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MARY ANN STUKEL

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Will County Recorder

Will County

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KMB Date 06/19/2000

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**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS
ARBOR CREEK UNIT NO. 1 SUBDIVISION
(AND OTHER POTENTIAL FUTURE "ADD-ON" PROPERTY)**

THIS DECLARATION is made this 24th day of May, 2000, by KRUGHOFF LAND COMPANY, an Illinois corporation (hereinafter referred to as "Declarant" or "Developer").

RECITALS:

A. Declarant is the owner of fee simple title to certain real estate, encompassing approximately 17.761+/- acres situated at or near Route 30 and I-55 in Plainfield, Illinois, commonly known as "Arbor Creek" legally described in Exhibit "A" attached hereto and made a part hereof (hereinafter sometimes referred to as the "Subject Property").

B. Such initial Subject Property is also sometimes known as the below-referenced "Unit 1 Subdivision." Upon recordation of the Plat for the below-referenced "Add-On Property" (also known as the "Unit 2 Subdivision") and compliance with the other "Add-On" provisions of this Declaration (including the provisions of Article VIII hereof), the "Subject Property" shall also include such Add-On Property.

This Instrument Prepared By and After
Recording Shall Be Returned To:
J. Steven Butkus, Esq.
GUERARD, KALINA & BUTKUS
100 W. Roosevelt Road, Suite A-1
Wheaton, IL 60187

P.I.N.(s): 03-26-100-010 and 03-27-200-005

Property Address:

(i) Unit 1 Subdivision:
Approx. 17.761+/- Acres at or near
Route 30 and I-55 in Plainfield (Will
County), Illinois

(ii) Unit 2 Subdivision (Add-On Property):
Approx. 21.795+/- Acres at or near
Route 30 and I-55 in Plainfield (Will
County), Illinois

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CHICAGO TITLE INSURANCE CO.

C. The Subject Property is part of a larger tract of land encompassing approximately 68.9+/- acres of area (the "Tract"), being the area to be developed with the below-referenced Unit 1 Subdivision and Unit 2 Subdivision, as well as a neighboring residential townhome development, which Tract was annexed to and made a part of the municipal and corporate boundaries of the Village of Plainfield (the "Village") pursuant to an Annexation Ordinance (Village Ordinance No. 1808) adopted by the Village on August 31, 1998 and an Annexation Agreement dated August 31, 1998 and recorded in Will County, Illinois on January 11, 1999, as Document No. R99-004234 (collectively the "Annexation Agreement").

D. A portion of the Subject Property has thus far been subdivided as reflected, set forth and depicted on a certain Final Plat recorded in Will County, Illinois on October 6, 1999 as Document No. R99-122861 (the "Unit 1 Subdivision"), creating thirty-seven (37) subdivided detached single family residential lots ("Detached Single Family Lots") and eight (8) subdivided attached single family (duplex) residential lots ("Attached Single Family Lots"; the Detached Single Family Lots and Attached Single Family Lots are sometimes collectively referred to as the "Lots" and individually referred to as a "Lot") located within the corporate limits of the Village of Plainfield, Illinois, all of which "Lots" are included hereunder and made subject to this Declaration.

E. There is also contained within such Tract and adjacent to and south of the aforementioned "Unit 1 Subdivision" portion of the Subject Property a so-called "Unit 2 Subdivision" which is or soon will be subdivided as reflected and depicted on a Final Plat to be recorded (the "Unit 2 Subdivision") to create an additional forty-seven (47) "Detached Single Family Lots" and an additional seven (7) such (duplex) "Attached Single Family Lots," all of which Unit 2 Subdivision "Lots" are also included hereunder and made subject to this Declaration.

F. There is also contained within such development Tract and adjacent and north of such aforementioned "Unit 1 Subdivision" portion of the Subject Property a so-called "Unit 3 Subdivision" parcel which is intended to ultimately be subdivided and constructed and developed with residential townhomes (sometimes referred to herein as the "Townhome Parcel"). Except only to the extent this Declaration addresses maintenance duties and obligations related to the Stormwater Facilities (hereinbelow defined) which are or may be situated on Drainage Easement Area(s) within such Townhome Parcel, such Townhome Parcel is NOT otherwise part of the Subject Property or subject of or to this Declaration, it being intended that such Townhome Parcel will be subject of its own separate future Townhome Declaration.

G. There also is or will be constructed and contained within such "Arbor Creek" development Tract storm water Detention Pond(s) and/or other Stormwater Facilities (hereinbelow further defined) situated in the Unit 2 Subdivision parcel and in the Townhome Parcel (i.e., also known as the Unit 3 Subdivision) which are to be utilized as and for storm water management and drainage easement and flood control purposes for all of the "Arbor Creek" development (i.e., the Unit 1 Subdivision, the Unit 2 Subdivision, and the Townhome Parcel) (the "Drainage Easement Area(s)").

H. Declarant has caused to be constructed certain landscape easements upon certain of the Lots located within the Subject Property as hereinafter identified (hereinafter referred to as the "Landscape Easements Area(s)").

I. Easements have been or are being reserved and established for possible construction, placement and maintenance of entrance or identifying monument signs for the Subject Property on portions of Lot(s) 99, 48, 86, and 87, all as further identified herein and/or on the Unit No. 1 and Unit No. 2 Plat(s) of Subdivision (sometimes collectively or alternatively referred to herein as the "Final Plat(s)") of the Subject Property.

J. Declarant is desirous of providing for the ownership, care, maintenance and replacement, reconstruction and limitation of such signage common areas and other common areas (including but not limited to Drainage Easement Area(s) and Landscape Easement Areas) through the creation of an incorporated association, and the covenants, restrictions and easements set forth in this Declaration.

K. Declarant is further desirous of impressing all of the Lots in the Subject Property with certain additional covenants, conditions and restrictions.

L. Declarant desires and intends that the several owners, mortgagees, occupants, and other persons acquiring any interest in the Subject Property, or in any Lot or portion of a Lot therein, shall at all times hold their interests subject to the rights, priorities, easements, covenants, conditions, restrictions, liens, and charges hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the attributes of the Subject Property for the use and enjoyment of the residents and Owners thereof.

NOW, THEREFORE, Declarant declares that the Subject Property, as hereinafter defined (including the "Add-On Property"), is and shall be held, transferred, sold, conveyed, and occupied subject to the following covenants, restrictions, easements, charges, and liens (hereinafter referred to as "covenants").

ARTICLE I

DEFINITIONS

SECTION 1: The following words when used in this Declaration have the following meanings:

(a) **ADD-ON PROPERTY:** The real estate legally described in Exhibit "B" attached hereto (also sometimes known or to be known as the "Unit 2 Subdivision").

(b) **ANNEXATION AGREEMENT:** The Annexation Agreement and Annexation Ordinance as further identified and described in the Recitals hereto.

- (c) **ASSOCIATION:** The "Arbor Creek Homeowners Association", an Illinois not-for-profit corporation (or such other similar available not-for-profit corporation name selected by Declarant) created and incorporated by Declarant.
- (d) **BASEMENT:** A portion of a dwelling unit in which not less than one-half of its floor to clear ceiling height is below the average grade of the adjoining ground at the front elevation.
- (e) **BOARD:** Members of the Board of Directors who are elected by the Association.
- (f) **BUILDING:** Any roofed structure intended for shelter, housing, or enclosure of any person, animal or chattel.
- (g) **COUNTY:** The County of Will, a body politic of the State of Illinois.
- (h) **DECLARANT:** Krughoff Land Company, an Illinois corporation.
- (i) **DEVELOPER:** Krughoff Land Company, an Illinois corporation.
- (j) **DRAINAGE EASEMENT AREA(S):** Those areas of the Subject Property situated in the Unit 2 Subdivision and in the Townhome Parcel which are to be improved with various Stormwater Facilities (further hereinbelow defined) including Detention Pond(s) and facilities for use as and for a storm water management and drainage easement and flood control for all of the Arbor Creek development, as recited hereinabove.
- (k) **DWELLING UNIT:** Any building or a portion thereof situated on a Lot within the Subject Property and intended for the use and occupancy of a single family for which an occupancy permit has been issued.
- (l) **DWELLING UNIT, ATTACHED:** A Dwelling Unit which is attached to and shares a party wall with another Dwelling Unit, to be constructed and occupied on an Attached Single Family Lot.
- (m) **DWELLING UNIT, DETACHED:** A Dwelling Unit which is not attached to and does not share a party wall with another Dwelling Unit.
- (n) **ENTRY FEATURES:** Permanent subdivision identification signs or monument signs, split rail fencing and other improvements constructed by Declarant or the Association within Lot(s) 99, 48, 86, and/or 87 or upon any other Lot within an appropriate easement established for the benefit of the Association. Entry Features may be illuminated, non-illuminated or a combination thereof.
- (o) **FINAL PLAT(S):** Collectively or alternatively the final plat(s) of subdivision for: (i) Arbor Creek Unit No. 1 Subdivision recorded with the Will County Recorder's office on October 6,

1999 as Document Number R99-122861; and/or (ii) Arbor Creek Unit No. 2 Subdivision, to be hereafter recorded.

(p) *GUEST*: A Person or Persons having access to and/or the use of a Lot pursuant to the invitation, consent, or neglect of the Owner of such Lot.

(q) *LIVING SPACE*: The total interior square footage of a dwelling unit measured on a horizontal plane for each story, calculated by using the outside dimensions of such dwelling unit, exclusive of porches, garages, uninhabitable storage areas, and basements.

(r) *LOT*: A subdivided lot or portion thereof located within the Subject Property upon which an attached or detached single family dwelling unit may legally be constructed, maintained, and occupied. Reference to a Lot shall not include or mean that aforementioned "Drainage Easement Area" unless otherwise expressly provided or unless the context of such provision reasonably implies the inclusion of such area or parcel.

(s) *LOT, ATTACHED SINGLE FAMILY*: A Lot on which an Attached Dwelling Unit may be or has been constructed. The portion of an Attached Single Family Lot conveyed with an Attached Dwelling Unit shall constitute a Lot hereunder.

(t) *LOT, DETACHED SINGLE FAMILY*: A Lot on which a Detached Dwelling Unit may be or has been constructed.

(u) *LOT OWNERSHIP*: Fee simple ownership of a Lot.

(v) *OCCUPANT*: A Person or Persons, other than an Owner, in possession of a Dwelling Unit.

(w) *OWNER*: A Person or Persons whose estates or interests, individually or collectively, at any time, constitute an aggregate fee simple ownership in a Lot. The word "Owner" shall also mean and refer to the Declarant as to any Lot Ownership, where title is held by Declarant, or its nominee or agent. The word "Owner" shall not, however, notwithstanding any applicable provisions of any mortgage, mean or refer to a mortgagee or any other persons having interest in any such Lot Ownership merely as security for the performance of an obligation unless and until such mortgagee or other holder of a security interest has acquired title pursuant to foreclosure or by deed in lieu of foreclosure. The word "Owner" shall include heirs or devisees of a record owner who is deceased.

(x) *PARK DISTRICT*: The Plainfield Park District, a municipal corporation organized under the Park District Code of the State of Illinois.

(y) *PERSON*: A natural person, corporation, partnership, trustee, or other legal entity capable of holding legal title to real estate.

(z) **STORMWATER FACILITIES:** Those improvements, including contours and grading and Detention Ponds, located within the aforementioned Drainage Easement Area(s) and impressed with an easement for stormwater management, required pursuant to applicable codes and ordinances of the Village to detain and/or retain stormwater from the Subject Property and discharge such storm water at a restricted release rate, including all storm sewers, fixtures, and appurtenances being a part thereof or incidental thereto, which are not owned and maintained by the Village.

(aa) **STORY:** That portion of a building other than a basement included between a floor and the top surface of the next floor or roof above, except that a space used exclusively for the housing of mechanical services of the building shall not be construed to be a story if access to such space may be had only for maintenance and such services. Except as otherwise provided for herein, a mezzanine floor shall be counted as a story when it covers over one-third of the area of the floor next below it, or if the vertical distance from the floor next below it to the floor next above it is twenty-four (24) feet or more.

(bb) **STRUCTURE:** Anything constructed or erected on a lot, the use of which requires more or less permanent location on the ground or attached to something having a permanent location on the ground.

(cc) **SUBJECT PROPERTY:** The real estate described in Article II hereof, being the Unit 1 Subdivision and Unit 2 Subdivision (and including the Add-On Property, as and when added hereto in accordance with the terms of this Declaration).

(dd) **TURNOVER DATE:** The date on which Declarant turns over control of the Association to the Owners pursuant to the provisions of this Declaration..

(ee) **VILLAGE:** The Village of Plainfield, Illinois, a municipal corporation.

(ff) **VOTING MEMBER:** The Owner or Person designated in writing to vote on behalf of a Lot Ownership pursuant to Article III, Section 5 of this Declaration.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Village of Plainfield, County of Will, State of Illinois, and is legally described in Exhibit "A", attached hereto.

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ARTICLE III

CREATION OF ASSOCIATION, ADMINISTRATION,
MEMBERSHIP, AND VOTING RIGHTS

SECTION 1. ASSOCIATION. Within seven (7) years following Declarant's recordation of this Declaration, the powers and authorities of the Declarant as set forth throughout this Declaration, except as otherwise expressly reserved unto Declarant hereunder or as limited pursuant to the instrument of assignment pertaining thereto, shall be vested in an Association having the name "Arbor Creek Homeowners Association", or such other name chosen by Declarant and acceptable to the Illinois Secretary of State, being an Illinois not-for-profit corporation formed by Declarant for such purpose. Declarant shall have the right, at Declarant's sole discretion, to establish the Association and assign all or any of Declarant's rights and/or duties hereunder to the Association at any time following the recordation of this Declaration. Until such time as the Association is created and turned over to the Owners, all of the rights, powers and duties of the Association as set forth herein shall remain vested in and may be exercised by Declarant, including, without limitation, the power to establish a budget and collect assessments in the manner and for the purposes set forth in Article IV of this Declaration.

SECTION 2. ASSOCIATION MEMBERSHIP. Each Owner, with respect to each Lot Ownership held by him, shall be a member of the Association so long as he is an Owner of a Lot. Ownership of a Lot shall be the sole qualification for membership. An Owner's membership shall automatically terminate when he ceases to be an Owner of a Lot. Upon the conveyance or transfer of an Owner's Lot Ownership to a new Owner, the new Owner shall automatically and simultaneously succeed to the former Owner's membership in the Association. Such succession of interest shall not, however, relieve the former Owner of his obligation for any assessments which were levied or became due while he was a Lot Owner under this Declaration.

SECTION 3. ASSOCIATION RESPONSIBILITIES. The Association, acting through its membership, or its Board of Directors, as the case may be, shall have the responsibility(ies) of: (a) enforcing and administering the terms of this Declaration; (b) establishing and approving the annual budget (including necessary reserves); (c) providing for the maintenance, repair, replanting and rehabilitation of all landscaping materials, fencing and signs, if any, located within the landscape, fence and sign easements as identified on the Final Plat or as otherwise provided for under Article V of this Declaration; (d) providing for the management, maintenance, repair and rehabilitation of the Drainage Easement Area(s) and Stormwater Facilities situated thereon all as further hereinbelow specified; and (e) establishing and collecting assessments to be paid by the Owners to defray the costs incurred by the Association in carrying out its duties and responsibilities hereunder, including, without limitation, the creation of reserve accounts determined to be reasonable and appropriate by the Board.

With respect to such management, maintenance and repair of the Drainage Easement Area(s) and Stormwater Facilities it is further hereby expressly provided that such responsibilities (and the appurtenant costs and expenses thereof) shall include and extend to the off-site Drainage

Easement Areas and Stormwater Facilities (including Detention Pond[s]) situated on such Townhome Parcel (i.e. the Unit 3 Subdivision) even though such areas are outside the Subject Property, for so long as and until a Townhome Association has been created and is in place to manage, handle and fund the maintenance needs for such Townhome Parcel -- Unit 3 Subdivision and the developer of such Townhome Parcel -- Unit 3 Subdivision has formally turned over control of such future Townhome Association to the residential owners-members thereof in accordance with such future declaration and/or other instruments which govern such Townhome Parcel. Once such Townhome Association has been created and formally turned over by the Townhome Parcel developer to the residential owner-members of residential units situated within such Townhome Parcel, then the management, maintenance and repair responsibilities (and the cost and expense thereof) for those off-site Drainage Easement Area(s) and Stormwater Facilities so situated within such Townhome Parcel -- Unit 3 Subdivision shall pass to and thereafter be the responsibility of such Townhome Association, subject, however, to continuing, perpetual reciprocal drainage easements between such Subject Property and the Townhome Parcel with respect to such Stormwater Facilities.

SECTION 4. BY-LAWS. The Association may adopt such By-Laws, not inconsistent with the provisions of this Declaration, as are necessary to fulfill its functions. Unless and until such By-Laws are adopted, this Declaration shall serve as the By-Laws of the Association. The fiscal year of the Association shall be determined by the Association, and may be changed from time to time as the Association deems advisable. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the use and benefit of the Lot Owners in accordance with the provisions of this Declaration.

SECTION 5. VOTING RIGHTS.

(a) Each Lot Ownership shall be entitled to one vote for each Lot owned by it. There shall be one person with respect to each Lot Ownership who shall be entitled to vote at any meeting of the Association ("voting member"). The voting member may be the Owner or may be a person designated in writing by such Owner to act as proxy on his behalf and who need not be an Owner. Such designation shall be made in writing by the Owner to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the Owner. It shall be the obligation of each Lot Owner to furnish the Board with the current mailing address of the Owner and voting member for the purpose of receiving notice. In any case where the Lot Ownership is vested in more than one person, the voting member and the vote of such Owner shall be determined among such persons as they may see fit, but not more than one (1) vote, and no fractional votes, may be cast on behalf of any Lot Ownership.

(b) During any period in which a Lot Owner shall be in default in the payment of any assessment or special assessment levied by the Association pursuant to this Declaration, the voting rights of such Owner shall be suspended, and the Association shall further have the right to suspend any or all services to such Owner until such default is cured.

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SECTION 6. MEETINGS.

(a) LOCATION/QUORUM. Meetings of the voting members shall be held at the Subject Property, or at such other reasonable location in the County of Will, Illinois, as may be designated in any notice of a meeting. The presence in person or by written proxy at any meeting of the voting members having at least ten percent (10%) of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the voting members at which a quorum is present upon the affirmative vote of a majority of the voting members present at such meeting. All meetings of the voting members shall be open to all Owners. Withdrawal of a voting member from any meeting shall not cause failure of a duly constituted quorum at that meeting.

(b) ANNUAL MEETING. The initial meeting of the voting members shall be held upon not less than seven (7) days written notice given by Declarant. Thereafter, there shall be an annual meeting of the voting members, at such reasonable time and date as may be designated by written notice of the Board delivered to the voting members not less than thirty (30) days prior to the date fixed for such meeting.

(c) SPECIAL MEETINGS. Special meetings of the voting members may be called at any time for the purpose of considering matters which, by the terms of this Declaration require the approval of all or some of the voting members, or for any other purpose. Such meetings shall be called by written notice authorized by a majority of the Board or by the voting members having twenty percent (20%) of the total votes and delivered not less than four (4) calendar days prior to the date of the meeting, or such longer period as may be specifically required by this Declaration. The notices shall specify the date, time, and place of the meeting and the matters to be considered.

(d) NOTICES OF MEETINGS. Notices of meetings required to be given herein shall be delivered either personally or by mail to the voting members, addressed to each such person at the address given to the Board for the purpose of service of such notice, or to the Owner at the address of the tax assessee of record for such Lot, if no other address has been given to the Board.

SECTION 7. BOARD OF DIRECTORS.

(a) At the initial meeting of the voting members, and at each annual meeting thereafter, a Board of Directors consisting of five (5) Lot Owners, or the total number of Lot Owners then existing, whichever is less, shall be elected by a majority of the voting members in attendance at such meeting in person or by written proxy, each to serve a term of one (1) year and until his successor is elected and qualified. Board members shall serve the Association without compensation. For purposes of incorporating the Association, Declarant may select an initial Board of Directors consisting of persons who may or may not be Lot Owners, to serve in such capacity until the initial meeting of the voting members and the election of a Board of Directors at said meeting.

(b) The Board shall elect from among its members a President who shall preside over both its meetings and those of the voting members, and who shall be the chief executive officer of

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the Board and the Association, and a Secretary-Treasurer who shall keep the minutes and records of the Board and the Association and perform all the usual functions of a Secretary and a Treasurer.

(c) Vacancies in the Board of Directors caused by any reason shall be filled by a vote of voting members at a special meeting called for that purpose.

(d) At any meeting of the voting members duly called, any one or more of the members of the Board of Directors may be removed with or without cause by a majority of the voting members and a successor may then and there be elected to fill the vacancy thus created. Any such member whose removal has been proposed shall be given an opportunity to be heard at the meeting.

(e) Until the first Board of Directors is elected by the voting members pursuant to this Section, the Declarant shall have and exercise the powers and duties of the Board.

(f) Except as otherwise expressly provided in this Declaration or in the By-Laws of the Association, the Board shall act by the majority vote of its members at meetings called from time to time as a majority of the Board may determine. The majority of the Board shall constitute a quorum. No meetings may be held without notice to all members of the Board which shall also set forth specifically the business to be conducted. All Board meetings shall be open to the Lot Owners and the voting members. Notwithstanding anything contained herein to the contrary, any action authorized herein to be taken by the Board at a meeting pursuant to notice may be taken by informal action consisting of a written resolution signed by all of the members of the Board and setting forth the action taken or authorized and waiving notice of a meeting and agreeing to the use of the informal procedure hereby authorized.

SECTION 8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by this Declaration or the Association's By-Laws directed to be exercised by the Lot Owners, including, without limitation, the following:

(a) To provide for the planting, care, maintenance, restoration and replacement of landscaping materials within the landscape easements as indicated on the Final Plat.

(b) To provide for the care, maintenance and rehabilitation of entryway landscaping and entry and other Entry Features.

(c) To provide for such landscape care and maintenance of the Drainage Easement Area(s), Stormwater Facilities and Landscape Easement Area(s) from time to time required in order to maintain compliance of such areas with this Declaration, the Annexation Agreement and applicable codes and regulations of the Village and other applicable governmental authorities pertaining to wet and/or dry bottom retention/detention and/or drainage facilities or areas and so on.

(d) To enforce the terms of this Declaration.

- (e) To cause the annual budget to be prepared, and each Lot Owner to be notified of the annual budget and any regular and/or special assessments against his Lot, and to collect the same, all in accordance with this Declaration.
- (f) To procure and maintain such public liability, workmen's compensation, fidelity, directors' and officers' liability and other insurance in such amounts and insuring the Lot Owners, the Association, and the Board against such risks as the Board may in its discretion deem appropriate, provided, however, that in no event shall comprehensive general liability insurance coverage for the Association be in an amount less than One Million Dollars (\$1,000,000.00) for each person and each occurrence.
- (g) To pay all taxes and other costs and expenses incident to any property owned by the Association for the benefit of the Association.
- (h) To execute such grants of easement, not inconsistent with the easements specified in Article V hereof, as may be necessary from time to time to any utility company or provider serving or utilizing any property from time to time owned by the Association.
- (i) To deposit from time to time to the credit of the Association funds in savings, money market and checking accounts in such banks, trust companies, or other depositories as the Board may select.
- (j) To authorize any officer or officers, agent or agents, of the Association to enter into contracts or to execute and deliver instruments in the name of and on behalf of the Association.
- (k) To keep correct and complete books and records of account and minutes of the proceedings of the Board and committees having any of the authority of the Board. All books and records of the Association may be inspected by any Lot Owner, voting member or member of the Board or his agent or attorney, for any proper purpose at any reasonable times.
- (l) To provide to the holder of a first mortgage on any Lot, upon written request, written notice of any default by the Owner of such Lot in the performance of any obligation under this Declaration which is not cured within thirty (30) days. This provision may not be amended without the written consent of all holders of first mortgages in the Lots.
- (m) To provide written statements upon the request of an Owner identifying the amount of the current assessments levied against such Owner's Lot and the amount, if any, of such assessment then remaining unpaid.
- (n) To exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Lot Owners by the By-Laws or this Declaration.

SECTION 9. INDEMNITY OF BOARD OF DIRECTORS. The members of the Board and the officers thereof or of the Association shall not be liable to the Lot Owners or any mortgage holder for any mistake of judgment, or any acts or omissions made in good faith as such members or officers. The Lot Owners shall indemnify and hold harmless each of such members or officers against all contractual liability to others arising out of contracts made by such Board members or officers on behalf of the Lot Owners or the Association unless such contract shall have been made in bad faith or contrary to the provisions of this Declaration.

SECTION 10. BOARD'S DETERMINATION BINDING. In the event of any dispute or disagreement between the Lot(s) Owner(s) relating to the Drainage Easement Area(s), Stormwater Facilities, Landscape Easement Area, Entry Features, or other common area or any question of interpretation or application of the provisions of this Declaration or the By-Laws of the Association, the determination thereof by the Board shall be final and binding on each and all of such Lot Owners.

ARTICLE IV

ASSESSMENTS

SECTION 1. LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot Ownership, whether or not improved with an occupiable dwelling unit owned by it, hereby covenants to pay to the Association, subject to the conditions and limitations expressed in Section 5 of this Article IV, and each Lot Owner other than the Declarant, by acceptance of the deed to his Lot Ownership, shall be deemed to covenant and agree to pay to the Association, annual assessments or charges, and special assessments as hereinafter authorized, fixed, established, and collected from time to time as hereinafter provided. All such annual and special assessments, together with interest, if any, and cost of collection thereof, including attorneys fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made from the date of its commencement, all as hereinafter provided. Each such assessment, together with such interest and such cost of collection, shall also be the continuing personal obligation of the Owner of such Lot at the time the assessment became due.

SECTION 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association or Declarant, as the case may be, shall be used exclusively to carry out and promote the purposes, obligations and duties of the Association as set forth in this Declaration, and to enforce this Declaration and the compliance herewith by each Lot Owner.

SECTION 3. AMOUNT OF ANNUAL ASSESSMENT/INITIAL "RESERVE(S) PAYMENT". Until the first annual meeting of the Association and the turnover of the Association by Declarant, the amount of the annual assessment shall be determined by the Declarant. Declarant and/or Developer may additionally require, in their sole discretion, that the first grantee of a fully improved Lot (meaning a Lot improved with a substantially completed Dwelling Unit) pay and deposit with the Association an initial non-refundable reasonable "reserve" amount for purposes of initially funding the Association and establishing Association reserves. The

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Association has the same rights and recourses to collect such reserve payment as it has with respect to any other assessment hereunder. Thereafter, the amount of the annual assessment shall be determined by the voting members at any annual meeting or any special meeting called for the purpose. Notice of any special meeting for such purpose shall be given in writing to all voting members at least thirty (30) days in advance of the date set for such special meeting. The amount of the annual assessment shall in no case be less than an amount determined (taking into consideration existing cash reserves and the need to maintain future reasonable reserves) by the Declarant or the Board, as the case may be, to be necessary to defray all costs and expenses of the Association in meeting its obligations and fulfilling its duties under this Declaration and the By-Laws for the following year. Each annual assessment shall be divided among the Lots contained within the Subject Property on an equal basis. In the event the annual assessment is not duly adopted by the voting members within sixty (60) days following the date of the initial meeting duly noticed for such purpose, whether due to lack of a quorum, lack of sufficient vote of the voting members, or for any other reason, then one hundred five percent (105%) percent of the amount of the annual assessment for the preceding year shall be assessed for the current year until otherwise approved by the voting members. In the event the voting members fail to adopt the annual assessment as aforesaid and the Board determines the financial requirements of the Association for the upcoming year will exceed one hundred five (105%) percent of the prior years annual assessment, the Board may, by a two-thirds (2/3) vote of the Directors, adopt an annual assessment exceeding one hundred five (105%) percent (but in any event not exceeding one hundred twenty-five (125%) percent) of the annual assessment for the preceding year.

SECTION 4. SPECIAL ASSESSMENTS FOR EXTRAORDINARY ITEMS. In addition to the annual assessments authorized by Section 3 of this Article IV, the Association may levy in any assessment year, applicable to that year only, a special assessment which shall be assessed uniformly against each Lot for the purpose of defraying, in whole or in part, the cost of any extraordinary construction or reconstruction, unexpected or emergency repair, replacement, rehabilitation or of any maintenance responsibility of the Association, provided that any such assessment shall have the assent of sixty percent (60%) of the voting members voting on the question at an annual meeting or a special meeting duly called for this purpose, written notice of which shall be sent to all voting members at least fourteen (14) days in advance and shall set forth the purpose of the meeting.

SECTION 5. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. The quorum required for any action authorized by Sections 3 and 4 of this Article IV, together with such other actions duly noticed to be considered at such meeting, shall be as follows:

At the first meeting of voting members called pursuant to Sections 3 and 4 of this Article IV, the presence in person or by written proxy of voting members entitled to cast twenty (20%) percent of all the votes of the Association shall constitute a quorum. If the required quorum is not forthcoming at such meeting, subsequent meetings may be called, subject to the notice requirement set forth in said Sections 3 and 4, until a quorum of three quarters (3/4) of the required quorum at the first such meeting is met.

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SECTION 6. DATE OF ASSESSMENT. The Declarant, until the first annual meeting of voting members, and thereafter, the Board, shall fix the date of commencement and the date or dates of payment of the annual assessment against each Lot at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be open to inspection by any Lot Owner. Written notice of the assessment shall thereupon be sent to every Lot Owner subject thereto. The Board shall upon demand at any time furnish to any Lot Owner liable for any assessment a certificate in writing signed by an officer of the Board, setting forth whether such assessment has been paid, and such certificate shall be presumptive evidence of payment of any such assessment. The due date of any special assessment under Section 4 hereof shall be fixed by the Board. The Board may require any annual or special assessment to be paid in such installments as it may deem appropriate.

SECTION 7. EFFECT OF NON-PAYMENT OF ASSESSMENT; REMEDIES OF ASSOCIATION

- (a) If an assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, be a continuing lien on the Lot in favor of the Association which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns until paid. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and that of his personal representatives but his personal obligation shall not pass to his successors in title unless expressly assumed by them, although the delinquent assessment will remain a lien on the land until satisfied.
- (b) If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at an interest rate of one and one-half percent (1-1/2%) per month, or the maximum rate allowable by law, whichever is less, and the Association may bring an action against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney fees to be fixed by the court, together with the costs of the action.

SECTION 8. SUBORDINATION OF LIEN TO CERTAIN ENCUMBRANCES.

The lien of the assessments provided for in this Section 7 shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon a Lot subject to assessment; provided, however, that such subordination shall apply only to the assessments and charges which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments and charges thereafter becoming due, nor from the lien of any such subsequent assessment or charge.

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SECTION 9. RIGHT OF VILLAGE TO MAINTAIN AND LEVY TAXES (SPECIAL SERVICE AREA). In the event the Association fails to properly maintain the Drainage Easement Area(s), Stormwater Facilities, Entry Features, perimeter landscaping features and Landscape Easement Area(s) or other common areas, the Village shall have the right to perform such maintenance in accordance with the provisions of this Declaration and the Annexation Agreement and the cost incurred by the Village as a result thereof, together with such additional Village fees as may be permitted by ordinance, rule or regulation, shall be defrayed from additional real estate taxes levied and collected pursuant to an ordinance or ordinances to be hereafter adopted by the Village of Plainfield establishing a special service area for the Subject Property and/or other portions of such "Arbor Creek" development from time to time developed ("Special Service Area"), all as provided for pursuant to applicable provision of the Annexation Agreement and applicable Village ordinances, rules and regulations. The Special Service Area encompasses the Subject Property (including the Add-on Property) as well as such Townhome Parcel - Unit 3 Subdivision of the "Arbor Creek" development.

ARTICLE V

EASEMENTS

SECTION 1. PUBLIC UTILITY, DRAINAGE AND STORM WATER MANAGEMENT EASEMENTS. Pursuant to the Final Plat and Plat of Easement, the Declarant and owner of the Retention Parcel have granted certain easements for public utilities, drainage and storm water retention/detention to the Village and other named common carriers and franchisees of the Village. Said easements and the locations thereof are identified on the Final Plat and Plat of Easement. Pursuant to said easements, the Village and other parties benefited thereby shall have the perpetual right, privilege and authority to utilize the easement premises in the manner set forth on the Final Plat and Plat of Easement, and each Owner of a Lot within the Subject Property shall maintain the easement premises located on his Lot and keep the same clear of unpermitted obstructions, all as specified on and required under the Final Plat and Plat of Easement.

SECTION 2. LANDSCAPE EASEMENT. Declarant hereby grants and reserves unto itself and the Association a non-exclusive perpetual easement for the installation, care, maintenance, replacement and renewal of fencing, temporary and permanent signs, plants, shrubs, bushes and other landscape materials (hereinafter referred to as the "Landscape Easement") over, across, upon and within those portions (if any) of the Subject Property adjacent to the Frontage Road (running along Interstate 55) identified in the Annexation Agreement and/or identified on the Final Plat(s) as Landscape Easement(s) (hereinafter referred to as the "Landscape Easement Area(s)"). The party carrying out any work or activity upon the Landscape Easement Premises pursuant to the authority established under the Landscape Easement shall promptly restore to a condition at least as good as that existing prior to such activity all areas within the Landscape Easement Premises and any adjoining property disturbed as a result of such work or activity. The Landscape Easement shall include the right of ingress and egress to and from the Landscape Easement Premises for the purpose of carrying out the rights and authorities established under the Landscape Easement. Anything hereinabove contained to the contrary notwithstanding, fencing may only be installed

within the Landscape Easement upon and subject to the prior express written consent of the Developer (prior to the "Turnover Date") and thereafter of the Association. The Developer (prior to the Turnover Date) or Association (after the Turnover Date) as the case may be, shall have sole and absolute discretion and authority, to allow or prohibit, on a case-by-case (Lot-by-Lot) basis installation of any fencing on landscape berm areas. In the event the Owner of a Lot backing up to Interstate 55 (Frontage Road) desires to install and receives such approval for installation of a fence generally parallel with and adjacent to either of said streets (hereinafter "Adjacent Road Fences"), such fence shall be of a type and installed in the location as required under Section 11 of Article VI of this Declaration.

SECTION 3. EASEMENT TO RUN WITH THE LAND. All easements on or with respect to any Lot within the Subject Property as established by the Final Plat or under this Declaration are easements appurtenant to and running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, the Village, and any Owner, Occupant, purchaser, mortgagee, and other person having an interest in any Lot upon which such easement is located, and its or his heirs, grantees, successors, and assigns, subject to the provisions of Section 1 of Article IX of this Declaration.

ARTICLE VI

USE RESTRICTIONS

The following covenants and restrictions on use shall apply to all Lots within the Subject Property.

SECTION 1. MAINTENANCE AREAS. All Lot Ownerships in the Subject Property, through the Association, shall be responsible for the care, maintenance, repair, rehabilitation and replacement of Entry Features and landscaping located within cul-de-sac landscape islands, public street right-of-ways and Landscape Easements and other common areas, to the extent required under this Declaration (collectively referred to as the "Maintenance Areas"). In the event Maintenance Areas are not properly maintained by the Association or the Lot Ownerships, the Village shall, upon ten (10) days prior written notice to the Association or all of the general real estate tax assesses of record for the Lots, have the right to perform or have performed on its behalf all reasonably necessary maintenance work to or upon the Maintenance Areas, or any portion thereof. In each such case, the Village, through its designated representatives, shall have the right to enter upon, cross over and utilize all or any portion of the Maintenance Areas to carry out such maintenance. The Village and its representatives shall use all reasonable efforts to minimize any damage or disturbance to Lot(s) and any other Maintenance Area. In the event the Village is required to effectuate such maintenance of any portion of the Maintenance Areas, it shall be entitled to recover one hundred ten percent (110%) of the costs incurred by it as a result thereof through the collection of additional taxes in accordance with the provisions of Section 9 of Article IV of this Declaration.

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SECTION 2. ANTENNA AND SOLAR HEATING SYSTEMS. No solar heating system, dish type antenna or tracking device utilized to receive or intercept satellite transmissions exceeding twenty-four (24") inches in diameter, or any other form of antenna, shall be located or used on any Lot within the Subject Property unless fully enclosed within the principal structure on the Lot. Furthermore, in any event any such satellite dish type antenna or tracking device which is twenty-four (24") inches or less in diameter, shall not be installed without prior architectural control approval as further hereinbelow provided at Article VII hereof nor in any event shall the same be installed in the front of a Dwelling Unit or in any other location which is highly visible from the adjoining street(s). No television or radio tower, antennae, or dish of any type used for transmitting signals shall be located or utilized on any Lot.

SECTION 3. TRUCKS AND RECREATIONAL VEHICLES. No trucks or other vehicles with commercial lettering or signs painted on or affixed to any portion of the exterior thereof, and no recreational vehicles of any type, including, without limitation, boats, trailers, campers, motor homes, airplanes, and other such vehicles and equipment shall be parked or stored, temporarily or permanently on any street within the Subject Property, on any Lot within the Subject Property other than in a fully enclosed garage. Notwithstanding the foregoing, trucks and other vehicles with commercial lettering or signs painted on or affixed to any portion of the exterior of the same shall be permitted to park temporarily on the driveway on a Lot during the limited period of a service call, delivery or pick-up being carried out or made to the dwelling unit on such Lot, provided such limited temporary parking shall not include or allow unenclosed overnight parking of such vehicles on any Lot. The restrictions set forth in this Section 3 shall not apply to trucks or other vehicles, (i) engaged or used in the development of the public improvements for the Subject Property, (ii) engaged or used in the construction of a dwelling unit or installation of landscaping or other site improvements on a Lot prior to the issuance of the occupancy permit for, and the residential habitation of, the dwelling unit located on such Lot, (iii) utilized, parked or stored on a Lot upon which a model home is located and operated pursuant to the written approval of Declarant, or (iv) utilized, parked or stored on a Lot upon which a house for sale which has not previously been inhabited is located.

SECTION 4. SWIMMING POOLS. No above ground swimming pools, excluding children's wading pools, shall be erected, placed or utilized on any Lot. Further, no partially buried or partially embedded swimming pools or other pool structures shall be erected, placed or utilized on any Lot.

SECTION 5. BUILDING EXTERIORS. Aluminum, vinyl, brick, stone, masonite, stucco, dryvit, cedar and wood exterior siding, fascia or soffit materials may be incorporated in or used in the construction of any dwelling unit located upon any Lot within the Subject Property. All aluminum siding shall be 4" or 5" embossed and .024 gauge. All roofs must be of cedar shake, or slate or tile or of asphalt shingle material. Vinyl siding will be allowed in lieu of aluminum siding. No other form or type of exterior material shall be utilized without Declarant's prior written consent given pursuant to the provisions of Article VII of this Declaration.

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SECTION 6. MINIMUM BUILDING SIZE/COMPLIANCE WITH VILLAGE CODES AND ORDINANCES. The following standards for minimum square footage of living space shall be applicable to each dwelling unit constructed within the Subject Property:

- a. All two (2) Story and multi-Story Detached Dwelling Units shall contain not less than One Thousand Seven Hundred (1,700) Square Feet of living space above the top of the Dwelling Unit's foundation at its highest point.
- b. All one (1) Story Detached Dwelling Units shall contain not less than One Thousand Four Hundred (1,400) Square Feet of living space above the top of the Dwelling Unit's foundation at its highest point.
- c. All Attached Dwelling Units, whether multi-Story or one Story, shall contain not less than One Thousand (1,000) Square Feet of living space above the top of the Dwelling Unit's foundation at its highest point.

The term "Square Feet" is defined as the sum of the horizontal areas of the several floors of the building, exclusive of basements, breezeways, garages, carports and open terraces. All buildings in the Development shall be constructed according to applicable building codes, regulations and ordinances promulgated by the Village; provided, however, that if any of the standards set forth herein or which may be hereinafter imposed by amendment to this document are more restrictive than said codes, regulations and ordinances, the more restrictive standards shall govern.

SECTION 7. COMMENCEMENT OF CONSTRUCTION. All purchaser (except Developer) of a Lot or Lots situated in the Subject Property shall commence construction thereon within twenty-four (24) months from the date of the closing of said purchase. Once commenced, such construction shall be completed within twelve (12) months from the date of commencement. Site landscaping (including, but not limited to, the parkway adjoining the street at the front or side of each lot which shall be sodded and planted with any required parkway trees) must be completed within six (6) months of the completion of the structure built thereon.

SECTION 8. LOT GRADING. Following the issuance of any occupancy certificate by the Village for a Lot, such Lot shall be graded, and such grades shall be maintained, in compliance with the master grading plan affecting such Lot, as approved by the Village. The top of foundation for each dwelling unit shall be constructed in substantial conformity to the elevation as provided on said master grading plan.

SECTION 9. MODEL HOMES. No structure or other facility located upon the Subject Property shall be occupied or utilized for the purpose of a model home and/or sales and or construction office without the prior written approval of Declarant, and then only in accordance with the limitations and restrictions of such approval. Such approval shall be in the sole and absolute discretion of Declarant. Nothing contained in this Declaration shall be construed to prohibit or limit the use of a structure for a model home and/or sales and construction office if

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otherwise approved by Declarant. Declarant shall have the right and authority to use, and authorize in writing others to use, sales and construction trailers upon the Subject Property.

SECTION 10. ACCESSORY STRUCTURES. No accessory structures, outbuildings, or storage sheds, including, without limitation, detached garages, shall be constructed, maintained, or utilized upon any Lot, except for decks, patios, swimming pools, children's playhouses, and gazebos, the latter two of which shall be constructed of materials permitted pursuant to Section 5 of this Article VI. Each such child's playhouse and gazebo shall contain one floor only constructed at or near ground level, and no child's playhouse shall exceed one hundred (100) square feet of gross floor area. No deck, patio, swimming pool, children's playhouse or gazebo shall be constructed on any Lot without first receiving Declarant's written approval pursuant to Article VII of this Declaration.

SECTION 11. FENCES. No chain link or cyclone type fences of any kind shall be constructed, used or maintained for any purpose upon any Lot located within the Subject Property. Any Lot Owner or Occupant desiring to erect a fence upon a Lot shall first obtain approval therefor pursuant to the provisions of Article VII of this Declaration. All fences erected, maintained or used upon a Lot shall be constructed of cedar in compliance with one of the designs identified in Exhibit "C" attached hereto, and shall be a maximum of five (5) feet in height. Any and all such fences erected, maintained or used on any corner Lot (being any Lot situated at and where two or more streets or roads meet) shall not be placed or situated: (i) any closer than fifteen (15) feet from the Lot line on the side of the Dwelling Unit thereon; and (ii) any closer than the thirty (30) foot building set back line at the front of such Dwelling Unit thereon.

All fences erected or used upon a Lot shall be constructed so that the finished face of such fence faces outward from the property lines of such Lot and all structural and support members of the fence face inward toward such Lot. All fences constructed within the Subject Property shall fully comply with applicable ordinances of the Village and all necessary and appropriate permits required by the Village or other applicable authority for such fence shall be procured by the constructing party prior to the commencement of construction. In the event a Lot Owner fails to properly maintain a fence located on such Owner's Lot, the Association shall have the right and authority, upon at least ten (10) days prior written notice to such Lot Owner, to enter upon such Lot and perform or cause to be performed reasonable maintenance, replacement, renewal or removal of such fence. All costs incurred by the Association in carrying out such work, plus an additional fifteen percent (15%) thereof, shall be paid by such Lot Owner to the Association, and the Association shall have a lien against such Lot in such amount, plus reasonable attorney's fees incurred by the Association in collecting the same.

SECTION 12. SIGNS. No signs or placards of any kind, except for a single customary size real estate "for sale" sign complying with applicable ordinances of the Village, shall be permitted to be publicly displayed by any Lot Owner on any Lot, whether inside or outside of the Dwelling Unit on such Lot. This provision shall not apply to any signs utilized by Declarant, Developer or any person authorized by them, in accordance with applicable Village sign ordinances in the development, sale and marketing of the Subject Property.

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SECTION 13. ANNEXATION AGREEMENT RESTRICTIONS. In addition to all other restrictions and covenants set forth in this Declaration, each Lot shall fully comply with the applicable terms, conditions and restrictions set forth in Exhibit "C" attached to the Annexation Agreement, a copy of which exhibit is attached to this Declaration as Exhibit "D." In the event of a conflict between any provision of this Declaration and a provision of Exhibit "D" attached hereto, the more restrictive provision shall prevail.

ARTICLE VII

ARCHITECTURAL CONTROLS

SECTION 1. PLAN APPROVAL. It is understood and agreed that the purpose of architectural controls for the Subject Property is to secure an attractive, harmonious residential development having continuing appeal. No construction on the Subject Property of a building, any accessory structure as identified in Section 10 of Article VI of this Declaration, fence, wall, or other structure or any satellite dish or other such tracking or reception device, shall be commenced, erected, or maintained, nor shall any addition to or change or alteration thereto be made (except interior alterations) until the construction plans and specifications, showing the nature, kind, shape, height, materials, color scheme, proposed location on the Lot, approximate cost of such building or other structure, and the grading plan and landscape plan of the Lot to be built upon shall have been submitted to and approved in writing by Declarant. Declarant shall have the right to refuse to approve any such construction plans or specifications, grading plan or landscape plan, which are not suitable or desirable in the opinion of Declarant for aesthetic or other reasons; and in so passing upon such construction plans and specifications, grading plan or landscape plan, Declarant shall have the right to take into consideration the suitability of the proposed building or other structure with the surroundings, and the effect of the building or other structure on the compatibility with adjacent or neighboring properties.

All plans, specifications, and other materials pertinent to any proposed construction shall be submitted to the office of Krughoff Land Company, c/o Roy A. Krughoff, President, 3080 Wagner Road, Aurora, IL 60504 or such other address as may from time to time serve as the principal place of business for said corporation, or such other person or entity and address as Declarant may from time to time designate as its agent (hereinafter referred to as "Agent"), for approval or disapproval. A report in writing setting forth the decision of Declarant or Declarant's Agent, and the reasons therefor shall thereafter be transmitted to the applicant by Declarant or its Agent within thirty (30) days after the date of filing the plans, specifications, and other material by the applicant. Declarant or its Agent, following the submission of the aforesaid, will aid and assist the prospective residents, or their agents, and will attempt to reasonably cooperate with the reasonable objectives of the Lot Owner. Lot Owners are encouraged to submit preliminary sketches for "informal comment" prior to the submittal of architectural drawings and specifications for full review. In the event: (a) Declarant or its Agent fails to approve or disapprove within one hundred twenty (120) days after submission, the final plans, specifications, or other material, as required in this Declaration; or (b) no suit to enjoin construction has been filed by Declarant, Agent, the

Association or any other Lot Owner, within two hundred ten (210) days after commencement of construction in violation of this Article VII, the requirement of Declarant's approval under this Article VII for the structure or improvement submitted for review or then under construction, and for such structure or improvement only, shall be deemed waived, provided, however, that all other provisions of this Declaration shall be fully complied with.

SECTION 2. ASSIGNMENT OF AUTHORITY. The rights and authorities established by this Article VII shall be personal to Declarant, through Declarant or its Agent, but may be assigned by Declarant to such other person(s) or entity, and thereafter from time to time assigned, as Declarant, or its successor or assign, may deem appropriate. An assignment of the Declarant's rights and authorities pursuant to this Article VII may only be accomplished by written instrument expressly referencing this Article VII, duly executed by the assignor, accepted by the assignee, and recorded with the Will County Recorder's Office. Declarant may at any time terminate the architectural controls established hereunder by written instrument recorded with the Will County Recorder's Office, without the consent of any Lot Owner within the Subject Property. In the event Declarant assigns its rights under this Article VII to the Association, the Association Board shall establish an architectural review committee consisting of not less than three (3) Lot Owners to administer the provisions of this Article VII. The term of service for each committee member elected by the Board, and the procedures to be utilized by such committee in carrying out its duties, shall be as established by the Board. Alternatively, Developer reserves unto itself the absolute right, power and authority to elect by written notice recorded with the Will County Recorder's Office any time prior to the "Turnover Date" to eliminate the architectural control and approval procedures set forth in this Article VII and leave the Association, upon such Turnover Date, to establish and form the Association's own architectural control and approval processes, procedures and rules (if any).

SECTION 3. DEVELOPER EXEMPTION. The provisions of Section 1 of this Article VII shall not apply to Declarant, Developer or any home building entity owned, in whole or in part, or controlled by Roy A. Krughoff. This exemption shall not be assignable and shall not run with the land upon the sale of a Lot by one of the exempt entities, but shall be personal to said exempt entities.

ARTICLE VIII

ADD-ON PROPERTY

The Subject Property initially consists of the aforementioned subdivided "Unit 1 Subdivision" (legally described on Exhibit "A" attached hereto) of the overall development Tract known as "Arbor Creek." Accordingly, Declarant contemplates the development of at least one more additional subdivision units of such "Arbor Creek" development (including in particular, the above-referenced "Unit 2 Subdivision") as the "Add-On Property" as defined in Paragraph (a) of Section 1 of Article I of this Declaration (which "Add-On Property" is legally described on Exhibit "B" attached hereto). Declarant, by written instrument or instruments duly executed by Declarant and hereafter recorded with the Will County Recorder's office, shall have the right and authority, but not the obligation, to from time to time subject all or any part of the Add-On Property, or any other

property contiguous to the Subject Property or Add-On Property hereafter acquired by Declarant, to the conditions, covenants, easements, reservations and restrictions set forth in this Declaration, subject to such alterations, amendments, or clarifications of the terms and provisions hereof, and such additional covenants, easements, and restrictions as Declarant may deem appropriate for the applicable parcel of the Add-On Property. The submission of all or any portion of the Add-On Property or other contiguous property to this Declaration shall be in the sole and absolute discretion of Declarant, and shall not require the consent or approval in any form or manner of any Lot Owner taking title by, through or under Declarant, or any of Declarant's grantees or assignees. The right and authority vested in Declarant pursuant to this Article VIII shall be personal to Declarant and shall not run to the benefit of any grantee, successor or assignee of Declarant except by written instrument of assignment specifically referencing the right being assigned, duly executed by Declarant and recorded with the Will County Recorder's office. Each portion of the Add-On Property, or other contiguous property, from time to time duly subjected to this Declaration shall automatically be treated as a part of the Subject Property for purposes of applying the provisions of this Declaration. Unless otherwise provided in the instrument adding such property under this Declaration, all common areas and common area facilities shall be administered and maintained by the Association, and the assessments from time to time levied by the Association or Declarant shall be spread over all of the property then being the subject of this Declaration.

ARTICLE IX

DECLARANT'S RIGHTS RESERVED

SECTION 1. EASEMENTS. Notwithstanding any provisions contained herein to the contrary, the easements granted or referred to under Article V of this Declaration shall be subject to:

- (a) The right of the Declarant to execute all documents and do all other acts and things affecting the Subject Property (including but not limited to the execution, granting and/or creation of future easements related to drainage stormwater management and/or public utilities or improvements; special service area agreements; conveyances or dedications of land to the Village and/or Park District and so on) which, in the Declarant's sole opinion and discretion, are desirable and appropriate in connection with Declarant's and Developer's rights hereunder, provided any such document or act or thing does not unreasonably interfere with the property rights of any Owner.
- (b) Easements of record on the date hereof and any easements which may hereafter be granted by Declarant to any public utility or governmental body for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewer and water pipes, or any other utility services serving any Dwelling Unit or as otherwise specified in such easements.
- (c) The vacation or relocation of easements by the Declarant pursuant to agreement with the Village to facilitate the service of utilities to all or any portion of the Subject Property, or to eliminate a particular hardship which would otherwise be experienced by an Owner.

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SECTION 2. CONSTRUCTION AND SALES FACILITIES. Declarant shall have the right to construct, operate and maintain, and to authorize others pursuant to the provisions of Section 8 of Article VI of this Declaration to construct, operate and maintain, construction and/or sales facilities in model homes and other structures approved by Declarant located within the Subject Property throughout the period of construction and sales of Lots and dwelling units located within the Subject Property, or any portion thereof.

SECTION 3. TEMPORARY SALES SIGNS AND MATERIALS. Declarant, Developer and others authorized in writing by Declarant, shall have the right and authority to construct, install and utilize temporary sales, marketing, directional and advertising signs, banners, pennants and materials (hereinafter collectively "Temporary Signs") from time to time deemed appropriate by Declarant to promote the development and sales of Lots and dwelling units constructed or to be constructed upon any Lot. Developer shall have sole and exclusive discretion in the design, colors, configurations and composition of such Temporary Signs. Temporary Signs may be located upon (i) the Landscape Easement, as defined in Section 2 of Article V of this Declaration, (ii) any Lot owned or controlled by Declarant, Developer or any other entity authorized in writing by Declarant, (iii) any Lot within the Subject Property upon which the right to place Temporary Signs is reserved by Declarant, Developer or such authorized entity, and (iv) any portion of the Add-On Property. All Temporary Signs shall be removed by the entity which installed the same no later than the issuance of the occupancy permit for the last dwelling unit occupied within the Subject Property, including any Add-On Property hereafter submitted under this Declaration.

SECTION 4. PERMANENT ENTRY SIGNS. Declarant shall have the right and authority, but not the obligation, to construct permanent subdivision identification entry signs within the Landscape Easement or other easements reserved by Declarant for such purpose on Lot(s) 99, 48, 86, and 87 and/or other Lot(s), at or near points of entry to the Subject Property from the Interstate 55-Frontage Road and other access points (hereinafter "Permanent Entry Signs"). All Permanent Entry Signs constructed by Declarant shall be conveyed to and owned and maintained by the Association.

SECTION 5. EXCEPTIONS. Except for rights granted to the Village, Declarant, for itself only, hereby reserves the right to enter into written agreements without the consent of any Owner to deviate from any or all of the provisions set forth herein, including, without limitation, the restrictions set forth in Article VI hereof, in the event Declarant determines, in its sole and absolute discretion, practical difficulties or particular hardships or other justifications are evidenced by any Owner of any Lot in the Subject Property. Any deviation so approved shall not constitute a waiver of the right of Declarant or any Owner to enforce against any other Lot within the Subject Property the provision deviated from, nor shall Declarant have any obligation to extend or grant such deviation to any other Lot within the Subject Property.

SECTION 6. GENERAL AUTHORITY. Declarant shall have the right to execute all documents and undertake any actions effecting the Subject Property, and any portions thereof, which in Declarant's sole and absolute discretion are either desirable or necessary to fulfill or

implement, either directly or indirectly, any of the rights granted or reserved to Declarant or the Association in this Declaration.

SECTION 7. DECLARANT'S AGENT. All notices, approvals, consents, deviations, and other authorizations which may be given by Declarant hereunder may also be given by Declarant's Agent as identified in Section 1 of Article VII of this Declaration. All such notices, approvals, consents, deviations, and other authorizations from time to time voluntarily given in writing under the authentic and duly authorized signature of Agent shall be deemed binding upon Declarant and may be relied upon solely by the person or entity to which the same is specifically addressed. Declarant may from time to time revoke, alter, amend or transfer the authority granted under this Section 5 by written instrument referencing this Section 5, which instrument shall be deemed effective upon execution by Declarant and recordation thereof with Will County Recorder of Deeds.

SECTION 8. ASSIGNMENT OF DECLARANT'S RIGHTS. Declarant, its successors or assigns, shall have the right to transfer and assign all or any of the rights, privileges, easements, powers, and duties herein retained or reserved by Declarant, its successors or assigns, by written instrument or instruments in the nature of an assignment expressly providing for such assignment and specifically referencing this Declaration and the provisions assigned, which shall be effective when recorded in the office of the Recorder of Deeds of Will County, Illinois, and Declarant, its successors or assigns, shall thereupon be relieved and discharged from every duty so vested in the transferee.

SECTION 9. RIGHTS OF DEVELOPER. All rights reserved and granted to Declarant hereunder shall be deemed reserved and granted to Developer and may be exercised and carried out by Developer.

ARTICLE X

GENERAL PROVISIONS

SECTION 1. DURATION. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association, the Owner of any land subject to this Declaration or portions thereof, and the Village, and their respective legal representatives, heirs, grantees, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time such covenants shall be automatically extended for successive periods of ten (10) years unless and until an instrument amending this provision as hereinafter provided shall be recorded.

SECTION 2. AMENDMENT. Except as otherwise provided herein, this instrument and its effect shall not at any time hereafter be modified, amended, or annulled except by the written agreement of the then Owners of record of sixty percent (60%) of all of the Lot Ownerships to which such provision applies, or such other percentage of Lot Ownerships as expressly otherwise provided in this Declaration. The foregoing to the contrary notwithstanding, prior to Declarant's

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assignment of its rights and powers hereunder to the Association, Declarant shall have the right and authority to from time to time amend this Declaration as Declarant may determine to be appropriate in Declarant's sole and absolute discretion, without the consent of any other Owner. No amendment to the obligation of the Association to provide for the common care and maintenance of the Drainage Easement Area(s), common landscaping and/or Entry Features as provided herein shall be effective unless duly approved and executed by the Village and Owner or Owners of each of the Lots upon which the effected item is located (as to the landscaping and signage). No amendment shall be effective until duly executed, acknowledged, and recorded in the office of the Recorder of Deeds, Will County, Illinois.

SECTION 3. SEVERABILITY. If any provisions of this Declaration or any section, sentence, clause, phrase or word hereof, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

SECTION 4. HEADINGS NOT CONTROLLING. The headings, sub-headings, and captions in this Declaration are for convenience only and shall not be construed to affect the meaning or interpretation of this Declaration.

SECTION 5. PERPETUITIES AND OTHER RULES OF PROPERTY. If any of the options, privileges, covenants, or rights created by this Declaration would otherwise violate (a) the rule against perpetuities or an analogous statutory provision, or (b) any other statute or common law rule imposing time limits, then such provision shall continue in the case of (a) only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the incumbent Chairman of the Will County Board, Will County, Illinois, and the incumbent President of the United States, and in the case of (b) for the maximum period permitted.

SECTION 6. TITLE IN LAND TRUST. In the event title to any Lot is conveyed to a title-holding trust, under the terms of which all powers of management, operation, and control of the Lot remain vested in the trust beneficiary or beneficiaries, then the beneficiary or beneficiaries from time to time established thereunder shall be responsible for payment of all obligations, liens, or indebtedness and for the performance of all agreements, covenants, and undertakings, chargeable or created under this Declaration against such Lot. No claim shall be made against any such title-holding trustee personally for payment of any lien or obligation hereunder created and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against such lien or obligation. The amount of such lien or obligation shall continue to be a charge or lien upon the Lot and the personal obligation of the beneficiaries of such trust at the time such charge or lien is incurred, notwithstanding any transfers of the beneficial interest of any such trust or any transfers of title to such Lot.

SECTION 7. RIGHTS AND OBLIGATIONS. Each grantee of Declarant by the acceptance of a deed of conveyance, and each purchaser under any contract for such deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens,

and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed and shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and, except as otherwise provided herein, shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance. The rights and powers reserved in Declarant hereunder shall be personal to Declarant and shall not inure to the benefit of any grantee, successor or assignee of Declarant unless otherwise expressly provided in a written instrument of assignment executed by Declarant and recorded with the Will County Recorder's Office.

SECTION 8. LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for development.

SECTION 9. REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS.

- (a) **DEFAULT.** In the event of any default of any Owner under the provisions of this Declaration, or any amendment hereof, Declarant, the Association, the East Parcel Owner, other Owners, and the Village shall have each and all of the rights which may be respectively provided for them in this Declaration, or which may be available at law or in equity and may prosecute any action or other proceeding for enforcement of any lien or for damages or injunction or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. All expenses of the Declarant, the Association, the East Parcel Owner, such other Owners, or the Village in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, shall be charged to and assessed against such defaulting Owner.
- (b) **NO WAIVER OF RIGHTS.** The failure to enforce any right, provision, covenant, or condition which may be granted by this Declaration shall not constitute a waiver of the right or of the continuing right to enforce such a right, provision, covenant, or condition in the future, irrespective of the number of violations, defaults, or breaches which may occur.
- (c) **REMEDIES CUMULATIVE.** All rights, remedies, and privileges granted to Declarant, the Association, Owners, or the Village pursuant to any of the terms, provisions, covenants, or conditions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude Declarant, the Association, Owners, or the Village thus exercising the same from exercising such other additional rights, remedies, or privileges as may be granted to Declarant, the Association, Owners, or the Village at law or in equity.

SECTION 10. LIMITED APPLICATION. Nothing contained in this Declaration shall be construed to apply to any property other than the Subject Property.

MORTGAGEE CONSENT

This Declaration is hereby consented to as of the date first above written by HARRIS BANK NAPERVILLE in its capacity as Mortgagee of record against the Subject Property and/or Add-On Property..

HARRIS BANK NAPERVILLE,
an Illinois Banking Corporation

By: *Deborah E Patrick*
Title: VICE PRESIDENT

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STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DEBORAH E - PATRICK being a VICE President of HARRIS BANK NAPERVILLE, an Illinois Banking Corporation, are personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth; and the said VICE President then and there acknowledged that as custodian of the corporate seal, he/she did affix the corporate seal of said Corporation to said instrument as his/her own free and voluntary act and as the free and voluntary act of said Corporation as trustee aforesaid, for the uses and purposes therein set forth. GIVEN under my hand and notarial seal this 24TH day of May, 2000.



[Handwritten Signature]

Notary Public

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