots in the Subdivision, plus written approval by the Developer for formation of the Association. The Association shall be deemed formed when a written notice of the formation of the Association has been recorded in the Office of the McLean County Recorder of Deeds and indexed to each lot in the Subdivision.

3. Powers and Duties of Association. Once formed, the Association shall have the following powers and duties:

a. Litigation. The Association shall specifically have the authority to bring suit to enforce compliance with any of the restrictions pertaining to the Subdivision in its own name and on its own behalf.

b. Maintenance. The Association shall be responsible for the care, maintenance, and upkeep of the entryway sign, and entryway sign easement, and the earthen berm located along the southern end of the residential area. The Association shall also maintain in a well kept condition any additional fence the Developer may chose

to erect around the perimeter of the Subdivision and mow and maintain the property extending outward from the Subdivision to adjacent roadways. The Association shall have an easement for ingress and egress to said earthen berm and shall have access over the entire area of the earthen berm.

c. Construction Approval. Upon written grant of authority from the Developer, the Association shall be responsible for the approval of construction in the Subdivision in accordance with the restrictions and the issuance of certificates of compliance through the Architectural Control Committee.

d. Assessments. The Association shall be authorized to assess fees against the Lot Owners in the Subdivision for the operational costs and projects of the Association in accordance with the guidelines hereinafter established.

e. Ownership of Property. The Association may own property in its own name.

f. Full Powers. Upon written grant of authority from Developer pursuant to Article VI, Section 6, the Association shall have all rights otherwise reserved to Developer.

4. Organization and Operation of the Association. Once formed, the Association may establish guidelines and By-laws for operation of and membership in the Association. The Association may elect to be organized and operate as a not-for-profit corporation or any other type of legal entity.

5. Initial Meeting and Organization of Association. Notice of the initial meeting of the Association shall be provided by the Developer by either delivery or mailing of notice, regular mail, to each Lot Owner in the Subdivision. The notice shall detail the date, time and place of the initial meeting of the Association, with said meeting to be held within forty-five (45) days of the date of the notice. Developer may conduct the initial meeting until such time as the first election of trustees. If Developer should fail to schedule the initial meeting of the Association after such time as when the Association should have been formed, the initial meeting can be scheduled by any individual Lot Owner in the Subdivision by following the procedures noted herein.

6. Voting Rights. In regards to all Association matters, one vote may be cast by the collective owners of each Lot of record in the Subdivision. Voting in Association matters may be done in person or by written proxy for specific issues, or general proxies provided same, on their face, expire within six months of execution.

7. Election of Board. At the initial meeting of the Association, the Association shall select a temporary board and a nominating committee to present a slate

of board members to be presented at an election of the board to be held within sixty days of the initial meeting. Each Lot Owner shall be entitled to cast one vote for each Lot owned for the election of the members of the Board the Association. Initially, the Board shall consist of five (5) members. Those five individuals receiving the highest total of votes shall be elected as the Board. The Board shall have the following rights and duties:

a. Budgets. The Board shall formulate a budget based on the estimated annual expenses of the Association for maintenance of common areas and operational costs with a reasonable reserve.

b. Assessments. The Board shall provide for the assessment of fees to each lot owner in an amount necessary to provide the funds required pursuant to the budget.

c. Employment. The Board shall employ, on behalf of the Association, such maintenance or service personnel as may be required to provide services to the entryway sign, and to employ and retain on behalf of the Association such legal, accounting, or other professional services as may be required by the Association.

d. Preparation of By-Laws. The Board shall formulate and propose, as part of the initial organization of the Association, general by-laws and guidelines for the Association.

e. Payment. The Board shall pay the bills of the Association and maintain accounts and books and records in accordance with standard accounting practices.

8. Provisions Relating to the Board. Unless and until the Association adopts new by-laws, each Board member shall be elected for a period of three years, provided, however, that the two Board members receiving the fewest number of votes at the initial meeting of the Association shall be elected for a term of two years and one year, respectively, with their successors to be elected for three year terms; thus staggering the terms so that in each year, one Board member is elected. The Board members shall provide for at least an annual meeting of the Association to be held at a reasonable time and place, which meeting shall include the election of one new Board member, with notice of said meeting to be made by delivering or mailing such notice, regular mail, to all lot owners or by conspicuously posting notice of said meeting for fourteen (14) days in advance of the meeting in at least three places in the Subdivision. Board members shall not be entitled to receipt of compensation for their acts as Board members, nor shall any Board member receive compensation for professional advice provided to the Association. Absent fraud or gross negligence, no Board member shall be personally liable for any act or failure to act on behalf of the Association.

9. Adoption or Amendment of By-Laws. The Association may adopt or amend the By-Laws of the Association upon the affirmative vote of three-fourths of all

Lot Owners in the Subdivision.

10. Assessments. The Association shall be empowered to assess each individual lot for said Lot Owner's proportionate share of the budget established by the Board. Assessments against each lot in the Subdivision shall be in equal amounts regardless of a lot's size except that no assessment shall be made against Outlot 100. Regardless of the budget established by the Board, the amount of the annual assessment charged to the Lot Owners may not exceed the sum of \$250.00 per year, unless the amount of the annual assessment is approved by at least three-fourths (3/4) of the Lot Owners in the Subdivision.

11. Liens. Any amount assessed against an individual Lot which remains unpaid thirty (30) days after said assessment, plus the costs of filing a lien including attorney's fees, becomes due may, at the option of the Board, become a lien against the Lot by placing notice of record with the McLean County Recorder of Deeds. In order to become a valid lien, said lien must be placed of record within two (2) years of the time said amount claimed became due, with the lien to expire two (2) years after recording of the same. Payment of said lien may be enforced by foreclosure of lien, or any other method permitted by law, and the Association may recover reasonable attorney's fees and court costs incurred in recovery of amounts due.

12. Obligations. The Homeowners Association shall be responsible for maintaining certain amenities provided for the common benefit of the subdivision, as determined in the sole discretion of the Developer, which presently include but are not limited to the landscaping and signage in the boulevard street serving as the main subdivision entrance, certain private subdivision signage, earthen berms, common lighting, irrigation of landscaping maintained by the Association and other features and/or areas which are more fully described or added by the Developer in the future in the Developer's sole discretion.

IN WITNESS WHEREOF, THE UNDERSIGNED HAVE AFFIXED THEIR SIGNATURES ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

DEVELOPER: Harvest Developers, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF McLEAN                )

I, the undersigned, a Notary Public in said County, in the State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, who is  
personally known to me to be the \_\_\_\_\_ of Harvest Developers,  
Inc., an Illinois corporation, and whose name is subscribed to the foregoing instrument as  
such \_\_\_\_\_, appeared before me this day in person and acknowledged  
that he signed and delivered said instrument as his free and voluntary act as such  
\_\_\_\_\_, and as the free and voluntary act of such company for the  
uses and purposes therein set forth; and on his oath stated that he was duly authorized to  
execute such instrument. Given under my hand and Notarial Seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

