

TAZEWELL COUNTY

This Instrument Prepared By:

Hickory Grove Land Trust  
22427 Woodland Court  
Morton, Illinois 61550

**DECLARATION OF RESTRICTIONS, COVENANTS, AGREEMENTS  
AND PROVISIONS FOR FORMATION OF A  
HOMEOWNER'S ASSOCIATION FOR  
CHEROKEE HILLS**

The undersigned ("Subdivider") owner of the real estate platted as **CHEROKEE HILLS** (the "Subdivision") and legally described in Exhibit A attached hereto and made a part hereof by this reference, **DOES HEREBY DECLARE AND PROVIDE** that said Subdivision and all Lots therein shall be subject to the following covenants, restrictions, easements, charges and liens, and each contract for sale, conveyance or lease thereof shall be made expressly subject to these covenants, restrictions, easements, charges and liens, and each purchaser, grantee or lessee, by the acceptance of such contract, conveyance, or lease shall subject himself his heirs, executors, administrators, successors and assigns to said covenants and restrictions which follow.

The purpose of these covenants and restrictions is to ensure the use of the Lots in the Subdivision for single family residential purposes only, to preserve, insofar as is practicable, the material beauty of the Subdivision and surrounding area, to prevent nuisances, to prevent the impairment of the beauty and the attraction of the Subdivision and surrounding area, to maintain the desired tone of the community, and to provide for a high type of improvement on each Lot and thereby enhance the value of the investments made by the purchasers of the Lots.

**ARTICLE 1**  
**Occupancy and Use**

1. All Lots in the Subdivision shall be used for single family residential purposes only, regardless of the zoning or use restrictions imposed from time to time by any governmental authority.
2. No dwelling shall be occupied until the Certificate of Occupancy has been issued by the appropriate governmental authority and construction of the exterior of the dwelling is complete.
3. No Lot shall be used and no building or improvement shall be constructed and used for mercantile, commercial, manufacturing, professional or business purposes.
4. No Lot, building, or improvement shall be used for any immoral or unlawful purpose, and no noxious or offensive trade or activity shall be carried on upon any Lot, and nothing shall be done thereon which may be or become a nuisance to the Subdivision and owners of Lots therein.
5. There shall be no trailer, basement, or garage house erected, installed or placed on any Lot. No mobile home, manufactured housing, RV, basement, tent, shack or garage shall at any time be used as a residence, temporarily or permanently.
6. No Lot shall be used for the purpose of advertising or the erection of any advertising sign or billboard, provided, however, that signs customarily used in the sale of Lots and dwellings shall be permitted when used for the purposes or selling such Lots and dwellings.
7. No Lot as platted shall be divided so as to result in creating additional Lots and no Lots shall be used to access any other Lot within the Subdivision.
8. No Pot Belly pigs or animals, other than domesticated house pets, shall be kept or maintained within the Subdivision.
9. No Lot shall be used for the storage of new or used construction materials or supplies, junk, wrecked or unused machinery and the like except for construction equipment, materials and supplies during the reasonable period of construction of a building on the Lot.

10. Recreational vehicles, motor homes, trucks, boats, trailers and all other vehicles, except passenger automobiles, shall be garaged when not in use and totally concealed from view. No such vehicles, etc., including those of the Lot owners, shall be parked on the street.
11. No recreational vehicles or devices such as snowmobiles, trail bikes, non-licensed motorcycles, mini-bikes, go-carts or all terrain vehicles (ATVs) shall be operated within the Subdivision.
12. On street parking shall be in conformance with the requirements of the County, or other governmental authority having jurisdiction.

## **ARTICLE II Construction and Maintenance**

1. No building or improvement, including, without limitation, any house, garage, outbuilding, fence, enclosure, swimming pool, wading pool, tennis court, recreational court, driveway, walkway, retaining wall or landscaping shall be erected, placed or altered on any Lot until the building plans, specifications, and plot plan, showing the design, building materials and location of the building or improvement, have been approved in writing by the Subdivider. The building plans and specifications shall include a site plan, a list of material to be used, exterior colors, landscaping plan, draining and grading plan, floor plan, exterior design of dwelling and the name of the building contractor. The following provisions shall apply to such approval requests and approval:
  - (a) All approval requests together with all required plans shall be submitted to the Subdivider for approval at least fifteen (15) days prior to the commencement of any proposed construction. The Subdivider shall have the right, in its sole discretion, to approve or disapprove any approval requests.
  - (b) Upon the event of approval by the Subdivider, the Subdivider, at the request of the Lot owner, shall issue a Certificate of Approval stating that the approval request has been approved by the Subdivider. Approval shall be binding on the Subdivider, provided that the construction strictly complies with the plans and specifications submitted to the Subdivider. Subdivider's approval shall not, however, excuse the Lot owner from compliance with all applicable building and use restrictions, codes, and ordinances, and the Subdivider shall not be liable for the approval of any plans

and specifications which fail to comply with any building or use restrictions, or governmental requirement, code or ordinance. No action shall lie against the Subdivider for Subdivider's failure to approve, or Subdivider's approval of any plans and specifications.

- (c) In the event the plans and specifications submitted to the Subdivider are not approved, the Lot owner shall refrain from any construction for which approval was sought and not received, but shall have the right to submit new plans and specifications for approval to the Subdivider.
- (d) In the event the Subdivider fails to approve or disapprove any plans or specifications within thirty (30) days after such plans and specifications have been submitted to Subdivider or, in any event, if no suit to enjoin the construction in accordance with the plans and specifications has been commenced prior to the completion thereof, such approval shall not be required, and this covenant shall be deemed to have been complied with fully.

2. Construction shall be governed by the following specifications:

- (a) No dwelling shall exceed three (3) stores in height, and shall have a minimum front yard setback of thirty-five (35) feet, but in no event less than any setback set forth on the Plat of the Subdivision or any legal governmental body.
- (b) Roof pitches shall be at least 7/12.
- (c) No dwelling shall have less than the following minimum number of square feet of enclosed living space, exclusive of garages, porches, basements and breezeways:
  - (i) Dwellings of one level – 1,850 square feet above ground.
  - (ii) Dwellings of multiple levels – 2,300 square feet above ground, the first floor area to be not less than 1,400 square feet.
- (d) No wallboard, sheet metal, tar paper or roofing paper shall be used for any exterior wall covering or roofs. Roof colors shall be earth tone.

- (e) No concrete block or poured concrete foundation or wall shall be exposed above grade so as to be visible; provided, however, that poured foundation walls having a brick appearance may be exposed above grade no more than one (1) foot provided that such exposed areas are substantially concealed by landscape plantings.
- (f) Fifty percent (50%) of the front exterior wall area on all dwellings shall be faced with brick or stone. Fireplace enclosures shall not be included in computing the fifty percent (50%) masonry or comparable requirement. The computation of compliance with the fifty percent (50%) masonry or comparable requirement shall be at the sole discretion of the Subdivider following review and approval of building plans and specifications.
  - (i) Lot #1, 11, 12, 27, 28, 39, 46, 47, 50, 51, 54, 55, and 60 shall be held to a standard of two fronts.
- (g) All fireplace enclosures shall be constructed of brick or stone, if the fireplace enclosure is located in the front of the dwelling.
- (h) Except as necessarily incidental to active construction of the buildings and structures, no new or used construction materials or supplies, junk, machinery, or the like shall be kept or allowed to remain on a Lot except inside buildings and concealed from view.
- (i) In the construction of any swimming or wading pool, all machinery and filtering tanks must be either recessed in the ground with an adequate cover, or placed inside a housing approved by the Subdivider.
- (j) No radio towers or similar structures shall be erected or maintained in the Subdivision. All television antennas shall be contained within the dwelling or approved by the Subdivider. Twenty (20) and thirty-six (36) inch diameter satellite dishes may be located on the back of the dwelling structure with approval of the Subdivider.
- (k) No animal pens or kennels shall be erected or maintained in the Subdivision without the written approval of the Subdivider or Association.
- (l) All sidewalks are to be installed at homeowner's expense and completed during the building permit period. Sidewalks shall be four (4) feet wide and minimum four (4) inches thick with tooled joints at approximately five (5) foot spacing. The concrete should be 3500 PSI minimum.

- (m) All driveways, including, but without limitation, those leading from the street right-of-way line to the garage of a dwelling shall be concrete or other hard surface material as is approved by the Subdivider. No fills or embankments shall be made within the Subdivision of materials other than earth, gravel, stone or such other masonry materials as are approved by the Subdivider. The Lot owner shall be responsible for payment of any damage to the street, curb, sidewalks and other Subdivision improvements caused by him or his agents and contractors. White rock driveway shall be installed when construction commences and shall be a minimum width of twelve (12) feet and minimum length of twenty-five (25) feet.
- (n) All garbage or trash cans shall be covered by a permanent lid and concealed from view.
- (o) Each dwelling shall be constructed with a garage having a capacity of no less than two (2) and not more than three (3) passenger automobiles. Any garage structures shall be of compatible design with and attached to the dwelling on the Lot and approved by the Subdivider.
- (p) Clotheslines or posts or other appliances for hanging clothes outside shall be constructed or maintained so as to be screened from view from the streets.
- (q) At the time of construction of the dwelling, there shall also be constructed, at the expense of the Lot owner, a freestanding lamp post and mailbox. The Subdivider shall provide the design for the column or post and mailbox, which design shall be the same for all Lots. The following provisions shall apply to such installations:
- (i) The mailbox shall be installed at a location approved by the Subdivider, in accordance with the requirements of the U.S. Post Office.
  - (ii) The lamp post shall be fitted with an automatic illuminating device which will illuminate the lamp post fixture at dusk, and shall be located at a point twelve (12) feet from the R.O.W. line and five (5) feet next to the driveway.

- (iii) The Lot owner shall maintain the lamp post and mailbox in proper operating condition and in good repair at all times.
  - (iv) In the event either the lamp post or mailbox is constructed in the public right-of-way, the Lot owner shall hold harmless the municipality, township, county, highway commissioner, or applicable governmental authority, from any damage occurring to either the lamp post or mailbox.
- (r) No trees in excess of eight (8) inches in diameter at the base shall be destroyed or removed from the Subdivision without the consent of the Subdivider.
- (s) No building or structure of any kind shall be located on any Lot nearer to the street, side or rear yard lines than the building setback lines shown on the recorded plat of the Subdivision, or as otherwise required by applicable health, zoning or building codes.
- (t) Landscaping shall include planting at least two (2) trees with one (1) being a hardwood of at least three (3) inches in diameter and the other being a fir tree of at least four (4) feet in height, with both to be in the front yard.
- (u) No fences shall be installed on any Lot without the approval of the Subdivider. No chain link fencing shall be allowed except on lots larger than one (1) acre and yet cannot be visible from the road. No fence will be allowed in the front yard or side yard, beyond the rear line of the dwelling.
- (v) No basement or garage houses shall be used as living quarters or permitted on any Lot.
3. Each Lot owner shall maintain his property including all landscaping in a presentable condition. Unreasonable destruction of natural foliage shall be avoided. No refuse, garbage, ashes, waste, debris or any offensive substance or material shall be kept or allowed to remain in the Subdivision except temporarily in suitable containers. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon the property higher than eight (8) inches with an exception to the wooded lots.

4. At such time as construction of a dwelling is commenced, such construction shall be performed continuously and completed within two (2) years after commencement of construction. Construction shall include construction of the dwelling and its appurtenances, the driveway, finished site grading and such ground covers as to prevent any soil erosion on the Lot.
5. No additions to existing structures, out buildings, storage sheds, auxiliary buildings, supplemental structures or pertinence thereto, including swimming pools, fences, mass plantings, walls, paving or other structures or improvements shall be placed or altered on any Lot unless approved by the Subdivider in writing. The same materials that are on the primary dwelling shall be used on any additional building, which shall be a single story.
6. The Subdivider may construct a sign containing the name of the Subdivision on the corner of either one or both of Lots 1 and/or II. Maintenance of such signs shall be by the Association (as defined herein) once it is formed.
7. Developer reserves the right to modify any or all restrictions on Lot 6.
8. Dirt excavated by reason of building or other construction shall not be removed from the subdivision boundaries without the permission of the subdivider/developer. Building materials and debris shall not be dumped on any lot in the subdivision.
9. There will be no structures allowed on the lake except those provided by the developer.

### **ARTICLE III Easements**

1. Easements for public utility installation and maintenance, including installation and maintenance of necessary underground appliances, are reserved as shown on the recorded Plat of the Subdivision. The right is hereby granted to all public and quasi-public utilities to install, lay, construct, renew, operate and maintain pipes, conduits, cable wires and related equipment underground, with all necessary appliances and related equipment for the purposes of serving the Subdivision and adjoining property with gas, electricity, water, sewer, telephone service, and cable television, including the right to



use the streets and walkways where necessary, together with the rights to enter upon the Lots at all times to install, lay, construct, renew, operate and maintain such pipes, conduits, cables and other appliances and related equipment. Similarly, the right is hereby also granted to use the streets and public walkways where necessary, for public utility equipment, provided the right to use the streets and walkways, where necessary, for public utility purposes is granted upon the condition that such use does not obstruct the same or interfere with their use as streets and walkways. No dwelling or other permanent structure shall be placed on such easements but the same may be used for gardens, shrubs, landscaping and other purposes that do not interfere with the use of such easements for public utility purposes.

2. Curtain drains are restricted for the use of curtain septic drain and sump pump drains. There shall be no surface drainage or down spout or other drains emptied into this system.
3. Maintenance of curtain drains shall be the responsibility of the Association, except when there is neglect by a homeowner that causes damage to this system, then the homeowner would be held liable for that expense.
4. No trees, evergreens, or bushes can be planted in the curtain drain easements.

#### **ARTICLE IV Homeowner's Association**

1. A Homeowner's Association to be known as "Cherokee Hills" ("Association") shall be organized upon the occurrence of either of the following events:
  - a. Upon the sale by the Subdivider of all of the Lots in the Subdivision; or
  - b. Upon the sale by the Subdivider of seventy-five percent (75%) of the Lots in the Subdivision together with the written approval of the Subdivider.

For the purpose of determining the number of Lots in the Subdivision under this paragraph, the term "Subdivision" shall include all single family Lots as shown on the Plat of the Subdivision filed at the Office of the Recorder of Deeds of Tazewell County, Illinois. The Subdivider

shall have the right to transfer its rights as Subdivider in connection with a transfer of Lots in the Subdivision and such transfer shall not be construed as a sale of Lots under this paragraph.

2. Organization of the Association shall be effected by instrument in writing and recorded in the Office of the Tazewell County Recorder of Deeds, Tazewell County, Illinois. The Association may be organized as an Illinois not-for-profit corporation in accordance with applicable law.
3. The Subdivider will transfer all its interest to any signs noted in paragraph six (6) of Article II to the Association to be owned and maintained by the Association for the benefit of all Lot owners, subject to reasonable rules and regulations which the Association shall from time to time adopt.
4. Membership in said Association shall be limited to owners of a Lot or Lots in the Subdivision. Each owner of every Lot shall automatically be and become a member of the Association and each member of the Association shall be entitled to have two (2) votes at all meetings for each Lot owned by the member. No member shall be expelled or voting rights cancelled by the Association; provided, however, that no member shall be entitled to vote on any matter during such period of time as such member or his or her lessee is in default in the payment of any bill owed to the Association. The Association may suspend the furnishing of services to any person or persons, or otherwise, during such period of time that bills are not paid by members, their lessees or otherwise.
5. Membership in the Association shall automatically cease and terminate when a person or persons cease or ceases to be an owner of a Lot in the Subdivision.
6. The Association shall have the right, power and authority to make any general or special assessment against members; provided, however, that no general or special assessment shall be made without the giving of notice to all members that the Association will hold a meeting at a time and place to be fixed by said Association for the purpose of levying and charging a general or special assessment, and no general or special assessment shall be made by the Association without the consent and approval of a majority of all votes of eligible members of the Association. The Association shall also have the right, power and authority to fix the time when general or special assessments shall be

payable and said assessment or assessments shall bear interest at the rate of eight percent (8%) per annum or prime rate, whichever is greater, from due date, and the payment of both principal and interest may be enforced by the Association as a lien on the real estate on which said bill of special assessment is made and said lien may be enforced in any court in Tazewell County, Illinois, having jurisdiction of suits for the enforcement of such liens. The Association shall, in addition to the foreclosure proceedings above and hereafter provided for, have the right to institute actions in law against the owner or owners of said Lots to recover any part of special assessment made by it and not paid by the owner or owners to the Association. Likewise, the Association may foreclose or sue in civil court of any unpaid amounts due it by Lot owners pursuant to these restrictions. The Association upon formation shall establish quorum rules.

7. As soon as conveniently possible after organization of the Association, a meeting shall be called pursuant to a written notice given by the Subdivider to all owners of Lots in the Subdivision. Said notice to be given to said owners of the time and place of the meeting to be held. At the first meeting so held three (3) directors shall be elected by the owners of all Lots. Directors so elected shall hold office until the first annual meeting to be held by the Association. The Directors so elected shall immediately after the adjournment of the meeting of members of the Association, elect from their members a President, a Secretary and a Treasurer and such other officers as they shall deem necessary. The business affairs of the Association shall thereafter be managed by the Board of Directors elected by the Owners. In the event of a vacancy in the office of Director, due to death, resignation or no longer being the owner of a Lot, the remaining Directors shall elect a successor Director or Directors to serve for the unexpired term on the office to which he or she succeeds. The Board of Directors shall also have the right and power to fill any vacancy which might occur in any office of the corporation.
8. The Association, after its organization, shall have its annual meetings in January of each year and the Secretary of said Association shall notify all members in writing at least thirty (30) days before the holding of said annual meeting of the time and place of said annual meeting. At the first annual meeting three (3) directors shall be elected. Director receiving the highest votes will serve for a three year term; director receiving second highest vote will serve for a two year term; and director receiving the least votes will serve for a one-year term. All subsequent elections shall consist of three-year terms.

9. At each annual meeting of the Association, Directors shall be elected to fill the office of the Director whose term expires at the time of the holding of said annual meeting. The Association shall adopt By-laws to provide for the holding of any special meeting and the transaction of other businesses not inconsistent with the provisions of law or the provisions hereof. The size of the board may be increased by the Homeowner's Association By-laws, but total board number must remain an odd amount.
10. The board shall have the right to adopt such other rules and procedures as it deems appropriate.
11. Payment of street light electricity is the obligation of the Homeowner's Association.

#### **ARTICLE V Enforcement**

1. The within covenants and restrictions of this Declaration shall run with the land and shall be binding on all parties acquiring any interest in the property or Lots covered hereby, and all persons claiming under them until the same shall be amended, altered or rescinded.
2. If any party or his heirs or assigns shall violate or attempt to violate any of the covenants and restrictions contained herein, it shall be lawful for any other person or persons owning any Lot situated in the Subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages for such violation. The right to enforce the covenants contained herein shall also be vested in the Subdivider and the Homeowner's Association upon its formation. The Subdivider and the Association shall be entitled to collect court costs and reasonable attorney's fees in connection with the enforcement of these restrictions.
3. Subdivider may, by an instrument in writing, properly acknowledged by it, assign and convey to any other person, corporation or entity, all of the rights, reservations and privileges herein reserved to it, and Subdivider shall have the further right to designate in writing, properly acknowledged, an agent for Subdivider to act for and, on behalf of Subdivider in all matters pertaining to this Declaration and all person or persons shall have the right to rely on any such designation in writing so naming Subdivider's agent as to all matters set forth herein.

4. The rights, reservations and privileges of the Subdivider shall remain with the Subdivider or its appointed agent or successor until formation of the Association. Upon formation of the Association, such rights and privileges shall become vested in the Association with further act or deed.

## **VI**

### **Amendments, Modifications and Waivers**

1. These restrictions, reservations and covenants may be altered, amended or rescinded by a declaration in writing, signed by the Subdivider until such time as the Homeowner's Association shall be formed, and thereafter any alteration, amendment or rescission shall be made by declaration signed by the owners 2/3 majority of all Lots in the Subdivision. Any alteration, amendment or rescission of this Declaration shall be in writing and filed in the Office of the Recorder of Deeds of Tazewell County, Illinois, and such alteration, amendment or rescission shall not be valid or binding until so recorded.
2. In the event that compliance with any of the provision of this Declaration, in the opinion of the Subdivider or Association, as the case may be, causes undue hardship on any owner of any Lot or Lots, then in that event, a special written permission may be given by the Subdivider or said Association, to deviate from the provisions contained herein in the manner as set forth in said written permission. The written permission shall have the effect of a waiver of the provision with respect to the specific Lot or Lots so mentioned in said letter and shall in no way affect this Declaration as such restrictions pertain to any other Lot or Lots in the Subdivision. Any such special written permission shall not be effective until it has been reduced to writing and filed for record in the Office of the Recorder of Deeds of Tazewell County, Illinois, to be indexed against the Lot or Lots affected.

## **ARTICLE VII**

### **Miscellaneous**

1. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the real estate, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon the real estate. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the real estate.

2. All of these restrictions, covenants and conditions apply not only to the first building, improvement or structure located on each Lot, but also to any building, structure or improvement thereafter erected as long as these restrictions, conditions and covenants remain in force and effect.
3. These restrictions, covenants and conditions are to run with the land and are binding upon and inure to the benefit of the successors and assigns of the undersigned and all present and future persons, firms, associations, or corporations owning or having an interest in the real estate or a part thereof.
4. The invalidity of any provision herein shall not impair the validity of any other provision. If any provision herein is determined by a court of competent jurisdiction to be unenforceable, that provision will be deemed severable and the remaining provisions herein shall be enforced with that provision severed or as modified by the court.
5. Lot owners shall be responsible for compliance with any City ordinances, State statutes, Federal statutes, Federal Environmental Protection Agency (EPA) and Illinois Environmental Protection Agency (IEPA), and their successors and assigns, regulations, and shall hold Subdivider harmless from any claims, penalties or other costs related to violation by Lot owner of any of the references rules. Further, if Subdivider incurs costs related to failure of the Lot owner to comply with these references ordinances, statutes, or regulations, the Lot owner shall reimburse Subdivider for these costs and attorney's fees incurred in any action by Subdivider to obtain reimbursement from Lot owner. Subdivider shall also have the right to place a lien on the Lot involved in the violation to secure payment of any costs and fees Subdivider incurs. If Subdivider's IEPA permit has been terminated, Lot owner shall submit a Notice of Intent to IEPA thirty (30) days before the starting of construction on their Lot and develop a Storm Water Pollution Prevention Plan for said Lot and obtain any necessary permits from any governmental agency regulating construction on said Lot. Lot owners shall consult the Subdivider prior to starting construction to determine if the Subdivider's permit has been terminated.
6. As used herein, unless the context clearly indicates to the contrary, the singular number shall include the plural, the plural singular and the use of any gender shall be applicable to all genders.

**VIII**  
**Legal Description**

As recorded on Final Plat of Cherokee Hills Subdivision Phase I.

IN WITNESS WHEREOF, the Subdivider has caused this Declaration of Restrictions to be signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Hickory Grove Land Trust  
Subdivider

By \_\_\_\_\_  
LEW E. NAUMAN, Trustee

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF TAZEWELL        )

I, the undersigned, a Notary Public in and for said County and state aforesaid, DO HEREBY CERTIFY that HICKORY GROVE LAND TRUST, and by LEW E. NAUMAN, Trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as the free and voluntary act of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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