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**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
OF
FONTENAY TOWNHOME SUBDIVISION**

A Capital Homes Development
Arlington Heights, Illinois

"THE SIGNATURES OF THE PARTIES EXECUTING THIS DOCUMENT
ARE COPIES AND ARE NOT ORIGINAL SIGNATURES."

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DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS OF FONTENAY TOWNHOME SUBDIVISION

THIS DECLARATION is made this 15th day of April, 2003, by FONTENAY LLC, an Illinois Limited Liability Company, ("Declarant"), with reference to the following:

A. Declarant is the Owner in fee simple of certain real estate in the Village of Palatine, Cook County, Illinois, legally described in Exhibit A attached hereto and made a part hereof, hereinafter referred to as the "Property".

B. Declarant desires to provide for the preservation and enhancement of the property values within the development and maintenance of the Property and improvements thereon, and in general to provide for a residential subdivision of the highest quality. To this end, Declarant desires to submit the Property to the easements, covenants and restrictions contained in this Declaration, each one of which is intended to run with the land and to bind and benefit the Property, all Owners of parts thereof, and other parties in interest forever.

ARTICLE I

DEFINITIONS

- A. "Association" means the Fontenay Townhome Association, an Illinois not-for-profit corporation, its successors and assigns.
- B. "Board" means the Board of Directors of the Association.
- C. "Common Areas" mean the areas intended for the common use and enjoyment of the Owners, the subdivision signage easement area, and all streets and parking areas, all as shown on the Plat.
- D. "Declaration" means this instrument, as it may be amended from time to time.
- E. "Home" means any single family townhome residence constructed on a Lot.
- F. "Lot" means any plot of land designated on the Plat, numbers 1 through 18, inclusive, which is included in the real estate submitted to this Declaration and any amendments hereto.
- G. "Owner" means the record Owner of the fee simple title to any Lot or Lots.
- H. "Plat" means the Final Plat of Subdivision for Fontenay Townhome Subdivision, recorded as Document Number 0320927093 in the Recorder of Deeds Office, Cook County, Illinois.

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I. "Developer" means FONTENAY LLC, an Illinois Limited Liability Company, its successors and assigns.

J. "Property" means the entire real estate described in Exhibit A attached hereto.

K. "Village" means the Village of Palatine, an Illinois municipal corporation.

ARTICLE II

ASSOCIATION

A. ASSOCIATION.

The Association has been or will be established as an Illinois not-for-profit Corporation for the purposes set forth in this Declaration and its Articles of Incorporation.

B. MEMBERS.

Every Owner, upon the vesting of title to a Lot, shall be a member of the Association, subject to the rights and obligations set forth in this Declaration, the Articles of Incorporation and By-Laws of the Association, as may be amended from time to time. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership, and membership shall cease upon termination of such Ownership.

C. VOTING.

The Association shall have two classes of voting membership:

Class A - Class A members shall be all Owners with the exception of the Declarant and Developer and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B - The Class B members shall be the Declarant and Developer, their successors and assigns, and shall be entitled to five (5) votes for each Lot owned, provided however that the Declarant and Developer shall be entitled to only one vote per Lot on the earlier of the following event:

(1). When 15 of the Lots have been conveyed to Owners other than the Declarant and Developer; or

(2). Five years after the date the first Lot is conveyed to an Owner other than the Declarant and Developer.

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Subject to the above, neither the Association nor the Board shall be responsible for determining the validity of multiple votes cast by persons based upon joint Ownership of a single Lot, and no such multiple vote shall be counted unless and until a single vote is presented by such persons.

D. BOARD OF DIRECTORS.

The affairs of the Association shall be managed by a Board of Directors as set forth in the By-Laws.

ARTICLE III

COMMON AREAS AND EASEMENTS

A. COMMON AREAS.

Every Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot, such enjoyment being subject to the following:

(1) the right of the Association to establish reasonable rules for the use of the Common Areas;

(2) the right of the Association to suspend the right of an Owner to use the Common Areas and any facilities thereon for any period during which an assessment against his Lot remains unpaid for more than thirty days after notice; the right of the Association to suspend the right of an Owner's use of said facilities for any other infraction of this Declaration, the By-Laws or the Association rules and regulations;

(3) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed or approved by fourteen (14) of the Owners and mortgagees, and by Declarant (but, as to Declarant, only during such time as Declarant owns any part of the Property) and recorded with the Cook County Recorder of Deeds; and

(4) the rights granted to the Association, other Owners and Declarant by this Declaration.

Each Owner, by accepting a deed to a Lot, designates the Association as his attorney-in-fact coupled with an interest to take whatever steps necessary to carry out the provisions of this Article III, Subparagraph A.

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B. DELEGATION OF USE.

Any Owner may delegate to, or share with, the members of his family and guests, his right of enjoyment to the Common Areas, facilities thereon and easements reserved in this Declaration, subject to this Declaration, the By-Laws, and any regulations established from time to time by the Board.

C. EASEMENTS.

In addition to utility easements and other easements affecting and binding the Property, easements are hereby granted as follows to the Declarant, Developer and the Association, its agents, its employees and to Declarant and Developer upon, across, over and under the Common Areas and any part of the Property for the purpose of maintenance, installation, replacement and repair of any improvements on, in or placed on/in the Common Areas:

(1) An easement is granted upon, across, over and under any retention, detention, creek or drainage area designated on the Plat, and any Lot or part of the Property as may be necessary for the purpose of maintaining, preserving, protecting and improving these areas to insure the proper management of storm water. These areas shall be maintained by the Association in perpetuity, and cannot be developed or used for private structures at any time.

(2) An easement is granted upon, across, over and under the Property for the purpose of installing, replacing, repairing and maintaining any landscaping and improvements thereon or placed thereon for the benefit of the Owners and Association, including but not limited to the green space areas, the storm water detention and retention ponds described in the Plat, and the subdivision entrance sign and plantings located on Lot A.

(3) An easement is granted upon, across, over and under the Property for the purpose of installing, replacing, repairing and maintaining any streets and parking areas now, or hereafter located within any portion of the Common Areas as described in the Plat.

(4) An easement is granted upon, across, over and under the Property for the purpose of installing, replacing, repairing and maintaining any sanitary sewer pipes or other system components now, or hereafter located within any portion of the Common Areas as described in the Plat.

(5) To the extent that the Association (and/or Declarant or Developer) is granted easements in this subparagraph C, the Village of Palatine, and its duly designated officials and employees are hereby granted easements over all easement areas designated herein for the purpose of inspection and insuring proper maintenance in conformity with this Declaration and all applicable ordinances and municipal regulations. If, at any time it is determined that any easement areas are not being properly maintained in conformity with applicable restrictions, ordinances, and regulations, the Village of Palatine shall give the Association written notice of such determination. No such written notice shall be required if the Village determines that the failure of the Association to provide proper maintenance constitutes an immediate threat to the public health, safety and welfare or will result in irreparable harm or damage.

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The Village of Palatine, its officials and employees, shall have the right, but not the obligation, to perform or cause to be performed any maintenance or other operations set forth herein and designated as the obligation of the Association for the purpose of preserving the drainage areas, the Common Areas, and all other common improvements, and shall be entitled to complete reimbursement by the Association for any expenditures made or incurred. Reimbursement shall include interest on the expenditures at the rate of 18% per annum from the date the expenditure is incurred to the date of payment. Any costs or expenses incurred by the Village in taking actions as described herein may be recorded as lien on the title to all Lots within the Development, which may be foreclosed by court action initiated by the Village in any manner provided for in the Illinois Code of Civil Procedure or other applicable law. In addition to the foregoing, the Village may pursue any other remedy or right provided by law including but not limited to an action at law against the Owner or Owners of record of such Lots.

In conjunction with any litigation initiated by the Village of Palatine to foreclose a lien, to seek reimbursement for expenses, or to seek compliance with this Declaration, the Village of Palatine shall be entitled to recover its attorneys' fees and other litigation expenses as a part of any final judgment or decree.

The easements set forth in this subparagraph C are easements appurtenant, shall run with the land, and at all times will be binding upon the Owner or Owners of the Property or Lots from time to time, and all successors, grantees, heirs and assigns.

Declarant and Developer shall also have the right to grant other easements over the Property to themselves, to utility companies, or to other entities as needed to construct, repair maintain or install utility services or other necessary or desirable services to the Property to facilitate the proper or desirable development of the Property. The authority to grant other easements with respect to any Lot on the Property shall cease upon its conveyance by Developer to a new Owner other than the Developer.

(6) An easement for ingress and egress is granted across and upon the Street to be built by Declarant and Developer for the benefit of a parcel of real estate described in Exhibit C attached hereto. This perpetual easement is established to aid in the development of the real estate described in Exhibit C. The easement will allow a future owner/developer of the real estate described in Exhibit C to connect a street to the Street to be built by Declarant and Developer so as to allow future residents of the real estate described in Exhibit C to have use of the Street within the Fontenay Townhome Subdivision. As a precondition to use of the easement granted herein, the future owner/developer of the real estate described in Exhibit C must grant a reciprocal easement in favor of Declarant, Developer and Owners to allow access across any streets to be built by said future owner/developer on the real estate described in Exhibit C. No fees or costs are payable by nor assessable against any beneficiary of the ingress/egress easements established herein.

D. CONSTRUCTION AND SALES EASEMENTS.

An easement is hereby granted and reserved to the Declarant, Developer, its agents, employees, contractors, grantees, successors and assigns to enter the Common Areas and any

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portion of the Property not conveyed during the period of construction and sale on the Property to maintain such facilities and perform such operations as, in the opinion of Declarant or Developer, may be reasonably required or incidental to the construction and sale of residences on the Property. This grant and reservation to Declarant and Developer, as above described, includes without limitation the construction and maintenance of a sales office, storage areas, signs and model units.

E. TITLE TO THE COMMON AREAS.

Declarant, its successors and assigns, shall retain legal title to the Common Areas until conveyed to the Association. No Owner shall have any right of partition to the Common Areas. The Association shall have no right to partition the Common Areas without first obtaining the consent of the Village of Palatine.

ARTICLE IV

MAINTENANCE OBLIGATIONS AND ASSESSMENTS

A. ASSOCIATION OBLIGATIONS.

The Association, on behalf of all Owners, will manage and maintain the Common Areas, and all improvements thereon, including all drainage facilities and improvements, all as fully set forth and described in the Plat. The obligation of the Association set forth herein and as relates to the foregoing specifically includes, but is not limited to, insuring and maintaining the proper functioning and operation of the Common Areas and keeping same in good repair, and in a safe and clean condition; and the replacement and restoration, when necessary, of any and all improvements thereon consistent with good engineering and property management, and the discharge of any and all other obligations as set forth in the ordinance and resolution adopted by the Village of Palatine authorizing the FONTENAY Townhome Development. The Association shall specifically be responsible for: the care, maintenance, repair, replacement and reconstruction of Lot A as depicted on the Plat and all structures and improvements contained within any portion of Lot A; control of erosion; the care, maintenance, repair, replacement and reconstruction of subdivision signage; all Common Area landscaping; the maintaining and mowing of grass and the cutting of weeds within the Common Areas; the removal of snow from the private streets following any two (2) inch snowfall; and the replacement of trees, shrubs and other plant material as needed in the Common Areas from time to time to maintain the integrity of the subdivision landscape plan.

Prior approval from the Village Manager must be obtained before making any alterations or changes of a permanent nature in the Common Areas. In the event the Association fails to satisfactorily perform said responsibilities, the Village may, but shall not be obligated to do so, and the costs thereof may be recorded as a lien on the title to all the Lots within the Development, which may be foreclosed by court action initiated by the Village in any manner provided for in the Illinois Code of Civil Procedure or other applicable law. In addition to the foregoing remedy, the Village may pursue any other remedy or right provided by law including but not limited to an action at law against the Owner or Owners of record of such Lots.

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B. OWNER OBLIGATIONS.

Each Owner shall keep any Lot owned by him, and all improvements thereon, including any portion of a creek, drainage area or watercourse, in a clean, healthy and safe condition, free of debris, and shall perform all necessary maintenance, landscaping, maintenance of landscaping and external care and maintenance of any building and improvements to a degree and in a manner consistent with good property management standards for a residential community of the character and quality of Fontenay Townhome Development. Failure to maintain the Lot or improvements as provided herein gives the Association, after written notice to the Owner, the right (but not the obligation) to enter said Lot for the purpose of correcting deficiencies set forth in the notice. Any and all costs incurred by the Association shall become a special assessment upon such Lot.

C. MAINTENANCE ASSESSMENTS.

(1) **Covenant for Maintenance Assessments.** Each Lot Owner, including Declarant, its successors, grantees and assigns, covenants and agrees to pay to the Association annual and special assessments. All annual and special assessments shall be personal obligations of each Lot Owner, including Declarant, and shall run with and bind each Lot, and are to be established and collected as provided in this Declaration, the By-Laws of the Association, and/or the Rules and Regulations issued by the Board.

(2) **Purpose and Use of Assessments.** All assessments levied by the Board and the Association shall be used solely for the purpose of maintaining and insuring the maintenance and operation of the Property, all Common Areas, and fulfilling all obligations of the Association as set forth in this Declaration.

(3) **Initial Assessments.** To insure the proper operation of the Association, Declarant shall have the right to establish initial assessments which will be paid by the initial Lot Owners at the time of initial conveyance by Declarant to Lot Owner. These fees will be used to capitalize the Association as well as to provide for other contingencies as the Declarant will determine in the exercise of its business judgment.

D. BUDGET AND ASSESSMENTS.

(1) On or before November 1st of each year commencing in the year that the first annual meeting of the Association is held, and pursuant to the By-Laws of the Association, the Board shall hold a meeting or meetings:

(i) To estimate the expenses of the Association for the following calendar year, and the appropriate reserves for contingencies and replacements;

(ii) To determine the amount to be assessed against each Lot, which annual assessment shall be on an equal basis per Lot; and

(iii) To establish the date or dates on which such annual assessments shall be due. Should the Board fail to establish payment dates, all annual assessments shall be due in two equal

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installments on the seventh day of February and on the seventh day of March of the year for which they are assessed.

(2) For the period commencing from the date of this Declaration until the date of the first annual meeting of the Association, Declarant shall:

(i) Prepare an estimated budget in and for each calendar year (or for a partial year in the case of the first year);

(ii) Fix the amount assessed against each Lot (whether title is held by Declarant or not) for the following year and establish the date or dates on which such annual assessments or installments thereof are due; and

(iii) Pay an amount equal to the difference between the actual operating expenses of the Association, less the amount collected from the individual Lot Owners other than Declarant, its successors, grantees and assigns.

(3) The Declarant, Developer or Board, as the case may be, shall distribute the estimated budget and the notice of assessment to each Lot Owner by January 15th of each year.

E. SPECIAL ASSESSMENTS.

(1) Special assessments may be levied by the Board to pay the cost, in whole or in part, of any capital improvement, any maintenance expense, or the unforeseen expense which, in the opinion of the Board, should not be paid from accumulated reserves.

(2) Whenever the Board shall determine there exists a need for levying a special assessment as herein provided, the Board shall adopt a resolution setting forth the need, amount and due date or dates for the proposed special assessment.

All special assessments must be approved by a two-thirds vote of the Owners, and said vote shall be taken at a meeting called for that purpose. The Board may, however, take any action deemed reasonably necessary to cure or remedy a condition which threatens immediate danger or damage absent Owner approval as aforesaid.

(3) Special assessments, as described herein, as with annual assessments, shall be assessed against each Lot on an equal basis.

F. DELINQUENT ASSESSMENTS.

Any assessments not paid on the due date shall be deemed delinquent. Such delinquency shall be a continuing lien and an equitable charge running with the land, and shall be appurtenant to the Lot so assessed. If title to any Lot be held by more than one Owner, all Owners shall be jointly and severally liable for the continuing lien and charge. Should title to any Lot be transferred, the transferee (except a mortgagee in possession) shall be jointly liable for any delinquent

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assessments with the transferor. Either of the parties to a transfer may request a statement from the Association setting forth an accounting of the assessments for the subject Lot, due and paid. The lien shall attach to all rents due from parties in possession on any Lot on which a delinquent assessment exists, provided that it shall be subordinate to an assignment of rents held by a mortgagee when delivered in connection with a first mortgage loan.

Should any assessment remain unpaid thirty days after it has become delinquent, such assessment shall bear interest from the date of delinquency at a rate of eighteen percent (18%) per annum, or at such other interest rate as may be fixed and determined by the Board, so long as permitted by Illinois law.

G. REMEDIES.

The Association may recover any delinquent assessments by:

- (1) bringing an action at law or in equity against the Owner;
- (2) foreclosing the lien against the Lot; or,
- (3) pursuing any other remedy available at law or in equity.

Any recovery shall include interest, costs, all attorneys' fees, and all other expenses incurred with the collection of the assessment.

Each Owner, by acceptance of a deed, vests in the Association the right to bring actions against the Owner personally to collect and enforce such liens or charges by all methods available, including foreclosure, in case of default. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Owners. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive liability for the assessments provided for herein by the nonuse or abandonment of the Lot.

H. SUBORDINATION OF ASSOCIATION LIEN.

The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage or first trust deed placed upon the Lot. Such automatic subordination shall apply only to the assessments which arise subsequent to the lien of the first mortgage or first trust deed but shall not apply to any assessments arising during any period which the holder of such mortgage or trust deed is in possession of the Lot. Any sale or transfer pursuant to a mortgage foreclosure or transfer in lieu thereof shall not relieve the Lot from liability for any assessments or installments thereafter becoming due.

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ARTICLE V

USE AND OCCUPANCY RESTRICTIONS

A. PURPOSE.

To insure compliance with this Declaration, the Board has the authority to enforce the restrictions contained in this Article and in this Declaration and to adopt, modify and enforce rules and regulations regarding the maintenance, use and enjoyment of the Lots, the townhomes, the Common Areas, and the other areas designated in this Declaration for which the Association bears responsibility.

B. LAND USE AND BUILDING.

All Lots shall be used for single family attached residential purposes only. All townhome dwellings shall have attached two or three car garages. No accessory buildings may be built on a Lot without the express written consent of the Association and the Village. In addition, all residences shall comply with the following architectural standards:

1. The architectural style of all residential structures constructed upon any Lot shall be a traditional style in exterior design. Contemporary exterior designs shall not be permitted. No Lot may hereafter be used for more than one attached, single family residence, and no more than seventeen (17) buildable Lots will be permitted on the Property. No sheds, storage buildings, tents or other detached temporary or permanent structures other than one single family attached residence shall be erected on any part of any Lot, except as provided for herein.
2. No exterior elevation nor floor plan may be changed or altered from those approved by the Village of Palatine in the ordinances and resolutions approving the Fontenay Townhome Development.
3. All residences to be built within the Property shall comply with the Village of Palatine anti-monotony rules.
4. Roofs may only be constructed of asphalt/fiberglass shingles.
5. The minimum roof pitch of the main roof line shall be 8/12 visible from the front of each residence.
6. All windows on the front elevation of any residence shall be placed in a symmetrical pattern or balanced in a traditional style. No trapezoidal or irregularly shaped windows shall be allowed on the front elevation of any residence.
7. All residences shall have attached garages of a minimum of two car capacity.
8. Each residence shall be limited to a maximum height of 35 feet, which

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height shall be measured per the applicable building and development codes of the Village of Palatine.

9. Sump pump drainage from residential structures shall never be connected directly into adjacent storm sewers.

10. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

11. No building, breezeway or garage shall be erected or maintained closer to a Lot line than the permitted building line as shown on the Plat. No fence or wall shall be erected, placed or altered on any Lot, except as shown on the Plat, as provided for in the ordinances approving the Fontenay Townhome Development, or as provided for below.

12. Any portion of any Lot which is designated as a drainage or village easement on the Plat shall be kept free of obstructions to drainage including without limitation shrubbery, fencing and other structures not approved by the Village. Unless otherwise specifically directed by the Village of Palatine, the respective Lot Owners shall be responsible for the control of erosion within those portions of any such easements, which are part of their respective premises. In the event a Lot Owner fails to fulfill such responsibilities, the Village may, but shall not be obligated to do so, and the costs thereof may be recorded as a lien on the title to said Lot, which may be foreclosed by court action initiated by the Village in any manner provided for in the Illinois Code of Civil Procedure or other applicable law. In addition to the foregoing remedy, the Village may bring an action at law against the Owner or Owners of record of such Lot.

13. No building shall be erected or maintained on any Lots for manufacturing, industrial or business purposes, excepting the use of one Lot for a temporary sales and/or construction office for Developer.

14. No Lot shall be used for the stabling or keeping of any horses, cattle, swine, goats, sheep, bees, fowl or any other animals breed for commercial purposes.

C. LOT CHANGES.

No Owner shall change the grade of a Lot which might affect the drainage over the Property without the prior written approval of the Board and the concurrence of the Village. No Lot shall be divided or subdivided.

D. VEHICLE STORAGE AND PARKING RESTRICTIONS.

No Lot Owner shall cause or permit any boat, airplane, trailer, non-passenger truck (except for trucks displaying B class license plates issued by the Illinois Secretary of State), house trailer, motorized recreational vehicle or commercial vehicle to be stored or parked on any Lot or part of the Property except in an Owner's garage, excepting a period of six (6) hours within a thirty (30) day period and then for the sole purpose of loading and unloading such vehicles. Conventional passenger vehicles of the Owners and their guests shall be permitted to be parked on

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an Owner's driveway and in the designated parking areas shown on the Plat as a part of the Common Areas. The Association shall have the right to regulate the use of all parking locations in the Common Areas. No private vehicles shall be continuously parked on the private street, but shall be kept on the driveway of the Lot or in the private garage, it being the intention to prevent obstruction of the street by continual parking thereon. No truck or commercial vehicle shall be permitted upon any Lot except when such truck or commercial vehicle is actually delivering or unloading personal property to and from the premises and except any truck or commercial vehicle which is restricted to the interior confines of the private garage.

E. HOME OCCUPATIONS.

No home occupation or commercial activity shall be conducted in any Townhome or accessory building. The foregoing restriction shall not, however, be construed in such a manner as to prohibit an Owner from: (a) maintaining a personal or professional library; (b) keeping personal, business or professional records or accounts; or (c) handling personal business or professional telephone calls or correspondence. Such uses are expressly declared customarily incident to the principal residential use and not in violation of this restriction.

F. NUISANCE ACTIVITIES.

No noxious, illegal or offensive activities shall be permitted or conducted upon any Lot or any part of the Property which, in the reasonable discretion of the Board, become an annoyance or nuisance.

G. FENCE RESTRICTIONS.

All fences or walls to be erected on any Lot must be approved by the Board in writing prior to erection or construction, and must be of a uniform height, design, composition and quality as determined by the Board. No exceptions to this restrictions will be permitted. Any violation by any Owner will subject him to any and all legal and equitable remedies, including injunctive relief, by the Board or by any other interested party.

H. OTHER RULES AND REGULATIONS.

The Board may from time to time adopt and amend rules and regulations for the operation, maintenance, use and beautification of the Lots and Property so long as such Rules and Regulations are not inconsistent with the terms of this Declaration. Written notice of any such rules or regulations, or amendments thereto, shall be given to all Owners and shall be binding on all Owners. Any violation of such rules and regulations shall be deemed a violation of this Declaration.

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ARTICLE VI

RIGHTS AND OBLIGATIONS OF BOARD

A. RIGHTS OF THE BOARD.

The Board shall have the right, among other rights expressed and implied:

- (1) to delegate portions of its authority to committees composed of its members or other Owners;
- (2) to hire contractors or agents to perform its duties here under and to employ legal counsel, accountants, and a managing agent;
- (3) to take necessary action to discharge or insure over liens filed against the Common Areas;
- (4) to take necessary action to enforce the Declaration, including, but not limited to entering on any Lot to perform such functions as are required of an Owner after such Owner fails to perform such functions pursuant to this Declaration, the Articles of Incorporation, the By-Laws, and/or the Association rules and regulations.

B. OBLIGATIONS OF THE BOARD.

The Board shall:

- (1) obtain insurance coverage both for property damage and liability on behalf of the Owners over the Common Areas in amounts sufficient to protect the interests of the Owners;
- (2) use its best efforts to collect all assessments and to enforce the terms of the Declaration;
- (3) prohibit the placing of mortgages, trust deeds, or other collateral conveyances on any portion of the Common Areas; and
- (4) fulfill all other Board duties as set forth herein, and as required by state law.

ARTICLE VII

GENERAL PROVISIONS

A. ENFORCEMENT.

Failure by the Association or by any Owner to enforce any rule, regulation, covenant or

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restriction contained in or promulgated pursuant to this Declaration, the Articles of Incorporation, or the By-Laws shall not be deemed a waiver of the right to do so thereafter. The Village of Palatine shall have the right, but not the obligation to enforce any of the provisions of this Declaration.

B. DISPUTES AMONG OWNERS.

The Board shall have the right to settle any dispute or disagreement between or among any Owners, relative to the Property or any question of interpretation or application of the provisions of the Declaration, the Articles of Incorporation, the By-Laws or any rules or regulations promulgated thereunder. The Board's determination with respect to such dispute or disagreement shall be final and binding on each of such Owners.

C. NOTICES.

All notices which are served pursuant to this Declaration shall be in writing and shall be deemed properly served if delivered by hand to the party to whose attention the notice is addressed; or if mailed by United States certified mail, return receipt requested, postage prepaid. If notice is to be given to the Board or Association, then to the address of the President of the Board or to any other address designated in writing by the Board from time to time; and, if to an Owner, then to the Owner's Home, or to any other address designated in writing by such Owner from time to time. Upon written request to the Board, giving the address at which notices should be sent, the holder of any duly recorded mortgage or trust deed against any Lot shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Lot is subject to such mortgage or trust deed. Notices shall be deemed served on the date of delivery, if by personal service; or if by mail on the third day following the date of mailing.

D. ARCHITECTURAL CONTROL.

Except as delineated herein, Developer shall have the sole right to exercise all architectural control over the development until such time as all Lots are sold. Notwithstanding the fact that it may comply with the foregoing restrictions, no residence of any type shall be erected, placed or permitted to remain, and no exterior alteration of any of the foregoing shall be made to any residence, and no above or below ground swimming pool of any kind shall be constructed or maintained on any Lot, and no fence or wall or free standing tower or antenna of any kind shall be constructed or placed or altered on any Lot, until and unless: (1) the plans and specifications for the same have been drawn showing the nature, kind, shape, size, architectural design, materials, location, proposed landscaping thereof and approximate cost; and (2) such plans and specifications shall have been submitted to and approved in writing by the Developer or its successors or assigns. In the event that such plans are not approved or disapproved in writing by the Developer, after the submission of such plans and specifications, or in the event the Developer is not in existence, or in the event that the Developer has sold all Lots in the subdivision, then such plans and specifications shall be submitted to and approved or disapproved by the Board. With the exception of fences, all plans and specifications referred to above shall be drawn by a licensed architect. No construction work of any kind may be undertaken until approved by the Developer, or in its absence, the Association.

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E. SEVERABILITY.

The invalidation of any provision contained in this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

F. TERM/AMENDMENT.


The provisions of this Declaration shall run with and bind the land for a term of twenty years from its recording, the date of recording being the "Effective Date" and thereafter shall be automatically extended in perpetuity unless terminated by seventeen (17) of the Owners and their mortgagees. This Declaration may be amended following the twenty year period by an instrument approved by not less than seventeen (17) of the Owners (and by Declarant alone so long as Declarant owns any of the Lots). Amendments affecting the rights of mortgagees shall also require the approval of each approving Owner's mortgage holder. During the initial twenty year term, the Village of Palatine shall have the authority, but not the legal obligation to amend the covenants and restrictions set forth herein from time to time. Any amendments to the Declaration shall require the written consent of the Village of Palatine prior to becoming effective. Any amendment or notice of termination must be recorded in the Office of the Recorder of Deeds of Cook County, Illinois to become effective


IN WITNESS WHEREOF, This Declaration is hereby freely and voluntarily made by Declarant on the date first written above.

FONTENAY LLC

an Illinois Limited Liability Company

By: CAPITAL HOMES, INC., an Illinois corporation
Manager

By: 
Rich Wilkinson, President

By: 
Ken Frank, Vice President

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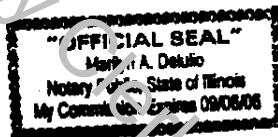
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid DO HEREBY CERTIFY, that Rick Wilkinson, President of CAPITAL HOMES, INC., Manager of FONTENAY LLC and Ken Frank, Vice President of CAPITAL HOMES, INC., Manager of FONTENAY LLC who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as corporate officers respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 21st day of April, 2003.

Mark A. DeLillo

Notary Public



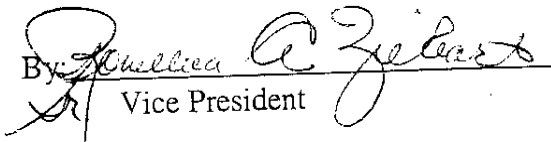
UNOFFICIAL COPY

CONSENT OF MORTGAGEE

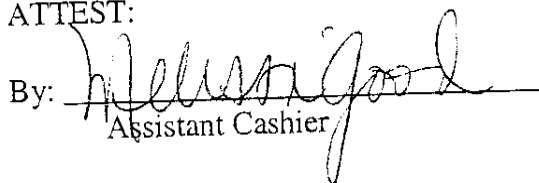
AMERICAN CHARTERED BANK, an Illinois banking corporation, holder of a mortgage on the parcel described in Exhibit "A", and recorded in the Office of the Recorder of Deeds, Cook County, Illinois does hereby consent to the execution and recording of the aforesaid Declaration of Easements, Covenants and Restriction and agrees that the aforesaid mortgage is subject to the provisions of said Declaration of Easements, Covenants and Restrictions.

IN WITNESS WHEREOF, AMERICAN CHARTERED BANK has caused these presents to be executed by its duly authorized officers on its behalf this 21st day of April, 2003.

AMERICAN CHARTERED BANK
1199 East Higgins Road
Schaumburg, IL 60173

By: 
Vice President

ATTEST:

By: 
Assistant Cashier

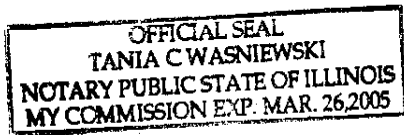
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the state aforesaid DO HEREBY CERTIFY, that RONNELVA A. ZIEBART, the Vice President of AMERICAN CHARTERED BANK and MELISSA GOOD, Assistant Cashier of said corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Cashier, respectively appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth herein.

Given under my hand and Notarial Seal this 21st day of April, 2003.

Tania C Wasniewski
Notary Public



This Document was prepared by and should be mailed to after recording:

Jerome W. Pinderski, Jr.
PINDERSKI & PINDERSKI, LTD.
115 West. Colfax Street
Palatine, IL 60067-5086
(847) 358-5220

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

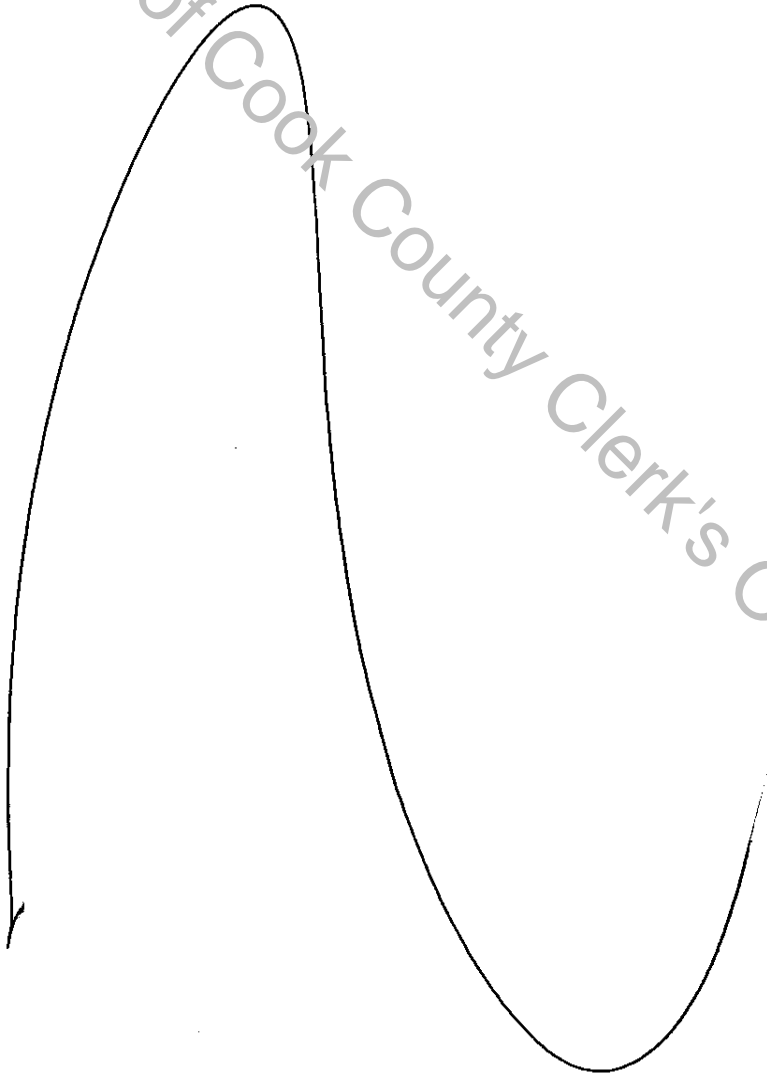


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FONTENAY

A SUBDIVISION OF PARTS OF THE SOUTHWEST QUARTER OF SECTION 10 AND THE NORTHWEST QUARTER OF SECTION 15, ALL IN TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property # - 02-15-101-008-0000




Property of Cook County Clerk's Office

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EXHIBIT B

INITIAL ASSOCIATION BY LAWS

Property of Cook County Clerk's Office

A large, complex handwritten scribble in black ink, consisting of several overlapping loops and lines, completely obscuring any text that might have been present in the center of the page.

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By-Laws Of Fontenay Townhome Association

I. DEFINITIONS

All terms used herein which are defined in the Declaration of Easements, Covenants and Restrictions for Fontenay Subdivision shall be used herein with the same meanings as defined in said Declaration.

II. LOCATION OF PRINCIPAL OFFICE

The initial principal office of the Association shall be located at N. Kennicott Ave. Arlington Heights IL 60004 or at such other place as may be established by resolution by the Board of Directors of the Association.

III. VOTING RIGHTS AND ASSESSMENTS

1. Every person or entity who is a record fee simple owner of a Lot, including the Developer at all times as long as it owns any property subject to this Declaration, shall be a member of the Association, provided that any such person or entity who holds such interest only as a security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any lot which is subject to assessment.

2. Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate set forth in the Declaration of Easements, Covenants and Restrictions for Fontenay Subdivision, and shall result in the suspension of voting privileges during any period of such nonpayment.

IV. BOARD OF DIRECTORS

1. A majority of the Board of Directors shall constitute a quorum to transact business at any meeting of the Board, and the action of the majority present at a meeting at which a quorum is present shall constitute the action of the Board of Directors.

2. Any vacancy occurring on the Board of Directors because of death, resignation or other termination of services of any Director, shall be filled by the Board of Directors. A Director

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appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office and until his successor shall have been elected and/or appointed and qualified.

3. The Board of Directors shall initially consist of five (5) individual directors. Each Director shall serve a term of one year beginning February 1, and ending the next January 31 or until his/her successor is elected.

V. ELECTION OF DIRECTORS: NOMINATING AND ELECTION COMMITTEES

1. Nominations for the election of Board members may be made by a Nominating Committee appointed by the Board, except that the first Board of Directors shall be nominated and appointed by the Developer.

2. Developer shall, within fourteen (14) days of the date set for the first annual meeting of the Association, notify the Members of the names of the Directors the Developer is appointing to the Board of Directors.

3. In all subsequent years, the Nominating Committee shall make nominations for election to the Board of Directors as it shall in its discretion determine. In addition to nominations made by the Nominating Committee, petitions for nominees shall be accepted if signed by either five (5) Class A Members or by one third (1/3 rd) of the Class A Membership, whichever is smaller.

4. All elections to the Board of Directors shall be made on written ballots which shall (a) describe the vacancies to be filled, and (b) set forth the names of those nominated for each vacancy by the Nominating Committee or by petition for such vacancy. Upon receipt of such ballots such members and representatives may, in respect to each vacancy, cast as many votes for the persons nominated as they are entitled to exercise under the provisions of the Articles of Incorporation and these By-Laws.

5. The completed ballots shall be returned to the Secretary at the address of the Association, or at such other address as designated upon each ballot. Upon receipt of each ballot, the Secretary shall immediately place it in the safe or other locked place until the date of the annual meeting of the Association. On that day, and at the annual meeting, the ballots shall be turned over to an election committee which shall consist of five (5) members appointed by the Board of Directors or be counted by the Secretary if the Board has not appointed an election committee.

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6. The members of the Board of Directors elected or appointed in accordance with the procedures set forth in this Article, shall be deemed elected or appointed as of the date of the annual meeting of the Association.

7. The written ballots shall be mailed to each Member by the Secretary at least thirty (30) days prior to the annual meeting of the Association.

VI. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. The Board of Directors shall have power:

A. To call meetings of the members.

B. To appoint, remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, officer or Director of the Association in any capacity whatsoever.

C. To establish, levy and assess, and collect the assessments necessary to operate the Association and carry on its activities, and to create such reserves for extraordinary expenditures as may be deemed appropriate by the Board of Directors.

D. To adopt and publish rules and regulations governing the use of the Common Area or any parcels thereof and the personal conduct of the members and their guests thereon, including reasonable admission charges if deemed appropriate.

E. To authorize and cause the Association to enter into contracts for the day to day operation of the Association and the discharge of its responsibilities and obligations.

F. To exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to members in the Declaration of Restrictions, Covenants and Restrictions for Fontenay Subdivision or the Articles of Incorporation of the Association.

2. It shall be the duty of the Board of Directors:

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A. To cause to be kept a complete record of all its acts and corporate affairs.

B. To supervise all officers, agents and employees of this Association and to see that their duties are properly performed.

C. With reference to assessments of the Association:

(1) To fix the amount of the assessment against each member for each assessment period at least thirty (30) days in advance of such date or period.

(2) To prepare a roster of the members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member, and

(3) To send written notice of each assessment to every member subject thereto.

D. To issue or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. Such certificate shall be prima facie evidence of any assessment therein stated to have been paid.

VII. DIRECTORS AND MEETINGS

1. The annual meeting of the Association and the annual meeting of the Board of Directors shall be held on February 1st, at 10:30 A.M. at the principal office of the Association, unless some other place is designated by the Board. Regular meetings of the Board of Directors shall be held at such time and place as provided by appropriate resolution of the Board of Directors.

2. Notice of such regular meetings of the Board of Directors is hereby dispensed with. If the day for a regular meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need be given.

3. Special meetings of the Board of Directors shall be held when called by the President or Vice President of the Association, or by any three (3) Directors after not less than three (3) days' notice to each Director.

4. The transaction of any business at any meeting of the Board of Directors, however, called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after

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regular call and notice, if a quorum is present and, if either before or after the meeting, each of the Directors not present signs a waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records and made part of the minutes of the meeting.

VIII. OFFICERS

1. The officers shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as may be determined by the Board, in accordance with the Articles of Incorporation, to be from time to time appropriate. The President shall be a member of the Board of Directors, but the other officers need not be.
2. The officers of the Association shall be elected by the Board of Directors at the annual meeting of the Board of Directors, which shall be held immediately following the annual meeting of the Association. New officers may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and qualified.
3. A vacancy in any office because of death, resignation, or other termination of service, may be filled by the Board of Directors for the unexpired portion of the term.
4. All officers shall hold office at the pleasure of the Board of Directors, except that if an officer is removed by the Board, such removal shall be without prejudice to the contract rights, if any, of the officer so removed.
5. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments.
6. The Vice President, or the Vice Presidents so designated by the Board of Directors, if there is more than one (1) Vice President, shall perform all the duties of the President in his absence. The Vice President(s) shall perform such other acts and duties as may be assigned by the Board of Directors.
7. The Secretary shall be the ex officio Secretary of the Board of Directors, and shall record the votes and keep the minutes of all proceedings in a book to be kept for the purposes. He shall sign all certificates of membership. He shall keep the records of the Association. He

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shall record in the book kept for that purpose all the names of the members of the Association together with their addresses as registered by such member.

8. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer may, but need not, be a required signatory on checks and notes of the Association.

9. The Treasurer, or his appointed agent, shall keep proper books of account and cause an annual audit of the Association books be made by a certified public accountant at the completion of each fiscal year. He or his appointed agent shall prepare an annual budget and an annual balance sheet statement and the budget and balance sheet statement shall be open for inspection upon reasonable request by a member.

10. The salaries, if any, of the officers and assistant officers of the Association shall be set by the Board of Directors.

IX. COMMITTEES

1. The standing committees of the Association shall be:

The Nominating Committee

The Maintenance Committee

Each committee shall consist of a chairman and two (2) or more members and shall include a member of the Board of Directors. Each committee shall be appointed by the Board of Directors within thirty (30) days after each annual meeting of the Board of Directors, to serve until succeeding committee members have been appointed. The Board of Directors may appoint such other committees as it deems advisable.

2. The Nominating Committee shall have the duties and functions described in these By-Laws.

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3. The Maintenance Committee shall advise the Board of Directors, on all matters pertaining to the maintenance, repair or improvement of property in Fontenay Subdivision, and shall perform or seek the performance of such other functions as the Board, in its discretion, determines.

4. The Maintenance Committee and other committees appointed and so empowered by the Board of Directors (but not the Nominating Committee) shall have the power to appoint subcommittees from among their membership and they may delegate to any subcommittees any powers, duties and functions.

5. It shall be the duty of each committee to receive complaints from members on any matter involving Association functions, duties and activities within its scope of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association which is further concerned with the matter presented.

X. BOOKS AND PAPERS

The books, records and papers of the Association shall at all times during reasonable business hours, be subject to inspection of any member.

XI. SEAL

The Association shall have a seal in circular form having within its circumference the words: **Fontenay Townhome Association**, an Illinois not for profit corporation, 2003.

XII. AMENDMENTS

These By-Laws may be altered, amended or repealed by majority vote of the Directors present at a duly constituted meeting of the Board of Directors except that no amendment affecting Developer shall be effective without Developer's written consent.

XIII. INDEMNIFICATION

The Association, to the fullest extent provided for by Illinois law shall indemnify and hold harmless each director and each officer from any personal liability arising from, or related to the discharge of their responsibilities on behalf of the Association.

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EXHIBIT C

LEGAL DESCRIPTION OF BENEFITED PARCEL
FOR INGRESS/EGRESS EASEMENT

Property of Cook County Clerk's Office



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Aspen Glen Property

Parcel 1:

The West 1/2 of the South 6.40 1/3 chains of the West 297 feet of the Southwest 1/4 of the Southeast 1/4 of Section 10, Township 42 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 02-10-405-007-0000

Address: 450 West Baldwin Road, Palatine, Illinois 60067

Parcel 2:

The West 1/2 of the West 297 feet of the North East 1/4 of Section 15 lying Northeasterly of the Center Line of Old Baldwin Road, now known as West Northwest Highway, in Township 42 North, Range 10 East of the Third Principal Meridian, in Cook County, Illinois

PIN: 02-15-200-005-0000

Address: 450 West Baldwin road, Palatine, Illinois 60067

Parcel 3:

That part of the Northeast 1/4 of the Northwest 1/4 of Section 15, Township 42 North, Range 10 East of the Third Principal Meridian, bounded by a line described as follows: Beginning at a point on the East line of said Northwest 1/4 Section, said point being 35.50 feet South of (as measured along said East line which bears 01° 48' 09" East) the Northeast corner thereof; thence South 01° 48' 09" East, along said East line, 225.71 feet; thence South 88° 12' 36" West, 89.00 feet; thence North 01° 47' 24" West, 15.00 feet; thence North 26° 37' 13" West, 60.93 feet; thence North 59° 00' 44" West, 37.81 feet; thence North 00° 00' 00" West, 130.91 feet; thence North 34° 24' 27" East, 9.43 feet to a point which is 35.50 feet South of (as measured at right angles) the North line of said Northwest 1/4 Section; thence North 89° 41' 06" East, along a line 35.50 feet South of and parallel with said North line, 136.71 feet to the point of beginning, in Cook County, Illinois.

PIN: 02-15-101-009-0000

Address: 496 West Northwest Highway, Palatine, Illinois 60067