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Eugene "Gene" Moore Fee: \$78.00  
Cook County Recorder of Deeds  
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**THIS INSTRUMENT  
PREPARED BY AND MAIL  
TO:**

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(The Above Space For Recorder's Use Only)

**MORNINGSIDE**

**DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made on this 15<sup>th</sup> day of January, 2004, by MORNINGSIDE GROUP, INC. (herein the "Developer").

**WITNESSETH:**

**WHEREAS**, Developer is the Owner of approximately 26 acres of real property generally located south of 154<sup>th</sup> Street and north of Calumet Drive and between State Street on the west and the Little Calumet River on the east in the Village of South Holland, County of Cook, State of Illinois (herein the "Property"), which real property has been annexed to the Village of South Holland and is zoned under Village R1 District single family residential classification;

**WHEREAS**, MORNINGSIDE GROUP, INC., an Illinois corporation (herein the "Developer"), is a developer of single-family homes throughout the Chicago suburban area and is the developer and general contractor of the Property; and

**WHEREAS**, the real property area which the Developer proposes to subdivide and develop is referred to herein, in some instances as "Morningside";

**WHEREAS**, Developer intends to develop a community of thirty-two (32) single-family private residences erected on individual lots in Morningside; and

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**WHEREAS**, Developer desires to provide for the preservation of the distinctive residential quality of Morningside and for the maintenance of the entranceway monuments and the drainage easement (Outlot A) and, for these purposes, Developer desires to subject the Property to the conditions, covenants, restrictions, reservations, grants and easements herein set forth (all of which are hereinafter referred to collectively as the "Covenants and Restrictions"); and

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an association to which should be delegated and assigned the powers of administering and enforcing the Covenants and Restrictions,

**NOW, THEREFORE**, Developer, for the purposes above set forth, hereby declare as follows:

## ARTICLE I

### Declaration, Subject to Covenants and Restrictions

1.1 Declaration and Description of the Property: Developer does hereby declare that the Property is and shall be subject to the uses and purposes herein set forth. Developer declares further that this declaration shall be managed and administered on the terms and conditions hereinafter set forth. The Property to which said declaration relates, and which is subject to this declaration, is the real property which Developer is developing, and said real property is described as follows:

LOTS 1 THROUGH 32, BOTH INCLUSIVE, DRAINAGE EASEMENT OUTLOT A, IN MORNINGSIDE, BEING A RE-SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 10 AND PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 15, ALL IN THE TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Numbers: 29-15-100-001  
29-15-100-002  
29-15-100-003

The specific lots in the Morningside Subdivision (other than the Outlot(s) are hereinafter referred to as the "Lots".

## ARTICLE II

### Definitions

2.1 Association: The name of the Association is Morningside of South Holland Homeowners Association, an Illinois not-for-profit corporation, its successor and assigns.

2.2 Board of Directors: The Association shall have a board of three (3) directors who shall constitute the Board of Directors. All rights, titles, powers, privileges and obligations vested

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in or imposed upon the Board of Directors, pursuant to the Illinois general Not-For-Profit Corporation Act of 1986, (805 ILCS 105 et seq.), and upon the Association in this Declaration shall be held and executed by this Association through the duly elected members of the Board of Directors and their successors in office.

- 2.3 By-Laws: The By-Laws of the Association.
- 2.4 Community Area: Drainage Easement Outlot A, all entranceway landscaping and monuments on the west 30 feet of Lots 1, 20, 21 and 32 as shown on the Plat for maintenance purposes by Owners and their agents.
- 2.5 Community Expenses: The expenses of administration (including management and professional services), maintenance, operation, repair, replacement and landscaping of the entranceway monuments, Drainage Easement Outlot A; any expenses designated as Community Expenses by this Declaration or the By-Laws; and any other expenses lawfully incurred by the Association for the common benefit of all of the Owners.
- 2.6 Declaration: This instrument as amended or supplemented from time to time.
- 2.7 Developer: Morningside Group, Inc., an Illinois corporation, its successors and assigns.
- 2.8 Lot: A portion of the Property shown on the Plat which is improved or intended to be improved with one single family residence. The "Lots" are those portions of the Property which are designated on the Plat as Lots 1 through 32.
- 2.9 Member or Membership: Shall mean or refer to every titleholder of a Lot within Morningside.
- 2.10 Outlot: That portion of the Property other than the Lots and dedicated roadways, such portion consisting of Drainage Easement Outlot A (referred to collectively herein as the "Outlot").
- 2.11 Owner: The record holder of fee simple title to any Lot on the Property, other than the Developer, whether such Owner shall be one or more persons or entities, the beneficiary of beneficiaries of a trust, shareholder of a corporation, or partner of a partnership, but excluding those persons or entities having any interest merely as security for the performance of an obligation.
- 2.12 Plat: The Plat of Subdivision of Morningside Subdivision recorded in Cook County, Illinois, on January 16, 2004, as Document 0401645092.
- 2.13 Property: The use of the term "Property" shall mean and refer to Lots and Outlot within Morningside, either improved, unimproved or both, whichever reference is appropriate in context, and all easements, rights and appurtenances belonging thereto.

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2.14 Restricted Property: That portion of the Outlot consisting of Wetlands referenced in Section 4.5, if any.

2.15 Rules and Regulations: The Rules and Regulations adopted from time to time by the Board governing Morningside and the use of Morningside by the Owners and by all other persons.

2.16 Village: Village of South Holland, an Illinois municipal corporation.

2.17 Voting Member: The person entitled to membership in the Association and who shall be entitled to vote at meetings of the Owners, as more fully set forth in Section 10.2(b).

2.18 Wetlands: That portion of the Outlot, if any, which is determined at any time to be Restricted Property under the regulatory jurisdiction of the Chicago District of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 USCA 1344) and certain state and municipal governmental agencies.

## ARTICLE III General Purpose of this Declaration

Statement of Purpose: The purpose of this Declaration and of the Covenants and Restrictions contained herein is to insure use and development of the Property consistent with the desire and intention of Developer to establish a residential community of high quality, to protect the owners of homes therein against use of the Property or of any part of the Property inappropriate to a fine residential community and incompatible with the proper enjoyment of such a community; to prevent the construction of buildings which, because of their design or construction or materials, are not in aesthetic harmony with other buildings on the Property; to encourage the construction of fine quality homes compatible with the architectural character of the Property; to make certain that homes are so located on sites within the Property that each home enjoys light, air, and free and open space; to protect Owners of property within the Property against any improper use of proximate Lots as may depreciate the value of their property; and to insure that the Property is at all times carefully and efficiently maintained and that the facilities, lawn, ponds, walks and open spaces are always so maintained and operated that they may be enjoyed and used with comfort and pleasure by the Owners of homes within said Property. It is the purpose of the Declaration, in general, to provide that the Property will be so managed, maintained and preserved, and that it will at all times be regarded as a residential community of outstanding excellence.

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## ARTICLE IV

### Restrictions and Responsibilities

4.1 Land Use and Building Type: All Lots shall be used for single-family purposes only, and no dwellings other than a single-family private residence shall at any time be constructed or maintained on a Lot. Each home shall be occupied by only one family. One family shall be defined as one or more persons each related to the other by blood, marriage, guardianship or legal adoption, or a group of less than four (4) persons not so related.

4.2 Violations: Violation of the restrictions described in this Declaration shall entitle Developer or the Association to enforce the rights and remedies hereinafter specified, whether or not said violation constitutes a legal nuisance.

4.3 Prohibition of Certain Activities and Other Matters: No activities shall be carried on which annoy or disturb or are likely to annoy and disturb others in or upon the Property.

4.3.1 Single Family Residential Buildings Only: No business or profession of any nature shall be conducted on any Lot or in any residence constructed on any Lot in this subdivision, except the business of sale of lots and houses in the subdivision constructed by the Developer of the Property or its successors or assigns. None of said Lots as heretofore platted shall be divided or re-subdivided except for the purpose of combining portions thereof with adjoining Lots, provided that no additional building site is created thereby. Any single ownership or single holding by any person or persons which comprises the whole or one of said Lots (as heretofore platted and subdivided) and a part of or parts of one or more adjoining Lots shall, for all purposes of this Declaration, be deemed to constitute a single Lot upon which only one residential building may be erected, constructed, or allowed to exist.

No room or rooms in any residence or parts thereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing contained in this paragraph, however, shall be construed as preventing the renting or leasing of an entire residence as a single unit to a single family.

Anything to the contrary notwithstanding, nothing herein contained shall be construed so as to prevent the Developer or its successors, or assigns from erecting a single family residential building or buildings as a sales office, model home, business office, storage area, construction area, for the purpose of the development and sales of the Lots or homes in the subdivision and any adjoining property.

4.3.2 Preservation of Exterior Finishes and Front Elevations: All Exterior Finishes shall remain as constructed with respect to the roof color, brick type and color, and siding color. No Changes or alterations shall be made to the front of any home. Any type of shutters or awnings shall not be allowed on the front of any home. No changes to the color of the front door and garage door shall be allowed. Homeowners may change the type of front door or garage doors on their home,

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but the color of the door must remain white to maintain uniformity. All forms of wood siding, wood finish, vertical siding, tudor, stucco, or dryvit type finishes are strictly prohibited.

4.3.3 Two-Car Garage Required: As appurtenant to the residential building permitted by Paragraph 4.3.1 hereof and to be used exclusively in connection with such residential building, a private garage of sufficient size to house not fewer than two (2) standard size automobiles shall be constructed or erected, which garage must be attached to the main residence. Such garage shall not be used at any time as a residence, or for use as related living or for domestic servants of the occupants of said residential dwelling.

4.3.4 No Sports Activities, Games, Children Playing or Bike Riding, Loitering, or Loud Music: NO FORM of sports activities, i.e. Basketball, baseball, football, bike riding, loitering, etc., or group activities shall take place on any street, sidewalk, driveway areas or in front of any home within the Property. Biking riding is only permitted on any street, sidewalk, or driveway area if the person riding bike is going to or from a specific destination. These activities shall be limited to the rear yard area of Owner's home and the public parks in South Holland. No music, including but not limited to music from a radio or stereo, shall be played so as to create a nuisance to the other owners.

4.3.5 Mailboxes and Posts for Mailboxes: One (1) initial mail box and post will be supplied by the Developer for each Residential Unit. All Owners shall be responsible to maintain and, if needed, replace with another mailbox of the same color and characteristics or of a similar type as the initial mailbox provided by the Developer.

No other type of structure, including, but not limited to, any type of brick monuments or brick piers, shall be erected or constructed in the right of way or front yard of Owner's home, excepting therefrom all landscape materials such as retaining walls, landscape boulder material and water type features (ie. Fountains, etc.).

4.3.6. No Temporary Building, Out Buildings, Campers, Trailers, Etc.: No temporary house, campers, habitable motor vehicles, trailer, tent, stand, recreational appurtenances, shack, basement, or other structure or building of a temporary character shall be constructed, placed, allowed to exist or used on any Lot at any time as a residence either temporarily or permanently and no residence erected on any Lot shall be occupied in any manner at any time prior to its full completion.

Nothing herein contained shall be construed so as to prevent the Developer from using such temporary facilities for the purpose of the development and sale of the Lots or homes in the subdivision and any adjoining property.

4.3.7 Fences and Walls: Fences and walls shall be restricted to the rear yard area of Owner's home. No fence shall encroach the side or front yard area of any home. Under no circumstances shall any type of metal or steel or "chain link" ( except for wrought iron fences

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approved by the Village of South Holland) or similar type of wooden “stockade” or similar type of fencing be allowed.

No fence or wall shall be allowed to be painted any type of color. Only the use of clear type stains or clear wood preservatives shall be allowed, it being the intent of the Developer to only allow fencing or wall types that compliment the subdivision and the adjacent neighbors. Any form of PVC or wrought iron fencing are strictly limited to the color white or black. No fence or wall shall be installed in any portion of a retention, detention, drainage area, or floodway, as designated by the Developer’s plat of subdivision and drainage plan. No fence shall be installed without a permit from the Village of South Holland.

4.3.8 Permittable Vehicles and Prohibited Types: Only mini vans, non-commercial pick-up trucks, sedans, sports cars, SUVs and non-commercial vans (“Permitted Vehicles”) shall be allowed to be maintained in the subdivision. No commercial vehicles or vehicles clearly designated for commercial use, tractor trailer type vehicles, campers, limousines, motor homes, buses, boats, snowmobiles, any type of trailer, delapidated or disabled vehicles of any kind shall be maintained, stored, or parked on any dedicated street, right-of-way, owner’s driveway, common areas, or Outlot of any kind in the Morningside Subdivision and property limits thereof.

4.3.9 Outdoor: No vehicle shall be permitted to be parked on any Lot, driveway, public street or right-of-way for more than a fifty-four (54) hour period unless placed inside of owners garage. This allows Owner to park a Permitted Vehicle outside of Owner's garage from Friday evening through Monday morning (the weekend) but then requires it to be used or parked inside of Owner's garage. It being the intent of the Developer that permitted Vehicles be parked in garages when not in use to help maintain the integrity of real estate values in the subdivision.

4.3.10 Junk, Machinery and Materials: No implements, machinery, lumber, building materials or similar items shall be permitted to remain exposed upon any Lot so they are visible from the street or any neighboring Lot, except as necessary during the period of construction of a building thereon. No part of the subdivision shall be used for storage or display of junk or unsightly items or materials. Burning of construction debris or material, etc., shall NOT be permitted any time.

4.3.11 Out-Buildings: Construction of out-buildings must be architecturally designed to compliment the main residence with the use of the same building materials - roof shingles, siding and exterior matching colors. The maximum allowable outbuilding size shall be one hundred and fifty (150) square feet which is further limited to a single story structure. No outbuilding shall be allowed without a building permit from the Village of South Holland.

4.3.12 Dogs and Cats: No more than a total of two (2) dogs or two (2) cats or one (1) dog and one (1) cat can be maintained, kept or housed in any residential unit whether or not such animal is the property of the Owner of such residential unit. No such animal shall be allowed outside of a residential unit unless accompanied and attended at all times by an occupant of such residential unit and no dogs shall be allowed to bark or create any type of a nuisance to neighbors. No kennels or other type of housing for such pets shall be constructed on any Lot unless in the interior of the

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residence and with no direct outside access to such kennel or housing. No dog run shall be allowed on any Lot in the subdivision.

All Homeowners must immediately clean-up any type of excrement or waste from Owner's pet. Furthermore, the Board of Directors shall have the right to prohibit any pet from any dedicated street, right-of-way, outlot, detention pond area, and common areas should (1) the pet be determined by a simple majority of the Board of Directors to be a nuisance, safety hazard or intimidating or (2) the Board of Directors determines that Owner has failed to promptly clean-up their pet's waste.

The Board of Directors shall serve written notice, as required on Paragraph 15.1 or to the Owner of any pet that it has voted to prohibit and the reasons for their decision. Should Owner violate the Notice prohibiting the pets presence on the subdivision, Owner shall be subject to a One Hundred Dollar (\$100.00) fine per each occurrence and to any and all legal action that the Board of Directors shall deem necessary in order to enforce this Section.

4.3.13 Swimming Pools No swimming pools other than "in ground pools" shall be allowed on any of the Lots in the subdivision and such in ground pools must be approved by the Village of South Holland and obtain all applicable building permits. For the purpose of this Declaration an "in ground pool" shall be considered to be a pool which has no pool wall extending more than two (2) feet above the average grade of that portion of the Lot lying to the rear of the residence. Plans and specifications for fences or walls required around such pool by the ordinances of the Village of South Holland and in conjunction with such pool shall be subject to as hereinbefore set forth in Paragraph 4.3.7 (Fences and Walls).

No access shall be granted for construction equipment of any kind, including but not limited to, worker's trucks or anything related to the construction of an inground swimming pool, or to anyone through the outlot, common areas, or detention pond area.

4.3.14 Parkway Trees and Maintenance Responsibilities of Owners: No landscaping is permitted in the Parkway/Right-of-Way other than sod and trees as required in this Section. The Developer shall provide one (1) minimum one and one half inch caliber (1-1/2") Bradford, or Arositicrat, Cleveland Select, Redspire Pear Tree (*Pyrus calleryana*) for each Lot's parkway area. All Owners shall be responsible for the immediate care including proper watering, weeding, etc., of the parkway tree placed in front of their home by the Developer. Any parkway tree that dies shall be immediately replaced by the Owner with another that meets the same specifications of the same aforementioned variety. The Developer, the Village of South Holland or the Association may elect upon prior written notice to Owner to replace any dead parkway tree in front of Owner's home at the Owner's expense. The Developer, the Village of South Holland and the Association shall further have the right to enforce reimbursement of all cost associated with the replacement of any parkway tree through any and all means including, but not limited to, applicable lien rights on the basis of this Declaration. Any attempt to plant or place a tree of another type or variety shall be considered a code violation and the Developer, the Village of South Holland and the Association shall have the right to remove said tree and seek reimbursement and/or lien Owner and his Lot.



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## 4.3.15 Final Grading and Landscaping Requirements:

(a) All landscaping must be completed by a professional landscaping contractor in business at least two (2) years and licensed with the Village. All landscape contractors hired by Owners shall adhere to Developer's final grading plan during the course of landscaping of any residence of said Owner. All Owners shall be responsible for sodding their entire yard within 90 days from closing, except as provided herein. If an Owner is unable to sod his yard prior to December 1 and is within the 90 period after closing, Owner shall cover his yard with straw until sod is to be laid. If Owner fails to cover his yard with straw by December 1 the Owner will be subject to a fine of twenty-five dollars (\$25.00) per day until Owner covers his yard with straw or sod. Said fine shall be collected by the Association. For purposes of 4.3.15 and 4.3.16 said ninety (90) period shall not run from December 1 to March 31, but shall resume running on April 1.

(b) All Owners shall be responsible for the planting of one (1), not less than six (6) feet in height, ornamental deciduous tree of the Crabapple, Hawthorne, Eastern Redbud, Serviceberry, Ornamental Pear and Cherry, or Magnolia family in front of their home at not more than fifteen (15) feet away from the foundation of their home. If any of the aforementioned plants or trees shall die or die-back more than fifty percent (50%), then Owner shall replace the tree or plant immediately.

(c) All downspouts shall be buried in standard three (3) inch or larger nonperforated drainage tile directed to the nearest drainage easement or storm water catch basin in Owner's yard.

All Owners shall be responsible for maintaining positive drainage between homes with positive slopes away from Owners home at a minimum of two percent (2%) on both sides of home and front of home, and a one percent (1%) minimum slope in the rear of their home. All Owners shall be responsible for maintaining a minimum of four inches (4") of exposed concrete around their entire home for proper drainage. Owners shall be responsible to maintain proper erosion controls until such time as their landscaping is complete with such items as splash blocks for gutter downspouts and clean-up of any soil erosion onto public sidewalks and dedicated streets. Furthermore, Owner shall maintain the straw bales and fabric on any storm sewer located on Owner's property until such time as the landscaping is complete, at which time Owner shall promptly remove the straw bales and filter fabric from the storm sewer to allow for the proper drainage. Owner is responsible to sod around any storm sewer in Owner's yard upon completing landscaping.

4.3.16 Landscape Completion Guarantee: Owner guarantees the completion of landscaping as described in 4.3.15. Landscaping will be considered complete if installed according to the terms of 4.3.15 and any other applicable Section of this Declaration of Covenants and Restrictions.

Owner must notify Developer in writing when Owner has completed landscaping. Said notice must be postmarked by the 91<sup>st</sup> day after closing. If Owner has not completed its landscaping within ninety (90) days after closing or sent notice of completion by the 91<sup>st</sup> day after closing, Owner

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will begin to incur a fine of Fifty Dollars (\$50.00) per day. It will be in the Association's discretion whether to collect these funds. The Association shall have the right to collect fines assessed against Owner through any and all means including, but not limited to, applicable lien rights against Owner's Property on the basis of this Declaration. Owner shall be liable to Developer and Association for any and all attorney's fees, court costs or others expenses associated with enforcement of this or any other provision of this Declaration.

4.3.17 Detention and Retention Areas: No type of structure, fencing, buildings, or similar items may be placed in any designated detention, retention or critical drainage area, nor shall the finished grade elevations of these areas be altered by any Owner. No vehicles or recreational vehicles of any kind shall be allowed in or upon these areas, except for maintenance equipment for mowing and maintaining the grass.

4.3.18 Signs: No advertising or signs of any type or character shall be erected, placed, permitted or maintained on any home. This provision shall not apply to any sign which the Developer may erect identifying and/or advertising the subdivision which may be deemed necessary by the Developer for the operation and sale of the subdivision houses or Lots therein, which said signs only the Developer may erect and maintain.

4.3.19 Other Types of Structures and Miscellaneous Items: No swing sets, playhouse, or children's type of structure shall be placed closer than fifteen (15) feet from any property line and shall be further restricted to the rear yard of Owner's home. No washing, drying, or clothing type lines shall be allowed. The displaying or hanging of clothing and garments in the exterior yard area of any home in subdivision is prohibited. No swing sets or children type of structures shall be allowed to become a detraction or unsightly due to neglect of any Owner to properly maintain, repair, or manage such items.

4.3.20 Satellite Dishes, Television Antennas and All Other Antennas: No satellite dishes shall be allowed upon a roof or roof of other structure or be allowed to be installed anywhere on Owner's Lot other than the rear yard area and at a minimum of eight (8) feet from side property lines. Satellite dishes shall be shall be limited to "mini dish" types, satellites over thirty-six (36) inch diameter are prohibited. Furthermore, no form of antenna, including, but not limited to, television antennas, radio antennas, ham radio antennas, etc., shall be placed on the exterior of Owner's home or Lot.

4.3.21 White Storm Doors: All exterior storm doors shall be white in color and shall compliment the exterior of Owner's home.

4.3.22 Garbage Containers, Garbage Cans and Storage of Garbage: No garbage, garbage containers or garbage shall be stored on the exterior of Owner's home with the exception only to the evening of, or the morning of, garbage pickup by the Village.

4.4 Owner's Individual Maintenance Obligation: As provided in Article VI, each Owner is responsible for the maintenance of his or her Lot and the improvements thereon except as

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otherwise provided in Section 11.1 herein. This responsibility shall be known as "Owner's Maintenance Obligation". If any Owner defaults in his or her Owner's Maintenance Obligation, Developer or the Association is hereby granted all rights and powers necessary to perform such reasonable repairs, maintenance, rehabilitation or restoration as may in Developer's or the Association's opinion be reasonably necessary to correct such default. All cost and expenses incurred in the performance of any such work shall be charged to the defaulting Owner, and shall constitute a lien against said Owner's Lot.

4.5 Community Association Maintenance Obligations: The Owners as members of the Association shall be solely responsible for all costs and expenses for the maintenance and upkeep of the Community Area. The portion or portions of the Outlot, if any, which are designated as Wetlands or will be so designated at a future date are referred to herein as the "Restricted Property". The Restricted Property may be dedicated and maintained for the perpetual use as a conservancy area in accordance with the terms established by the U.S. Army Corps of Engineers.

4.6 Maintenance Assessment: The Association shall annually prepare and distribute a budget for each calendar year to all Owners of record of Morningside. The Association shall have the right to assess each Lot a prorata share of the cost of maintenance, upkeep, operation, safeguarding and repair for the Outlot. Each Owner, by acceptance of a deed to a parcel, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association, whether such acceptance shall occur before or after the conveyance of the Outlot to the Association: (1) periodic assessment or charges; and (2) special assessments for maintenance, repair, removal of liens and capital improvements.

4.7 Temporary Structures: Trailers and temporary buildings or structures may be located on a Lot only during the course of the construction of a home upon the Lot, but they shall be so located only because the convenience or necessity of the contractor in charge of construction requires their use, and all such trailers, temporary buildings or other structures shall be removed from the Lot promptly upon termination of the necessity or convenience therefor, or completion of the home, whichever first occurs.

4.8 General Appearance: Owner shall be responsible to properly maintain all aspects of the Owner's Real and Personal property on Owner's Lot and to not detract, devalue or create any kind of nuisance to the other Owners or residents in Morningside. All temporary holiday decorations shall be installed no earlier two weeks before a holiday (except in the case of Christmas when decorations may be installed four weeks prior to Christmas) and removed within two weeks of the holiday.

4.9 Covenants and Restrictions - Running with Land: The Covenants and Restrictions created by this Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting the Property from and after the execution hereof shall be deemed subject to these Covenants and Restrictions and bound thereby as fully and as firmly as if said Covenants and Restrictions were fully set forth in each said conveyance or other instrument.

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## ARTICLE V Use of the Community Area

5.1 Use by Owners and Developer: The Owners, their families, guests and invitees have the joint right of access and the shared right to use the Community Area. Developer, its agents, employees and invitees also have the right to use the Community Area. Use of the Community Area shall be subject to the Rules and Regulations which may be amended from time to time by the Developer or the Association.

5.2 Use to Comply with Declaration and Rules and Regulations: No use of the Community Area shall be made by any person, whether Owner or otherwise, which does not comply with, and conform to, the requirements of this Declaration, and which does not comply with, and conform to, the Rules and Regulations.

5.3 Use of Pond Water: No Owner shall withdraw water from ponds on the Community Area for sprinkling of lawns or any other use without the prior written consent of Developer or the Association which consent may be granted or withheld and, if granted, may be withdrawn at any time and from time to time at the sole discretion of the Developer or the Association.

## ARTICLE VI Maintenance and Repair

6.1 Individual Responsibility of Owner: Each Owner of a Lot in Morningside shall provide at his or her own expense and be liable for the following:

- (a) All of the maintenance, decorating, repairs and replacement as to his or her own Lot. Owner shall keep same in good condition, other than as specified in Section 11.1 herein.
- (b) Installation of grass sod as specified in Section 4.3.15 herein.
- (c) Final grading on each Lot, including maintenance of surface water drainage swales as shown on the final engineering plans, as approved by the Village.

6.2 Responsibility of Association: The Association shall be responsible for the maintenance, repair and replacement of the Property as specified in Section 11.1 of this Declaration.

6.3 Liability for Damage to Property: Each Owner of a Lot in Morningside may be liable for the expense to the Association of any maintenance, repair or replacement of any of the Property including, but not limited to, any and all public improvements, the storm water detention facilities and structures and surface water drainage ways. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

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## ARTICLE VII

### Maintenance Assessments for Morningside

7.1 Creation of the Lien and Personal Obligation for Assessments: The Developer hereby covenants that each Owner, by acceptance of a deed for a Lot or other document of conveyance therefor, whether or not it shall be so expressed in any deed or other document of conveyance, shall be deemed to covenant and agree to pay to the Association regular assessments or charges and special assessments for capital improvements and maintenance expenses as provided herein in an amount equal to one-thirty-second (1/32) of the total assessment. Such assessments shall be fixed, established and collected from time to time as hereafter provided. The regular and special assessments together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge against and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due.

7.2 Purpose of Assessments: The assessments levied by the Association shall be used for any purpose of the Association as specified in this Declaration or its Articles of Incorporation.

7.3 Regular Assessments: The Association, through the Board of Directors, shall levy for each assessment year an assessment, applicable to that year only, for the purpose of enabling the Association to exercise its powers and duties and to fulfill its responsibilities as delineated herein.

7.4 Procedures: The Board of Directors of the Association shall determine the amount of the assessment against each Lot for each assessment year. The Board of Directors shall notify in writing each member of the Association of the amount of the assessment against the member's Lot no later than December 1 of each year. The annual assessment shall be paid on or before January 1 of each calendar year. The Board of Directors shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. The office of the Association shall be deemed the address of the Secretary of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.5 Change in Basis of Regular Assessments: The Board of Directors of the Association may change the amount and/or basis of the regular assessment during any assessment year, provided that any increase in the assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.6 Special Assessments for Capital Improvements and Maintenance Expenses: In addition to the regular assessments authorized by Section 7.3 hereof, the Association, through the

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Board of Directors, may levy from time to time in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or unexpected repair or replacement of any of the Community Areas provided that any such assessment shall be approved by a majority of the Directors present at a meeting duly called for this purpose and at which a quorum is present.

7.7 Quorum for any Action Authorized under Sections 7.5 and 7.6: The quorum required for any action authorized by Sections 7.5 and 7.6 hereof shall be the presence in person at the meeting of the Board of Directors a majority of that number of directors having the total votes that could be cast by the Board. If the required quorum is not forthcoming at any meeting, another meeting may be called, and the required quorum at any such subsequent meeting shall be the same number, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.8 Effect of Non-Payment of an Assessment: If any regular or special assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection including reasonable attorneys' fees as hereinafter provided, thereupon become a continuing lien on the Lot and equitable charge running with the land touching and concerning it, which shall bind upon the Lot in the hands of the then Owner, his heirs, devisees, personal representatives, assigns, successors, and grantees. If title to a Lot is held by an Illinois land trust, the trustee shall not have any personal liability for the assessment, but all beneficiaries of the trust shall be jointly and severally so liable. In the event title to a Lot is held by more than one Owner, all Owners shall be jointly and severally liable. The lien shall attached to rents due from parties in possession to the record Owners, provided that it shall be subordinate to an assignment of rents held by a mortgagee delivered in connection with a first mortgage loan to a purchaser of a Lot.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay same and/or to foreclose the lien against the Lot, and there shall be added to the amount of such assessment all the costs of preparing and filing the complaint and maintaining and concluding such action, including the cost of title reports, and in the event a personal judgment or decree of foreclosure is obtained, such judgment or decree shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with all costs of the action. The venue for all legal actions shall be in Cook County, Illinois. The persons in possession shall be authorized to accept summons for the Owners of the Lot.

In the event that title to any Lot is conveyed to a land trustee, upon the demand of the Association, the trustee shall furnish the Association with a certified copy of the trust agreement so that the Association shall be advised of the beneficiaries entitled to vote and who will be personally liable for the regular and special assessments.

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7.9 Subordination of the Lien to Mortgages: The lien of the assessments provided for herein may for any reason be subordinated by the Association by written document executed by its duly authorized officers and shall without any writing be subordinate to the lien of any mortgage placed upon the Lots subject to assessments for the purpose of purchasing the subject Lot or Lots provided, however, that such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the mortgage or mortgages, and provided further that such subordination shall apply only to the assessments which have become due and payable prior to sale or transfer of such property pursuant to a decree of foreclosure, or any other proceedings in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The Owners agree upon accepting title that the lien of the assessments shall be prior to the homestead rights of the Owners since it runs with the land and is in existence before commencement of ownership interests.

## ARTICLE VIII Easements

8.1 Easements Reserved by Developer: Notwithstanding any provision herein to the contrary, until such time as the Developer is no longer vested with or controls title to any part of Morningside or any Lot in Morningside, the Developer and its agents and contractors shall have the right (a) to place and maintain on the Property model residences, sales offices, advertising signs, construction trailers, parking spaces and lighting in connection therewith, at such locations and in such forms as the Developer may determine, in its discretion, to be used by the Developer in connection with the promotion, sale, or lease of the residences constructed or to be constructed on any part of Morningside, (b) to come over, across and upon the Property for the purposes of making alterations or improvements to the residences, Lots or Community Area, and (c) to store on the Community Area or any Lot owned by it equipment and materials used in connection with such work on the residences, Lots or Community Area, all without the payment of any fee or charge whatsoever.

8.2 Perpetual Easement in Gross to Association: The Community Area shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association to properly perform its duties and responsibilities. The Association further has a perpetual easement in gross to enter upon a Lot where reasonably necessary in the judgment of the Association for the purpose of properly performing or executing a duty or responsibility of the Association in respect of the Community Area. Without limiting the above easement in gross, the Association has a perpetual easement in the Community Area and the Lots for the purpose of installing, repairing, maintaining, and inspecting the Community Area or any other systems, if any, which the Association has the duty or responsibility to operate or maintain for the benefit of the Owners or the Association. Developer also has an easement in gross for the purpose of enabling and permitting Developer properly to perform its duties and responsibilities as Developer. Developer further has an easement in gross to enter upon a lot where reasonably necessary in the judgment of Developer for the purpose of properly performing or executing a duty or responsibility of Developer in respect of the Community Area.

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In the event the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration and such delinquency shall exist on the part of the Association for a period of thirty (30) days after the date of delivery by the Village to the Association of written notice advising the Association of the existence and nature of such delinquency, the Village shall succeed to and become the beneficiary of the easement rights described in the preceding paragraph and such easement rights shall be exercised by the Village in support of the exercise of its rights described in Article XVI of this Declaration.

8.3 Easements for public Utilities, Sanitary and Storm Sewers: Developer initially, and the Association thereafter, has the right to establish easements over (a) the Property for public utilities, drainage, and ingress and egress to and from the Outlot for maintenance thereof and (b) portions of the Property for sanitary and storm sewers, storm water facilities, and for all other public utility purposes including but not limited to electricity, gas, water, cable television, and telephones, and Developer and the Association have the concomitant right, in connection with such grants of easements, to grant the right and power to do all things necessary or appropriate in connection with said grant of easements, including, but without limitation, the right of maintenance, repair and replacement. Developer and the Association are fully authorized and empowered to execute and deliver any and all documents necessary to implement these provisions, and the Owners shall be deemed to have approved and confirmed such documents, and to be bound thereby.

8.4 Easements: How Created: Easements for all public utilities or other purposes, including, but without limitation, electricity, gas, water, cable television, security, and telephone, shall be initially created by the recording of the Plat in the Recorder's Office of Cook County, Illinois, and, if necessary, individual grants of easements to which shall be appended plats of easements showing the location of the easements being initially created. Thereafter, easements for public utilities shall be created by the recording of separate plats or grants of easements, each of which shall show the location, within the Community Area and within any Lots covered by such subsequent plats or grants of easements, of the easements being newly created. The utility easements created by the filing of plats or grants of easements shall be deemed to have been created upon, and subject to, all of the terms and conditions of the Plat and initial grants of easements to the respective utilities or services, so that upon the recording of a plat or grant of easement subsequent to the recording of the Plat or an initial grant of easement, each utility or service company shall forthwith have all the rights, powers and obligations contained in the Plat or in the initial grants of easements, as fully and as effectively as if all the terms of said grant of easements were contained within the subsequently recorded plat or grant of easements.

## ARTICLE IX Developer's Reserved Rights

9.1 Developer's Rights, Powers and Obligations – Duration: Until such time as required by law, or sooner at the option of Developer, all of the rights, powers and obligations which by this Declaration are to be vested in the Board of Directors shall be deemed vested in and possessed by Developer.



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9.2 Easement Grants: Developer shall grant such easements and convey Lots in the Property subject to such easements, as are necessary for the benefit of the Association for the performance of its obligations pursuant to this Declaration, including, but not limited to, maintenance, repair or replacement of the landscaped areas, including grass, trees and vegetation, and for access to maintain, repair or replace in any Community Area, and for public utilities on Lots 1 through 32 and the Lots on which the entranceway monuments, landscaping and drainage easements are located.

9.3 Construction and Advertising by Developer: Prior to Developer's completion of improvements on the Property, sale of all Lots owned by Developer and Developer's transfer of all of its rights, powers and obligations to the Board, Developer shall have the right and power to erect and maintain dignified advertising and to use and employ on the Property other sales devices and arrangements, all to be in good taste and consistent with the quality and character of the development, and for the purpose of advertising Lots and residences in and upon the Property. Developer shall have the further right and power to maintain for the aforesaid period, sales, business and construction offices.

9.4 Developer's Successors and Assigns: Developer's successors and assigns shall have without limitation, qualification or exception, all rights, powers and authority of the Developer itself.

9.5 General Rights: The Developer shall have the right to execute all documents or undertake any actions affecting Morningside which, in its sole discretion, are either desirable or necessary to fulfill or implement, either directly or indirectly, any of the rights granted or reserved to it by this Declaration.

## ARTICLE X

### Morningside of South Holland Home Owner's Association

10.1 The Association: Morningside of South Holland Home Owner's Association shall be organized under the Illinois General Not-For-Profit Corporation Act, in a manner that allows such organization to function under this Declaration. The Association shall be the governing body for all of the Owners and for the administration and operation of Morningside as provided in this Declaration and the By-Laws.

#### 10.2 Membership:

(a) There shall be only one class of membership in the Association. The Owner of each Lot shall be a member of the Association, but there shall be only one member per Lot. Membership shall be appurtenant to and may not be separated from Ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association shall be given written notice of the change of Ownership of a Lot within ten days after such change.

(b) One individual shall be designated as the "Voting Member" for each Lot. The Voting Member, or his proxy, shall be the individual who shall be entitled to vote at

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meetings of the Owners. If the record Ownership of a Lot shall be in more than one person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the Voting Member for the Lot shall be designated by such Owner or Owners in writing to the Board and, if in the case of multiple individual Owners no designation is given, then the Board at its election may recognize an individual Owner of the Lot as the Voting Member for such Lot. The Association shall have the right to suspend the voting rights of any member for any period during which any assessment levied by the Association against the member's Lot remains unpaid.

10.3 Election of a Board of Directors (the "Board"): When Developer notifies the Owners that Developer is ready to transfer and assign to the Association all of its rights, powers and obligations under this Declaration, the Owners shall proceed to elect a Board of Directors pursuant to Illinois law. If in the judgment of Developer, the Owners fail to elect an initial Board after notice authorizing such election has been given by Developer, then Developer shall have the right to designate, in its discretion, any three (3) of the Owners as an initial Board. A director shall serve for one year, and thereafter until his successor is elected.

10.4 Adoption of Rules and Regulations: The Board may from time to time adopt rules and regulations governing the Community Area and use of the Community Area by the Owners and by all other persons. Developer shall have the right to adopt Rules and Regulations prior to their adoption by the Board. All users of the Community Area and all use of the Community Area shall comply with the Rules and Regulations, and no use shall be made of the Community Area by any person which does not comply with the Rules and Regulations. Although the Rules and Regulations shall apply to, and be effective throughout Morningside, including the Lots located therein, the rights, powers and duties of the Board shall be primarily concerned with the Community Area, and the primary responsibility of the board is the management and the operation of the Community Area and enforcement of the provisions of this Declaration. The Rules and Regulations to be adopted by the Board in respect of the Community Area and Lots may cover, among other things and without limitation, matters pertaining to use, pets, discipline and disciplinary measures against violators of said Rules and Regulations.

10.5 Vacancies, Compensation and Other Matters: The Board shall receive no compensation for its services. A vacancy in the Board, whatever the reason for the vacancy, shall be filled by vote of the remaining members of the Board. If there are two or more vacancies in the Board, the vacancies shall be filled by majority vote of the Owners at a special meeting called for that purpose. The Board shall act by majority vote of those present at its meetings when a quorum is present.

10.6 Officers of the Board of Directors: The Board shall elect from among its members a President, a Secretary/Vice President and a Treasurer. Each officer shall perform the duties which commonly attach to the office he or she holds.

10.7 Meetings of the Owners: When Developer is prepared to transfer and assign all of Developer's rights, powers and obligations to the Association, Developer shall give due notice to

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Owners of said transfer by certified mail. Owners shall meet within fifteen (15) days of said notice at a place designated by the Owners at which, by majority vote of all Owners present at said meeting, the Owners shall elect the Board hereinabove referred to. Thereafter, the Owners shall meet annually for the purpose of electing Directors at a place to be designated by the Board in Cook County. Developer shall give due notice to Owners of said transfer by certified mail. Owners shall meet within fifteen (15) days of said notice at a place designated by the Owners at which

The first annual meeting of the Owners shall be held one year, as nearly as practicable, after the date of the first meeting of the Owners, and subsequent meetings shall be held at yearly intervals thereafter.

10.8 Meetings of the Board: The Board shall meet promptly after the first meeting of the Owners and annually thereafter, at a place to be designated by the Board in Cook County for the purpose of electing officers and transacting any other business which may properly come before the annual meeting. In addition to the said annual meeting, the Board may hold special meetings when business before the Board makes it necessary. Special meetings of the Board shall also be held on the written request of one-third of the Owners, delivered to the Board. The request of the Owners shall state the purpose of the special meeting for which a request has been made, and in response to a proper request by one-third of the Owners, the Board shall set a suitable date for a special meeting and shall give not less than 10 days notice to each Owner, of the date, time and place of the special meeting.

## ARTICLE XI

### Rights, Powers and Obligations of Association

11.1 Rights, Powers and Obligations of Association: For the benefit of all the Owners, the Association shall have all powers relating to the maintenance, repair, improvement, management, and operation of the Property including, but not limited to, the power set forth in this Article XI, and all the rights and powers possessed by Developer under the terms of this Declaration including, but not limited to, those rights and powers set forth in Article IV hereof. The power of the Association shall include the power to acquire and pay out funds as hereinafter provided for the following community expenses and/or residence expenses:

a) Comprehensive public liability and property damage insurance in such limits as the Association shall deem desirable, insuring the Association itself, its manager, if any, agents and employees, the Owners, including each member of the Board personally, the Trustee and the Developer, its agents and employees, from any liability in connection with the Community Area or the public spaces adjoining the Community Area. Such insurance coverage shall also cover cross liability claims of one insured against another. The insurance coverage provided for Developer, its agents and employees, shall continue in force and effect only until the time of the transfer by Developer to the Association of all of the rights, powers and obligations of Developer, and said coverage may then be canceled;

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(b) Workmen's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Association in its judgment shall elect to effect;

(c) General real estate taxes, assessments or other charges of governmental bodies against the Community Area;

(d) The services of any person or firm employed by the Association. The Association may employ the service of any person or firm to act on behalf of the Owners in connection with real estate taxes and special assessments, and in connection with any other matter where the respective interests of the Owners are deemed by the Association to be similar and non-adverse to each other;

(e) Landscaping, gardening, painting, cleaning, maintenance, decorating, repair and replacement in the Community Area as the Association shall determine are necessary and proper;

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations or assessments, tax or otherwise, which the Association is required to secure or pay for pursuant to the terms of this Declaration or the By-Laws; and

(g) All funds collected hereunder shall be held and expended for the purposes designated herein;

11.2 Alterations and Improvements of Community Area: The Association shall have the right to make or cause to be made alterations and improvements to the Community Area. The costs of such alterations and improvements shall be assessed as community expenses in the manner hereinafter set forth.

11.3 Books and Records: The Association, through its Treasurer or Manager, if any, shall keep complete and correct books of account of the receipts and expenditures relating to the Community Area, specifying and itemizing the maintenance and repair expenses of the Community Area and any other expenses incurred. Such records and vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten days' notice to the Association and payment of a reasonable fee, any Owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner for community expenses.

11.4 Employment of Professional Management: The administrative duties of the Board may be performed by a Manager (which may be a professional management firm) employed by the Association, and the Association has the right to pay reasonable compensation to a Manager so employed. The Developer has the right, but not the obligation, on behalf of the Owners, to engage the initial Manager and to enter into a contract with said Manager expiring not later than one year

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after the voluntary turnover to the members of the Association the authority to elect the Board. The professional manager hired may be the Developer, but is not required to be the Developer.

11.5 Execution of Agreements, Contracts, etc.: All agreements, contracts, vouchers for payment of expenditures and other instruments shall be signed by the President of the Board, or by such other persons and in such manner, as from time to time may be determined by the Board.

11.6 No Business Activity: Nothing in the Declaration shall be construed to give the Association authority to conduct a business for profit on the Community Area or any part hereof.

11.7 Non-Liability of the Board: The Board and Developer shall not be personally liable to the Owners or to any others for any mistake in judgment or for any acts or omissions made in good faith. The Owners shall indemnify and hold harmless each member of the Board and the Developer against all contractual liability to others arising out of contracts made by the Board or the Developer on behalf of the Owners unless any such contract shall have been made in bad faith or in violation of the provisions of this Declaration. The liability of the Owners based upon a contract made by the Board or by Developer, or based upon Owners' agreement to indemnify and hold harmless, shall be several, and not joint, and no Owner shall be liable for more than his or her equal proportionate share of any such contract or indemnity liability. Every agreement made by the Board or Developer shall provide that the Board or the Developer, as the case may be, are acting only as agents for and on behalf of the Association and the Owners and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be several, and not joint, and shall not exceed the Owner's equal proportionate share of such contract liability. The indemnity herein provided for shall extend to and be operative in favor of the Manager and all other agents and employees of the Association and the Developer.

11.8 Delegation of Power: The maintenance, repair, and improvement of the Community Area shall be the responsibility of the Association, but the Association has the right to delegate to the Manager or others such authority and duties as may be granted and imposed upon the Board by this Declaration.

11.9. Funds and Titles for the Owners: All funds and all properties acquired by the Association, and the proceeds thereof, shall belong to the Owners and shall be held for the benefit of the Owners subject to this Declaration for the purposes herein stated.

## ARTICLE XII

### Conveyance of Title by Developer to Association

12.1 Developer's Rights, Powers and Obligations Prior to Transfer to Association: Until such time as Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, all of the rights, powers and obligations which by this Declaration are to be vested in the Association or its Board shall be deemed vested in and possessed by Developer.

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12.2 Transfer of Rights, Powers and Obligations by Developer to Association: When Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, it shall transfer and assign to the Association all of its rights, powers, and obligations under this Declaration.

12.3 Developer's Successors and Assigns: Developer's successors and assigns shall have, without limitation, qualification or exception, all the rights, powers and authority of Developer itself.

## ARTICLE XIII Compliance, Breach of Covenants, and Default

13.1 Rights and Remedies of Association: Each Owner is bound by and shall comply with the terms of this Declaration, the By-Laws, and the Rules and Regulations adopted pursuant thereto, and by all amendments to them. A failure by an Owner other than the Developer to comply with this Declaration, or with the By-Laws, and Rules and Regulations of the Association or any authorized amendment to said Declaration, By-Laws, or Rules and Regulations shall constitute a default by such Owner. If a default occurs, the Association shall have the right to recover damages at law, to procure injunctive relief, to foreclose on any lien rights the Association may have, or to avail themselves of any other rights or remedies permitted at law or in equity including, but not limited to, filing suit pursuant to the Forcible Entry and Detainer Act. All expenses of the Association in connection with any actions or proceedings described herein including attorney fees incurred in collection and court costs and attorneys' fees and all other expenses of the proceeding, and all damages, liquidated or otherwise, together with interest thereon at the rate set forth in Section 7.8 herein until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his or her respective share of the annual expenses and the Association shall have a lien for all of the same, as well as for non-payment of his or her respective share of the annual expenses upon the Lot of such defaulting Owner and upon all of his or her additions and improvements thereto and upon all of his or her personal property located on his or her Lot or elsewhere on the Property. The rights and remedies of the Association shall be cumulative and shall be enforceable concurrently in a single proceeding. By virtue of the provision of this Declaration which give Developer all rights and powers of the Association prior to transfer of Developer's rights to the Association, Developer has every right and power and every right and remedy which the Association is given by this Article.

13.2 Liability of Owners for Negligence: Each Owner shall be liable for any damage caused by such Owner's act or negligence, or by the act or negligence of any party whose right to be upon the Community Area is derived from such Owner, but only to the extent that such damage is not covered by insurance carried by the Association. Nothing herein contained, however, shall be construed so as to modify any waiver by an insurance company of rights of subrogation.

13.3 Recovery of Suit Expenses: In any proceeding commenced by the Association or an Owner based upon or arising out of an alleged default by the Association or an Owner, the prevailing party, whether Association or Owner, shall be entitled to recover all expense of the proceeding, including reasonable attorneys' fees and costs such as but not limited to filings fees, depositions, experts, etc.

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## ARTICLE XIV Amendment and Termination of Declaration

14.1 Amendment Prior to Sale of a Lot: Prior to the sale of any Lot, Developer itself has the right to amend or to terminate this Declaration at any time and in any manner. If Developer elects to terminate this Declaration, Developer may evidence its election by recordation of an appropriate statement of termination with the Recorder of Deeds of Cook County, Illinois, and upon such recordation, the entire title in the Property shall stand free and clear of this Declaration.

14.2 Amendment After Sale of a Lot: After one or more Lots have been sold, but prior to Developer's turnover to the Members of the Association the authority to appoint the Board, Developer itself, acting without concurrence of any other party, has the right to amend this Declaration as often as Developer deems necessary, but no such amendment shall unfairly or unreasonably affect any rights of the Owners of Lots already sold.

14.3 Amendment After All Lots Have Been Sold: After Developer voluntarily turns over to the Members of the Association the authority to appoint the Board, all Lots having been sold by Developer, this Declaration may be amended by a two-thirds (2/3rds) vote of the Owners, but such amendment shall not unfairly or unreasonably affect the rights of the Owners and shall be no less restrictive than this Declaration.

14.4 Procedure on Amendment or Termination:

(a) If this Declaration is to be amended or terminated by the Developer solely, pursuant to the above provisions of this Article XIV, which provides for amendment or termination by Developer solely, Developer shall amend or terminate by due execution of an appropriate written instrument setting forth the terms of the amendment, or stating that this Declaration is terminated, as the case may be.

(b) If this Declaration is to be amended before the Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board, the amendment shall be effected by an appropriate written instrument setting forth the terms of the amendment and duly executed by the Developer.

(c) If an amendment is to be effective after Developer has voluntarily turned over to the Members of the Association the authority to appoint the Board, and after the rights and powers of Developer have been transferred to the Association, then the amendment may be evidenced by a written instrument executed on behalf of sixty-six (66%) percent of the Owners, and participation by the Developer may be required only as the Owner of a Lot or Lots.

(d) The instrument effecting an amendment of this Declaration shall, after execution, be recorded promptly in the Office of the Recorder of Deeds of Cook County, Illinois, and the amendment provided for therein shall become effective and operative upon recordation.

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14.5 Notices with Respect to Amendment or Termination: All parties who have a right to participate in the amendment of this Declaration, subject to Covenants and Restrictions, shall have the right to initiate proceedings for amendment of this Declaration. Any such party desiring to initiate proceedings for amendment shall give at least ten (10) days' prior written notice of the meeting at which amendment or termination is to be considered. If Developer solely amends this Declaration, in pursuance of the foregoing provisions providing for such amendment solely, then within fifteen (15) days after adoption of the amendment, notice of the amendment shall be given by Developer to all Owners, and each Owner, promptly upon receipt of such notice, shall give notice of the amendment to his mortgagee.

14.6 Amendment Affecting the Rights of the Village: No amendments to the association's duties and obligations relating to the rights of the Village or the Village's rights may be adopted without the prior written consent of the Village by Ordinance duly passed and approved by the Corporate Authorities of the Village.

## ARTICLE XV General Provisions

### 15.1 Notices - In General:

(a) Notices given pursuant to this Declaration or in connection therewith shall be written and shall be delivered in person or by regular mail. Notices of default or formal demands by any party hereunder to any other party shall be sent by certified or registered mail, with respect of return receipt. Notices shall be deemed delivered on the date personal delivery is made or on the date of mailing. Notice to an Owner may be given to the Owner at his or her Lot, unless the Owners has informed the Association otherwise. Notice may be given to the Association at its registered office, or sent to the home of the President of the Board of Directors. Until Developer has transferred all its rights, powers and obligations to the Directors, all notices which the Board would be entitled to receive shall be given to Developer. Notices in respect of meetings or Special Meetings of the Board of Directors or of the Owners shall be given in accordance with the provisions of this Declaration.

(b) Notice to the personal representative of a deceased Owner shall be sent to the address furnished by such personal representative to the Board, and if no address is furnished by said personal representative, the notice to a deceased Owner shall be given to the deceased by a writing directed to the Owner at such Owner's Lot.

(c) Upon request of a mortgagee of a Lot, and payment of a reasonable charge therefor, the Board shall supply to said mortgagee a copy of any amendment to this Declaration.

15.2 Non-Waiver Except by Written Instrument: No conditions, covenants, restrictions, reservations, grants or other provisions of this Declaration shall be deemed to have been waived by silence, or inaction, or failure to enforce rights or by any other matters whatsoever, other than a



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writing executed by the party against whom the waiver is asserted, which expressly states that a specified right or remedy is being waived. No waiver shall be deemed to have been affected by the failure to enforce rights or remedies of which a party is possessed, regardless of the number of breaches or violations of said rights which have occurred.

15.3 Liberal Interpretation: This Declaration shall be liberally construed so as to effectuate and facilitate the objectives of this Declaration as hereinabove set forth. Narrow, technical and literal construction of this Declaration inconsistent with the objectives of the Developer or the Association shall be avoided.

15.4 Rule Against Perpetuities: Should any provision of this instrument be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then, and in that event, such provisions shall be deemed to be operative only until twenty-one (21) years after the death of the last survivor of the now living descendants of Rod R. Blagojevich, Governor of the State of Illinois, and of George W. Bush, President of the United States of America.

15.5 Partial Invalidity – Severability: The invalidity of any of the conditions, covenants, restrictions or reservations herein contained, or of any other provision or provisions, of whatever nature, of this Declaration shall not in any way impair or affect the validity or enforceability of any other provision or provisions of this Declaration, and any such invalidity or enforceability of other provision of this Declaration as remains, and any such invalidity shall be deemed partial and separable, and all of this Declaration shall be deemed valid, enforceable and binding except for the invalid provision.

15.6 Gender, Usage of Singular and Plural Forms and Other Usage: Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural and any gender shall be deemed to include both genders. Prior to completion of development of the Property and sale of all Lots by Developer and to Developer's transfer of its rights, powers and obligations to the Board and Association, all references to the rights, powers and obligations of and to the Board or Association shall be read as references to the rights, powers and obligations of the Developer. The term "sale" means a sale consummated by delivery of a Trustee's Deed to a Lot to an Owner other than Developer.

15.7 Captions: Captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text thereof.

15.8 Recordation: Prior to consummation of the sale of the first Lot in the Property by delivery of a Trustee's Deed to said Lot, this Declaration shall be recorded in the Office of the Recorder of Deeds of Cook County, Illinois. All amendments to the Declaration shall also be recorded in said Recorder's office.

15.9 Conflicts Between Declaration and Village Ordinance Provisions: In the event there is at any time a conflict between any provision of this Declaration and any provision of any then

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effective ordinance, rule or regulation of the Village, the ordinance, rule or regulation of the Village then in effect shall prevail, but only to the extent it is more restrictive than this Declaration.

## ARTICLE XVI

### Village

The following covenants and provisions are intended to inure to the benefit of the Village and it is specified and provided as follows:

16.1 Right of Village to Perform Obligations of Association: In the event the Association fails to perform any of its obligations required to be performed by it pursuant to the provisions of this Declaration and such delinquency shall exist on the part of the Association for a period of thirty (30) days after the date of delivery by the Village to the Association of written notice advising the Association of the existence and nature of such delinquency, the Village shall have the right, but not the obligation, to perform the obligations required to be performed by the Association pursuant to this Declaration. In the event the Village elects so to do, the Association shall pay promptly to the Village the amount of the cost and expense incurred by it in the performance of such work, including compensation for staff time, the use of Village equipment, as well as materials and outside services.

16.2 Right of Village to Levy Assessment: In the event the Village performs any of the Association's duties and obligations and the Association fails to pay the Village any costs it incurred as aforesaid, within thirty (30) days after the date of the Village's demand for payment or date of any statement, the Village shall have the right to levy an assessment on all Lots for the costs and expenses incurred by it in the performance of such work to the same extent and as fully as the association might do pursuant to the provisions contained herein. Should any Owner fail to pay to the Village such Owner's portion of any assessment levied pursuant to this paragraph upon the due date thereof, then the Village shall have the right to exercise all rights, powers, privileges and remedies granted to the Association by this Declaration, and any other remedies provided by law. This paragraph is not a limitation on other remedies that may be pursued by the Village.

16.3 Special Service Tax: In lieu of pursuing a lien upon each Lot to collect for costs incurred by the Village in performing the Association's duties and obligations, the Village may elect to declare the Property subject to this Declaration to be a special service district for the levy of a special service tax to pay the costs incurred by the Village, plus any administrative costs, attorneys' fees and like expenses related to the establishment of a special service district, then each Owner

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covenants and agrees that it shall not object to the establishment of the special service district or the levy of a special service tax to pay the costs incurred by the Village in performing the Association's duties and obligations.

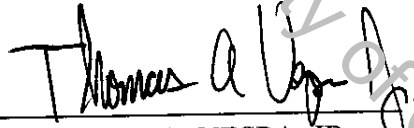
Morningside Group, Inc., an Illinois corporation

By: 

DAN W. ELLINGHAUSEN

President

ATTEST:



THOMAS A. VESPA, JR.

Secretary

Property of Cook County Clerk's Office

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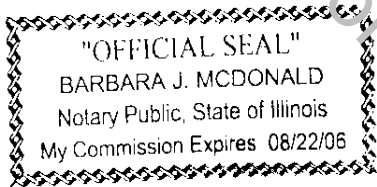
STATE OF ILLINOIS                    )  
   )  
 COUNTY OF COOK                    )

SS

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that **Dan W. Ellinghausen**, President of Morningside Group, Inc., and **Thomas A. Vespa, Jr.**, Secretary of said Corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as the free and voluntary act of PREMIER HOMES, INC, an Illinois corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14 day of January, 2004.

(Notarial Seal)



*Barbara J. McDonald*  
 \_\_\_\_\_  
 Notary Public

H:\PRB\Morningside SHHO\Covenants and Restrictions.wpd 1/13/04