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SECOND AMENDMENT, BEING A RESTATEMENT OF THE
DECLARATION AND FIRST AMENDMENT AND RESTATEMENT OF
RESIDENTIAL COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE FOUNTAINS OF SUNSET.

This document prepared by and return to:

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SECOND AMENDMENT, BEING A RESTATEMENT
OF THE
DECLARATION AND FIRST AMENDMENT AND RESTATEMENT
OF RESIDENTIAL COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE FOUNTAINS OF SUNSET

PREAMBLE

The Subdivision Plat of The Fountains of Sunset was recorded in the Office of the Madison County, Illinois, Recorder of Deeds in Plat Book Volume PC 63, Page 172 on September 18, 2003 as Document Number 2003R72026, and is designated as The Fountains of Sunset.

THE FOUNTAINS OF SUNSET LLC, an Illinois limited liability company, as the "Declarant" on March 19, 2001, promulgated its Declaration of Residential Covenants, Conditions and Restrictions, dated February 21, 2001, said Declaration being recorded as Document 2001R11272 in Book 4421, Page 1601, in the Office of the Recorder of Deeds, Madison County, Illinois, and THE FOUNTAINS OF SUNSET, LLC, an Illinois Limited Liability Company, as the "Declarant" on July 1, 2003, promulgated its First Amendment and Restatement of Residential Covenants, Conditions and Restrictions, said First Amendment and Restatement being recorded as Document 2003R52357 in Book 4589, Page 3839, in the Office of the Recorder of Deeds, Madison County, Illinois.

Section 22.2, "Amendment" of the Declaration and Section 23.2, "Amendment" of the First Amendment and Restatement state as follows:

"Except as provided in paragraph 5.1.5, this Declaration may be amended upon the written consent of at least two-thirds (2/3) of the Members. Amendments to this Declaration shall become effective upon recordation in the Madison County Office of the Recorder of deeds, unless a later effective date is specified in the recorded Amendment. This provision is subject to the provisions of Article V of the Declaration encompassing rights of Declarant. Major amendments to these Covenants and Restrictions shall be subject to approval by the Village of Glen Carbon Board of Trustees."

Section 5.1.5, "Amendment" of the Declaration and First Amendment and Restatement states as follows:

"Section 5.1.5. Amendment. Declarant reserves the right to amend this Declaration by modification, addition, or deletion of any provisions hereof for a period extending from the date of recording of this Declaration to the earlier of the sale and conveyance of all lots in the Property or conveyance by Declarant to the Association of all common ground(s) to be conveyed to it. Major

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amendments or modifications to these Covenants and Restrictions shall be subject to approval by the Village of Glen Carbon Board of Trustees."

Neither have all the lots been sold in the Property nor have all the common grounds been conveyed to the Association.

The Declarant wishes to amend the Declaration and First Amendment and Restatement by restating them in their entirety, and by making those further amendments shown in this "Second Amendment, Being a Restatement of the Declaration and First Amendment and Restatement of Residential Covenants, Conditions and Restrictions for the Fountains of Sunset." Such further amendments include the following, formerly enumerated as "Section 5.1.5. Amendment," and shall, upon approval of the Board of Trustees of the Village of Glen Carbon, provide:

Declarant reserves the right, upon written consent of Fifty-One percent (51%) of its Members, to amend this Declaration by modification, addition, or deletion of any provisions hereof for a period extending from the date of recording of this Declaration to the earlier of the sale and conveyance of all Lots in the Property or conveyance by Declarant to the Association of all common ground(s) to be conveyed to it. Amendments to this Declaration shall become effective upon their recordation in the Office of the Madison County Recorder of Deeds unless a later effective date is specified therein; provided, however, this provision and any modification, amendment, addition or deletion of this Declaration is subject to the rights of Declarant set forth in Article V and elsewhere herein; further provided, this Declaration may not have major amendments or modifications made to it without presenting the issue to the Planning and Zoning Commission of the Village of Glen Carbon, or its successors, and receiving the approval of the Board of Trustees of the Village of Glen Carbon. After the original Declaration (and thereafter any rescissions or amendments thereto) have been recorded with the Office of Recorder, Madison County, Illinois, the Declarant or Homeowner's Association, as the case may be, shall provide a properly recorded copy of same to the Village of Glen Carbon.

This Second Amendment, Being a Restatement of the Declaration and First Amendment and Restatement of Residential Covenants, Conditions and Restrictions for the Fountains of Sunset may not be hereafter amended or modified at any time without presenting the issue to the Planning and Zoning Commission of the Village of Glen Carbon or its successors, and receiving the approval of the Board of Trustees of the Village of Glen Carbon. After recording any such amendment or modification with the Office of Recorder, Madison County, Illinois, the Declarant or Homeowner's Association, as the case may be, shall provide a properly recorded copy of same to the Village of Glen Carbon.

NOW, THEREFORE, the Declarant, The Fountains of Sunset LLC, hereby amends the Declaration and First Amendment and Restatement of Residential Covenants,

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Conditions and Restrictions for The Fountains of Sunset, by restating the Declaration and First Amendment and Restatement of Residential Covenants, Conditions and Restrictions for The Fountains of Sunset in their entirety, as follows:

THIS SECOND AMENDMENT, BEING A RESTATEMENT OF THE DECLARATION AND FIRST AMENDMENT AND RESTATEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOUNTAINS OF SUNSET is made as of the _____ day of _____, 2004, by THE FOUNTAINS OF SUNSET LLC, an Illinois limited liability company.

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real property in Madison County, Illinois, and desires to create thereon a planned unit development community to be known as "The Fountains of Sunset" with open spaces, walkways and common facilities for the benefit of said community; and

WHEREAS, the Subdivision plat of The Fountains of Sunset has been recorded in the Office of the Madison County, Illinois, Recorder of Deeds in Plat Book Volume PC 63, Page 172 on September 18, 2003 as Document Number 2003R72026, and is designated as The Fountains of Sunset; and

WHEREAS, Declarant desires to ensure the attractiveness of the development and to preserve, protect and enhance the values and amenities of said property by the adoption of a sound urban environmental plan and set of covenants, conditions and restrictions to govern said property, and to provide for the maintenance of the Common Ground(s); and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which the Common Ground(s) should be conveyed, and which should have the powers of maintaining and administering the Common Ground(s) and administering and enforcing the covenants, conditions and restrictions hereinafter set forth and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Illinois, The Fountains of Sunset Homeowners Association, an Illinois not-for-profit corporation, for the purpose of exercising the functions aforesaid, and The Fountains of Sunset Homeowners Association joins in the execution of this Second Amendment and Restatement of the Declaration and its execution of this Second Amendment and Restatement of the Declaration is intended to indicate its consent; and

WHEREAS, there have been and will be designated, established and recited on a recorded plat or by other appropriate recorded instruments of the Subdivision, easements which are for the exclusive use and benefit of the Owners of the Lots shown and to be

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shown on the Subdivision Plat, and some of these easements may now or may hereafter be dedicated to public bodies and agencies; and

WHEREAS, it is the purpose of this Second Amendment and Restatement of the Declaration to provide a plan for maintaining the Common Ground(s); and to provide certain architectural and design controls of structures; and certain use restrictions, all for the benefit of the Owners, their heirs, successors, and assigns and the subsequent Owners, being principally the purchasers of Lots in the Subdivision, so that the Subdivision will have desirable features; and

WHEREAS, the Declarant now creates and establishes the following Second Amendment and Restatement of the Declaration of Covenants, Conditions and Restrictions for The Fountains of Sunset, which is to be binding on the land of the Subdivision as it may exist at the time of the recording of this Second Amendment and Restatement of the Declaration and as the Subdivision may be later augmented by future recorded plats; and

WHEREAS, Declarant hereby declares that all of the Lots described as The Fountains of Sunset shall be held, sold and conveyed subject to the covenants, conditions and restrictions stated below, all to which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions and restrictions shall run with the Property, and shall be binding on all parties, their heirs, successors, and assigns, regardless of what title or interest they may have in the Property or any part of the Property, and shall inure to the benefit of each Owner until March 1, 2034, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of sixty-seven percent (67%) of all Owners of the Lots, it is agreed to change said covenants, conditions and restrictions in whole or in part; and

WHEREAS, this Second Amendment and Restatement is an amendment of the existing First Amendment and Restatement of the Declaration and shall be effective, as provided in this amendment, upon its approval by the Board of Trustees of the Village of Glen Carbon.

NOW, THEREFORE, the Declarant declares that the property described as The Fountains of Sunset and such additions thereto as may hereafter be made pursuant to these covenants, conditions and restrictions is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE 1 **DEFINITION OF TERMS**

Section 1.1. Definitions. The following words when used in this Second Amendment and Restatement of Declaration, unless the context shall clearly indicate a different meaning, shall have the following meanings:

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Section 1.1.1. "The Fountains of Sunset" shall mean and refer to the Subdivision.

Section 1.1.2. "Architectural Control Committee" shall mean the committee responsible for architectural and environmental compliance and restrictions for the Property as described in ARTICLE XIII of this Second Amendment and Restatement of Declaration. "Architectural Control Committee" shall apply to the Declarant, the aforesaid Committee, or the Board of Directors, whichever is acting as same at the time.

Section 1.1.3. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association.

Section 1.1.4. "Association" shall mean and refer to The Fountains of Sunset Homeowners Association, an Illinois not-for-profit corporation, and its successors and assigns, which was created by the Declarant.

Section 1.1.5. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.1.6. "Boarder" shall mean a person who is not a member of the immediate family of the Lot Owner or principal occupant of a dwelling (with the exception of parents or foreign exchange students) but who resides therein and pays rent or remuneration in kind to the Lot Owner or principal occupant.

Section 1.1.7. "By-laws" shall mean and refer to the By-laws of the Association.

Section 1.1.8. "Common Ground(s)" shall mean and refer to those areas of land, common walking trails, retention basins and ponds, certain storm sewers, lakes, entrance monument, landscaping, plantings, lawn care and other common facilities owned by the Association and intended to be devoted to the common and non-exclusive use and enjoyment of the Members of the Association.

Section 1.1.9. "Declarant" means The Fountains of Sunset LLC, an Illinois limited liability company and its successors and assigns.

Section 1.1.10. "Declaration" shall mean and refer to this Second Amendment and Restatement of Declaration of Residential Covenants, Conditions and Restrictions for The Fountains of Sunset.

Section 1.1.11. "Easement Property" shall mean that certain property designated as easements on the Subdivision Plat.

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Section 1.1.12. "Living Unit" shall mean and refer to any portion of a building on the Property designed and intended for independent residential use.

Section 1.1.13. "Lot" shall mean and refer to any plot of land shown on any final recorded subdivision plat of the Property with the exception of Common Ground(s) as herein defined.

Section 1.1.14. "Member" or "Members" shall mean and refer to all those Owners who are Members of the Association as defined in Article IV Section 4.1 of this Declaration. For the purpose of this Declaration, the word "Member" shall include any beneficiary of a trust holding legal title to one or more Lots.

Section 1.1.15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property but shall not mean or refer to the holder of a security interest in any Lot unless and until such security interest holder has acquired title pursuant to foreclosure or any lawful proceeding in lieu of foreclosure.

Section 1.1.16. "Property" shall mean and refer to all real property described in the Subdivision, and a legal description of which real property is attached hereto and incorporated herein as Exhibit A. "Property" shall also include such additions to the real property of the Subdivision as may later be annexed thereto in accordance with the provisions of this Declaration. When such additions are made in accordance with the provisions of this Declaration, Exhibit A shall be deemed to include the legal descriptions of such additional real property without the requirement of recording the additional legal descriptions to amend Exhibit A.

Section 1.1.17. "Rules and Regulations" are those rules and regulations established by the Association through its Board of Directors that may from time to time be adopted regarding the use and occupancy of the Lots and the activities of occupants of the Living Units and further described in Article III Section 3.2 of this Declaration.

Section 1.1.18. "Subdivision" shall mean and refer to the subdivision known as The Fountains of Sunset as shown on the Subdivision Plat.

Section 1.1.19. "Subdivision Plat" shall mean and refer to the Amended Section Plan / Final Plat of the resubdivision of The Fountains of Sunset, recorded in the Office of the Madison County, Illinois Recorder of Deeds in Plat Book Volume PC 63, Page 172 on September 18, 2003 as Document Number 2003R72026.

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Section 1.1.20. "Dues" shall mean the amount of money assessed by the Homeowners Association for the purpose of maintaining the subdivision common areas and entrance and for paying the electric and any other bills necessary for the proper operation of the Homeowners Association.

Section 1.1.21. "Assessments" shall mean any expenditure for a capital improvement in excess of \$5,000 to the property maintained by the Homeowners Association.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION- EXISTING AND ADDITIONS

Section 2.1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Madison County, Illinois, and is more particularly described on the Subdivision Plat referred to in this Declaration.

Section 2.2. Additions to Existing Property. The Declarant, upon the approval of the Village of Glen Carbon, may from time-to-time add to the Property subject to these covenants, conditions and restrictions such land as is now owned or hereafter owned or approved for addition by the Declarant. Declarant, however, shall be under no obligation to add to the Property if it determines, in its sole judgment, that said addition is not in the best interests of the Property.

Section 2.2.1. The additions authorized under this Article II of this Declaration shall be made by executing and filing of record in Madison County, Illinois, an instrument or plat executed by Declarant which shall extend this Declaration to such additional properties. Said instrument may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties that is not inconsistent with the scheme and intent of this Declaration, and may limit the availability of the Common Ground(s), or portions thereof, including the prohibition of use thereof, to such added properties, subject to the limitation of applicable zoning and subdivision ordinances.

Section 2.3. Change in Subdivision Plat. Declarant may have been, or may in the future may be, required to resubdivide the Property in order to achieve the overall plan for The Fountains of Sunset as described in this Declaration or to effect other aspects of the development of the Subdivision. Declarant shall have no liability to the Association, the Owners or any other party of interest as a result of such changes in the Property, it being understood by all parties that such resubdivision may be necessary in order to carry out the plan for The Fountains of Sunset as described in this Declaration.

ARTICLE III

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PERSONS SUBJECT TO DECLARATION AND TO RULES AND REGULATIONS

Section 3.1. Declaration. All Lot Owners, tenants, trustees, trust beneficiaries, deed of trust beneficiaries, mortgagees, guests, and occupants of Lots or Living Units shall comply with this Declaration. The acceptance of a deed, the exercise of any indicia of ownership, the entering into a lease, the acceptance of a mortgage or deed of trust, or the entering into occupancy of a Lot or Living Unit constitutes an agreement that the provisions of this Declaration are accepted and ratified by such Lot Owner, tenant, trustee, trust beneficiary, deed of trust beneficiary, mortgagee, guest or occupant. All the provisions of this Declaration are covenants running with the land and shall bind any persons having an interest or estate in such Lot or Living Unit at any time.

Section 3.2. Adoption of Rules and Regulations. The Association, through its authorized Board of Directors, may from time to time adopt Rules and Regulations regarding the use and occupancy of the Lots and the activities of occupants of the Living Units. All Lot Owners, tenants, trustees, trust beneficiaries, deed of trust beneficiaries, mortgagees, guests, and occupants shall comply with the Rules and Regulations as promulgated by the Association, whether or not said Rules and Regulations have been recorded in the Office of the Madison County, Illinois, Recorder of Deeds.

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

Section 4.1. Membership. Every person or entity who is a record Owner of a fee simple interest or undivided fee simple interest in any Lot which is subject to this Declaration shall automatically be a Member of the Association. The rights of a Member shall be exercisable appurtenant to and in conjunction with a Member's ownership of a Lot. For each Lot owned, whether vacant or improved, the Owner thereof shall be entitled to one (1) membership, and shall be considered one (1) Member. Membership as a Member shall confer certain rights and privileges as described herein, provided that any person or entity who holds an interest merely as security for the performance of an obligation shall not be a Member. Each purchaser of any Lot shall be a Member of the Association whether or not it shall be so expressed in any deed or other conveyance. Ownership of such Lot shall be the sole qualification for membership as a Member.

Section 4.2. Transfer. The membership of a Member held by any Owner of a Lot shall not be transferred or pledged in any way except upon the sale of such Lot, and then only to the purchaser of such Lot, and further excepting death, where the ownership may be transferred by will, trust, or operation of law. Any attempt to make a prohibited transfer is void, and will not be reflected in the books and records of the Association. Any conveyance or change of ownership of any Lot shall convey with it membership as a Member in the Association, and no membership as a Member in the Association shall be conveyed by a Lot Owner except in conjunction with the sale of a Lot, or as stated, by reason of death where the ownership is transferred by will, trust, or operation of law. The sale or permissible conveyance of any Lot shall carry with it all the characteristics of membership as a Member in the Association, although such membership as a Member is

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not expressly mentioned in the deed; provided, however, no right or power conferred upon the Association shall be abrogated.

Section 4.3. Voting Rights. The Association shall have one (1) class of voting membership of the Members. Each Member of the Association shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds a fee or undivided fee interest in any Lot, the vote for such Lot shall be exercised as they among them shall determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Section 4.4. Dues. The initial Homeowners Association dues will be One Hundred Fifty Dollars (\$150) per Lot per quarter for each Lot owned by an Owner, and One Hundred Fifty Dollars (\$150) per year for each Lot owned by the Declarant. The initial charge will be collected at closing for the first year and for subsequent years all annual charges are due by April 30 of each year.

ARTICLE V **DECLARANT RIGHTS**

Section 5.1. Reservations by Declarant. Notwithstanding any provisions of this Declaration to the contrary, the Declarant reserves the following rights, powers, and exceptions regarding every Lot subject to the terms and provisions of this Declaration:

Section 5.1.1. Additional Property. Declarant reserves the right to add additional real property which may become subject to this Declaration by reference in a recorded plat, which shall require only the execution and recording by Declarant, and which shall specifically subject the parcel or parcels to this Declaration; provided that the additional property shall be contiguous to the property which is already subject to this Declaration; provided further, that Declarant's rights pursuant to this Article V Section 5.1.1 of this Declaration shall be consistent with the provisions in Article II Section 2.2.1 of this Declaration.

Section 5.1.2. Signs. Nothing herein shall be construed to prohibit the Declarant from establishing or erecting such promotional signs as it shall determine necessary, in its sole discretion, on any Lot or Lots of the Property or the Common Ground. Any such promotional sign may be of a type, size, and character as Declarant solely shall determine suitable to advertise the availability of a Lot or Lots for sale. All signs constructed for these purposes shall be subject to the Village of Glen Carbon ordinances.

Section 5.1.3. Liability for Assessments. So long as any Lot shall be owned by the Declarant, such Lot shall not be subject to the provisions of Article XI of this Declaration, and the Declarant shall not be subject to the requirements thereof, and shall in no manner whatsoever be held responsible for the payment of any monthly, special, or specific

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assessment hereunder. Any assessment voted solely by the Homeowners and not by the Declarant will be subject to this section.

Section 5.1.4. Refunds. Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended, deposited, placed in escrow, or subsequently provided by it for sewers, utility facilities or services, streets, subdivision fees, consultation fees, or any other purpose of any nature or description with respect to any land which is not or may in the future be made subject hereto. Until such time as ninety-five percent (95%) of all of the Lots subject to this Declaration have been conveyed, Declarant further reserves the right to receive and retain any monies, damage payments or condemnation awards for any easement or other interest granted or condemned as to the Common Ground(s) within the Property subject hereto.

Section 5.1.5. Streetlights. Declarant may enter into a binding contractual arrangement with any electric company to provide streetlights, in its sole discretion, in the Subdivision, and the Association shall take by assignment the Declarant's contractual obligations.

ARTICLE VI **CREATION OF THE ASSOCIATION**

Section 6.1. Declarant has formed a not-for-profit corporation created under the laws of the State of Illinois known as "The Fountains of Sunset Homeowners Association," which corporation shall exercise all the rights, duties, powers, and privileges granted the Association under the terms of:

- 1) this Declaration;
- 2) the Articles of Incorporation;
- 3) the By-laws; and
- 4) the laws, statutes, regulations, rules and the like of the State of Illinois pertaining to a not-for-profit corporation.

Section 6.2. The Association is vested with the right in its own behalf and on behalf of each Lot Owner to enforce all the restrictions, conditions, easements, liens, and covenants contained in this Declaration.

Section 6.3. Every right, duty, power, and privilege that this Declaration gives the Association or which is given to the Association by its Articles of Incorporation or By-laws, shall be vested in the Board of Directors, unless otherwise specified expressly in this Declaration.

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ARTICLE VII
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 7.1. Common Ground(s). The Association, through the Board of Directors, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management, maintenance and control of the Common Ground(s), the easement areas, and all improvements thereon (including furnishings and equipment related to them, if any), and certain storm sewers, and shall keep such Common Ground(s), easement areas and all improvements thereon (including furnishings and equipment related to them, if any) in good, clean, attractive and sanitary condition, order, and repair.

Section 7.1.1. Conveyance of Common Grounds to the Association. Declarant anticipates development of the subdivision in three phases, I, II, and III. Following the close of the sale of twenty-five percent (25%) of the lots in each phase of the development of the subdivision, the Declarant shall convey the common grounds associated therewith to the Association.

Section 7.2. Streets. The streets as shown on the Subdivision plat will be deeded to the public. Parking in the street will be used only temporarily for visitors. The Owner of each Lot shall provide paved off street parking adequate for each vehicle of Owner and Owner's family occupying the premises. All driveways and parking spaces will be concrete.

Section 7.3. Entrance of The Fountains of Sunset. The entrance to the Property at The Fountains of Sunset shall be the responsibility of and shall be maintained by the Association.

Section 7.4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it by this Declaration or reasonably necessary to effectuate any such right or privilege given to it by this Declaration or to carry out the intent of this Declaration.

ARTICLE VIII
BOARD OF DIRECTORS POWERS AND DUTIES

Section 8.1. Powers and Duties. The Board of Directors may act in all instances on behalf of the Association, unless a vote of the Members is required by this Declaration, Articles of Incorporation or By-laws of the Association. Consistent with the provisions of this Declaration, the Board of Directors shall have the powers necessary for, and the duties which flow from, the administration of the affairs of the Association and of the Subdivision, which shall include, but not be limited to, the following:

Section 8.1.1. Adoption and amendment of By-laws and Rules and Regulations;

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Section 8.1.2. Adoption and amendment of budgets for revenues, expenditures, and reserves;

Section 8.1.3. Collection of assessments from Owners;

Section 8.1.4. Hiring and discharging of managing agents;

Section 8.1.5. Hiring and discharging of employees, agents and independent contractors;

Section 8.1.6. Instituting, defending, or intervening in litigation or administrative proceedings in the Association's name on behalf of the Association on matters affecting the Subdivision;

Section 8.1.7. Making contracts and incurring liabilities;

Section 8.1.8. Establishing an Architectural Control Committee of the Association and appointing members thereto, pursuant to Article XXI, Sections 21.1 and 21.3 of this Declaration, and promulgating such rules for the proceedings of said Committee as may be appropriate;

Section 8.1.9. Regulating the use, maintenance, repair, replacement and modification of the Subdivision easements and Common Ground(s);

Section 8.1.10. Causing additional improvements to be made as a part of the Subdivision;

Section 8.1.11. Acquiring, holding or encumbering, in the Association's name, any right, title or interest to real property or personal property and conveying, dedicating or transferring all or any part of the Common Ground(s) to any public agency or authority for such purposes and subject to such conditions as the Board may determine;

Section 8.1.12. Granting easements for any period of time, including permanent easements;

Section 8.1.13. Imposing charges, interest, or both for late payment of assessments and, after notice, levying reasonable fines for violations of this Declaration and the Rules and Regulations of the Association;

Section 8.1.14. Imposing reasonable charges for statements of unpaid assessments and/or statements of account;

Section 8.1.15. Providing for the indemnification of the Association's officers and directors and maintaining directors' and officers' insurance;

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Section 8.1.16. Assigning the Association's right to future income, including the right to receive assessments;

Section 8.1.17. Exercising any other powers conferred by this Declaration;

Section 8.1.18. Exercising all other powers that may be exercised in the State of Illinois by legal entities of the same type as the Association;

Section 8.1.19. Exercising any other powers necessary and proper for the governance and operation of the Association.

Section 8.2. Eminent Domain. In the event it shall become necessary for any public agency to acquire all or any part of the property of the Association, the Association is authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisition by eminent domain become necessary, only the Board of Directors need be made parties, and in any event, the proceeds received shall be held by the Association.

Section 8.3. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including legal fees incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, willful misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify, defend, and forever hold each officer and director free and harmless against any and all liability to others on account of any such contract or commitment. This right to indemnification shall not exclude other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a common expense, maintain adequate general liability and directors' and officers' liability insurance to fund this obligation, if such insurance is available.

ARTICLE IX

SELECTION OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 9.1. General Powers. The business and affairs of the Association shall be managed by its Board of Directors.

Section 9.2. Number, Election and Term. The number of Directors of the Association shall be five (5), each of whom shall initially be appointed by the Declarant and known as the "Original Directors." The first Original Director shall be appointed for a one (1) year term, the second Original Director shall be appointed for a two (2) year term, the third Original Director shall be appointed for a three (3) year term, the fourth

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Original Director shall be appointed for a four (4) year term, and the fifth Original Director shall be appointed for a five (5) year term.

Section 9.2.1. Upon the expiration of each of the Original Directors' terms, a successor Director shall be appointed by the Declarant or elected by the Members, as the case may be and as set forth hereinafter, for a five (5) year term. In the case of disability, refusal to act, death or resignation of a Director appointed by the Declarant, the Declarant may, in addition, appoint a successor Director for the unexpired term of such Director.

Section 9.2.2. At such time as fifty percent (50%) of the Lots have been sold and transferred of record, the Original Director and second Original Director initially appointed, or his or her successor shall be replaced by election of the Members.

Section 9.2.3. At such time as ninety-five percent (95%) of the Lots have been sold and transferred of record, the Third Original Director initially appointed, or his or her successor shall be replaced by election of the Members.

Section 9.2.4. At such time as one hundred percent (100%) of the Lots have been sold and transferred of record, the Fourth and Fifth Original Directors initially appointed, or his or her successor shall be replaced by election of the Members.

Section 9.2.5. Whenever replacement by an election is required hereunder, an election shall be held at a meeting of the Members called for that purpose, after notice thereof as provided in the By-laws. Elections of directors other than Original Directors or successors as appointed by the Declarant shall be held at each annual meeting of the Association to elect a Director for a term of five (5) years upon the expiration of the term of each such Director, so that the term of one such Director shall expire annually. If the record owner of a Lot is a corporation, the President or Vice President of the corporation may designate a person in its behalf as a person eligible for appointment or election as a Director. In the case of the death, resignation or disqualification of any one or more of the Directors, other than the Directors appointed by the Declarant, a successor or successors of such Directors shall be elected by the Members at a meeting called for that purpose after notice thereof as provided in the By-laws. Where the provisions of this Declaration cannot be fulfilled by reason of unfilled vacancies among the Directors, the Village Council of the Village of Glen Carbon, Illinois, may upon petition of any Lot Owner or resident of the Subdivision, appoint one or more Directors to fill vacancies until such time as Directors are elected in accordance with the By-laws. Any person so appointed who is not a Lot Owner or a resident of the Subdivision shall be allowed a reasonable fee for his or her services by the order of appointment, which fee shall be levied as a special

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assessment against the Property in the Subdivision, and which shall not be subject to any limitation on special assessments contained in this Declaration or elsewhere.

ARTICLE X
PROPERTY RIGHTS IN THE COMMON GROUND(S)

Section 10.1. Members' Easements of Enjoyment. Subject to the right reserved herein to limit or prohibit the use of Common Ground(s), and subject to the provisions of Article X Section 10.2 of this Declaration, every Member of the Association shall have a right and easement of enjoyment in and to the Common Ground(s), and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 10.2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

Section 10.2.1. The right of the Declarant and of the Association to borrow money for the purpose of improving the Common Ground(s) and in aid thereof to mortgage or otherwise burden or encumber said property; and

Section 10.2.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Ground(s) against foreclosure; and

Section 10.2.3. The right of the Association to promulgate Rules and Regulations governing the use of the Common Ground(s), including, without limitation, the right to restrict or limit their usage or to permit, on such terms as deemed appropriate by the Board, their use by non-Members; and

Section 10.2.4. The right of the Association, as provided in its By-laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for such period as it considers appropriate for any infraction of its published Rules and Regulations; and

Section 10.2.5. The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Ground(s) and to require licenses and license fees where it is deemed necessary by the Board; and

Section 10.2.6. The right of the Association to dedicate or transfer all or part of the Common Ground(s) to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association and public agency or authority; and

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Section 10.2.7. The right of the Declarant or other builder-developers authorized in writing by the Declarant to utilize Common Ground(s) for promotional purposes during periods of development; and

Section 10.2.8. The right of the Association to grant such easements and rights of way to such utility companies, public agencies, authorities, and other persons or entities as it shall deem necessary or appropriate; and

Section 10.2.9. The right of the Association to enter into licensing agreements with commercial enterprises for the operation of recreational facilities and related concessions for the benefit of Owners and residents of the Subdivision.

ARTICLE XI

ASSESSMENTS AND COLLECTION

Section 11.1. Purpose of Assessment. The assessments described in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the Lots and Living Units in the Subdivision, including the maintenance of real property or other property used in conjunction with the real property constituting the Common Ground(s), all as may be more specifically authorized from time to time by the Board of Directors of the Association. This Article XI of this Declaration is subject to the provisions of Article V of this Declaration encompassing rights of the Declarant.

Section 11.2. Common expenses shall include but shall not be limited to:

Section 11.2.1. Expenses of administration, maintenance, insurance, and repair or replacement of the Subdivision easements, Common Ground(s), drainage retention areas, certain storm sewers, or other projects as deemed necessary and appropriate by the Board of Directors of the Association;

Section 11.2.2. Expenses declared to be common expenses by this Declaration;

Section 11.2.3. Repayment of debt incurred by the Association;

Section 11.2.4. Expenses agreed upon as being common expenses by the Board of Directors of the Association;

Section 11.2.5. Such reserves as may be established by the Board of Directors of the Association for repair, replacement or additions to the Subdivision easements or Common Ground(s), or other projects, or any other real or personal property acquired or held by the Association;

Section 11.2.6. Expenses for insurance pursuant to Article XII of this Declaration.

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Section 11.3. Creation of Assessments, Lien and Personal Obligation of Assessments.

Section 11.3.1. The Owner of each Lot within the Subdivision covenants, and each Owner, by acceptance of a deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

Section 11.3.1.1. Monthly assessments as set forth in Section 11.4 of this Declaration; and

Section 11.3.1.2. Additional assessments as set forth in Section 11.5 of this Declaration; and

Section 11.3.1.3. Special assessments against any particular Lot which are established by this Declaration including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration.

Section 11.3.1.4. Special assessments which relate to a particular, one-time-only project;

Section 11.3.1.5. All such assessments, together with late charges, interest not to exceed the maximum legal rate, out-of-pocket costs, and attorneys fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

Section 11.3.2. Each such assessment, together with late charges, interest, out-of-pocket costs, and attorneys fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for whatever portion may be due at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued before acquisition of title.

Section 11.3.3. Assessments shall be paid in the manner and on dates fixed by the Board of Directors. If the Board of Directors does not otherwise provide, the assessments shall be paid in monthly installments.

Section 11.4. Monthly Assessment. Beginning on the first day of August, 2000, and on the first day of each month thereafter, the Board of Directors shall have the authority to levy uniform monthly assessments of Fifty Dollars (\$50.00) per Lot. The initial monthly assessment shall be One Hundred Ninety Five Dollars (\$195.00).

Section 11.5. Additional Assessments. In the event the monthly assessment is insufficient to pay for the Association's expenses in any given year, the Board of

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Directors shall have the authority to levy a uniform additional assessment to meet such obligations, not to exceed One Thousand Dollars (\$1,000.00) for that year per Lot, whether vacant or improved.

Section 11.6. Specific Assessments. The Board of Directors may also levy a specific assessment against any Member to reimburse the Association for costs incurred in bringing the Member and/or his or her Lot into compliance with the provisions of this Declaration, Articles of Incorporation, By-laws and Rules and Regulations, as written or as may be amended from time to time. Specific assessments may be levied upon the vote of the Board, after notice to the Lot Owner and the opportunity for hearing before the Board is given.

Section 11.7. Special Assessments.

Section 11.7.1. In the event that the Board considers it necessary to make any expenditure requiring an assessment for a particular project, it shall submit in writing to the Members for approval an outline of the plan for the project contemplated and the estimated amount required for completion. The special assessment must be approved by the assent of the majority of the Members who are voting in person or by proxy at a meeting duly called for that purpose. Written notice shall be mailed to all Members at least thirty (30) days prior to such meeting.

Section 11.7.2. Quorum. Members or proxies entitled to cast not less than sixty percent (60%) of all votes shall constitute a quorum for a meeting under Article XI Section 11.7.1 of this Declaration. If the required quorum is not present, a second meeting may be called. The required quorum at such second meeting shall be thirty percent (30%) of all votes. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 11.8. Calendar Year; Proration. Assessments, where applicable, are to be calculated on a calendar year basis. Proration, where applicable, shall occur for any year in which the ownership of a Lot changes from Declarant to a third party purchaser of a Lot.

Section 11.9. Lien for Assessments.

Section 11.9.1. All sums assessed against any Lot pursuant to this Declaration, together with any late charges, interest, out-of-pocket costs and reasonable attorneys fees actually incurred, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot except for liens of *ad valorem* taxes.

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Section 11.9.2. All other entities acquiring liens or encumbrances on any Lot after the original Declaration recorded at Book 4421, Page 1601 as aforesaid in the second paragraph of this Declaration shall be deemed to consent to such liens or encumbrances being inferior to future liens for the assessments described in this Declaration, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 11.9.3. The sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from lien rights or any assessments later becoming due.

Section 11.9.4. The purchaser of a Lot shall be liable for the unpaid assessments chargeable to such Lot.

Section 11.10. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent.

Section 11.10.1. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge.

Section 11.10.2. If the assessment is not paid within sixty (60) days of the due date, a lien shall attach and the lien shall include the late charges from the date first due and payable; interest, not to exceed the maximum legal rate, on the principal amount due; all out-of-pocket costs of the Association; all costs of collection, including attorneys' fees actually incurred; and any other amounts provided or permitted by law. A notice of claim of lien may, but need not, be filed by the Association.

Section 11.10.3. In the event the assessment remains unpaid after ninety (90) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or foreclose its lien.

Section 11.10.4. Each Owner, by acceptance of a deed, vests in the Association the right and power to bring all actions against the Owner personally for the collection of such charges as a debt and/or to foreclose the lien in the manner established pursuant to the laws of the State of Illinois as they may exist from time to time. The lien provided for in this Article XI shall be in favor of the Association and shall be for the benefit of all Owners.

Section 11.10.5. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage, or convey the Lot.

Section 11.10.6. No Owner may waive or otherwise escape liability for the assessments by abandonment of the Lot.

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Section 11.10.7. All payments shall be applied first to collection costs and attorneys' fees, then to late charges, then to interest, then to newly-delinquent assessments, then to any unpaid installments of the assessments which are coming due within thirty (30) days of payment, and then to any unpaid installments of the assessments which are the subject matter of suit.

Section 11.10.8. Upon the timely cure of any default for which a notice of claim of lien was filed by the Association and prior to the commencement of any legal proceedings to enforce the collection of such claims for lien, the Board of Directors is hereby authorized to file or record an appropriate release of such notice, upon payment by the defaulting Owner of a fee to be determined by the Board of Directors, to cover the costs of preparing and filing or recording such notice and such release.

Section 11.10.9. The assessment lien shall be in addition to all other remedies provided in this Declaration, Articles of Incorporation, By-laws or Rules and Regulations of the Association or remedies provided or permitted by law. The remedies specified are cumulative and not in substitution of other remedies available at law or equity, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 11.11. Initial Capital Reserve and Replacement Contribution. Upon acquisition of record title to a Lot by each initial purchaser thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to Five Hundred Dollars (\$500.00). This amount shall be used to create the Association's initial capital reserve and replacement account and may be used by the Association in the manner determined by the Board.

Section 11.12. Initial Maintenance Fund to be Advanced by Declarant. The Declarant commits itself to advance the sum of Five Thousand Dollars (\$5,000) to the Association upon the commencement of the sale of lots of the Subdivision, and up to \$5,000 on the first and second anniversaries thereafter for the purpose of providing a fund for the maintenance of the Subdivision. Such sums advanced by the Declarant shall be deemed to be interest free loans to the Association, and shall be repaid in no less than three (3) annual installments, commencing not later than the end of the fourth, fifth, and sixth anniversaries, the Association being required to make special assessments for this purpose if such funds are not otherwise available.

ARTICLE XII INSURANCE

Section 12. Common Ground(s). The Board of Directors, or its duly authorized agent, shall have the authority and shall obtain insurance on the Common Ground(s) for the appropriate needs of the Subdivision. This insurance shall be in an amount sufficient to cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from insurable hazards, if such insurance is reasonably available.

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Section 12.1.1. All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as owner and beneficiary.

Section 12.1.2. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

ARTICLE XIII
AESTHETICS AND ENVIRONMENTAL RESTRICTIONS

Section 13. The property shall be subject to the following aesthetic and environmental restrictions:

Section 13.1. Lakes (Retention Basins) and Drainage System. Lakes (retention basins), if any, may contribute measurably to the overall cohesiveness and aesthetic appeal of the Subdivision; but more importantly, they may serve an essential engineering purpose as an integral part of the drainage system. It is incumbent upon each and every Owner to respect the design and area of the lakes and retention basins, if any, and drainage channels, and it shall be each Owner's responsibility to insure that sufficient protective measures are taken at all times to prevent any and all debris from such Owner's lot from entering storm sewers, drainage channels and lakes. Particular attention shall be given to erosion control and the prevention of the introduction of dirt, sand, mud or silt into the drainage facilities. Each Owner shall insure that these areas are kept free of trash and refuse. Any discharge of liquid or solid waste or sanitary waste into the interior drainage facilities from any Lot is expressly prohibited. Specific precautions shall be taken to exclude or prevent petroleum products, polluting-type fertilizers, insecticides, herbicides, and to minimize rock salt and other snow and ice melting chemicals from entering the storm sewer and interior drainage system. No structure, planting or activity shall be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or change the direction of flow of drainage channels or obstruct or retard the flow of water through said drainage channels. If any Owner fails to comply with these provisions, the Association is empowered to correct all violations at the expense of the Owner concerned, which expenses shall be a lien upon the property of such Owner, equal in priority to the lien provided for in Article XI hereof and enforceable in the same manner as therein provided.

Section 13.2. Circulation System. Pedestrian and bicycle circulation systems, if any, throughout the Property are an integral part of the overall planning and design concept. All buildings or structures on Lots immediately adjacent to designed circulation systems shall allow for

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unrestricted public pedestrian and bicycle passage as provided on the recorded plats of the Property.

Section 13.3. Land Use.

Section 13.3.1. No structure shall be used for a purpose other than that for which the structure was originally designed without the express written approval of the Association.

Section 13.3.2. No Lot shall be improved, used, or occupied other than for residential occupancy by a single family without the express written approval of the Association.

Section 13.4. Frontage. All residences shall present a good, well-maintained frontage harmonious in design to the neighborhood and the street on which they are located as shown on the Subdivision Plat. Residences located on corner lots shall present a good, well-maintained frontage harmonious in design to the neighborhood on both streets.

ARTICLE XIV
RECONSTRUCTION

Section 14.1. Each Owner, his or her successors and assigns, hereby covenants and agrees to maintain his or her Lot and Living Unit in a neat and proper condition and to perform all necessary repairs except where the Association is required to maintain and repair. Each Owner further covenants and agrees to promptly restore, rebuild or replace all or any portion of the Owner's Living Unit and its appurtenances located on the Owner's Lot when destroyed or damaged. Each Owner further covenants to guarantee performance of this covenant by maintaining casualty insurance covering his or her Lot and Living Unit with reputable companies in an amount sufficient to restore or rebuild the Living Unit and its appurtenances.

Section 14.2. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

ARTICLE XV
USE RESTRICTIONS

Section 15.1. The Property shall be subject to the following use restrictions for and on behalf of each and every Owner of any Lot in The Fountains of Sunset, their grantees, lessces, heirs, successors, and assigns.

Section 15.1.1. No Commercial Activities. No commercial activities of any kind shall be conducted on any Lot other than home professional pursuits which shall not include the use of employees or agents, public

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visits or non-residential storage, mail or trash for such home professional pursuits.

Section 15.1.2. Nuisances. No noxious or offensive activity shall be performed upon any portion of the Property, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood as determined in the sole judgment of the Association, except that any construction or related activity performed by Declarant shall not be deemed to be a nuisance hereunder. No exterior lighting shall be directed outside the boundaries of a Lot.

Section 15.1.3. Maintenance of Lots and Living Units. Each Owner shall maintain and keep his or her Lot and Living Unit (including all areas or facilities exclusively reserved for such Lot) in good order and repair (except for such repairs and maintenance as may be assigned to the Association), and shall do nothing which will prejudice the structural integrity or increase the rate of insurance on the improvement or which would be in violation of any law, statute, code, rule, regulation, ordinance or the like. Each Owner shall maintain, repair and replace, at his or her own cost and expense, the portion of his or her Living Unit requiring maintenance, repair or replacement, including but not limited to, air conditioning and heating equipment, water heaters, and all other appliances and equipment (including any facility and connection required to provide utility service to serve the Living Unit and no other).

Section 15.1.4. Obstructions. There shall be no obstruction of any portion of the Common Ground(s) or any storage or construction thereon by any Owner. Any plantings thereon shall not be made by an Owner on any Lot without the prior written approval of the Architectural Control Committee. The Association shall not be responsible for maintenance of any of the plantings which have been made by the Owners on a Lot or the Common Ground(s). No clothes, clotheslines, laundry or other articles or equipment for the purpose of hanging laundry shall be placed, hung, exposed, constructed or stored on the Common Ground(s) or any Lot, and no structure or facility for housing of pets or animals shall be placed or maintained in any portion of the Common Ground(s) or in any portion of the exterior or yard area of any Lot or on or about the exterior of any building.

Section 15.1.5. Animals. No animals, horses, cattle, livestock or poultry of any kind shall be raised, bred or kept on the Property or any Lot, except dogs or cats kept inside as house pets. No pets of any type may be kept outside the dwelling, in exterior kennels or houses, or maintained for any commercial purpose. The keeping of any pet, which by reason of its noisiness, number, or other factor, is a nuisance or annoyance to the neighborhood, in the sole discretion of the Association, is prohibited. Deceased pets may not be buried in Subdivision.

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Section 15.1.6. Overhead Wiring. No power or telephone distribution or service connection lines may be erected or maintained above the surface of the ground on any Lot without the prior written consent of the Association.

Section 15.1.7. Obstruction of Traffic. No wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.

Section 15.1.8. Antennas. No outside radio or television antennas or satellite dishes shall be erected, installed, constructed or maintained on any Lot without the prior written approval of the Architectural Control Committee. All satellite dishes if approved by the Architectural Control Committee shall be limited to no more than eighteen inches (18") in diameter.

Section 15.1.9. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 15.1.10. Garages. All garages must be equipped with doors which shall be kept closed as much as practicable to preserve the appearance of the elevation of the Living Unit fronting on the street.

Section 15.1.11. Boathouses, Docks and Wharves. No boathouse, dock, wharf, or other structure of any kind shall be erected, placed or altered on the shores of a retention basin or lake, if any, unless the construction plans and specifications and a plan showing the location of the structure have the prior written approval of the Association as to quality of workmanship and materials, harmony or exterior design with existing structures, location with respect to topography and finish grade elevation, and as to desirability *per se*. It is the intention of this Declaration to authorize the Association, in its sole discretion, to approve or disapprove any such boathouse, dock, wharf, or other structure on purely aesthetic grounds, any other grounds, or for the reason that there should be no such boathouse, dock, wharf or other structure on the retention basin or lake, if any. The Association shall have the power to promulgate such Rules and Regulations as it deems necessary to carry out the provisions and intent of this Article XV Section 15.1.13 of this Declaration.

Section 15.1.12. Shoreline Contours. Shoreline contours of retention basins or lakes, if any, may not be changed without the prior written approval of the Association and any necessary governmental authority. No Lot shall be increased in size by filling in the waters, if any, upon which it abuts.

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Section 15.1.13. Use of Lots. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used only as a residence for a single family. A single-family residence means a single housekeeping unit operating on a non-profit, non-commercial basis between its occupants. Owners shall not have the right to rent rooms. No boarders shall be permitted to reside in the Subdivision. Garages are limited to the storage of vehicles and accessories.

Section 15.1.14. Signs. No signs, window displays, or advertising signs shall be placed on any Lot or structure without the prior written approval of the Association. This use restriction is subject to the provisions of Article V encompassing reservations of the Declarant; Notwithstanding the foregoing, one (1) "For Sale" sign may be posted during the hours of an open house for sale of the Lot or structure. Such "For Sale" sign shall not exceed five (5) square feet in size, and shall be placed for the sole and exclusive purpose of advertising for the sale of the Lot or structure.

Section 15.1.15. Drilling and Quarrying. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in burrowing for oil, natural gas, or minerals shall be erected, maintained, or permitted upon any Lot.

Section 15.1.16. Trash and Rubbish. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, rubbish, garbage, or other waste shall not be kept except in sanitary containers, or other equipment for the storage or disposal of such material, which equipment shall be kept in a clean and sanitary condition. No trash, garbage, rubbish, refuse, debris, trash cans, or trash receptacles of any type shall be stored outside a building on any Lot, except that after sunrise on any day designated for trash pickup, said trash, garbage, rubbish, refuse, and debris secured within appropriate trash cans or receptacles may be placed at the street curbing for pickup. Trash cans or receptacles shall be removed and secured within the improvements for each Lot prior to sundown of the same day. No trash, rubbish, garbage, refuse, debris or other waste shall be disposed of or placed in the lakes, retention basins, drainage channels or common areas of the Property.

Section 15.1.17. Balconies, Porches and Decks. The use of these areas shall be limited to the Living Unit to which they are attached. The balconies, porches and decks shall be used only for the purposes intended and shall not be used for storage of appliances or other objects, or for cleaning of rugs or other household items. None of these areas shall be kept in an unsightly or disorderly condition or used for storage of items not directly associated with normal use of such areas. The Board may

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require removal of rusty furniture, rusty bar-b-que pits, dead plants, or other objects that detract from the appearance of the Subdivision. Any damage caused or made worse by use of a bar-b-que pit, or due to excessive weight placed on such areas shall be repaired at the expense of the Owner. The Board shall have the power to make further rules and regulations regarding the use of the areas described in this subparagraph.

Section 15.1.18. Fuel Tanks. No fuel tanks or containers of any nature shall be placed, erected, installed, or constructed on any Lot. No underground, enclosed propane tank shall be allowed without the prior written approval of the Association.

Section 15.1.19. Swimming Pools. In-ground swimming pools may be constructed, but no such pool may be constructed on a Lot if, upon the completion of construction, the pool or its accessories encroaches upon set backs established by the applicable ordinances of the Village of Glen Carbon or the minimum distances shown on the Subdivision Plat. Above-ground pools shall not be permitted.

Section 15.1.20. Flagpoles. No permanent flagpoles may be constructed or erected on any Lot. Temporary or removable devices may be used for the purpose of displaying flags.

Section 15.1.21. Sale or Lease of Units. The Board shall be given thirty (30) days' notice of an Owner's intent to sell or lease the Living Unit. Such notice must include any Purchaser's or lessee's form designated by the Board to be completed by both the Owner and the buyer or tenant, and a copy of this form must then be returned to the Board with a reasonable administrative fee which shall be set periodically by the Board, to be used to defray clerical and office expenses involved with the transfer. The purpose of this notice is to assist the Board in the collection of past due assessments and shall not be considered as a right of the Board to prevent or delay any conveyance of a Unit.

The Owner shall be responsible for delivering a copy of the Declaration, By-laws, policies, rules and regulations to the new Owner or tenant, and the new Owner or tenant shall be responsible for knowing and following all of the requirements contained therein immediately upon purchase of the Lot. If the Association is requested to provide a copy of the Declaration, By-laws, policies, rules and regulations, or other information not generally distributed by the Board, it shall have the right to charge an additional reasonable fee set periodically by the Board for such materials.

Section 15.1.22. Solar Collectors. No Lot shall have an exterior solar collection system, wind generator system, or any other similar type system or appliance.

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Section 15.1.23. Storage of Personal Property and Vehicles. Personal property including, without limitation, trucks or other commercial vehicles, tractors or other lawn, garden or agricultural equipment, boats, trailers, tractor-trailers, boat trailers, house trailers and motor homes, campers and camper shells, motorcycles, all-terrain vehicles (ATV's) and recreational vehicles shall not be placed, parked or stored permanently or temporarily in the open on any Lot, nor shall they be parked on any driveway or street overnight. The Association may cause any item of such personal property to be towed or removed at the Owner's expense. This prohibition shall not apply to temporary parking of automobiles of temporary guests parked in parking spaces designed and intended therefor.

Section 15.1.23.1. Any item of personal property such as enumerated in the preceding paragraph, and which is not otherwise prohibited by any other provision of this Declaration from being kept, placed, stored or used upon the Property or any Lot thereof, must be stored inside a garage except during periods of approved construction on the lot or structure thereon.

Section 15.1.23.2. No tractor-trailers shall be placed on any Lot.

Section 15.1.23.3. No commercial vehicles, including Owner-owned vehicles with commercial signs, emblems or markings, will be allowed unless they are stored in a garage. This prohibition shall not apply to temporary parking of trucks or commercial vehicles for pick-up or delivery, construction, or other commercial services. Pick-up trucks and van type vehicles with a capacity of three-quarters (3/4) ton or less and used exclusively for private or personal purposes and not in any manner for commercial or business purposes shall not be classified as commercial vehicles, unless such vehicles are Owner-owned with commercial signs, emblems or markings.

Section 15.1.23.4. No disabled, vagrant, unlicensed, or inoperable motor vehicle shall be placed on any Lot.

Section 15.1.23.5. No repairing, body or mechanical work, painting or maintenance (except for washing or waxing), of any motor vehicle, including passenger cars, shall be permitted upon the Property or any Lot thereof, except while in an enclosed garage, and only then when the repairing, body work, or painting is done to a motor vehicle owned by a resident dwelling on the Lot on which such activity takes place.

Section 15.1.24. Indemnification for Actions of Others. Each Owner does hereby agree to defend, indemnify and hold harmless the Declarant, the Association, their and each of their officers, members, representatives and

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directors, and other Owners and occupants for, from and against all claims, demands, damages, losses and expenses of every kind arising from the actions or omissions of such Owner and his, her, or their children, tenants, guests, pets, servants, employees, agents, invitees, or licensees which violate the provisions of this Declaration.

ARTICLE XVI **EASEMENTS**

Section 16.1. Utility Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat. Such easements shall include the rights of ingress and egress for construction and maintenance purposes. No structure, planting, or other material shall be permitted to be placed or remain within easements which may damage or interfere with the installation or maintenance of utilities or which change the direction or flow of drainage channels, or which in any other manner obstruct the use for which these easements are reserved. Any such structure, planting or other materials which may be damaged or interfere with such easement shall not be replaced or restored by Declarant but may be replaced or restored by the Association, at its sole discretion.

Section 16.2. Maintenance Easement. The Declarant does hereby give, grant, extend and confer to the Association an easement to landscape, maintain, repair, and reconstruct the Easement Property with all rights and privileges necessary or convenient for the full enjoyment or the use thereof for the purposes described herein, subject to the following conditions and limitations:

Section 16.2.1. The Association may use such additional space adjacent to the Easement Property as may be required for temporary working room during the landscaping, maintenance, repair and reconstruction of the aforementioned improvements.

Section 16.2.2. All provisions of this maintenance easement, including the benefits and burdens, run with the Easement Property, and are binding upon and inure to the heirs, successors and assigns of the Association and the Declarant.

Section 16.2.3. All rights granted to the Association hereunder are subject to the rights of the Declarant and its heirs, successors and assigns, to use and enjoy the remaining parcels of land adjacent to the Easement Property and the Association's use and enjoyment of the Easement Property shall not interfere with the use of the remaining parcels of land adjacent to the Easement Property by the Declarant or its successors and assigns. At its sole cost and expense, the Association shall, immediately after exercising any rights granted hereunder, restore the Easement Property to the condition existing prior to exercising any such rights. Notwithstanding the foregoing, the Declarant and its successors and assigns shall in no event

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remove any existing trees, bushes, or shrubberies of the Association on the Easement Property.

Section 16.3. Storm Sewers. The Glen Carbon Public Works Department is required to maintain storm sewers. If for any reason Glen Carbon Public Works does not maintain such storm sewers then the Association shall maintain the storm sewers. Under no circumstances, including Glen Carbon Public Works refusal to maintain the storm sewers, shall the Declarant be responsible for such maintenance of the storm sewers after its escrows have been released by the appropriate governmental authority.

Section 16.4. Detention/Retention Areas. The Homeowners Association will assume responsibility for the maintenance of all common grounds and properties for detention and retention areas. In the event the Homeowners Association fails to adequately maintain the commons, detention and retention areas for a period of thirty (30) days after receiving written notice of such failure or inadequacy from the Village of Glen Carbon in writing, the Village of Glen Carbon shall have the right to maintain same and charge the cost thereof as a lien, upon said lots and/or the Homeowners Association, or both. As in the case of storm sewers, the Declarant shall not be responsible for the maintenance of the common grounds and properties for detention and retention areas.

Section 16.5. Encroachment. Through construction, settlement or shifting, should any part of a Living Unit encroach upon the Common Ground(s) or upon any other Lot, perpetual easements for the maintenance of any such encroachment and for the use of the space required thereby are hereby established and shall exist for the benefit of the Owner of the encroaching property; provided, however, that no easement shall be created in the event the encroachment is due to the willful conduct of the Owner or a person under the direction of the Owner.

Section 16.6. Easements Appurtenant. Perpetual easements are hereby established, running with the land, appurtenant to all Lots and Living Units, for use by the Owners thereof, their families and guests, invitees and servants, of the Common Ground(s). Each Living Unit is further granted a perpetual easement, running with the ownership of the Unit, to use and occupy the balcony, terrace, patio, sidewalks, driveways and garage, if any, which are part of the Living Unit, should there be any encroachment on the Common Ground(s) or any other Lot; provided, however, that no Owner shall enclose, decorate or landscape any such balcony, terrace, patio, sidewalks, driveways or garage contrary to any Rules and Regulations established by the Association.

Section 16.7. Easements in Gross. The Property and each Lot shall be subject to a perpetual easement in gross to the Association for ingress and egress, to perform its obligations and duties as required by this Declaration. Should it be necessary to enter a Lot or Living Unit to effect a necessary repair, the employees, agents and workmen acting on behalf of the Association shall be entitled to entrance by exhibiting to the Owner a written order from the Association.

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Section 16.8. Effect of Easements. All easements and rights herein established shall run with the land and inure to the benefit of and be binding on each Lot Owner, his or her heirs, successors and assigns, and any Owner, purchaser, mortgagee or other person having an interest in any portion of the Property, whether or not such easements are mentioned or described in any deed of conveyance.

ARTICLE XVII MAINTENANCE

Section 17.1. Association's Responsibility for Common Ground(s). The Association shall maintain and keep in good repair the Subdivision entrance, gates, the Subdivision Common Ground(s), and other projects and improvements of the Association. Maintenance shall be funded by the Association's assessments.

Section 17.2. Owner's Failure to Comply. In the event the Association determines that any Owner has failed to maintain his or her Lot and Living Unit in a neat and attractive manner consistent with the provisions of this Declaration, the Association shall give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, replacement, or improvement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, replacements, or improvements deemed necessary. The Owner shall have thirty (30) days after service of such notice within which to complete the maintenance, repair, replacement or improvement, or in the event that such maintenance, repair, replacement or improvement is not reasonably capable of completion within the thirty (30) day period, to commence such work and complete it within such reasonable time as is determined by the Association. One (1) notice per violation will be given and will cover any continuation of that violation.

Section 17.2.1. In an emergency, the Association may take remedial action immediately without giving the thirty (30) day notice. In such an emergency situation, in the sole discretion of the Association, the Association will not need to comply with this Article XVII Section 17.2 of this Declaration.

Section 17.2.2. Each Owner covenants and agrees that if such Owner fails to comply with the provisions of this Declaration, the Association shall have the right, without being deemed guilty of trespass, to enter upon the Lot to provide such maintenance, repair, replacement or improvement thereon as the Association may, in its discretion, determine to be necessary, at the Owner's sole cost and expense.

ARTICLE XVIII PARTY WALLS (only on Lots 43, 44, 59 and 60)

Section 18.1. General Rules of Law to Apply. Each wall, including fence walls and common garage walls, which is built as a part of the original construction of a Living Unit upon the Lots identified in the caption of this Article XVIII and placed on the

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dividing line between the Lots, and each foundation wall upon which more than one (1) Living Unit is built, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article XVIII of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Penetration of a party wall for any reason is strictly prohibited.

Section 18.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared in proportion to their use by the Owners who make use of the wall.

Section 18.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use and such contribution shall be without prejudice to the right of any such Owners to call for a larger contribution from others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 18.4. Weatherproofing. Notwithstanding any other provisions of this Article XVIII, an Owner who, by his or her negligent or willful act, causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary repairs and protection against such elements.

Section 18.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article XVIII shall be appurtenant to the land and shall pass to such Owner's heirs, successors or assigns in title.

ARTICLE XIX

ARBITRATION OF PARTY WALL DISPUTES (only on Lots 43, 44, 59 and 60)

Section 19.1. Arbitration. All claims, demands, disputes, controversies, and differences that may arise under Article XVIII of this Declaration concerning a party wall shall be settled by arbitration pursuant to Chapter 710 ILCS 5/1 *et seq.*, as amended.

Section 19.2. Selection of Arbitrators. Either party to a dispute concerning a party wall may, by written notice to the other party within ten (10) days after receipt of such notice by the first party, appoint a second arbitrator, and in default of such second appointment, then the first arbitrator appointed shall be the sole arbitrator. All arbitrators appointed or selected as provided in this Article XIX shall be attorneys licensed to practice law in the State of Illinois.

Section 19.2.1. When two arbitrators have been appointed as hereinabove provided, they shall, if possible, agree on a third arbitrator and shall appoint him or her by written notice signed by both arbitrators and a copy shall be mailed to each party to the dispute within ten (10) days after such appointment of the third arbitrator.

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Section 19.2.2. In the event ten (10) days shall elapse after the appointment of the second arbitrator without notice of appointment of the third arbitrator as hereinabove provided, then either party to the dispute, or both, may in writing, within fifteen (15) days after the original appointments, request the Association to appoint a third arbitrator.

Section 19.3. Arbitration Hearing and Award. On appointment of three (3) arbitrators as hereinabove provided, such arbitrators shall hold an arbitration hearing in Madison County, Illinois, within twenty (20) days after such appointments. At the hearing, the laws of evidence of the State of Illinois shall apply, and the three (3) arbitrators shall allow each party to present his or her case, evidence, and witnesses, if any, in the presence of the other party, and shall render their award, including a provision for payment of costs and expenses of arbitration to be paid by one or both of the parties, as the arbitrators deem just.

Section 19.4. Finality of Award. The award of the majority of the arbitrators shall be binding on the parties, and judgment may be entered thereon in any court having jurisdiction.

ARTICLE XX

UTILITIES/JOINT CONNECTIONS

Section 20.1. The rights and duties of the Owners of Lots and Living Units within the Property with respect to sewer, water, electricity, gas and telephone connections thereto shall be subject to the following conditions:

Section 20.1.1. Easements. Whenever connections of sanitary sewers, storm sewers, water, electricity, gas, telephone lines, television aerial lines, cable television lines or any other utilities are installed within the Property, and the connections, or any portion thereof, lie in or upon Lots or Living Units thereon owned by others than the Owner served by said connections, the Association, the utility companies and the Owners of any Lots or Living Units served by said connections shall have the right, and are hereby granted easements to the full extent necessary, to construct, reconstruct, repair, replace and maintain said connections, and to enter upon Lots or to have the utility companies or repair personnel enter upon Lots within the Property in or upon which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary. If the Association deems the repair, replacement or maintenance of any such connection to be necessary or is requested by the Owner of a Lot or Living Unit served by any such connection to repair, replace or maintain the same, the Association shall have the right to repair, replace or maintain such connection and pay for such repair, replacement or maintenance out of the assessments collected by the Association under Article XI of this Declaration; provided, however, that in the event that the repair, replacement or maintenance of the connection is necessitated by the act of an Owner of a Lot or Living

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Unit served thereby, said Owner shall bear all of the cost of repair, replacement or maintenance in accordance with Article XX Section 20.1.2 of this Declaration.

Section 20.1.2. Damage or Destruction; Fault. In the event any portion of any connection or line is obstructed, damaged or destroyed through the act of any Owner of a Lot or Living Unit being served by said connection, or any of his or her agents, guests, or members of his or her family, whether or not such act is negligent or the Owner is otherwise culpable, so as to deprive the other Owners being served by said connection of the full use and enjoyment of said connection, then the Owner who is responsible for such obstruction, damage or destruction shall forthwith proceed to replace or repair the same to as good a condition as existed prior to such destruction, damage, or obstruction, without cost to the other Owners served by said connection at said Owner's sole cost and expense, and if said Owner fails to make such replacement or repair, then the Association shall have the right to do so and assess the costs thereof against said Owner's Lot and Living Unit. Said Owner, for himself or herself, or his or her heirs, successors and assigns, covenants that he or she will pay the Association said assessment upon demand or in such periodic payments as may be permitted by the Association, and that said assessment, if not so paid on the date(s) when due, shall become a continuing lien on the Lot and Living Unit and the personal obligation of said Owner, and shall be subject to collection, enforceability, foreclosure and remedies of the Association in the provisions set forth in Article XI hercof for other assessments by the Association.

Section 20.1.3. Damage or Destruction - No Fault. In the event any portion of any connection or line is obstructed, damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time) other than the act of any of the Owners being served by said connection, their agents, guests, or members or their families, then in such event, if said obstruction, damage or destruction shall prevent the full use and enjoyment of said connection by the Owner of any Lot or Living Unit served by said connection, said Owner shall notify the Association and the Association shall proceed forthwith to replace or repair said connection to as good condition as prior to such obstruction, damage or destruction.

Section 20.1.4. Restoration. In conjunction with any repair, replacement or maintenance of any connection, the premises thereby affected shall be restored to their condition prior to such repair, replacement and maintenance and the cost thereof borne as provided for the cost of repairs.

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ARTICLE XXI HOME CONSTRUCTION STANDARDS

Section 21.1. Formation of Committee. An Architectural Control Committee is hereby established, which shall initially be comprised of the officers or appointees of the Declarant, and which shall have authority to approve or reject the plans and specifications for any structure to be erected or constructed upon a Lot, as is further set forth in this Article XXI, Section 21.2 hereof.

Section 21.2. Review by Declarant. Prior to commencement of any construction, including ground and site preparation and excavation for such construction, and prior to the erection of any building, wall, fence, or other structure upon any Lot owned by Declarant as of the date of this Declaration, the Owner of such Lot shall submit to the Declarant and the Village of Glen Carbon for approval plans and specifications setting forth the following information regarding the proposed structure:

- A. Floor Plans;
- B. Front, sides and rear elevations;
- C. Exterior materials and color selections;
- D. Name of General Contractor or Construction Company;
- E. Plot plan showing front, side and rear setback lines, driveways, parking areas, and location of all structures on the Lot;
- F. Landscaping plan.

Approval of such plans and specifications and authorization for commencement of construction must be granted by both the Declarant and the Village of Glen Carbon, and such approval shall be in their sole discretion, but approval will neither be unreasonably withheld nor conflict with any of the other terms of this Declaration regarding the characteristics of structures upon the Property.

Section 21.3. Review by Homeowners Association. From and after completion of construction and occupancy of a structure pursuant to authorization by the Declarant and the Village of Glen Carbon, respectively, no building, wall, fence or other structure shall be commenced, constructed, erected or maintained upon any Lot, nor shall any exterior addition to, removal of all or any part thereof, or exterior change or alteration in any improvement thereon be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, location and other material information regarding same shall have been submitted to and approved in writing by the Architectural Control Committee of the Homeowners Association, which is hereby established in accordance with Section 8.1.8. of this Declaration. The said Architectural Control Committee of the Homeowners Association may approve the proposed structure, change or alteration if it determines that such structure, change or alteration is consistent and in harmony with the external design, types of materials, colors and location in relation to surrounding structures and topography.

Section 21.4. Building Materials and Construction. It is the intent of this Declaration that all buildings and structures within the Property be constructed of

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attractive exterior materials of high quality. In its review of submissions, the Declarant or Architectural Control Committee of the Homeowners Association, as set forth hereinabove, shall evaluate the construction standards and building materials for all proposed construction to insure that they are in conformance with the general objectives of the project as enumerated herein. Accessory buildings, enclosures, appurtenant structures to, or extrusions from, any building or structure shall be of similar or compatible materials, design and construction. Exterior finishes once approved and constructed, shall not be altered without the express written consent of the Architectural Control Committee of the Homeowners Association.

Section 21.5. Land Use and Building Type. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling, not to exceed two stories in height, excluding the basement, plus an attached garage.

Section 21.6. Sidewalks. The Owner of each Lot shall construct a sidewalk (or sidewalks) on such Lot, when and as required by the Village of Glen Carbon, at such Lot Owner's expense. If any Lot Owner fails to complete said sidewalk (or sidewalks), and deliver a letter from the Village of Glen Carbon approving said sidewalk (or sidewalks) within sixty (60) days of demand, then the Homeowners Association may complete said sidewalk (or sidewalks) and bill the cost thereof to said Lot Owners; if not paid within thirty (30) days, a lien against the Lot may be filed by the Association.

The Village of Glen Carbon requires that all sidewalks, whether located on the Owner's Lot, the road right-of-way, or both, shall be maintained by and at the cost of the Owner whose Lot the sidewalk is on or adjacent to, in accordance with the Village of Glen Carbon's then current subdivision control ordinance. In the event the homeowner fails to repair or maintain the sidewalks as herein provided, the Village may make such repairs or perform such maintenance as the Village deems necessary and charge the cost thereof to the homeowner, and/or assert a lien upon the Lot where said repairs were made or against which said repairs are attributable in accordance herewith. The Village of Glen Carbon shall have the power and authority to maintain an action to foreclose upon said lien.

Section 21.7. Occupancy Prior to Completion of Residence. No Lot Owner will be permitted to occupy the Lot prior to completion of all aspects of the Lot and issuance of an occupancy permit therefor by the Village of Glen Carbon.

Section 21.8. Uncompleted Structures. No building, addition or alteration shall be permitted to stand with its exterior in an unfinished condition for longer than three (3) months after commencement of construction, unless such condition is the result of force majeure. All buildings must be completed within twelve (12) months from the commencement of construction.

Section 21.9. Building Location. No building shall be located on any Lot nearer to any street line than the building lines shown on the Subdivision Plat. No structure shall be located closer than seven and one-half feet (7-1/2') from any side Lot line, or closer than twenty-five feet (25') from any rear Lot line; provided, however, on Lots 43,

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44, 59 and 60, and where more than one Lot is used for the construction of one dwelling overlapping the Lot lines, the side line restrictions are hereby waived as to the lines between said combined Lots; and the combined Lots shall thereafter be considered one "Lot" for purposes of this Declaration. For purposes of the setback requirements herein, eaves, steps and open porches shall not be considered a part of the building; provided, however, that this shall not be construed to permit any portion of a building, on a Lot, to encroach upon another Lot.

Section 21.10. Dwelling Size and Miscellaneous. No one-story dwelling shall be permitted on any Lot which does not meet the minimum square footage requirements outlined below, excluding garages, any space below ground level, and open porches and balconies; no one-and-one half story or two story dwelling shall be permitted on any Lot which does not meet the minimum square footage requirements outlined below (any clerestory square footage may be counted as both first-floor and second-floor space). The character and design of garages must conform to the character and design of the dwelling structure.

Ranch 1800 square feet

Two Story 2200 square feet

Minimum 1st Floor 900 square feet

Section 21.11. Garage Requirements. Each Lot with a dwelling shall have a garage fully capable of housing a minimum of two automobiles. All buildings, including garages, shall be attached to the dwelling structure. Any exterior parking area will be restricted to operable automobiles, and such parking space will be allowed only upon prior written approval of the Architectural Control Committee of the Homeowners Association.

Section 21.12. Driveways and Parking Areas. The paving materials of all parking areas, driveways, and turnarounds shall be Portland cement concrete, brick or stone, and shall be subject to the Village of Glen Carbon's requirements. Driveways must be located a minimum of five feet (5') from the nearest side Lot line at the point of intersection with right-of-way and comply with the Village of Glen Carbon's zoning ordinances.

Section 21.13. Brick and Exterior Wall Requirements. The home which may be erected on a Lot shall be constructed of good quality, new materials, suitable for use in the construction of residences, and no existing building shall be placed on or moved to the Property. No tin, tarpaper, composition paper, or similar materials may be used as the exterior covering of any building. No A-frame design, modular or mobile homes, or underground homes are allowed. Brick, brick veneer, or stone is required on at least fifty-percent (50%) of the entire exterior wall surface on the first floor (excluding windows and doors). A ranch style home must have the entire front of the dwelling and

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one side covered with brick, brick veneer or stone (excluding doors and windows). On a two-story home, the brick requirement of 50% of the entire exterior wall surface being brick, brick veneer or stone can be met by combining the front and / or sides if desired, as by making the entire front exterior wall surface of brick, brick veneer or stone. In addition to 50% of the exterior front and wall surfaces being brick, brick veneer or stone, lakefront lots must have at least 50% of the rear of the house covered with such a surface(s). The balance of the exterior walls may be natural wood siding, finished masonite type siding, aluminum siding, or premium grade Dutch Lap vinyl siding (gauge 0.42 to 0.44 or better). NO DOUBLE 4 VINYL SIDING IS ALLOWED. All exterior portions of all structures shall be fully enclosed and finished, including, by way of example and not by way of limitation, all soffit, undercave, overhang and porch areas.

Section 21.14. Fence Requirements. No wall, fence, or fencing of any kind shall be allowed to be constructed nearer the front of any Lot than the line of the rear exterior wall of the dwelling. In addition, for all corner Lots, no wall, fence, or fencing of any kind shall be allowed nearer to any street than the side exterior wall of the premises facing that street. No wall, fence or fencing over five feet (5') in height shall be allowed on any Lot, nor shall any wall, fence or fencing be located closer than one foot (1') to any Lot line. All walls, fences and fencing shall be vinyl, aluminum or professionally constructed wrought iron construction, subject to the conditions herein set out for materials. ALL FENCES MUST BE BLACK OR WHITE. No chain link, wire, or other metal wall, fence or fencing shall be permitted. All walls, fences, and fencing must be submitted to, and approved by the Declarant or the Architectural Control Committee of the Homeowners Association prior to construction, and must be continually maintained to present an attractive appearance, or, after sixty (60) days' notice, such walls, fences and fencing may be removed by the Homeowners Association and the cost thereof billed to the Lot Owner. If such a bill remains unpaid over thirty (30) days, a lien may be attached and filed against any such Lot.

If the Village of Glen Carbon's zoning ordinances on fencing around in-ground swimming pools is hereafter changed, and this Declaration as it currently exists will not meet the changed zoning requirements, then this Declaration will automatically be changed to adopt the minimum change required to bring the provisions of this Declaration into compliance with the new zoning ordinance.

Section 21.15. Shingle Requirements. All roofs shall be covered with HEAVYWEIGHT ARCHITECTURAL GRADE SHINGLES OR BETTER. Shingles must have a textured design and appearance and be constructed of fiberglass, asphalt, or wood materials. Questions on whether shingles meet requirements will be determined by the Declarant or the Architectural Control Committee of the Homeowners Association. NO 3 TAB SHINGLES ARE PERMITTED. All roofs must have a MINIMUM OF 6/12 PITCH FRONT TO BACK, AND AN 8/12 PITCH ON FRONT GABLES.

Section 21.16. Mailboxes and Address Blocks. All Lot Owners will be required to install MATCHING MAILBOXES and ADDRESS BLOCKS which will be furnished by the Declarant for initial installation only. Any additional mailboxes, lights, and address blocks must match and will be purchased by the Lot Owner.

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Section 21.17. Construction of Residences, Maintenance of Property. During the construction, maintenance or refurbishment of any dwelling house or Lot, any littering or damage to the public and private roadways and easements in the Subdivision, and any necessary clean up of them (including mud), shall be the responsibility of the Owner of any Lot upon which such work is being performed. During construction, maintenance or refurbishment of any Lot, the Lot must be maintained in a neat and orderly condition. All trash, scraps and debris must be placed in a dumpster or suitable container.

Section 21.18. Grades and Grading. All Lots shall have a finish grade that will allow the natural flow of surface drainage water without erosion or damage. Under no circumstances shall the Owner of any Lot or parcel of land in the Subdivision alter the topographic conditions of said Owner's property in any way that will permit or cause additional quantities of water to flow from or across the Owner's property and onto adjoining property or public right of way. Neither shall any Owner erect or construct any structure, plant any vegetation, place or allow any material to remain, or carry on any activity within the slope area established on the Subdivision Plat and plans, such as may damage or interfere with established slope ratios, create erosion or sliding of soil, or obstruct or retard the flow of water through drainage channels. Grading shall be sloped and tapered at the side or rear Lot lines in such a manner as to permit construction on an adjacent Lot without the need for retaining walls. Gutter down spouts' run-off shall be connected to storm sewers whenever permitted by municipal regulations, but shall never be connected to any sanitary sewer. The slope areas of each Lot shall be maintained continuously by the Association, except for those improvements for which a public authority or utility is responsible. This paragraph is in no way intended to prevent a house or driveway from being built on any certain Lot or Lots.

ARTICLE XXII **REMEDIES AND ENFORCEMENT**

Section 22.1. Enforcement. The Association, the Declarant, and each Owner to whose benefit this Declaration inures may proceed through the judicial system to prevent the occurrence or contribution to any violation of any provision of this Declaration.

Section 22.2. Suspension of Rights. The Association may suspend all of an Owner's voting rights for any period during which any assessment against such Owner remains unpaid, or during the period of any continuing violation of the provisions of this Declaration or the Rules and Regulations. Suspension shall commence when an Owner is declared by the Association to be in violation of this Declaration or the Rules and Regulations, and such suspension shall continue for an additional period not to exceed thirty (30) days after the violation has been cured.

Section 22.3. Cumulative Remedies. The remedies provided for herein are cumulative, and any specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy. No delay or failure on the part of an aggrieved party to invoke an available remedy shall be a waiver by that party of any right available to him

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or her upon the recurrence or continuation of said violation or the occurrence of a different violation.

Section 22.4. Self-Help. In addition to any other remedy provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove a violation of the provisions of this Declaration, using such force as may be reasonably necessary to abate or remove any structure, thing or condition which violates this Declaration or the Rules and Regulations. Unless an emergency situation exists, the Association shall give the violating Owner thirty (30) days written notice of its intent to exercise self-help. All costs of self-help, including attorneys' fees actually incurred, shall be assessed against the violating Owner and shall be collected as a specific assessment. Neither the Association nor its agents shall be deemed guilty in any manner of trespass by exercising the remedy of self-help granted hereby.

Section 22.5. Attorneys' Fees. The court, in any action between or among the Declarant, the Association and any other party, relating to the terms and provisions of this Declaration, may award the prevailing party reasonable expenses incurred in prosecuting or defending such action, including attorneys' fees actually incurred. In the event the Declarant or Association shall prevail in any suit brought against any Owner for a violation of any of the provisions of this Declaration, the cost of suit and attorneys' fees actually incurred by Declarant and/or the Association will be assessed as costs against the Owner. The Association may include as a specific assessment to any violating Owner the cost of any effort before legal action to enforce provisions of this Declaration. In the event that any attorneys' fees and costs are not paid by the Owner within thirty (30) days after the Association has assessed them specifically against the Owner or within thirty (30) days after judgment for them has been rendered, then those fees and costs shall bear the maximum legal interest rate. The Association may execute and acknowledge an instrument reciting this specific assessment and record it in the Office of the Recorder of Deeds for Madison County, Illinois. Thereupon the specific assessment shall become a continuing lien on the Lot of that Owner and shall bind the Owner, his or her heirs, successors and assigns.

Section 22.6. Fines. The Board may by resolution levy a fine of up to Five Dollars (\$5.00) per day upon any Lot for the continuing violation by the Lot Owner or the Lot Owner's tenant or occupant of any provisions of this Declaration or the Rules and Regulations. Such fine shall only be imposed after the Board has given the Owner at least twenty (20) days' written notice that a hearing will be held to determine the existence of any violation, and only after the Board determines at such hearing that a violation exists. Any unpaid fines shall constitute a lien against the Lot.

ARTICLE XXIII **GENERAL PROVISIONS**

Section 23.1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of, and shall be enforceable by, the Declarant, the Association, or the Owner of any Lot, his or her, its or their respective legal representatives, heirs, successors and assigns, until March

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1, 2034, at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of sixty-seven percent (67%) of all of the Owners of the Lots, it is agreed to change said covenants, conditions, and restrictions in whole or in part. In the event the Subdivision is vacated, fee simple title to the Common Ground shall vest in the then record Owners of all Lots and Living Units constituting a part of the Property, as tenants in common. The rights of said tenants in common shall only be appurtenant to and in conjunction with their ownership of Lots or Living Units in the Subdivision, and none of the owners of the Common Ground shall have such rights of ownership as to permit them to convey their interest in the Common Ground except as is incident to the ownership of a Lot or Living Unit. Any sale of any Lot or Living Unit shall carry with it, without specifically mentioning it, all the characteristics of ownership of the Common Ground; provided, however, that all of the rights, powers and authority conferred upon the Association shall continue to be possessed by the Association.

Section 23.2. Severability. Every provision of this Declaration is declared to be independent of and severable from every other provision. If any provision shall be held by a court of competent jurisdiction to be invalid or unenforceable, all remaining provisions shall remain unimpaired and in full force and effect.

Section 23.3. Captions and Gender. Captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof. All references to gender shall be interpreted as including the masculine, feminine or neuter, as the context may require, and any reference to the singular shall include the plural.

Section 23.4. Binding Arbitration. Excepting claims, demands, disputes, controversies and differences arising under Article XVIII of this Declaration relating to party walls, which are to be determined in accordance with the provisions of Article XIX hereof, all disputes and controversies between the parties to this Declaration regarding the subject matter of this Declaration shall be resolved by arbitration in Madison County, Illinois before a proceeding administered by the American Arbitration Association and in accordance with the rules of the American Arbitration Association. In connection therewith, discovery shall be permitted pursuant to the provisions of the Illinois Code of Civil Procedure and Illinois Supreme Court Rules. Any matter determined by arbitration as aforesaid shall be final and binding upon all of the parties thereto. Only upon more than the majority of the Owners' approval shall the Association be allowed to represent an Owner in arbitration with respect to the subject matter of this Declaration.

THIS DOCUMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

**THE FOUNTAINS OF SUNSET, L.L.C., an
Illinois Limited Liability Company**

**BY: PEAR INVESTMENT, INC., an Illinois corporation
Member**

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PEAR INVESTMENT, INC., an Illinois corporation

BY: *Robert L. Plummer*
ROBERT L. PLUMMER, President and Secretary

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

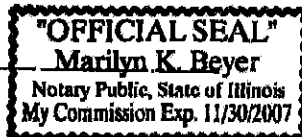
I, the undersigned Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY that **ROBERT L. PLUMMER**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as President and Secretary of Pear Investment, Inc., as his free and voluntary act, and as the free and voluntary act of said corporation, pursuant to authority granted him by said corporation as President and Secretary, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 13th day of April, 2004.

Marilyn K. Beyer
 Notary Public

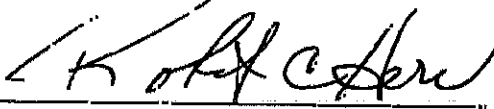
My Commission Expires:

11-30-2007



4645 0257

**THE FOUNTAINS OF SUNSET
HOMEOWNERS ASSOCIATION**

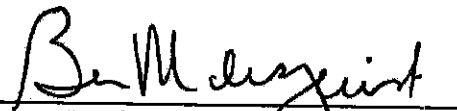
BY: 
ROBERT C. HERR, President

ATTEST:


JOSEPH MITELLO, Secretary

APPROVED:

VILLAGE OF GLEN CARBON

BY: 
President, Board of Trustees

Date: March 9, 2004

ATTEST:


Village Clerk

Date: March 9, 2004

4645 0258

EXHIBIT A
(LEGAL DESCRIPTION)

"EXHIBIT A"

4645 0259

Part of the Northwest Quarter of Section 28, Township 4 North, Range 8 West of the Third Principal Meridian, Village of Glen Carbon, Madison County, Illinois, being more particularly described as follows:

Commencing at the Southeast corner of Country Maples Subdivision as recorded in Plat Cabinet 52, Page 198 of the records of the Madison County, Illinois Recorder's Office; thence North 00 Degrees 17 Minutes 51 Seconds West along the East line of said Country Maples, a distance of 401.88 feet to the Southwest corner of Country Maples 1st Addition as recorded in Plat Cabinet 56, Page 61 in said Recorder's Office; thence North 88 Degrees 19 Minutes 38 Seconds East along the South line of said Country Maples 1st Addition, a distance of 619.43 feet to the Western most line of Lot 41 in Glen Hills 1st Addition, as recorded in Plat Cabinet 56, Page 79 in said Recorder's Office; thence South 00 Degrees 11 Minutes 22 Seconds East along the West line of said Lot 41 and the West line of the Seventh and Eighth Addition of Meridian Hills, as recorded in Plat Cabinet 54, Page 115 and Plat Cabinet 60, Page 137, respectively, in said Recorder's Office, a distance of 936.00 feet; thence South 63 Degrees 11 Minutes 44 Seconds West, a distance of 537.67 feet; thence South 88 Degrees 15 Minutes 45 Seconds West, a distance of 41.22 feet; thence North 53 Degrees 58 Minutes 56 Seconds West, a distance of 355.06 feet; thence North 46 Degrees 01 Minute 14 Seconds West, a distance of 98.11 feet to the beginning of a 100.00 foot radius non-tangent curve to the right whose center bears North 29 Degrees 44 Minutes 50 Seconds East; thence Westerly along said curve through a central angle of 08 Degrees 33 Minutes 06 Seconds, an arc distance of 14.93 feet to the beginning of a 523.00 foot radius tangent curve to the right; thence Westerly along said curve through a central angle of 34 Degrees 43 Minutes 03 Seconds, an arc distance of 316.90 feet; thence North 76 Degrees 28 Minutes 41 Seconds West, a distance of 49.03 feet to the beginning of a 230.00 foot radius tangent curve to the right; thence Westerly along said curve through a central angle of 35 Degrees 34 Minutes 03 Seconds, an arc distance of 142.78 feet to the beginning of a 300.00 foot radius tangent curve to the left; thence Westerly along said curve through a central angle of 09 Degrees 04 Minutes 07 Seconds, an arc distance of 47.48 feet to the beginning of a 300.00 foot radius tangent curve to the right; thence Westerly along said curve through a central angle of 09 Degrees 04 Minutes 07 Seconds, an arc distance of 47.48 feet; thence North 40 Degrees 54 Minutes 38 seconds West, a distance of 24.51 feet to the beginning of a 30 foot radius non-tangent curve to the left whose center bears South 82 Degrees 53 Minutes 52 Seconds East; thence Southerly, along said curve through a central angle of 06 Degrees 13 Minutes 32 Seconds, an arc length of 3.26 feet; thence South 00 Degrees 52 Minutes 36 Seconds West, a distance of 19.06 feet; thence North 40 Degrees 54 Minutes 38 Seconds West, a distance of 70.34 feet; thence South 85 Degrees 42 Minutes 36 Seconds West, a distance of 50.20 feet to a point on the Southeasterly right-of-way line of Illinois Route 157; thence North 49 Degrees 05 Minutes 22 Seconds East along said Southeasterly right-of-way line of Illinois Route 157, a distance of 287.22 feet to the beginning of a 1573.78 foot radius tangent curve to the left; thence Northeasterly

4645 0260

along said curve and right-of-way line through a central angle of 06 Degrees 59 Minutes 51 Seconds, an arc distance of 192.21 feet to a point on the South line of said Country Maples; thence South 89 Degrees 09 Minutes 07 Seconds East, a distance of 576.84 feet to the Point of Beginning, containing 24.64 acres, more or less.

Except coal, gas and other mineral rights excepted or reserved in prior conveyances.

EXCEPTING THEREFROM:

Part of the North Half of Section 28, Township 4 North, Range 8 West of the Third Principal Meridian, Village of Glen Carbon, Madison County, Illinois, being more particularly described as follows:

Commencing at the Southeast corner of Lot 3 of Country Maples Subdivision as recorded in Plat Cabinet 52, page 198 of the Madison County, Illinois Recorder's Office; thence North 89 Degrees 09 Minutes 07 Seconds West, along the South line of said Country Maples Subdivision, a distance of 360.24 feet to the Northwest corner of The Fountains of Sunset, a subdivision as recorded in Plat Cabinet 62, Page 114 in said Recorder's Office, said point being the point of beginning of the tract of land hereinafter described, thence South 01 Degrees 18 Minutes 16 Seconds West, along the West line of said The Fountains of Sunset, a distance of 464.95 feet to a point on the Northerly line of Fountains Drive (variable width) as shown on the said The Fountains of Sunset, said point being the beginning of a 521.50 foot radius non tangent curve to the right whose center bears North 08 Degrees 46 Minutes 04 Seconds West; thence Westerly along said curve and Northerly line of Fountains Drive, through a central angle of 22 Degrees 17 Minutes 23 Seconds, for an arc distance of 202.88 feet; thence North 76 Degrees 28 Minutes 41 Seconds West, along said Northerly line of Fountains Drive, a distance of 46.25 feet to the beginning of 170.00 foot radius tangent curve to the right; thence Northwesterly, along said curve and Northerly line of Fountains Drive, through a central angle of 53 Degrees 15 Minutes 45 Seconds, for an arc distance of 159.52 feet to the beginning of a 170.00 foot radius tangent curve to the left; thence Northwesterly, along said curve and Northerly line of Fountains Drive, through a central angle of 18 Degrees 11 Minutes 42 Seconds, for an arc distance of 53.99 feet; thence North 40 Degrees 54 Minutes 38 Seconds West, along said Northerly line of Fountains Drive, a distance of 56.69 feet to the beginning of a 40.00 foot radius tangent curve to the right; thence Northerly, along said curve and Easterly line of Fountains Drive, through a central angle of 90 Degrees 00 Minutes 00 Seconds, for an arc distance of 62.83 feet to a point on the Southeasterly right-of-way line of Illinois Route 157; thence North 49 Degrees 05 Minutes 22 Seconds East, along said Southeasterly right-of-way line of Illinois Route 157, a distance of 113.19 feet to the beginning of 1573.78 foot radius tangent curve to the left; thence Northeasterly, along said curve and Southeasterly right-of-way line of Illinois Route 157, through a central angle of 06 Degrees 47 Minutes 15 Seconds, for an arc distance of 186.44 feet to a point on the South line of said Country Maples

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Subdivision; thence South 89 Degrees 09 Minutes 07 Seconds East, along South line of said Country Maples Subdivision, a distance of 216.61 feet to the Point of Beginning, containing 3.71 acres, more or less.

(WITH PRIVILEGES OF AND SUBJECT TO ALL RESTRICTIONS, RESERVATIONS, RIGHT-OF-WAY GRANTS, COVENANTS, EXCEPTIONS, EASEMENTS, AND AGREEMENTS, ETC., OF RECORD.)

Permanent Parcel No. 14-1-15-28-00-000-003 (Part)

Permanent Parcel No. 14-1-15-28-00-000-003.001 (Part)

Permanent Parcel No. _____

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END OF DOCUMENT