

This document was prepared by:
The Board of Directors of
Forest Gate Homeowners' Association, Inc.

After recording return to:
Forest Gate Homeowners' Association, Inc.
81 Forest Gate Circle
Oak Brook, Illinois 60523

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOREST GATE SUBDIVISION

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR FOREST GATE SUBDIVISION** is made
and entered into on the date hereinafter set forth.

Forest Gate, Inc., was the original declarant of the Forest Gate Subdivision Declaration of Covenants, Conditions, and Restrictions, recorded on August 6, 1999, as document number R1999-172960 in the Recorder of Deeds office in DuPage County, Illinois; and

Forest Gate, Inc., was the owner and legal title holder of certain real estate situated in Oak Brook, Illinois, which real estate is legally described in Exhibit A attached hereto and by this reference made a part hereof; and

Forest Gate Homeowners' Association, Inc. is the legal entity created to administer the terms and conditions of the original Declaration.

Forest Gate Subdivision is a development of single family detached cluster homes for occupancy primarily by persons fifty-five (55) years of age or older. Each "cluster home" is a single-family private residence erected on a separate lot. Each cluster home shall be surrounded by a landscaped common area, designated on the Plat as Lot 79. All of the cluster homes within Forest Gate Subdivision shall be accessed by a system of interconnected private streets, designated on the Plat as Lot 80, and the storm water management for Forest Gate Subdivision has been designed for collection in ponds within the Common Area designated as ponds A through J on Lot 79. Entry to Forest Gate Subdivision shall be controlled by a gatehouse on Lot 81 which shall be maintained by the Association.

NOW, THEREFORE, the Association and the Owners hereby declare that the property described in Exhibit A shall be transferred, held, sold, conveyed and accepted subject to this Amended and Restated Declaration. The following party wall rights, easements, covenants, restrictions, conditions and burdens, uses, privileges, charges and

liens shall: (1) exist at all times hereafter among all parties having or acquired right, title or interest in any portions of the real estate; (2) be binding upon and inure to the benefit of each Owner and (3) run with the land subjected to this Amended and Restated Declaration, to be held, sold and conveyed subject thereto.

ARTICLE ONE

Definitions

The following words, phrases, and terms shall be defined for use herein as follows. Whenever the context so requires, use of the plural form shall include the singular, use of the singular form shall include the plural or any gender shall be deemed to include all genders.

1.1 **Act:** The Fair Housing Act (Title VIII of Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619).

1.2 **Age-Qualified Occupant:** A Person who is fifty-five (55) years of age and older who occupies a Residence.

1.3 **Amended and Restated Declaration:** This instrument as amended or supplemented from time to time.

1.4 **Approved Occupant:** An individual who is 18 years of age or older, including an Owner, in lawful possession of a Residence who has complied with the provisions of Article V.

1.5 **Articles of Incorporation:** The Articles of Incorporation of the Association as amended or supplemented from time to time.

1.6 **Association:** Forest Gate Homeowners' Association, Inc., an Illinois not-for-profit corporation, its successors and assigns, managed by its elected Board of Directors.

1.7 **Board:** The Board of Directors of the Association consisting of from 3 to 5 individuals, as constituted at any time or from time to time, in accordance with this Amended and Restated Declaration and the By-Laws.

1.8 **By-Laws:** The By-Laws of the Association as amended or supplemented from time to time.

1.9 **Cluster Home:** A single-family residence not including the Cluster Home Lot upon which it is constructed.

1.10 **Cluster Home Lot:** Any one of the Lots in Forest Gate upon which a Cluster Home is to be or has been constructed.

1.11 **Common Area:** Lots 79, 80, and 81 on the Plat.

1.12 **Common Expenses:** The expenses incurred by the Association for the general benefit of all Owners including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Amended and Restated Declaration, the By-Laws, and Rules and Regulations of the Association.

1.13 **Developer:** Forest Gate, Inc., an Illinois Corporation, its successors and assigns.

1.14 **Forest Gate:** Forest Gate Subdivision as defined in the fifth paragraph of this Amended and Restated Declaration.

1.15 **Institutional Mortgagee:** A mortgagee which, in the ordinary course of business, lends money to borrowers in exchange for taking a security interest in the real estate of the borrowers.

1.16 **Lot:** Any Cluster Home Lot and/or Common Area (Lots 1 through 81, inclusive).

1.17 **Occupant:** An individual, including an Owner, who is in lawful possession of a Residence and staying overnight in excess of thirty days in a calendar year.

1.18 **Owner:** A record owner, whether one or more persons, of fee simple title to any Lot upon which a Cluster Home has been or is to be built, excluding those having an interest merely as security for the performance of an obligation.

1.19 **Person:** A natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

1.20 **Plat:** The Plat of Subdivision as recorded August 6, 1999, as document number R1000-172958 recorded in DuPage County, Illinois.

1.21 **Property:** All the land, property, and space comprising Forest Gate as legally described above, all improvements and structures erected, constructed or contained therein or thereon, excluding all utilities deeded to municipal governmental units, but including Residences, and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, hereby or hereafter subject to the Amended and Restated Declaration.

1.22 **Residence:** The single-family Cluster Home and the Cluster Home Lot upon which it is constructed.

1.23 **Residence Expenses:** Any expense other than a Common Expense, incurred by the Board which is to be charged to any Owner. A Residence Expense shall include, without limitation, the cost of any maintenance, repairs, or replacements or other services furnished by the Association to a Residence and any expense which is specifically

designated as Residence Expense in this Amended and Restated Declaration or the By-Laws.

1.24 Rules and Regulations: The Rules and Regulations adopted from time to time by the Board governing Forest Gate and the use of the Property including the Cluster Home Lots and Residences by the Owners and by all other persons.

1.25 Storm Water Management System: Natural and man-made means of draining surface or subsurface water from land or holding said water on land, including, but not limited to, storm water swales, channels, conduits, pipes, detention/retention basins/ponds and their restrictor devices, culverts, manholes, catch basins, inlets, pumps, and appurtenances and facilities for storm water management as more particularly shown on certain engineering plans prepared by Ruettiger, Tonelli and Associates as last revised and approved by the Village.

1.26 Village: The Village of Oak Brook, Illinois.

1.27 Voting Member: The person entitled to membership in the Association and who shall be entitled to vote at meetings of the Owners.

1.28 Wetland Mitigation System: A natural and man made means of maintaining, in compliance with predetermined performance standards approved by the Army Corps of Engineers and the Village, a planned management program of vegetation, hydrology, grading, and soil in the area within Forest Gate designated as "Wetland and Conservation Easements" on the Plat and appurtenances and facilities as more particularly shown on certain plans prepared by Ruettiger, Tonelli and Associates as last revised and approved by the Village.

ARTICLE TWO

Amended and Restated Declaration

2.1 Forest Gate is Subject to Amended and Restated Declaration. Forest Gate is hereby made and declared to be subject to the covenants, conditions, restrictions, reservations, grants and easements contained in this Amended and Restated Declaration, and the sale, transfer, mortgage, conveyance, use or occupation of the Residences and the Common Area are and shall at all times hereafter be subject to the provisions of the Amended and Restated Declaration.

2.2 Covenants, Conditions, and Restrictions Running with the Land. The covenants, conditions, and restrictions created by this Amended and Restated Declaration run with the land both as to burden and benefit, and every conveyance or other instrument affecting Forest Gate shall be deemed subject to these Covenants, Conditions, and Restrictions whether fully set forth in said conveyance or other instrument. Violation of the foregoing restrictions shall entitle the Association to enforce the rights and remedies hereinafter specified, including reasonable attorneys' fees and court costs, whether or not said violation constitutes a nuisance. The Board is hereby authorized to establish Rules

and Regulations related to the Property and to enforce the covenants, conditions and restrictions and other provisions contained in this Amended and Restated Declaration, the Articles of Incorporation, the By-Laws, and the Rules and Regulations.

ARTICLE THREE **The Cluster Home Lots**

3.1 Creation of Cluster Home Lots. The Cluster Home Lots were created by the recording of the Plat. Said Plat shows, for each Cluster Home Lot, a lot number, the legal description, boundary dimensions, and configuration.

3.2 Designation of Cluster Home Lot. Each Cluster Home Lot may for all purposes, including but without limitation, conveyances and mortgages, be identified and referred to by the number described and delineated on the Plat.

ARTICLE FOUR **Restrictions**

4.1 Land Use and Building Type. All Cluster Home Lots in Forest Gate shall be used for single-family, private residence purposes only, and no building or structure other than a single-family private Cluster Home shall at any time be constructed or maintained on any Cluster Home Lot within Forest Gate. No accessory buildings or structures, other than the gatehouse, including by way of illustration and not by way of limitation, sheds, dog houses, swimming pools, or other accessory buildings or structures shall at any time be constructed or maintained on any Cluster Home Lot or within the Common Area by any Owner. However, the Association is not prohibited from constructing a storage building on the Common Area which is architecturally compatible with the Residences, to store items belonging to the Association. All buildings or structures erected on the Property shall be of new construction, and no buildings or structures shall be moved from other locations to the Property. No subsequent buildings or structures shall be built on any Lot where a Cluster Home has been constructed. The garages shall be used for parking automobiles and other motor vehicles, and for storage and other acceptable uses, all subject to such reasonable Rules and Regulations as may be adopted by the Board from time to time.

4.2 Business Use and Signs. No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise, designed for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any Lot. No advertising signs or billboards, "For Lease" or "For Sale" signs, shall be erected, placed or permitted to remain on any Lot, without obtaining the Board's prior written approval. The foregoing restrictions shall not apply to the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, By-Laws and Rules and Regulations, as the same may be amended from time to time.

4.3 Personal and Professional Use. The restrictions in Sections 4.1 and 4.2 shall not, however, be construed in such a manner as to prohibit an Owner or Approved Occupant from: (a) maintaining a personal professional library therein; (b) keeping personal

business records or accounts therein; or (c) handling personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared customarily incident to the principal residential use and not in violation of said sections.

4.4 Parking and Outside Storage. The outdoor parking areas shall be used for the parking of passenger automobiles. No boats, trailers, recreational vehicles, trucks or vehicles bearing signs on their exteriors or other vehicles or property of any kind shall be parked or stored within the Property unless permitted by such Rules and Regulations as the Board may prescribe. Every Owner, Approved Occupant and guests and invitees of the Owner or Approved Occupant shall be responsible for their personal property on the Property. No snowmobile, dune buggy, three- or four-wheeled off-road recreational vehicles or similar motorized device may be operated anywhere within Forest Gate.

4.5 Changes or Improvements to Exteriors of Buildings. Any change in the color of any exterior building surface or any part thereof and any addition, change or improvement to any building, (including, but not limited to, any roof, siding, trim, door, storm door, storm window, window air conditioner, awning, canopy, or shutter) or the size, placement, or configuration of any patio or deck on the rear or side portion of any Lot or the addition or deletion of any trees, bushes or plants, other than annual flowers will be allowed only with the prior written approval of the Board and in compliance with Article IX, Paragraph 9.4, of this Amended and Restated Declaration.

4.6 Window Covering. The covering of the interior surfaces of the windows and other glass surfaces whether by window grilles, shades, draperies or other items visible from the exterior of the Residence, shall be subject to the Rules and Regulations of the Board.

4.7 Proscribed Activities. No unlawful, noxious, loud, or offensive activity shall be conducted within any Residence or the Common Area, either willfully or negligently, which may be or become an annoyance or nuisance, as determined by the Board, to the Owners or Occupants of any Residence. No objects of unsightly appearance or nuisance shall be erected, placed or permitted to remain on any Lot, nor shall any Lot be used in any way or for any purpose which may endanger the health or unreasonably disturb any resident, Owner or Approved Occupant of a Cluster Home. All woodpiles shall be properly stacked and shall be screened by adequate planting, as may be required by the Board at the Owner's expense, so as to conceal them from view of neighboring Lots and streets. No clothes, sheets, blankets, laundry of any kind, or similar articles shall be hung out on any part of any Residence or the Common Area. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly material and no waste shall be committed thereon.

4.8 Use Affecting Insurance. Nothing shall be done or kept on the Property which will increase the rate of the Association's insurance or of insurance applicable to the improvements or their contents, without prior written consent of the Board. No Owner shall permit anything to be done or kept on the Property which will result in the cancellation of

insurance of the Owner, any other Owner, or the Association or which would be in violation of any law.

4.9 Structural Impairment. Nothing shall be done on any Lot which will damage the structural integrity of any building or which would structurally change the building except as otherwise herein provided. No Owner shall overload the electrical wiring in a building or operate any machines, appliances, accessories or equipment in such a manner as to cause, in the judgment of the Board, an unreasonable disturbance to others.

4.10 Animals and Pets. There may be no more than 2 domestic animals in any Residence and they shall only be those breeds and animals allowed by the Rules and Regulations. Any animal and pet within Forest Gate must be kept in accordance with the Rules and Regulations of Forest Gate.

4.11 Trash Removal. All rubbish, trash and garbage shall be stored inside the Owner's garage, shall be regularly removed from the Property, and shall not be allowed to accumulate. Refuse or waste material shall not be permitted to be burned outside anywhere on the Property by any Person.

4.12 Landscaping Controls. Any changes to the initial landscaping shall be made by an Owner or Approved Occupant only with the prior written approval of the Board and in compliance with Article IX, Paragraph 9.4. The Board has the right, in making a judgment as to the giving or withholding of approval of plans and specifications submitted to the Board, to consider the desirability of the proposed landscaping or grading in relation to other landscaping and grading in Forest Gate, and to consider the character and qualities of the residential development existing or being created within Forest Gate. This Article shall not restrict any Owner or Approved Occupant from planting or maintaining flowers in the Cluster Home Lot or Common Area adjoining each Residence, provided that such use of the Common Area does not interfere with the use and enjoyment of the Common Area by other Approved Occupants or access to the Common Areas by emergency, utility, or other service personnel and equipment

4.13 Nameplates, Antennae, and Other Devices. There shall not be more than one nameplate on each Cluster Home Lot. Style, size and location of nameplates shall be governed by the Rules and Regulations. No television or radio antennae (including satellite dishes of all kinds), tower, or other receiving or transmitting devices shall be erected outdoors without the prior written approval of the Board.

ARTICLE FIVE **Restrictions On Age**

5.1 Age Restriction. Forest Gate is intended to provide housing primarily for persons fifty-five (55) years of age or older. The Association shall only provide housing for Age-Qualified Occupants and Approved Occupants as defined herein. The Association shall be operated as an age restricted community in compliance with all applicable State and Federal laws.

(a) NO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE SHALL BE ALLOWED TO OCCUPY OR RESIDE IN ANY RESIDENCE, EXCEPT THAT SUCH PERSONS UNDER EIGHTEEN (18) YEARS OF AGE MAY BE PERMITTED TO STAY OVERNIGHT FOR REASONABLE PERIODS, NOT TO EXCEED TWO CONSECUTIVE WEEKS ON ANY ONE OCCASION OR THIRTY DAYS IN A CALENDAR YEAR.

(b) At least eighty percent (80%) of all occupied Residences shall be occupied by at least one Age-Qualified Occupant. If a Residence is occupied by an Age-Qualified Occupant, then other Approved Occupants may occupy the Residence. If an Age-Qualified Occupant's occupancy is terminated and the only remaining Occupants of the Residence are Approved Occupants, then an Approved Occupant may continue to occupy the Residence provided that the Approved Occupant is either a.) the spouse of the Age-Qualified Occupant, or b.) fifty-five years of age or older. If the Approved Occupant does not meet either of these criteria, then said Approved Occupant shall vacate the Residence within one year from the date of the termination of the Age-Qualified Occupant's occupancy.

(c) A Residence may be owned by a Person or Persons under the age of fifty-five years. However, said Owner may not occupy the Residence unless said Owner is an Approved Occupant. Further, said Owner may not allow anyone to reside in the Residence, except in compliance with the age restrictions set forth herein.

5.2 Policies and Procedures. The Board shall establish, publish and adhere to policies and procedures which demonstrate an intent to provide housing for persons fifty-five years of age or older as necessary to maintain its status as an age restricted community under State and Federal laws. The Board shall have the power and authority to enforce these age restrictions by any legal or equitable means available, as the Board deems appropriate.

5.3 Verification of Age. In order to assure that Forest Gate continues to meet the age requirements for Occupants pursuant to the Fair Housing Act, the Association, its successors and/or assigns, shall be responsible for publishing and adhering to policies demonstrating its intent to qualify as fifty-five (55) or older housing. Such policies shall include:

(a) A written survey of all Occupants of all Residences within Forest Gate conducted at least once every two years.

(b) A requirement that all Occupants provide the Association with reliable documentation to verify age, such as a copy of the Occupant's:

- (i) driver's license;
- (ii) birth certificate;
- (iii) passport;
- (iv) immigration card;

- (v) military identification;
- (vi) any other state, local, national, or international official documents containing a birth date of comparable reliability;
or
- (vii) any other evidence acceptable to the Board which is also acceptable under the Act.

(c) A requirement that the Occupant is to attest that the information provided is true and accurate, under oath.

(d) Such other policies and practices that the Board determines are necessary to demonstrate that at least eighty percent (80%) of its occupied Residences are occupied by at least one person 55 years of age or older.

(e) Prior to a Person purchasing a Residence within the Association, the Person must comply with subsections (a) through (d) herein.

ARTICLE SIX

Maintenance of Community Interests

6.1 Multiple Residences. No person shall own, lease, occupy, or otherwise hold any ownership interest in more than one Residence in Forest Gate except for multiple Residences held for sale by the Developer. This Restriction shall not apply to any Owner who owns more than one Residence in Forest Gate, so long as the Owner has one of the Residences up for sale, and is actively marketing the sale of at least one of the Residences within Forest Gate.

6.2 Sale. No Owner may dispose of a Residence or any interest in a Residence, by sale or otherwise, unless it is to a person who complies with Article Five. Any Owner who wishes to sell his Residence shall give the Association within thirty (30) days of entering into the contract, the name and necessary information to confirm the age of the proposed Owner and Occupants. The Board has the right to withhold any Certificate of Payment necessary for a residential closing to occur, until such information is obtained and the Board has issued an Approved Occupant certificate.

6.3 Lease. All Residences must be Owner occupied or occupied by an Approved Occupant.

(a) Any Owner may apply for a one time hardship waiver of enforceability of this policy every five (5) years. The Owner must submit a request in writing to the Board requesting a hardship waiver. If the Board determines a hardship exists, the Owner requesting such hardship will be permitted to lease his Residence for a period of not less than twelve (12) consecutive months and not more than twenty-four (24) consecutive months. The hardship waiver will only be granted if the tenant is an Approved Occupant. Once the tenant moves out or this period expires, whichever occurs first, the Owner must come into compliance with this provision and may no longer lease

his Residence. Failure to abide by all Rules and Regulations of the Association may result in revocation of hardship status.

(b) Any Residence being leased in violation of this Section or any restriction related to leasing within the Rules and Regulations may result in the Association, through the Board, pursuing any remedies granted to the Association under the terms of the Association's governing documents, including but not limited to the imposition of a monetary fine. In addition to the authority to levy fines against the Owner for violation of this Section or any other provision of the Amended and Restated Declaration, By-Laws or Rules and Regulations, the Board shall have all rights and remedies, including but not limited to the right to maintain an action for possession against the Owner and/or his tenant, under 735 ILCS 5/9 et. seq., an action for injunctive and other equitable relief, or an action at law for damages. Any action brought on behalf of the Association and/or the Board to enforce this Section of the Amended and Restated Declaration shall subject the Owner to the payment of all costs and attorneys' fees at the time they are incurred by the Association.

(c) All unpaid charges as a result of the foregoing shall be deemed to be a lien against the Residence and collectible as any other unpaid regular or special assessment, including late fees, management fees, attorney's fees and costs.

(d) The Board shall have the right to lease any Association owned Residence or any Residence which the Association has possession pursuant to any court order, and said Residences shall not be subject to this Section.

6.4 **Gift.** If any Person shall acquire his title or right to occupy by gift, the continuance of his ownership or occupancy of the Residence shall be subject to compliance with Article Five herein.

6.5 **Devise or Inheritance.** If any Owner shall acquire his title or right to occupy by devise or inheritance, the continuance of his ownership or occupancy of the Residence shall be subject to compliance with Article Five herein.

6.6 **Other Transfers.** If any Owner shall acquire his title or the right to occupy by any manner not considered in the foregoing subsections, the continuance of his ownership or occupancy of the Residence shall be subject to compliance with Article Five herein.

6.7 **Institutional Mortgage Foreclosure.** The provisions of this Article shall not apply to a transfer to, or purchase by, an Institutional Mortgagee that acquired its title as the result of a deed from the Mortgagor in lieu of foreclosure or through foreclosure proceedings. After an Institutional Mortgagee acquires title to a Residence as hereinabove provided, such Institutional Mortgagee shall be subject to all of the provisions of this instrument. Should any purchaser acquire title to a Residence at a duly advertised public sale with open bidding as provided by law, then such person shall also comply with Article Five and comply with the provisions therein, in addition to

complying with all of the provisions of this instrument, and any and all documents related to Forest Gate.

6.8 Association Documents. It shall be the responsibility of the transferor of a Residence to transfer to transferee this Amended and Restated Declaration, the By-Laws, and the Rules and Regulations for Forest Gate. The transferee shall be bound by the terms of the Association documents even if the transferor fails to comply with the terms of this provision.

6.9 Certificate of Payment. An Owner must request a Certificate of Payment, in writing to the Board or its authorized Agent, reflecting that all assessments are current through the date of the closing and/or transfer. Any fee charged by the Board or its agent is to be borne by the requesting Owner.

6.10 Unauthorized Transactions. Any sale or lease not authorized pursuant to the provisions of this Amended and Restated Declaration shall authorize the Board to pursue any equitable and/or legal remedies available to the Association against the Owner and any Occupant of the Residence.

6.11 Inter-Family Transfers. None of the provisions of this Article shall apply to a transfer between joint or co-tenants, or among spouses, or immediate family members where the grantee is not to take immediate possession (i.e. Life-estate deed, joint tenancy with children, etc.). However, any Occupant must comply with Article Five herein.

6.12 Trust Ownership. None of the provisions of this Article shall apply to a transfer of Ownership from a current individual(s) Owner into a Trust, where the beneficiaries and/or Occupants of the Residence comply with Article Five herein. Notwithstanding anything contained herein to the contrary, the provisions of this Article shall apply to the sale or transfer of a beneficial interest in an Illinois Land Trust.

ARTICLE SEVEN

Easements

7.1 Easements for Enjoyment of the Common Area. A perpetual easement has been reserved by the Plat and granted to the Association upon the Common Area for the use and enjoyment of said area by all Owners, their families, guests, invitees and others where a right to use or enjoy the Common Area is derived from the Owners and is hereby declared to continue under this Amended and Restated Declaration. Each Owner, and all persons whose rights are derived from the Owner, has an easement to make all reasonable and proper use of the Common Area, and all improvements thereon. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights:

- (a) The right of the Board to pass reasonable Rules and Regulations;

(b) The right of the Association to establish reasonable procedures and measures with respect to entry into the Common Area;

(c) The right of the Board to levy assessments and impose monetary fines for violations as provided in this Amended and Restated Declaration and/or the Rules and Regulations;

(d) The right of the Association through the Board, to dedicate, convey or transfer all or any part of Lots 79, 80, and 81 to the Village, or to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by the Board; and

(e) The right of the Board to regulate the parking of vehicles on any Cluster Home Lot or within the Common Area.

7.2 Easements for Ingress/Egress of Utility Companies. A perpetual easement has been reserved by the Plat and granted to the Village and to those public utility companies operating under franchise from the Village, including but not limited to, Commonwealth Edison, Ameritech, Northern Illinois Gas, Hinsdale Sanitary District, cable television companies, and their successors and assigns over Lot 79, 80 and 81 for the perpetual right, privilege and authority to construct, reconstruct, repair, inspect, maintain and operate various utility transmission and distribution systems, including, but not limited to, water lines and storm and/or sanitary sewers, together with any and all necessary manholes, catch basins, connections, appliances and other structures and appurtenances as may be deemed necessary by the Village or utility over, upon, along, under and through said Lots together with right of access across the Lots, for the necessary men and equipment to do any of the above work. The right is also granted to cut down, trim or remove, without obligation to restore or replace, any obstruction, including but not limited to, trees, shrubs, other plants, structures or other improvements on the easement that interfere with the operation of the utilities. Where any area within the easement is used for utilities, the utility installation shall be subject to the approval of the Village as to design and location. All installations are subject to the ordinances of the Village.

7.3 Easements for Municipal Services. A perpetual easement has been reserved by the Plat and granted to the Village, other governmental authorities having jurisdiction over the Property, and the Association over Lots 79, 80 and 81 for ingress, egress, and the performance of municipal and other governmental services, including, but not limited to, water, storm and sanitary service and maintenance, drainage and detention purposes and maintenance, wetland mitigation purposes and maintenance and emergency and routine police, fire and other public safety-related service; provided, however, the Village shall have no duties with respect to any private streets, detention improvement or landscaping, which are to be constructed in Forest Gate and which shall be maintained by the Association. The Village shall not be responsible for any damage or disturbance of any part of any lawn irrigation system, any private well and its system or any retaining wall, its foundation or any part of the wall system located within Forest Gate that may be

caused by the Village or its agents due to the installation and/or repair of any municipal utility.

7.4 Easements for Storm Water Management Facilities and Maintenance.

A perpetual easement has been reserved by the Plat and granted to the Association, over, under, upon and across Lot 79, 80, and 81 for the purpose of constructing, operating and maintaining a Storm Water Management System. The ownership of any Lot shall be at all times subject to the easements created herein and to the following:

(a) No use of the Property shall be made or permitted, with respect to any portion of the Storm Water Management System, which in any manner (i) pollutes the water, or (ii) obstructs, hinders, or lessens either the storage capacity of the detention/retention ponds, basins or the flow of storm water into, out of, or through, any of the Storm Water Management System. A determination by the Association that such pollution, obstruction, hindrance or lessening has occurred shall be conclusive and binding upon any Owner. Upon written notice of any such determination, the Owner of the Lot on or from which such pollution, obstruction, hindrance or lessening has occurred shall be responsible for the immediate removing, curing and correcting of such condition, so as to restore the normal water quality, flow and capacity.

(b) No improvements shall be made to any Lot which increase the amount of storm water runoff from such Lot or changes or interferes with the established grading of the Property without prior written approval of the Board as provided for in this Amended and Restated Declaration.

(c) The Association shall perform all maintenance of the Storm Water Management System, including, but not limited to, the selective removal of woody material and accumulated debris from, or repairs to, the Storm Water Management System, so that such facility will perform the function for which it was designed and constructed.

(d) The Association shall at all times have such rights of entry and access to such portions of the Cluster Home and Cluster Home Lot as are reasonably necessary to conduct such repair and maintenance. If the Association, determines that pollution, obstruction, hindrance or lessening of flow or capacity has occurred as set forth above and that the appropriate Owner has not forthwith removed, cured or corrected such condition and/or cause for such condition after written notice to do so, then the Association shall have the right to enter the Lot or Lots where such pollution, obstruction, hindrance or lessening of flow or capacity has occurred, or where the condition or activity causing such is located, and to take such action as in its sole discretion it deems reasonably necessary to remove, cure and correct the condition and restore the normal water quality, flow and capacity. If the Association determines that such problem has been caused by the action or inaction of an Owner, then the costs and expenses of all actions taken by the Association in correcting such problems shall be assessed to and paid by said Owner.

(e) In the event the Association fails to perform any of the obligations required to be performed by it as provided in this Amended and Restated Declaration and such deficiencies shall exist 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 deficiencies, the Village has the right, but not the duty, to enter onto the Property and perform the obligations required to be performed by the Association pursuant to this Amended and Restated Declaration. In the event the Village elects to perform the obligations, the Association shall pay promptly to the Village the amount of the cost and expense incurred by it in the performance of such obligations.

(f) If the Village performs or causes to be performed such corrective work, it shall be deemed to have agreed to defend, hold harmless and indemnify the Association and the Owners (collectively "Indemnities") from and against all claims, costs, damages, expenses, judgments, and liabilities resulting from the acts of and work performed by or for the Village except for the willful misconduct and/or negligent acts of the aforesaid Indemnities. The reasonable costs and expenses of all such actions taken by the Village in correcting such problem shall be paid by the Association within thirty (30) days of billing by the Village, without waiver or release of any right the Association may have to recover same from an individual Owner. The Village's costs and expenses, if not reimbursed upon receipt of a written invoice, shall constitute a lien against the benefited property which may be enforced by legal action.

7.5 Easements for Wetland Facilities and Maintenance. A perpetual easement has been reserved by the Plat granted to the Association over, under, upon and across those parts of Lot 79 labeled "Wetland and Conservation Easement" on the Plat for the purpose of constructing, operating, and maintaining a Wetland Mitigation System for the benefit of Forest Gate. The ownership of any Lot shall be at all times subject to the easements created herein. The Association shall be responsible for the perpetual maintenance of the Wetland Mitigation System. As part of the construction, operation and maintenance of the Wetland Mitigation System, the following restrictions shall be enforced by the Association to assure the proper operation and maintenance of the Wetland Mitigation System:

(a) There shall be no buildings or structures constructed within said easement;

(b) There shall be no removal or destruction of trees or plants; no planting of non-native vegetation; no mowing, plowing, mining, removal of topsoil, sand, rock, gravel, minerals, or other material within the easement;

(c) There shall be no operation of snowmobiles, dune buggies, motorcycles, all terrain vehicles or any other type of motorized vehicles within the easements, except for machinery needed for installation or maintenance of utilities constructed or for installation or maintenance of the Wetland Mitigation System;

(d) No rubbish, including lawn clippings, may be discarded within the easement;

(e) No planting or disbursement of any native or non-native plant species or parts thereof within the easement without the prior written approval of the Association; and

(f) No fertilizer or herbicide may be spread within the easement other than for attainment of specific vegetation management goals to meet or maintain performance standards.

(g) The Association shall be responsible for performing all maintenance of the Wetland Mitigation System as the Board determines is necessary in order to maintain the design standards and functions and shall at all times have such rights of entry and access to such portions of Lots 79 and 80 as are reasonably necessary to conduct such repair and maintenance. If the Association determines that a problem requiring repair or maintenance has been caused by the action or inaction of an Owner, then the costs and expenses of all actions taken by the Association in correcting such a problem shall be assessed to and paid by said Owner.

(h) In the event the Association fails to perform any of the obligations required to be performed by it as provided in this Amended and Restated Declaration and such deficiencies shall exist for a period of thirty 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 deficiencies, the Village has the right, but not the duty, to enter onto the property to perform the obligations required to be performed by the Association pursuant to this Declaration. In the event the Village elects to perform the obligations, the Association shall pay promptly to the Village the amount of the cost and expense incurred by it in the performance of such obligations.

(i) If the Village performs or causes to be performed such corrective work, it shall be deemed to have agreed to defend, hold harmless and indemnify the Association and the Owners (collectively "Indemnities") from and against all claims, costs, damages, expenses, judgments and liabilities resulting from the acts of and work performed by or for the Village except for the willful misconduct and/or negligent acts of the aforesaid Indemnities. The reasonable costs and expenses of all such actions taken by the Village in correcting such problem shall be paid by the Association, within thirty (30) days of billing by the Village, without waiver or release of any right the Association may have to recover same from an individual Owner. The Village's costs and expenses, if not reimbursed upon receipt of a written notice, shall constitute a lien against the benefited property which may be enforced by legal action.

7.6 Amendment or Termination of Easements for Storm Water Management Facilities and Maintenance or of Easements for Wetland Facilities and Maintenance. Notwithstanding anything within this Amended and Restated Declaration to the contrary, no part of this Amended and Restated Declaration that may give or

impose rights, obligations, duties, or permissive actions to or on the Association or the Village regarding the easements for Storm Water Management Facilities and Maintenance or the easements for Wetland Facilities and Maintenance, shall be amended or terminated without the approval of the Village.

7.7 Easements for Construction. A perpetual easement has been reserved by Plat and granted to the Association over each Lot in Forest Gate to permit the construction, existence, maintenance and repair of structures located on adjoining Lots. The Association, its agents and employees have the right to enter upon any Lot in Forest Gate at any reasonable time and from time to time in order to provide exterior maintenance or repairs and lawn and landscaping care.

7.8 Easement for Encroachments. A perpetual easement has been reserved by the Plat and granted to the Association, which is parallel to and contiguous to the boundary of each Cluster Home Lot, for the purpose of incidental encroachments of the structure (including an overhang and gutter), maintenance, repair or replacement of the wall of the dwelling and access for other lawful purposes, such as, but not limited to, meter reading.

(a) In the event that any improvements upon a Cluster Home, as originally constructed, shall encroach upon the Common Area, for any reason, then an easement appurtenant to such improvement shall exist for so long as such encroachment shall continue to exist.

(b) In the event that, by reason of the initial design, construction, repair, reconstruction, settlement or shifting of the Property or any part thereof, (i) any part of the Common Area encroaches, or shall hereafter encroach, upon any part of any Cluster Home Lot, or (ii) any part of a Cluster Home Lot (including, but not limited to, patios, decks, fireplaces, chimneys, bay, bow or box windows, and window wells) encroaches, or shall hereafter encroach, upon any part of any other Cluster Home Lot or the Common Area, then, in any such case, there shall be deemed to be an easement in favor of the Owner for the maintenance and use of any of the Common Area which may encroach upon a Cluster Home Lot, and there shall also be deemed to be an easement in favor of any Owner for the exclusive use of any part of his Cluster Home Lot which shall encroach upon the Common Area or any other Cluster Home Lot;

(c) In no event shall an easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the intentional, willful or negligent conduct of such Owner or his agent.

7.9 Easements for Patios and Decks. A perpetual easement has been reserved by the Plat and granted to the Association with the size, shape and location as depicted on the Plat, contiguous to the boundary of a Cluster Home Lot that is reserved exclusively as an easement for either a patio and/or a deck. Such easements are hereby reserved exclusively for the use and enjoyment of the Owner of the Cluster Home Lot appurtenant to said easement, as well as others permitted by the Owner, the families,

guests, and invitees of said Owner. The type, number and size of each deck and patio are subject to the prior written approval of the Association.

7.10 Easements Reserved for Development. Notwithstanding any provision herein to the contrary, until such time as the Developer is no longer vested with or controls title to any Lot, the Board shall have the authority to allow the Developer and its agents and contractors (a) to place and maintain on the Property model residences, sales offices, advertising signs, parking spaces and lighting in connection therewith, at such locations and in such forms as the Board may determine, in its discretion, to be used by the Developer in connection with the promotion, sale, or lease of the Residences or of the Residences constructed on any part of Forest Gate; (b) to come over, across and upon the Property for the purpose of making alterations or improvements to the Residences, Cluster Home Lots, or Common Area; and (c) to store on the Common Area equipment and materials used in connection with such work on the Residences, Cluster Home Lots or Common Area, under such terms and conditions as the Board shall approve.

7.11 Easements in Gross to the Association. The Common Area shall be subject to a perpetual easement in gross to the Association for the purpose of enabling and permitting the Association properly to perform its duties and responsibilities. The Association further has a perpetual easement in gross to enter upon a Cluster Home Lot where reasonably necessary in the judgment of the Association for the purposes of properly performing or executing a duty or responsibility of the Association in respect of other Owners, or of the Owners generally, or of the Common Area. Without limiting the above easement in gross, the Association has a perpetual easement in the Common Area and the Cluster Home Lots for the purpose of maintaining, and testing the lawn sprinkler system, the exterior lighting system, and the fire protection security system, along with any other systems which the Association has the duty or responsibility to operate or maintain for the benefit of the Owners or the Association. The Association also has an easement in gross for the purpose of enabling and permitting the Developer properly to perform its duties and responsibilities. The Association further has an easement in gross to enter upon a Cluster Home Lot where reasonably necessary for the purpose of properly performing or executing a duty or responsibility of the Developer in respect of other Owners, or of the Owners generally, or of the Common Area.

7.12 Easements for Public Utilities, Sanitary and Storm Sewers. The Association has the right to grant easements over portions of Lots 79, 80, and 81 for sanitary and storm sewers and for all other public utility purposes including electricity, gas, water, cable television, security and telephones, and the Association has the 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. The Association is 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.

7.13 Easements to Streets and for Driveways. An easement for ingress and egress to streets shall exist over Lots 79 and 80 and all driveways. Said easement shall provide ingress and egress to each Residence from the private roads of Forest Gate. Said easement shall exist in favor of the Association, Owners, Approved Occupants, their families, guests, invitees and others whose right of use is derived from the Owner, and in favor of the Association. An area for a private road and for the utility easement (in addition to the utility easements hereinabove provided for), and for other purposes not inconsistent with such uses, is created and shall exist, as shown on the Plat as Lot 80. No driveway may be modified in size or location without the prior written consent of the Association.

7.14 Easement for Fire and Police Departments. Fire and police departments servicing Forest Gate, and any cooperating fire and police departments, are hereby given an easement to enter upon and make such use of the private road of Forest Gate, and of so much of Forest Gate itself, as is necessary for the customary and proper performance and discharge of their duties.

7.15 Easement Creation and Amendment. Easements for all public utility or other purposes, including, but without limitation, electricity, gas, water, cable television, security, and telephone, were initially created by the recording in the Recorder's Office of DuPage County, Illinois, of the Plat and, if necessary, individual grants of easements to which shall be appended a plat of easement showing the location of the easements that were initially created. Thereafter, easements for public utilities shall be created by the recording of separate plats of easement, each of which shall show the location of such easements within the Common Area and within any Cluster Home Lot, and such subsequent 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 easement to the respective utilities or services, so that upon the recording of a subsequent plat of easement, each utility or service company shall forthwith have all the rights, powers and obligations contained in said Plat or the initial grants of easement, as fully and as effectively as if all the terms of said initial grant of easement were contained within the subsequently recorded plats of easement.

ARTICLE EIGHT

Forest Gate Homeowners' Association

8.1 The Association. The Association has been incorporated as an Illinois not-for-profit corporation entitled: Forest Gate Homeowners' Association, Inc. The Association shall be the governing body for all of the Owners and for the administration and operation of Forest Gate as provided in this Amended and Restated Declaration, the Articles of Incorporation, the By-Laws, and the Rules and Regulations. All agreements and determinations lawfully made by the Association shall be deemed to be binding on all Owners and their respective successors and assigns.

8.2 Association Membership. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from

ownership of any Residence. Only an Owner, or a designee of the Owner where the Owner is a trust, corporation, partnership, or other legal entity, who is an Approved Occupant, may be a member of the Board or an officer of the Association.

8.3 Right to Vote. All Owners shall be entitled to one vote for each Residence owned. When more than one Person holds an interest in a Residence, all such Persons shall be members. The vote for such Residence shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Residence. One Owner of each Residence shall be designated as the "Voting Member" for that Residence. The Voting Member, or its proxy, shall be the individual who shall be entitled to vote at meetings of the Owners. If the record ownership of a Residence 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 Residence shall be designated by such Owner or Owners in writing to the Board. In the case of multiple individual Owners, or if the Owner is a trust, corporation, partnership, or other legal entity where no designation is given, the Board at its election may recognize an individual who is an Approved Occupant of a Residence as the Voting Member for such Residence.

8.4 Direction and Administration of the Association. The direction and administration of the Association and the Property in accordance with the provisions of this Amended and Restated Declaration shall be vested in the Board of Directors and shall be consistent with this Amended and Restated Declaration, the By-Laws and Rules and Regulations.

8.5 Management and Control by Board. The Board may retain all responsibility and authority for day-to-day management and control of the Property. The Board has the right, to vest all of its responsibility and authority for day-to-day management and control of the Property in a manager to be employed by the Association. If a manager is so employed, the manager shall be subject to the authority of the Board. The policies and decisions of the Board shall be executed by the manager, and the manager shall enforce the Rules and Regulations. The power and authority of the manager shall be coextensive with that of the Board, but shall be subject and subordinate to the Board.

8.6 Adoption of Rules and Regulations. The Board may from time to time adopt Rules and Regulations governing the Property and use of the Property by the Owners and by all other persons. All users of any portion of the Property shall comply with the Rules and Regulations. The Rules and Regulations to be adopted by the Board in respect of any portion of the Property may cover, among other things and without limitation, matters pertaining to use, admission of guests, pets, discipline and disciplinary measures against violators of the Rules and Regulations, including the imposition of monetary fines.

ARTICLE NINE
Rights, Powers and Obligations

9.1 **Powers of the 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, and all such powers shall be exercised by the Board. The power of the Association shall include the power to acquire and pay out funds as hereinafter provided, for the following Common Expenses and/or Residence Expenses:

- (a) Management services
- (b) Gatehouse services, which may include:
 - (i) Electronic entry control/monitoring systems;
 - (ii) Personnel on duty;
 - (iii) Such other services, including but not limited to fire protection and/or individual Cluster Home alarm services, as the Association may deem necessary and proper.

(c) Water removal, and well operation expenses, electricity, telephone and other necessary utility services for the Common Area.

(d) Comprehensive public liability, property damage, and directors and officers insurance in such limits and having such terms as the Board shall deem desirable insuring the Association, its manager, if any, its agents and employees, including the Directors and officers personally, from any liability in connection with the Property, or its operation or maintenance, including the streets, lakes, sidewalks and public space adjoining. The Association is not responsible for insuring the Cluster Home or any portion thereof. Such insurance coverage shall also cover cross liability claims of one insured against another.

(e) Worker's compensation insurance as may be necessary to comply with applicable laws and such other forms of insurance as the Board, in its judgment, shall elect to effect.

(f) General real estate taxes or other taxes, assessments or other charges of governmental bodies against the Common Area or its operation.

(g) 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 Board to be similar and non-adverse to each other.

(h) Landscaping, gardening, snow removal, painting, cleaning, tuck pointing, maintenance, decorating, repair and replacement in the Common Area, including but not limited to the Storm Water Management System, Wetland Mitigation System, street lighting, streets, irrigation wells, and the acquisition of such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper. The Board shall have the exclusive right and duty to acquire the same for the Common Area.

(i) Maintenance of landscaping and snow removal from driveways.

(j) Maintenance and repair of Residence walks, driveways, decks, and patios on behalf of the Owners, but each Owner shall be separately assessed by the Association for the expense thereof applicable to their Cluster Home Lot. Such assessments shall be governed by the provisions set forth in Article Ten relating to assessments generally, except that the invoice covering the cost of walk, driveway, deck, or patio maintenance and repair shall constitute a Residence Expense and shall be paid promptly upon presentation to the Owner for whom the work was done.

(k) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, assessments, taxes or otherwise, which the Board is required to secure or pay for pursuant to the terms of this Amended and Restated Declaration or the By-Laws or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Property or for the implementation of this Amended and Restated Declaration.

(l) Any amount necessary to pay for or discharge any mechanic's lien or other encumbrance levied against the entire Common Area or any part thereof which may, in the opinion of the Board, constitute a lien against the Common Area or any part thereof, rather than merely against the interest therein of particular Owners.

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

(n) Any amount necessary to have the exterior of the Residences inspected, maintained, or repaired as determined necessary by the Board.

9.2 Maintenance of Residences and Common Area.

(a) The Association shall maintain and repair the exterior of the Residences, including but not limited to painting, staining, or other finishing of the exterior trim, garage doors, front doors, decks, patios, and exterior surfaces. The obligation of the Association to maintain and repair the exterior of the Residences shall include the roof, stucco, and exterior stone or brick, but shall not include the complete replacement or rebuilding of all or a substantial portion of the roof, stucco, or exterior brick or stone. The cost of such maintenance and repair shall constitute a Residence

Expense. No Owner, Occupant, or agent of either, may paint, repaint, stain or otherwise alter the appearance of the exterior of any Residence without the prior written consent of the Board. The Association may further regulate the exterior appearance of all Residences consistent with the intent of this Amended and Restated Declaration.

(b) Except as provided in Section 9.2(a), each Owner shall have the obligation to maintain the Owner's Residence and all improvements on the Cluster Home Lot in good condition and repair. Upon the failure of any Owner to maintain the Residence and improvements, the Association may enter upon said Cluster Home Lot and make such repairs, maintenance, rehabilitation or restoration of the premises as may be necessary, the costs thereof shall constitute a Residence Expense and be paid promptly upon presentation by the Association of an invoice for the costs, and the costs may become a lien upon the Cluster Home Lot as provided herein.

(c) Any and all cost incurred as a result of any alteration, and/or repairs or maintenance of any Residence or the replacement of any portion thereof completed by the Association shall be the sole responsibility of the Owner benefited by the repair or maintenance and shall be charged to the Owner as a Residence Expense.

9.3 Alterations and Improvements of the Common Area. The Association shall have the right to make or cause to be made alterations and improvements to the Common Area. The costs of such alterations and improvements shall be assessed as Common Expenses in the manner hereinafter set forth.

9.4 Alterations and Improvements of a Residence. No structure, patio, deck, improvement or addition shall be erected, placed or altered on any Cluster Home Lot within the Association, nor upon the Common Area, until the building plans, specifications and plat plan showing the location and proposed erection, placement or alteration of any such structure, patio, deck, improvement or addition, have been approved in writing as to conformity of external design and harmony with existing structures on the Property and as to location with respect to topography and finished ground elevation, by the Board or by an Architectural Review Committee (ARC) as from time to time constituted by the Board composed of at least three but not more than five members. The ARC shall make recommendations to the Board, but all decisions shall be made by the Board and shall be final. The Board shall notify an applicant of such approval or disapproval in writing. In the event a suit is filed or in the event the Association takes other actions to enforce this Amended and Restated Declaration with respect to such improvements or additions, the Owner shall be responsible for reasonable attorneys' fees and costs incurred by the Association. No member of such committee, nor its designated representative, shall be entitled to any compensation for such services performed pursuant to this Amended and Restated Declaration.

9.5 Books and Records.

(a) The Association shall keep and maintain the following records, or true and complete copies of these records, at the Association's principal office:

- (1) the Amended and Restated Declaration, By-laws, and all plats of survey, and all amendments of these;
- (2) the Rules and Regulations of the Association, if any;
- (3) the Articles of Incorporation of the Association and all Amendments to the Articles of Incorporation;
- (4) minutes of all meetings of the Association and its Board for the immediately preceding 7 years;
- (5) all current policies of insurance of the Association;
- (6) all contracts, leases, and other agreements then in effect to which the Association is a party or under which the Association or the Owners have obligations or liabilities;
- (7) a current listing of the names and addresses of all Owners and Approved Occupants;
- (8) ballots and proxies related to all matters voted on by the members of the Association during the immediately preceding 12 months, including but not limited to the election of members of the Board; and
- (9) the books and records of account for the Association's current and 10 immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures.

(b) Any member of the Association shall have the right to inspect, examine, and make copies of the records described in subdivisions (1), (2), (3), (4), and (5) of subsection (a) of this Section, in person or by agent, at any reasonable time or times, at the Association's principal office. In order to exercise this right, a member must submit a written request to the Association's Board or its authorized agent, stating with particularity the records sought to be examined.

(c) Any member of the Association shall have the right to inspect, examine, and make copies of the records described in subdivisions (6), (7), (8), and (9) of subsection (a) of this Section, in person or by agent, at any reasonable time or times, but only for a proper purpose, at the Association's principal office. In order to exercise this

right, a member must submit a written request to the Association's Board or its authorized agent, stating with particularity the records sought to be examined and a proper purpose for the request.

(d) The actual cost to the Association of retrieving and making requested records available for inspection and examination under this Section shall be charged by the Association to the requesting member. If a member requests copies of records requested under this Section, the actual costs to the Association of reproducing the records shall also be charged by the Association to the requesting member.

(e) Unless otherwise directed by court order, the Board need not make the following records available for inspection, examination, or copying by the members:

- (1) documents relating to appointment, employment, discipline, or dismissal of Association employees or any subcontractor employee;
- (2) documents relating to actions pending against or on behalf of the Association or its Board in a court or administrative tribunal;
- (3) documents relating to actions threatened against, or likely to be asserted on behalf of the Association or its Board in a court or administrative tribunal;
- (4) documents relating to Common Expenses, Residence Expenses or other charges owed by a member other than the requesting member; and
- (5) documents provided to the Association in connection with the lease, sale, or other transfer of a Cluster Home by a member other than the requesting member.

9.6 Employment of Professional Management. The administrative duties of the Board may be performed by a professional property manager or professional management company employed by the Association, and the Association has the right to pay reasonable compensation to a manager, or other professional, so employed.

9.7 Execution of Agreements, Contracts, etc. All agreements, contracts, deeds, leases, vouchers for payment of expenditures and other instruments shall be signed by the authorized officers of the Board, its managers, or by such other persons and in such manner, as from time to time may be determined by the Board.

9.8 Authority to Lease or License. The Association shall have the authority to lease or to grant licenses or concessions with respect to the Common Area, when reasonably deemed to be in the best interest of the Owners by the Board.

9.9 No Business Activity. Nothing in the Amended and Restated Declaration shall be construed to give the Association authority to conduct a business for profit on the Common Area or any part thereof.

9.10 Non-Liability of the Board. The Board shall not be personally liable to the Owners or to any other Person for any mistake in judgment or for any acts or omissions made in good faith. The Association shall, on behalf of the Owners, indemnify and hold harmless each member of the Board against all contractual liability to others arising out of contracts made by the Association at the direction of the Board on behalf of the Owners, unless any such contract shall have been made in bad faith or in violation of the provisions of this Amended and Restated Declaration. Each Owner's proportionate share of any liability for the indemnity and hold harmless based upon a contract made by the Board, 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 the Owner's equal proportionate share of any such contract or indemnity liability. The Board members shall be deemed to be acting only as agents on behalf of the Owners and/or the Association, when authorizing the Association to enter into a contract or agreement on behalf of the Association, and the Board members shall not be held personally liable for any damages or liabilities incurred as a result of the agreement or contract, unless the individual Board members did not act as an agent of the Association. No Board member shall be held personally liable for any damages or liability that results from a decision that had to be made by less than a majority of the Board to respond to an emergency situation.

9.11 Delegation of Power. The maintenance, repair, improvement, management and operation of the Property 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 Amended and Restated Declaration.

9.12 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 Amended and Restated Declaration and for the purposes herein stated.

ARTICLE TEN Assessments

10.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Cluster Home Lot by acceptance of a deed therefore or possession thereof, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to personally and individually covenant and agree to pay the Association; (1) annual assessments or charges, (2) special assessments, and (3) initial single assessment, such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments, together with late fees or interest thereon, attorney's fees and costs of collection thereof, including any and all management fees incurred by the Association solely related to the collection of Common and Residence Expenses, shall be a charge on the land and shall be a continuing lien upon the Cluster Home Lot so

charged. Each such assessment, interest, late fees, all management fees incurred which relate to the collection of the Common and Residence Expenses and reasonable attorney's fees as may be due shall also be the personal obligation of the person who is the Owner of such Cluster Home Lot at the time when the assessment falls due. The personal obligation shall pass to his successors in title accepting a deed to or assignment of beneficial interest in any trust holding title to said Cluster Home Lot.

10.2 No Waiver of Liability. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use or abandonment of their Cluster Home Lot.

10.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the purposes set forth above, and to provide funds for the Association to carry on its duties and fulfill its obligations as set forth herein or in its Articles of Incorporation or By-Laws.

10.4 Reasonable Reserves. The Association shall establish and maintain, from annual assessments collected hereunder, reasonable reserves for Common Expenses.

10.5 Special Assessment. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of providing funds to the Association to carry on any of its duties set forth in this Amended and Restated Declaration or in its Articles of Incorporation or By-Laws.

(a) The Board has the authority to adopt a special assessment, without obtaining member approval, so long as the sum of all regular and separate assessments payable in the current fiscal year do not exceed 120% of the sum of all regular and separate assessments payable during the preceding fiscal year. If the sum of all regular and separate assessments payable in the current fiscal year does exceed 120% of the sum of all regular and separate assessments payable during the preceding fiscal year, the Board, upon written petition by the members with 20 percent of the votes of the Association delivered to the Board within 14 days of the Board action, shall call a meeting of the members within 30 days of the date of delivery of the petition to consider the special assessment. Unless a majority of the total votes of the members are cast at the meeting to reject the budget or the special assessment, it is ratified.

(b) If the special assessment is related to an emergency or mandated by law, the special assessment is not subject to a petition by the members. "Emergency" means an immediate danger to the structural integrity of the Common Area or to the life, health, safety or property of the members.

(c) The Board may adopt special assessments payable over more than one fiscal year. The entire amount of the multi-year assessment shall be deemed considered and authorized in the first fiscal year in which the assessment is approved.

10.6 Uniform Rate of Assessment. Except for Cluster Home Lots owned or controlled by the Developer which shall be assessed in accordance with the separate

contract referenced in Section 15.8 of this Amended and Restated Declaration, annual assessments must be fixed at a uniform rate for all Cluster Home Lots, and shall be as specified in this Amended and Restated Declaration.

10.7 Annual Assessments, Due Dates. On or before November 1 of each year, the Board shall fix the amount of the annual assessment for each Cluster Home Lot. Written notice of any changed amount of the annual assessment shall be sent to every Owner subject thereto. In the absence of notice of change in the assessment, the amount of the prior year's annual assessment shall be the fixed amount.

(a) Annual assessments shall be due and payable in four equal installments on January 1, April 1, July 1, and October 1 of each year.

(b) A late fee will be assessed to any member's account, if the Owner fails to pay an installment of the annual assessment within fifteen (15) days of such installment's due date. Additional late fees will be assessed monthly on the fifteenth day of each subsequent month until any delinquent annual assessment plus any late fee is paid in full.

10.8 Initial Capital Contribution. At the time of the initial sale of any Cluster Home Lot from the Developer to any Owner, such Owner shall pay to the Association an initial capital contribution of \$500.00. This initial capital contribution shall be levied only upon the sale by the Developer to the first Owner and shall not be levied on any subsequent sale of the same Lot.

10.9 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, or its manager, setting forth whether the annual assessments on a specified Cluster Home Lot have been paid and the amount of delinquency, if any. A reasonable charge as determined by the Board from time to time may be made for the issuance of these certificates. Said certificate shall be conclusive evidence that any assessment therein stated to have been paid has in fact been paid.

10.10 Lien for Assessments.

(a) If an Owner fails to pay an assessment or portion thereof for which he is liable, then the Association shall have a lien, regardless if it is recorded or not, effective as of the date on which payment was due, on such Owner's Residence for the purpose of securing the obligation of the Owner in respect of said unpaid assessment or portion thereof; provided, the lien hereby created in favor of the Association shall be subject and subordinate to the lien of any mortgage or trust deed on such Residence made by a bank or insurance company or savings and loan association or other lender, recorded prior to the date of such failure or refusal to pay an assessment. The Association's lien shall include all amounts due and owing for unpaid assessments, late fees, management fees incurred as a result of the management company's attempt to collect any part of defaulting Owner's assessment, attorney's fees and costs.

(b) In addition to the lien for unpaid assessment or any portion thereof in favor of the Association provided for herein, the Association shall have a lien on all tangible personal property located in, on or about the Cluster Home Lot.

10.11 Rights of Association on Default. If an Owner is in default in the payment of the aforesaid assessments or expenses for thirty days or more, the Association may bring suit to foreclose the lien in favor of the Association hereinabove provided for, or may bring suit to enforce collection of the unpaid assessment, and for the recovery of all costs, fees and expenses incurred by reason of said default, including but not limited to, management fees incurred by the Association which are related to the management company's effort to collect any and all assessments, late fees, interest as hereinabove provided, attorneys' fees and/or costs. The lien hereby created may be foreclosed by an action brought in the name of the Association and shall be maintained as in the case of foreclosure of any mortgage or other equitable lien against real estate; provided however that, as herein provided, the Association's lien shall be subordinate to a first mortgage on the Residence only as set forth in 10.10(a). In addition, if any Owner shall fail to pay his assessments when due, the rights and remedies of the Association shall include the right to take possession of such Owner's Cluster Home and/or Cluster Home Lot and other interest in the Property and to maintain for the benefit of all the other Owners an action for possession in the manner prescribed by "An Act in Regard to Forcible Entry and Detainer," approved February 16, 1874, as amended (735 ILCS 5/9-101, *et. seq.*). Any mortgagee of a Residence has the right from time to time and upon payment of a reasonable fee to request in writing a written statement from the Association showing the status of the assessment account of the Owner of the mortgaged Residence, and showing all unpaid items in respect of which the Association is given lien rights hereunder.

ARTICLE ELEVEN

Insurance

11.1 Owners' Casualty Insurance for Cluster Homes. Each individual Owner shall obtain and maintain a policy or policies of insurance covering the Cluster Homes (together with the contents thereof) constructed on the Cluster Home Lots within Forest Gate including, without limitation, all alterations and additions thereto, against damage or destruction by the perils of fire, lightening and those causalities contained in an all risk form and such other perils as the Board from time to time may determine should be included in such coverage, in an amount equal to 100% of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. The policies obtained by the Owners shall be deemed to be the primary insurance coverage for any Cluster Home.

11.2 Owners' Insurance for Liability and Contents of Cluster Homes. Each Owner shall maintain at his own cost and expense insurance coverage with respect to (i) personal liability for acts and occurrences upon the Owner's Cluster Home Lot and within the Owner's Cluster Home with limits of liability not less than \$1,000,000, or such greater amount as the Board from time to time may determine, and (ii) such insurance as the Owner may desire for physical damage losses for personal property and the contents of his Cluster Home. Each Owner shall name the Association as an additional insured for

the liability coverage under the Owners policy. The Board shall have a right to request a certificate of insurance or a copy of the liability insurance policy from time to time to verify that coverage is in place.

11.3 Association's Liability Insurance. The Association shall obtain and maintain a policy or policies with reputable insurance companies of comprehensive general liability insurance insuring on an occurrence basis the Association, its directors, officers, the members, and their agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in connection with any act or omission of or on behalf of the Association, its directors, officers or their agents or employees. Such policies shall be in the amount of not less than \$1,000,000 for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that any such policy or policies may not be canceled without at least a thirty (30) day prior notice to the Association.

11.4 Association's Workers Compensation, Fidelity and Other Insurance. The Association shall obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage:

(a) Workers Compensation and employers liability insurance in such form and in no less than the amounts necessary to comply with applicable laws;

(b) Fidelity insurance or bonds in reasonable amount for all officers, managers and employees having fiscal responsibilities, naming the Association as obligee; and

(c) Such other insurance, including but not limited to director's and officer's insurance coverage, in such limits and for such purpose as the Board may, from time to time, deem reasonable and appropriate.

11.5 Waiver of Subrogation. To the extent practicable, all policies of insurance obtained by the Association shall contain provisions that no act or omission of any named insured shall affect or limit the obligation of the insurance company to pay the amounts of any loss sustained. So long as the policies of insurance provided for herein shall provide that a mutual release as provided for in this Section shall not affect the right of recovery thereunder, and further provide coverage for the matters for which the release herein is given, all named insureds and all parties claiming under them shall, and do by these presents mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard or source covered by any insurance procured by the Association, regardless of the cause of damage or loss.

11.6 Insurance Premium Expense. The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

ARTICLE TWELVE
Compliance, Breach of Covenants, and Default

12.1 Rights and Remedies of Association. Each Owner is bound by and shall comply with the terms of this Amended and Restated Declaration, the By-Laws, and the Rules and Regulations adopted pursuant thereto, and by all amendments to them. A failure by an Owner, or his Approved Occupant, invitee, or guest, to comply with this Amended and Restated Declaration, or with the By-Laws, or Rules and Regulations of the Association or any authorized amendment to said Amended and Restated Declaration, By-Laws, or Rules and Regulations shall constitute a default by such Owner. Each Owner is responsible for the actions or failure to act of any Approved Occupant, invitee, or guest within the Owner's Residence or on Common Area. If a default occurs, the Association shall have the right to recover damages, remove and abate the violation, to procure injunctive relief, to foreclosure on any lien rights the Association may have, or to avail itself 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 any court costs and attorney's fees and all other expenses of the proceeding, and all damages, liquidated or otherwise, all management fees incurred as a result of collecting any amount due, together with late fees, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of the Owner's 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 the Owner's respective share of the annual expenses upon the Cluster Home Lot of such defaulting Owner and upon all of his additions and improvements thereto and upon all of his personal property located on his Cluster Home 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.

12.2 Liability of Owner. Each Owner shall be liable for any damage caused by his act or negligence, or by the act or negligence of any party whose right to be upon the Property, is derived from such Owner. Nothing herein contained, however, shall be construed so as to modify any waiver by an insurance company of rights of subrogation.

12.3 Recovery of Suit Expense. In any action or proceeding commenced by the Association, based upon or arising out of an alleged default or violation of any restriction within this Amended and Restated Declaration, the By-Laws, or Rules and Regulations of the Association, by an Owner, the Association shall be entitled to reimbursement of all expenses incurred, including reasonable attorneys' fees and costs, management fees and damages.

ARTICLE THIRTEEN
Cluster Home Lots: Title in Land Trust

13.1 Cluster Home Lots: Title Held by Land Trustee. Notwithstanding the provisions of Section 1.16 hereof, if title to any Cluster Home Lot is conveyed to a land trust, under the terms of which all powers of management, operation and control of the premises are vested in the trust beneficiary or beneficiaries, then the parties who are the

beneficiaries from time to time under such land trust shall be deemed the Owners of such Cluster Home Lots and shall have all the rights and obligations of Owners hereunder. Beneficiaries of a land trust who transfer their beneficial interest by assignment, or who cause their trustee to transfer a Cluster Home Lot by trustee's deed shall continue to be liable for all liabilities and obligations incurred by them prior to the disposition of their Cluster Home Lot.

ARTICLE FOURTEEN

Amendment and Termination of Declaration

14.1 **Who may amend.** This Declaration may be amended in the manner provided for in this Article. Amendment other than in accordance with this Article is not enforceable.

14.2 **Amendment.** This Amended and Restated Declaration may only be amended by a vote of no less than two-thirds ($\frac{2}{3}$) of all the Owners. The vote shall be taken at a meeting of Owners duly called to consider and vote on any such amendment. Owners may attend in person or by written and signed proxy.

14.3 **Termination of Amended and Restated Declaration.** This Amended and Restated Declaration may be terminated only with the joint consent of:

- (a) The Board, supported by a two-thirds ($\frac{2}{3}$) vote of the Directors;
- (b) The Owners of seventy-five percent (75%) of the Cluster Home Lots;
- (c) The Village; and
- (d) Seventy-five percent (75%) of all mortgagees of Cluster Home Lots and/or Residences.

Concurrence of all the foregoing shall be required in order to effect a valid termination of this Amended and Restated Declaration.

14.4 Procedure on Amendment or Termination.

(a) If this Amended and Restated Declaration is to be terminated, the termination shall be evidenced by an appropriate written instrument stating that this Amended and Restated Declaration has been terminated. The statement of termination shall be executed by the President and Secretary of the Association on behalf of the Association, and by seventy-five percent (75%) of the Owners of the Cluster Home Lots. The President and Secretary of the Association shall certify, in the statement of termination, that no less than two-thirds ($\frac{2}{3}$) of the Board, seventy-five percent (75%) of the Owners of Cluster Home Lots, and seventy-five percent (75%) of all mortgagees of Cluster Home Lots and/or Residences have voted for termination of this Amended and Restated Declaration.

(b) Once approved, the instrument effecting an amendment or termination of this Amended and Restated Declaration shall be recorded in the office of the Recorder of Deeds of DuPage County, Illinois, and the amendment or termination provided for therein shall become effective and operative upon recordation.

14.5 Notices with Respect to Amendment or Termination. The Board shall give at least ten (10) days' prior written notice of the meeting at which amendment or termination of the Amended and Restated Declaration is to be considered.

14.6 Amendment or Termination as to Village. No part of this Amended and Restated Declaration that may give rights, obligations, duties or permissive actions to the Village shall be amended or terminated without the approval of the Village. Additionally, no part of this Amended and Restated Declaration that may give rights and/or responsibilities concerning the storm water management system or the wetland mitigation system shall be amended or terminated without the approval of the Village.

ARTICLE FIFTEEN **General Provisions**

15.1 Notices.

(a) Notices given pursuant to this Declaration or in connection therewith shall be written, and shall be delivered in person or by mail. Notices sent by mail may be sent by regular, certified or registered mail. 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 Cluster Home Lot, unless the Owner has informed the Board in writing of some other mailing address. Notice to the Association may be given to the Association at an address selected by the Board from time to time, or at the Cluster Home Lot of the President of the Board.

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

(c) **Notices - To Mortgagees.** Upon request of the mortgagee of any Cluster Home Lot, and payment of a reasonable charge therefore, the Association shall give to such mortgagee a copy of every amendment to this Amended and Restated Declaration.

(d) **Notices - To Village of Oak Brook.** Notice to the Village of Oak Brook shall be sent to 1200 Oak Brook Road, Oak Brook, Illinois 60523, attention Village Clerk.

15.2 Non-Waiver Except by Written Instrument. No conditions, covenants, restrictions, reservations, grants or other provisions of this Amended and Restated Declaration shall be deemed to have been waived by silence, or inaction, or failure to

enforce rights or in any other manner whatsoever, other than a 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 effected 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 Amended and Restated Declaration shall be liberally construed so as to facilitate and promote the objectives of this Amended and Restated Declaration. Narrow, technical, and literal construction of this instrument inconsistent with the objectives of the Association and Owners shall be avoided. The Board has the authority to reasonably interpret the Association's governing documents and its interpretation shall be binding.

15.4 Rule Against Perpetuities. Should any provision of this instrument be unlawful or void for violation of the rule against perpetuities, then such provisions shall be deemed to be operative only until twenty-one years after the death of the last survivor of the now living lawful descendants 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 provisions of whatever nature of this Amended and Restated Declaration shall not in any way impair or affect the validity or enforceability of any other provision of this Amended and Restated Declaration, and any such invalidity shall be deemed partial and separable, and all of this Amended and Restated Declaration shall be deemed valid, effective and binding except for the invalid provision.

15.6 Legal Fees and Costs. The Association has the right to reimbursement of all legal fees and costs incurred as a result of the Association's enforcement action, including but not limited to any action or proceeding by the Association to collect any and all annual assessments, Special Assessments, Residence Expenses, late fees, fines, or any other amount due from any Owner. The Association shall be reimbursed by the Owner for all attorney's fees and costs incurred as a result of the Association enforcing against the applicable Owner any restriction contained in this Amended and Restated Declaration, the By-Laws, or the Rules and Regulations.

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

15.8 Developer's Rights and Obligations. All rights and obligations of the Developer with respect to the Association regarding the Common Area or any Cluster Home Lot and/or any Residence owned by the Developer shall be governed by a separate contract between the Developer and the Association having such terms and conditions as shall be approved from time to time by the Board (the "Developer Agreement"). Any and all voting rights and/or assessments associated with any Lots and/or Residence as to which the Developer holds fee simple title or is otherwise the beneficial owner of title or a right to control the sale of such Lot and/or Residence shall be in accordance with the

Developer Agreement. In case of any ambiguity in the terms of the Developer Agreement, the rights, benefits, burdens and obligations of the Developer shall be determined by the provisions of the Forest Gate Subdivision Declaration of Covenants, Conditions, and Restrictions, recorded on August 6, 1999, as document number R1999-172960 in the Recorder of Deeds office in DuPage County, Illinois, (the "Original Declaration") excluding the Class B shares in Section 10.3 thereof and finally by the provisions of this Amended and Restated Declaration; provided however, that the provisions of this Amended and Restated Declaration shall not be applied to the Developer in any manner which imposes a greater burden upon the Developer or deprives the Developer of any right or benefit than would be under the Original Declaration, except for any right, benefit, obligation or burden that may be extinguished by the exclusion of the Class B shares in Section 10.3 thereof. Nothing contained in this Section 15.8, the Developer Agreement, or both shall have any further application to any Cluster Home Lot and/or Residence upon the first to occur of (a) the transfer of fee simple title to a party not owned by, controlled by, or for the benefit of the Developer or an immediate family member of a principle owner of the Developer; or (b) the first occupancy of any Residence.

IN WITNESS WHEREOF, the Association has caused its corporate seal to be hereto affixed, and has caused its name to be signed to these presents by its President and attested by its Secretary, this _____ day of _____, 2007.

Forest Gate Homeowners' Association, Inc.

By: _____
Its President

Attest: _____
Its Secretary

Subscribed and Sworn to before me this
_____ day of _____, 2007.

Notary Public